

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

**FORM 10-K
FOR ANNUAL AND TRANSITION REPORTS PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934**

(Mark One)

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

For the fiscal year ended December 31, 2021
OR

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

For the transition period from _____ to _____
Commission File Numbers: 001-38329

NEWMARK GROUP, INC.
(Exact name of Registrant as specified in its charter)

Delaware
(State or other Jurisdiction of
Incorporation or Organization)

6531
(Primary Standard Industrial
Classification Code Number)

81-4467492
(I.R.S. Employer
Identification Number)

125 Park Avenue
New York, New York 10017
(212) 372-2000

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

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

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on Which Registered
Class A Common Stock, \$0.01 par value	NMRK	The NASDAQ Stock Market LLC

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

None
(Title of Class)

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 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 (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

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 definition of "large accelerated filer", "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

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

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

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

The aggregate market value of voting common equity held by non-affiliates of the registrant, based upon the closing price of the Class A common stock on June 30, 2021 as reported on NASDAQ, was approximately \$1.9 billion.

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date.

Class	Outstanding at February 23, 2022
Class A Common Stock, par value \$0.01 per share	167,776,734 shares
Class B Common Stock, par value \$0.01 per share	21,285,533 shares

DOCUMENTS INCORPORATED BY REFERENCE.

Portions of the registrant's definitive proxy statement for its 2022 annual meeting of stockholders are incorporated by reference in Part III of this Annual Report on Form 10-K

NEWMARK GROUP, INC.
2021 FORM 10-K ANNUAL REPORT
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SPECIAL NOTE REGARDING FORWARD-LOOKING INFORMATION

This Annual Report on Form 10-K (this “Form 10-K”) contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Such statements are based upon current expectations that involve risks and uncertainties. Any statements contained herein that are not statements of historical fact may be deemed to be forward-looking statements. For example, words such as “may,” “will,” “should,” “estimates,” “predicts,” “possible,” “potential,” “continue,” “strategy,” “believes,” “anticipates,” “plans,” “expects,” “intends,” and similar expressions are intended to identify forward-looking statements. The information included herein is given as of the filing date of this Form 10-K with the Securities and Exchange Commission (the “SEC”), and future results or events could differ significantly from these forward-looking statements. We do not undertake to publicly update or revise any forward-looking statements, whether as a result of new information, future events, or otherwise.

RISK FACTOR SUMMARY

The following is a summary of material risks that could affect our business, each of which may have a material adverse effect on our business, financial condition, results of operations and prospects. This summary may not contain all of our material risks, and it is qualified in its entirety by the more detailed risk factors set forth in Item 1A- “Risk Factors.”

- *The ongoing COVID-19 pandemic has significantly disrupted and adversely affected the environment in which we and our clients and competitors operate, including the global economy, the U.S. economy, the global financial markets, and the commercial real estate services industry.*
- *The loss of one or more of our key executives and the development of future talent and the ability of certain key employees to devote adequate time to us are a key part of the success of our business, and failure to continue to employ and have the benefit of these executives may adversely affect our businesses and prospects. We also may be unable to attract, retain, motivate and integrate new employees to facilitate our growth strategy.*
- *We may be adversely affected by the transition away from LIBOR and the use of SOFR or other alternative reference rates.*
- *We are subject to certain risks relating to our indebtedness, including constraints on our ability to raise additional capital, declines in our credit ratings and limitations on our financial flexibility to react to changes in the economy or the commercial real estate services industry. We may need to incur additional indebtedness to finance our growth strategy, including in connection with the re-positioning of aspects of our business to adapt to changes in market conditions in the commercial real estate services industry.*
- *We may face difficulties in monetizing the Nasdaq shares without taking some discounts to the per share market price of Nasdaq common stock. Additionally, we will have the risk of fluctuations in the market price of any Nasdaq shares we hold; we may not be able enter into new hedging arrangements with respect to the Nasdaq shares on favorable terms or at all; and we may face various regulatory issues raised by receiving, holding, pledging, hedging and selling the Nasdaq shares.*
- *As we grow our business internationally, we will be exposed to political, economic, legal, regulatory, operational and other risks, including with respect to the outbreak of hostilities or other instability, inherent in operating in foreign countries.*
- *We are a holding company with dual class common stock. Holders of our Class A common stock are subject to certain risks resulting from our structure, including our dependence upon distributions from Newmark Partners, L.P. (“Newmark OpCo”) and the concentration of our voting control among the holders of our Class B common stock, which may materially adversely affect the market price of our Class A common stock.*
- *Reductions in our quarterly cash dividend and corresponding reductions in distributions by Newmark Holdings, L.P. (“Newmark Holdings”) to its partners may reduce the value of our common stock and the attractiveness of our equity-based compensation and limit the ability of our partners to repay employee loans.*
- *Purchasers of our Class A common stock, as well as existing stockholders, may experience significant dilution as a result of sales of shares of our Class A common stock by us or by our partners and employees. Our management will have broad discretion as to the timing and amount of sales of our Class A common stock in any offering by us, as well as the application of the net proceeds of any such sales. In addition, sales of substantial amounts of our*

Class A common stock, or the perception that such sales could occur, may adversely affect prevailing market prices for our stock.

- *We are controlled by Cantor Fitzgerald, L.P. ("Cantor"). Cantor's interests may conflict with our interests, and Cantor may exercise its control in a way that favors its interests to our detriment, including in competition with us for acquisitions or other business opportunities. In addition, agreements between us and Cantor are between related parties, and the terms of these agreements may be less favorable to us than those that we could negotiate with third parties and may subject us to litigation.*
- *We continue to be subject to certain risks relating to the tax treatment of the Spin-Off. If there is a determination that the Spin-Off (as defined below) was taxable for U.S. federal income tax purposes, then BGC Partners, Inc. ("BGC Partners") and its stockholders could incur significant U.S. federal income tax liabilities, and we could incur significant liabilities; and we may be required to pay Cantor for a significant portion of the tax benefit, if any, relating to any additional tax depreciation or amortization deductions we claim as a result of any step-up in the tax basis of the assets of Newmark OpCo resulting from exchanges of interests in Newmark Holdings for our common stock.*

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC. These filings are also available to the public from the SEC's website at www.sec.gov.

Our website address is www.nmrk.com. Through our website, we make available, free of charge, the following documents as soon as reasonably practicable after they are electronically filed with, or furnished to, the SEC: our Annual Reports on Form 10-K; our proxy statements for our annual and special stockholder meetings; our Quarterly Reports on Form 10-Q; our Current Reports on Form 8-K; Forms 3, 4 and 5 and Schedules 13D filed on behalf of Cantor, CF Group Management, Inc., our directors and our executive officers; and amendments to those documents. Our website also contains additional information with respect to our industry and business. The information contained on, or that may be accessed through, our website is not part of, and is not incorporated into, this Annual Report on Form 10-K.

PART I

ITEM 1. BUSINESS

Throughout this document Newmark Group, Inc. is referred to as “Newmark” and, together with its subsidiaries, as the “Company,” “we,” “us,” or “our.”

Our Business

Newmark is a leading full-service commercial real estate services business. We offer a diverse array of integrated services and products designed to meet the full needs of both real estate investors/owners and occupiers. Our investor/owner services and products include capital markets (which includes investment sales, commercial mortgage brokerage, and the placement of debt, equity and structured finance.), agency leasing, government-sponsored enterprise (“GSE”) and Federal Housing Administration (“FHA”) multifamily lending and loan servicing, Valuation and Advisory, property management, and commercial real estate due diligence consulting and advisory services. Our occupier services and products include tenant representation leasing, Global Corporate Services (which includes real estate strategy consulting, workplace strategy and human experience consulting, program and project management, facilities management, lease administration, account management and transaction management). Our global flexible workspace platform, which operates under the names Knotel and Deskeo, is a product that is offered to owners and investors. We enhance these services and products through innovative real estate technology solutions and data analytics that enable our clients to increase their efficiency and profits by optimizing their real estate portfolio. We have relationships with many of the world’s largest commercial property owners, real estate developers and investors, and Fortune 500 and Forbes Global 2000 companies. For the year ended December 31, 2021, we generated revenues of over \$2.9 billion.

We believe that our strong revenue growth and earnings growth over the last several years have resulted from the execution of our unique integrated corporate strategies:

- we provide a “one-stop-shop” platform for the benefit of our clients, offering a full suite of real estate services performed by best-in-class professionals,
- we appreciate the innovative and entrepreneurial nature of our professionals and empower them by providing infrastructure, technology and aggregated data to make them better at what they do,
- we deploy deeply embedded technology and use data-driven analytics to enable clients to better manage their real estate utilization and spend, enhancing the depth of our client relationships,
- we attract and retain market-leading professionals with the benefits of our partnership and equity-based compensation structure and high growth platform,
- we actively encourage cross-selling among our diversified business lines, and
- we continuously build out additional capabilities to capitalize on our market knowledge and client relationships

Our History

Newmark was founded in 1929 with an emphasis on New York-based investor/owner and occupier services, and developed a reputation for having talented, knowledgeable and motivated advisors/intermediaries. BGC acquired Newmark in October 2011. From that time until Newmark was spun off from BGC in December 2018, we embarked on a rapid expansion throughout North America encompassing all key business lines in the real estate services sector and including the acquisition of Berkely Point Financial LLC in 2017. We believe our rapid growth is a result of our management’s strong understanding of commercial real estate as an asset class, deep relationships with users and owners and long-term vision, our strong culture of innovation and collaboration, our ability to adapt to the evolving market and to shifts in the demand for our services, and our proven track record of attracting high-producing talent while completing accretive acquisitions and profitable hiring.

Beginning in 2006, our servicing of clients in the Asia-Pacific region, in Europe, the Middle East and Africa was facilitated through our relationship with Knight Frank. In the third quarter of 2021, we ended our affiliation with Knight Frank. While we still have the ability to utilize their platform and other partners’ platforms on a non-exclusive basis, we have accelerated our own global growth plans by acquiring Knotel, Inc. (“Knotel”) a US-based flexible office space provider with a significant European footprint, and by acquiring Space Management (DBA “Deskeo”), a European leader in flexible and serviced office space. Furthermore, we have announced the addition of industry-leading international professionals in our Global Corporate Services and our Capital Markets businesses and have hired real estate services professionals in Hong Kong and London as we establish footholds in economic centers outside of the Americas. We expect to continue to acquire and hire outside of North America as we execute on our plans to expand globally.

In certain smaller markets in which we do not maintain owned offices, we have agreements in place to operate on a collaborative and cross-referral basis with certain independently-owned offices in return for contractual and referral fees paid to us and/or certain mutually beneficial co-branding and other business arrangements. We do not derive a significant portion of

our revenue from these relationships. These independently-owned offices generally use some variation of our branding in their names and marketing materials. These agreements are normally multi-year contracts, and generally provide for mutual referrals in their respective markets, generating additional contract and brokerage fees. Through these independently-owned offices, our clients have access to additional brokerage professionals with local market research capabilities as well as other commercial real estate services in locations where our business does not have a physical presence.

As of December 31, 2021, our company-owned offices, together with our business partners, operate from approximately 160 offices with over 6,200 professionals in 25 countries across four continents. We intend to continue to opportunistically expand into markets, where we believe we can profitably execute our full service and integrated business model, with a particular focus on growing our presence in key markets in Europe, the Middle East, and Asia, while continuing to opportunistically augment our presence in the Americas.

In summary, we generate revenues from commissions on leasing and capital markets transactions, mortgage origination and loan servicing fees, valuation and advisory, property and facility management fees, as well as fees related to consulting and other real estate services. Our revenues are widely diversified across service lines, geographic regions and clients, with our top 10 clients accounting for approximately 6.9% of our total revenue on a consolidated basis, and our largest client accounting for less than 1.8% of our total revenue on a consolidated basis in 2021.

The continued impact of the pandemic on our business is largely dependent on global efforts to stem the spread of COVID-19, including governmental efforts to distribute vaccines and overall vaccination rates. The evolving nature of the pandemic may continue to present challenges for us and our clients, such as those arising from inflation, supply chain disruptions and rising interest rates. Additional information about the impact of COVID-19 on our business, results of operations and human capital resources can be found elsewhere in this Annual Report on Form 10-K.

Our Services

Newmark offers a diverse array of integrated services designed to meet the full needs of both real estate investors/owners and occupiers. Our technology advantages, industry-leading talent, deep and diverse client relationships and suite of complementary services allow us to actively cross-sell our services and drive margins.

Industry and Market Data

In this Annual Report on Form 10-K, we rely on and refer to information and statistics regarding the commercial real estate services industry. We obtained this data from independent publications or other publicly available information. Independent publications generally indicate that the information contained therein was obtained from sources believed to be reliable, but do not guarantee the accuracy and completeness of such information. Although we believe these sources are reliable, we have not independently verified this information, and we cannot guarantee the accuracy and completeness of this information.

Real Estate Investor/Owner Services and Products

Capital Markets. We offer a broad range of real estate capital markets services, including investment sales, debt placement, fundraising and recapitalization of individual assets, portfolios and operating companies. We match capital providers with capital users. Our capital markets professionals have deep relationships with investors and capital sources of various composition, including government sponsored agencies, insurance companies, pension funds, real estate investment trusts, private funds, private investors, developers and construction firms.

Landlord Representation. We understand the nuanced needs of corporate, institutional, family and entrepreneurial property owners, and develop customized leasing strategies to help them attract and maintain the right tenants. Armed with both on-the-ground intel and comprehensive data, we help landlords find opportunities and make sound decisions. From strategic planning to property and asset management, we believe that our seamless services deliver increased revenue and enhanced value.

Valuation and Advisory. We operate a national Valuation and Advisory business, which has grown over the past six years from fewer than 30 professionals to over 570 as of December 31, 2021. Our Valuation and Advisory professionals execute projects of nearly every size and type, from single properties to large portfolios, existing and proposed facilities, and mixed-use developments across the spectrum of asset classes. Clients include banks, pension funds, equity funds, REITs, insurance companies, developers, corporations, and institutional capital sources. These institutions utilize the advisory services

we provide in their loan underwriting, construction financing, portfolio analytics, feasibility determination, acquisition structures, litigation support, property tax, and financial reporting.

Property Management. We provide property management services on a contractual basis to owners and investors in office (including medical and life science in office), industrial and retail properties. Property management services include building operations and maintenance, vendor and contract negotiation, project oversight and value engineering, labor relations, property inspection/quality control, property accounting and financial reporting, cash flow analysis, financial modeling, lease administration, due diligence and exit strategies. We have an opportunity to grow our property management contracts in connection with other high-margin leasing or other capital markets contracts. These businesses also give us better insight into our clients' overall real estate needs.

Flex Space Provider. We offer flexible office space services across a global network of offices. We make smart, city dependent choices with buildings that serve both owners and occupiers of real estate. We are providing a bespoke solution with world class amenities in a post-COVID landscape.

Leading Commercial Real Estate Technology Platform and Capabilities

We offer innovative real estate technology solutions for both investors/owners and occupiers that enable our clients to increase efficiency and realize additional income or cost savings. Our deep and growing real estate database and commitment to providing innovative technological solutions enable us to provide our clients with value-adding technology products and data-driven advice and analytics.

Government Sponsored Enterprise ("GSE")

Lending and Loan Servicing. We operate a leading commercial real estate finance company focused on the origination and sale of multifamily and other commercial real estate loans through government-sponsored and government-funded loan programs, as well as the servicing of loans originated by it and third parties, including our affiliates. We participate in loan origination, sale, and servicing programs operated by two GSEs, Federal National Mortgage Association ("Fannie Mae") and Federal Home Loan Mortgage Corporation ("Freddie Mac"). We also originate, sell and service loans under Housing and Urban Development's ("HUD") Federal Housing Administration ("FHA") programs, and are an approved HUD Multifamily Accelerated Processing ("MAP") and HUD LEAN lender, as well as an approved Government National Mortgage Association ("Ginnie Mae") issuer.

Origination for GSEs. We originate multifamily loans distributed through the GSE programs of Fannie Mae and Freddie Mac, as well as through HUD programs. Through HUD's MAP and LEAN Programs, we provide construction and permanent loans to developers and owners of multifamily housing, affordable housing, senior housing and healthcare facilities. We are one of 23 approved lenders that participate in the Fannie Mae Delegated Underwriting and Servicing ("DUS") program and one of 21 lenders approved as a Freddie Mac seller/servicer. As a low-risk intermediary, we originate loans guaranteed by government agencies or entities and pre-sell such loans prior to transaction closing. We have established a strong credit culture over decades of originating loans and remain committed to disciplined risk management from the initial underwriting stage through loan payoff.

Servicing. In conjunction with our origination services, we sell the loans that we originate under GSE and FHA programs and retain the servicing of those loans. The servicing portfolio (which includes certain other non-agency loans) provides a stable, predictable recurring stream of revenue to us over the life of each loan. The typical multifamily loan that we originate and service under these programs is either fixed or variable rate and includes significant prepayment penalties. These structural features generally offer prepayment protection and provide more stable, recurring fee income. Our servicing operations are rated by Fitch, S&P, and Kroll for commercial loan primary and special servicing and consist of a team of over 70 professionals dedicated to primary and special servicing and asset management. These professionals focus on financial performance and risk management to anticipate potential property, borrower or market issues. Portfolio management conducted by these professionals is not only a risk management tool, but also leads to deeper relationships with borrowers, resulting in continued interaction with borrowers over the term of the loan, and potential additional financing opportunities.

We believe that the combination of our leading multifamily investment sales, mortgage brokerage, and agency lending businesses has provided and will continue to provide substantial cross-selling opportunities.

Key Lending Channels

- **Fannie Mae.** As one of 23 lenders under the Fannie Mae DUS program, we are a multifamily approved seller/servicer for conventional, affordable and seniors loans that satisfy Fannie Mae's underwriting and other eligibility requirements. Fannie Mae has delegated to us responsibility for ensuring that the loans originated under the

Fannie Mae DUS program satisfy the underwriting and other eligibility requirements established from time to time by Fannie Mae. In exchange for this delegation of authority, we share up to one-third of the losses that may result from a borrower's default. All of the Fannie Mae loans that we originate are sold, prior to loan funding, in the form of a Fannie Mae-insured security to third-party investors. We service all loans that we originate under the Fannie Mae DUS program.

- **Freddie Mac.** We are one of 21 Freddie Mac multifamily approved seller/servicer for conventional, affordable and seniors loans that satisfy Freddie Mac's underwriting and other eligibility requirements. Under the program, we submit the completed loan underwriting package to Freddie Mac and obtain Freddie Mac's commitment to purchase the loan at a specified price after closing. Freddie Mac ultimately performs its own underwriting of loans that we sell to Freddie Mac. Freddie Mac may choose to hold, sell or, as it does in most cases, later securitize such loans. We do not have any material risk-sharing arrangements on loans sold to Freddie Mac under the program. We also generally service loans that we originate under this Freddie Mac program.
- **HUD/Ginnie Mae/FHA.** As an approved HUD MAP and HUD LEAN lender and Ginnie Mae issuer, we provide construction and permanent loans to developers and owners of multifamily housing, affordable housing, senior housing and healthcare facilities. We submit a completed loan underwriting package to FHA and obtain FHA's firm commitment to insure the loan. The loans are typically securitized into Ginnie Mae securities that are sold, prior to loan funding, to third-party investors. Ginnie Mae is a United States government corporation in HUD. Ginnie Mae securities are backed by the full faith and credit of the United States. In the event of a default on a HUD insured loan, HUD will reimburse approximately 99% of any losses of principal and interest on the loan and Ginnie Mae will reimburse the majority of remaining losses of principal and interest. The lender typically is obligated to continue to advance principal and interest payments and tax and insurance escrow amounts on Ginnie Mae securities until the HUD mortgage insurance claim has been paid and the Ginnie Mae security is fully paid. We also generally service all loans that we originate under these programs.
- As described under "Real Estate Investor/Owner Services - Capital Markets," we also offer our clients access to third party banks, insurance companies and other capital providers through our mortgage brokerage platform.

Lending Transaction Process. Our value driven, credit focused approach to underwriting and credit processes provides for clearly defined roles for senior management and carefully designed checks and balances to ensure appropriate quality control. We are subject to both our own and the GSEs' and HUD's rigorous underwriting requirements related to property, borrower, and market due diligence to identify risks associated with each loan and to ensure credit quality, satisfactory risk assessment and appropriate risk diversification for our portfolio. We believe that thorough underwriting is essential to generating and sustaining attractive risk adjusted returns for our investors.

We source lending opportunities by leveraging a deep network of direct borrower and brokerage professional relationships in the real estate industry from our national origination platform. We benefit from offices located throughout the United States and our \$70.4 billion servicing portfolio as of December 31, 2021 (of which approximately 76%, 21% and 3%, respectively, relate to primary, limited, and special servicing), providing real time information on market performance and comparable data points. Servicing companies generally earn considerably higher fees from primary servicing (GSE and FHA loans) compared with limited and special servicing. Our primary servicing book has grown at a 10% CAGR since 2015.

Financing. We finance our loan originations under GSE programs through collateralized financing agreements in the form of warehouse loan agreements ("WHAs") with multiple lenders with an aggregate commitment as of December 31, 2021 of \$1.5 billion, an uncommitted \$300.0 million warehouse line with one lender and an uncommitted \$400.0 million Fannie Mae loan repurchase facility. As of December 31, 2021 and December 31, 2020, we had collateralized financing outstanding of approximately \$1,050.7 million and \$1,061.2 million, respectively. Collateral includes the underlying originated loans and related collateral, the commitment to purchase the loans, and credit enhancements from the applicable GSE or HUD. We typically complete the distribution of the loans we originate within 30 to 60 days of closing. Proceeds from the distribution are applied to reduce borrowings under the WHAs, thus restoring borrowing capacity for further loan originations under GSE programs.

Intercompany Referrals. We, Cantor Commercial Real Estate Company, L.P. ("CCRE") and certain of our affiliates have entered into arrangements in respect of intercompany referrals. Pursuant to these arrangements, the parties refer to each other for customary fees, opportunities for commercial real estate loan originations to CCRE, opportunities for real estate investment sales, broker or leasing services to us and opportunities for GSE/FHA loan originations to us.

Due Diligence, Consulting and Advisory Services and Other Services. We provide commercial real estate due diligence consulting and advisory services to a variety of clients, including lenders, investment banks and investors. Our core competencies include underwriting, modeling, structuring, due diligence and asset management. We also offer clients cost-

effective and flexible staffing solutions through both on-site and off-site teams. We believe that this business line and other non-brokerage services we offer give us additional ways to cross-sell services to our clients.

Real Estate Occupier Services

Tenant Representation Leasing. We represent commercial tenants in virtually all aspects of the leasing process, including space acquisition and disposition, strategic planning, site selection, financial and market analysis, economic incentives analysis, lease negotiations, lease auditing and project management. We assist clients by defining space requirements, identifying suitable alternatives, recommending appropriate occupancy solutions, negotiating lease and ownership terms with landlords and minimizing real estate costs and associated risks for clients through analyzing, structuring and negotiating business and economic incentives. Fees are typically based on a percentage of the total financial consideration of the lease commitment for executed leases and are generally earned when a lease is signed. In many cases, landlords are responsible for paying the fees. We use innovative technology and data to provide tenants with an advantage in negotiating leases, which has contributed to our market share gains.

Global Corporate Services (“GCS”). GCS is our consulting and outsourcing services business that focuses on reducing occupancy expense and improving efficiency for corporate real estate occupiers, with significant, often multi-national presences. We provide beginning-to-end corporate real estate solutions for clients. GCS strives to make its clients more profitable by optimizing real estate usage, reducing overall corporate footprint, and improving workflow and human capital efficiency through large scale data analysis and our industry-leading technology.

We provide real estate strategic consulting services to our clients, including many Fortune 500 and Forbes Global 2000 companies, owner-occupiers, government agencies, as well as organizations in healthcare and higher education. We also provide enterprise asset management information consulting and technology solutions which can yield cost-savings for our GCS business’s client base. Our consulting services include financial integration, asset and portfolio strategy, location strategy and optimization, workplace strategies, workflow and business process improvement, merger and acquisition integration and industrial consulting. Fees for these services are on a negotiated basis and are often part of a multi-year services agreement. Fees may be contingent on meeting certain financial or savings objectives with incentives for exceeding agreed upon targets.

We believe that GCS provides us with a unique lens into commercial real estate and offers ways to win business across multiple business lines. Whether a client currently manages its corporate real estate function in-house (insource) or has engaged an external provider (outsource), GCS aims to create value by securing accounts that are first generation outsource or by gaining outsourced market share.

For the past 13 years, the International Association of Outsourcing Professionals (“IAOP”) has named Newmark to The Best of The Global Outsourcing 100®, which identifies the world’s best outsourcing providers across all industries.

Workplace and Occupancy Strategy. Our workplace strategy and human experience team includes real estate strategists, architects, financial analysts, change managers, and subject matter experts with experience in the components of a successful workplace. We focus on the people, place and process aspects that drive performance. We work with clients to make the experience of going to work more engaging, supportive, and productive by inspiring people through meaningful placemaking. Our clients include leading corporations who are increasingly rethinking their approach to the workplace as a result of the pandemic. They are motivated by a variety of factors - including making their people happier, safer and healthier, driving organizational change and re-alignment, and being more effective with their real estate and technology investments. Our team leverages workplace to tailor environments where employees want to come to work, participate and perform.

Our Energy and Sustainability Services team aims to help management services clients lower energy costs, increase net operating income and support responsible corporate stewardship, and include: calibration of outside air/demand control ventilation, energy procurement, EnergyStar management, enhanced air filtration & IAQ Upgrades Electrical Demand Lighting, electrical load curtailment (demand response), EV charging stations, LED lighting upgrades, LEED certification, renewable energy and utility data management and benchmarking.

Technology. GCS has upgraded and improved upon various technologies offered in the real estate industry combining our technological specialties and our creative core of development within our GCS platform.

Recurring Revenue Streams. GCS often provides a recurring revenue stream when it enters into multi-year contracts for ongoing services, such as Project and Facilities Management and Real Estate and Lease Administration over the course of the contract.

Project Management. We provide a variety of services to tenants and owners of self-occupied spaces. These include conversion management, move management, construction management and strategic occupancy planning services. These services may be provided in connection with a tenant representation lease or on a contractual basis across a corporate client's portfolio. Fees are generally determined on a negotiated basis and earned when the project is complete.

Real Estate and Lease Administration. We manage leases for our clients for a fee, which is generally on a per lease basis. We also perform lease audits and certain accounting functions related to the leases. Our lease administration services include critical date management, rent processing and rent payments. These services provide additional insight into a client's real estate portfolio, which allows us to deliver significant value back to the client through the provision of additional services, such as tenant representation, project management and consulting assignments, to minimize leasing and occupancy costs. For large occupier clients, our real estate technology enables them to access and manage their complete portfolio of real estate assets. We offer clients a fully integrated user-focused technology product designed to help them efficiently manage their real estate costs and assets.

Facilities Management. We manage a broad range of properties on behalf of users of commercial real estate, including headquarters, facilities and office space, for a broad cross section of companies including Fortune 500 and Forbes Global 2000 companies. We manage the day-to-day operations and maintenance for urban and suburban commercial properties of most types, including office, industrial, data centers, healthcare, retail, call centers, urban towers, suburban campuses, and landmark buildings. Facilities management services may also include facility audits and reviews, energy management services, janitorial services, mechanical services, bill payment, maintenance, project management, and moving management. While facility management contracts are typically three to five years in duration, they may be terminated on relatively short notice periods.

Industry Trends and Opportunity

We expect the following industry and macroeconomic trends to impact our market opportunity:

Large and Highly Fragmented Market. We believe that the commercial real estate services industry is a more than \$230 billion global revenue market opportunity of which a significant portion currently resides with smaller and regional companies, while a large percentage consists of real estate services that are performed in-house by owners and occupiers but could be partially or entirely outsourced. We estimate that less than 20% of the potential revenue in the global commercial real estate services market is currently serviced by the top 10 global firms (by total revenue), leaving a large opportunity for us to reach clients through superior experience and high-quality service, relative to both our larger competitors and the significant number of fragmented smaller and regional companies. We believe that clients increasingly value full service real estate service providers with comprehensive capabilities and multi-jurisdictional reach. We believe this will provide a competitive advantage for us as we have full service capabilities to service both real estate owners and occupier.

Increasing Institutional Investor Demand for Commercial Real Estate. Institutions investing in real estate often compare their returns on investments in real estate to those of alternative asset classes. Additionally, the continued low-interest rate environment (relative to long-term historical rates) around the world and appealing spreads between those rates relative to risk-adjusted total returns for commercial real estate have attracted significant additional investment from the portfolios of sovereign wealth funds, insurance companies, pension and mutual funds, high net worth investors and family offices, and other institutional investors, leading to an increased percentage of direct and indirect ownership of real-estate related assets over time. For example, Preqin estimated that there was approximately \$391 billion of investable funds held by global real-estate focused institutions as of December 2021, versus \$157 billion in 2010. In addition, global institutional investors' target allocation to real estate has increased from 5.6% of their overall portfolios in 2010 to 10.7% in 2021, according to figures from Preqin Real Estate Online, Cornell University's Baker Program in Real Estate and Hodes Weill & Associates. We expect this positive allocation trend to continue to benefit our capital markets, services, and GSE lending businesses.

Significant Levels of Commercial Mortgage Debt Outstanding and Upcoming Maturities. With \$2.6 trillion in U.S. commercial mortgage debt outstanding and with approximately \$2.3 trillion of maturities expected from 2022 to 2026 according to the Mortgage Bankers Association ("MBA") and Trepp, LLC, we see opportunities in our commercial mortgage brokerage businesses and our GSE lending units. Sustained low interest rates typically stimulate our capital markets business, where demand is often dependent on attractive all-in borrowing rates versus asset yields. Demand also depends on credit accessibility and general macroeconomic trends.

Favorable Multifamily Demographics Driving Growth in GSE Lending and Multifamily Sales. Increasing sales prices for single-family homes relative to wages, delayed marriages, an aging population and immigration to the United States are among the factors increasing demand for new apartment living, as well as for single-family rental housing. We expect these factors to support continued growth for our real estate capital markets business, which provides integrated investment sales, mortgage brokerage, GSE/FHA lending, and loan servicing capabilities.

Trend Toward Outsourcing of Commercial Real Estate Services. We believe that the outsourcing of real-estate-related services has reduced both property owner and tenant costs, which has increased the profitability for those who utilize commercial real estate and spurred additional demand for property. We believe that the more than \$230 billion global revenue opportunity includes a large percentage of companies and landlords that have not yet outsourced their commercial real estate functions, including many functions offered by our management services businesses. Large corporations are focused on consistency in service delivery and centralization of the real estate function and procurement to maximize cost savings and efficiencies in their real estate portfolios. This focus tends to lead them to choose full-service providers like Newmark, where customers can centralize service delivery and maximize cost savings. We expect our GCS and Property Management businesses to benefit from the continued growth of outsourcing. For those companies and landlords who do not outsource, we consult with them and offer technology solutions to facilitate self-management more efficiently. In addition, the recent global pandemic has increased demand among owners and occupiers of commercial real estate for ways to best manage their property portfolios and maximize both the safety and productivity of their workforce. Our GCS business has seen increased demand for services relevant to these client needs. We believe that our outsourcing, consulting, and technology offerings allow us to engage further with clients and position us for opportunities to provide additional services to fulfill their needs.

Our Competitive Strengths

We believe the following competitive strengths differentiate us from competitors and will help us enhance our position as a leading commercial real estate services provider:

Full-Service Capabilities. We provide a fully integrated real estate services platform to meet the needs of our clients and seek to provide beginning-to-end services to each client. These services include leasing, investment sales, mortgage brokerage, property management, facility management, multifamily GSE/FHA lending, loan servicing, advisory and consulting, appraisal, property and development services, and technology solutions. Today's clients are focused on consistency of service delivery and centralization of the real estate function and procurement, resulting in savings and efficiencies and allowing them to focus on their core competencies. Our target clients increasingly award business to full-service commercial real estate services firms, a trend which benefits our business over a number of our competitors. Additionally, our full-service capabilities afford us an advantage when competing for business from clients who are outsourcing real estate services for the first time, as well as clients seeking best in class technology solutions. We believe that our comprehensive, top-down approach to commercial real estate services has allowed our revenue sources to become well-diversified across services and key markets throughout North America. Going forward, we expect to replicate our growth strategies as we continue our global expansion, with a focus on 8-10 key non-U.S. markets.

Proven Ability to Attract High-Quality Talent and Grow Market Share. Over the past decade, Newmark has been able to provide full-service capabilities while maintaining a manageable scale and has gained market share and risen in relevant league table standings across many business lines. We have accomplished this in part by investing in the leadership of our business lines and recruiting the top performers across our diverse business lines and geographies to our platform. We believe that we will duplicate this success over time as we further expand our presence outside the U.S.

Alignment to Investor Sentiment & Diverse Revenue Mix. We have added companies and talent to our platform that provide services in business lines, property types and geographies that align with the objectives of our clients and with the changing market for commercial real estate services. We have grown our revenues in multifamily, industrial and life sciences, driven by our clients' desires to expand their investments and operations within these property types. Additionally, we have expanded our services through geographic diversification, growing service offerings in many markets in North America, and in other markets globally. For example, in 2021, we acquired the assets of Knotel, a leading flexible office platform with locations throughout the U.S., the U.K., France, and the rest of Europe, as well as a majority stake in Deskeo, a French leader in flexible and serviced office space for enterprise clients.

Deeply Embedded, Industry-Leading Technology. Our advanced technology differentiates us in the marketplace by harnessing the scale and scope of our data derived from billions of square feet of leased real estate. Below are some examples of our technology solutions:

- Ngage is our proprietary Valuation & Advisory technology system that improves the efficiency and effectiveness of our appraisers. We expect Ngage to aid the growth of our Valuation & Advisory business throughout the rest of the world, and also expect the underlying technology to be applicable in many of our other business lines.
- In 2019, Newmark acquired Workframe, Inc. ("Workframe") The Workframe software tool is a workflow solution that was built to address the unique complexity of the CRE project lifecycle. Workframe further solidifies the Company's differentiated, value-add and client-facing technology platforms and is expected to be utilized by Newmark professionals and clients to manage a high volume of concurrent projects, seamlessly engage throughout a document-

centric workflow, and unite large, geographically distributed teams, often comprised of stakeholders across multiple third-party organizations.

- Spaceful is a technology platform that helps brokers transform space tours for the digital age, saving time and strengthening tenant relationships along the way. Through an intuitive web-based software, brokers can design dynamic tour experiences. A drag-and-drop interface allows brokers to assemble elegant tour books in minutes and collaborate with colleagues and tenants throughout the tour experience. The result is a more interactive, more collaborative tour experience that benefits brokers and tenants alike.
- Ideal is Newmark's proprietary CRM system used across all business lines creating a One-Newmark experience for our customers. By fostering collaboration across Newmark, the CRM system provides valuable insights for conversion and upselling opportunities.

In addition to generating revenue from software licenses and user agreements, we believe our technology solutions encourage customers to use Newmark to execute capital markets and leasing transactions, as well as other recurring services. We believe that the customer experience through technology is becoming a key source for competitive advantage as companies look to transform how they do business. We are leading our technology effort through engineering excellence and product innovation. To improve investor, tenant and broker experiences, we will continue to develop and invest in cutting edge technologies, which we believe will help to drive our growth.

Strong and Diversified Client Relationships. We have long-standing relationships with many of the world's largest commercial property owners, real estate developers and investors, and Fortune 500 and Forbes Global 2000 companies. We are able to provide beginning-to-end solutions for our clients through our management services offerings. This allows us to generate more recurring and predictable revenues. We generally have multi-year contracts to provide services, including repeatable transaction work, lease administration, project management, facilities management and consulting. In capital markets, we provide real estate investors and owners with property management and landlord representation during their ownership and assist them with maximizing their return on real estate investments through investment sales, debt and equity financing, lending and valuation and advisory services and real estate technology solutions. We believe that the many touch points we have with our clients gives us a competitive advantage in client-specific and overall industry knowledge, while also giving us an opportunity to cross-sell our various offerings to provide maximum value to our customers.

Strong Financial Position to Support High Growth. We generate significant earnings and strong and consistent cash flow. We have \$575.9 million of liquidity and no net debt as of December 31, 2021. We expect to use our strong balance sheet and future cash flow generation to fuel our future growth. For the 12 months ended December 31, 2021, we generated revenues of over \$2.9 billion. We intend to maintain a strong balance sheet and to continue to grow our market share as we accretively acquire companies, develop, and invest in technology and add top talent across our platform. With our future earnings potential and strong balance sheet, we believe we are well-positioned to invest strategically to grow our business over the long term while returning capital to shareholders.

Employee Ownership and Equity-Based Compensation Yields Multiple Benefits. Unlike many of our peers, virtually all of our key executives and revenue-generating employees have partnership and/or equity stakes in our company. This strong emphasis on equity-based compensation promotes an entrepreneurial culture that enables us to attract and retain key producers in key markets and services. See “-Human Capital Management.”

Strong and Experienced Management Team. Our management team possesses deep leadership experience and subject matter expertise, benefiting both us and our clients. Our executive officers comprise a diverse set of individuals with an average of more than 30 years of industry experience. Additionally, our geographic and business line leadership teams also average more than 30 years of industry experience. Together, these leadership teams represent our flat leadership structure and robust capabilities in both corporate strategy and production expertise.

Our Differentiated Business Growth Strategy

Set forth below are the key components of our differentiated business growth strategy:

Profitably Hire Top Talent and Accretively Acquire Complementary Businesses. Building on our management team's proven track record, our retentive compensation structure, our high-growth platform and our equity currency, we intend to opportunistically hire additional producers and acquire other firms, and services to strengthen and enhance our broad suite of offerings. We expect this growth to deepen our presence in our existing markets and expand our ability to service existing and new clients globally.

Actively Cross-Sell Services to Increase Revenue and Expand Margins. We expect the combination of our services to generate substantial revenue synergies across our platforms, increase revenues per producer and expand margins. To complement and drive future growth opportunities within our GCS business, we are leveraging our capabilities in providing innovative front-end real estate data and technology solutions to complement and cross-sell other corporate services to those

clients, including leasing services, project management, facilities management and lease administration services. Furthermore, in capital markets we can leverage relationships with institutional owners of real estate to provide investment sales, debt and equity placement, origination, landlord representation and property management. In particular, the combination of our leading multifamily GSE/FHA origination business, our top two multifamily investment sales business (for the year ended December 31, 2021), and Newmark's fast-growing commercial mortgage business has enabled us to successfully cross-sell services across our multifamily platform. We expect this to expand our more than \$70 billion servicing portfolio.

Incentivize and Retain Top Talent Using Equity-based Compensation. Unlike many of our peers, virtually all of our key executives and producers have partnership and/or equity stakes in our company and receive deferred equity, restricted stock units or Newmark Holdings units as part of their compensation. A significant percentage of Newmark's fully diluted shares are owned by our executives, partners and employees. Our ownership stakes provide effective tools to recruit, motivate and retain our key employees.

Utilize Our Technology to Provide Value and Deepen Relationships with Clients. We believe owners and occupiers of commercial real estate are increasingly focused on improving their efficiency, cost reduction and outsourcing of non-core real estate competencies. Through the use of our innovative technology and consulting services, we help clients become more efficient in their commercial real estate activities, and thus realize additional profit. We will continue to provide technology solutions for companies that self-manage, offering them visibility into their real estate data and tools to better manage their real estate utilization and spend. For instance, we are well positioned to provide technology services for the approximately 80% of the market (measured in square feet) that we believe does not outsource their real estate functions. The deep insight into our clients that we gain through our data and technology will provide us with opportunities to cross-sell consulting and transaction services.

Opportunity to Grow Domestic and Global Footprint. In 2021, less than 5% of our revenues were from international sources, while our largest, full-service, U.S.-listed competitors generated approximately 30-50% of their revenues outside the U.S., for the most recent twelve-month periods reported, excluding investment management. We believe that our successful history of acquiring businesses across the U.S. and making profitable hires across our business lines demonstrate our ability to continue to grow substantially around the globe.

Industry Recognition

As a result of our experienced management team's ability to skillfully grow the Company, we have become a nationally recognized brand. Over the past several years, we have consistently won a number of U.S. industry awards and accolades, been ranked highly by third-party sources and significantly increased our rankings, which we believe reflects recognition of our performance and achievements. For example:

- Ranked #3 Top CRE Brokerage Firms, Commercial Property Executive, 2021;
- Ranked #2 Top Sales Firms, Commercial Property Executive, 2021;
- Ranked #2 Top Brokers of Multi-Family Properties, Real Estate Alert, 2021;
- Ranked #3 Top Office Brokers, Real Estate Alert, 2021;
- Ranked #4 Top Overall Brokers, Real Estate Alert, 2021
- Ranked #4 Top Retail Brokers, Real Estate Alert, 2021
- Ranked #5 Top Brokers of Hotels, Real Estate Alert, 2021;
- Ranked #2 Top Apartment Brokers, Real Capital Analytics, 2021;
- Ranked #4 Top Brokers by Investment Volume, Real Capital Analytics, 2021;
- Ranked #4 Top Office Brokers, Real Capital Analytics, 2021;
- Ranked #4 Top Retail Brokers, Real Capital Analytics, 2021;
- Ranked #5 Top Development Site Brokers, Real Capital Analytics, 2021;
- Ranked #6 Freddie Mac Top Optigo® Lender in 2021 by the agency; including #3 Top Optigo® Lender - Seniors Housing and in #5 Top Optigo® Lender – Conventional;
- Ranked #5 Fannie Mae Delegated Underwriting and Servicing (DUS) lender by volume in 2021 by the agency; including #2 DUS Producers for Structured Transactions and #3 DUS Producers for Seniors Housing;
- Ranked among The Global Outsourcing 100® by the International Association of Outsourcing Professionals, 2022, for the 13th consecutive year; and
- Winner of 19 REBNY Deal of the Year Awards over the past 17 Years, Real Estate Board of New York.

Clients

Our clients include a full range of real estate owners, occupiers, tenants, investors, lenders and multi-national corporations in numerous markets, including office, retail, industrial, multifamily, student housing, hotels, data center, healthcare, self-storage, land, condominium conversions, subdivisions and special use. Our clients vary greatly in size and

complexity, and include for-profit and non-profit entities, governmental entities and public and private companies. For the year ended December 31, 2021, our top 10 clients, collectively, accounted for approximately 6.9% of our total revenue on a consolidated basis, and our largest client accounted for less than 1.8% of our total revenue on a consolidated basis.

Sales and Marketing

We seek to develop our brand and highlight its expansive platform while reinforcing our position as a leading commercial real estate services firm in the United States through national brand and corporate marketing, local marketing of specific business lines and targeted brokerage professional marketing efforts.

National Brand and Corporate Marketing

At a national level, we utilize media relations, industry sponsorships, social media, sales collateral and targeted advertising in trade and business publications to develop and market our brand. We believe that our emphasis on our unique capabilities enables us to demonstrate our strengths and differentiate ourselves from our competitors. Our multi-market business groups provide customized collateral, website and technology solutions designed to address specific client needs.

Local Market Expertise and Targeted Brokerage Professional Efforts

On a local level, our offices (including those owned by us and independently owned offices) have access to tools and templates that provide our sales professionals with the market knowledge we believe is necessary to educate and advise clients, and also to bring properties to market quickly and effectively. These tools and templates include proprietary research and analyses, web-based marketing systems and ongoing communications and training about our depth and breadth of services. Our sales professionals use these local and national resources to participate directly in selling to, advising and servicing clients. We provide marketing services and materials to certain independently owned offices as part of an overall agreement allowing them to use our branding. We also benefit from shared referrals and materials from local offices.

Additionally, we invest in and rely on comprehensive research to support and guide the development of real estate and investment strategy for our clients. Research plays a key role in keeping colleagues attuned to important trends and changing conditions in world markets. We disseminate this information internally and externally directly to prospective clients and the marketplace through the company website. We believe that our investments in research and technology are critical to establishing our brand as a thought leader and expert in real estate-related matters and provide a key sales and marketing differentiator.

Intellectual Property

We hold various trademarks, trade dress and trade names and rely on a combination of patent, copyright, trademark, service mark and trade secret laws, as well as contractual restrictions, to establish and protect our intellectual property rights. We own numerous domain names and have registered numerous trademarks and/or service marks in the United States and foreign countries. We will continue to file additional patent applications on new inventions, as appropriate, demonstrating our commitment to technology and innovation. Although we believe our intellectual property rights play a role in maintaining our competitive position in a number of the markets that we serve, we do not believe we would be materially adversely affected by the expiration or termination of our trademarks or trade names or the loss of any of our other intellectual property rights. Our trademark registrations must be renewed periodically, and, in most jurisdictions, every 10 years.

Competition

We compete across a variety of business disciplines within the commercial real estate industry, including commercial property and corporate facilities management, owner-occupier, property and landlord representation, property sales, valuation, capital markets (equity and debt) solutions, GSE lending and loan servicing and development services. Each business discipline is highly competitive on a local, regional, national and global level. We also compete with other large multi-national firms that have similar service competencies to ours, including CBRE Group, Inc., Jones Lang LaSalle Incorporated, Cushman & Wakefield plc, Savills plc, and Colliers International Group, Inc. In addition, more specialized firms like Marcus & Millichap Inc., Eastdil Secured LLC and Walker & Dunlop, Inc. compete with us in certain service lines or property types. Depending on the geography, property type or service, we compete with other commercial real estate service providers, including outsourcing companies that traditionally competed in limited portions of our real estate management services business and have recently expanded their offerings. These competitors include companies such as Aramark, ISS A/S and ABM Industries. From time to time, we also compete with in-house corporate real estate departments, institutional lenders, insurance companies, investment banking firms, and accounting and consulting firms in various parts of our business. Despite recent consolidation, the commercial real estate services industry remains highly fragmented and competitive. Although many of our competitors are local or regional firms that are smaller than us, some of these competitors are more entrenched than us on a local or regional basis.

Seasonality

Due to the strong desire of many market participants to close real estate transactions prior to the end of a calendar year, our business exhibits certain seasonality, with our revenue tending to be lowest in the first quarter and strongest in the fourth quarter. For the full year ended 2021, we earned approximately 17% of our revenues in the first quarter and 34% of our revenues in the fourth quarter. Due to the lingering negative impact of the global pandemic on overall commercial real estate activity in the first quarter of 2021, this seasonality was more pronounced than in prior years. For example, the comparable figures were 25% and 32%, respectively, in 2020, and 20% and 29%, respectively, in 2019.

Partnership and Equity Overview

We expect many of our key brokerage professionals, salespeople and other professionals to have a substantial amount of their own capital invested in our business, aligning their interests with those of our stockholders. We control the general partner of Newmark Holdings. The limited partnership interests in Newmark Holdings consist of: (i) a special voting limited partnership interest held by us; (ii) exchangeable limited partnership interests held by Cantor; (iii) founding/working partner interests held by founding/working partners; (iv) limited partnership units, which consist of a variety of units that are generally held by employees such as REUs, RPU, PSUs, PSIs, PSEs, LPU, APSUs, APSIs, AREUs, ARPU and NPSUs; and (v) Preferred Units, which are working partner interests that may be awarded to holders of, or contemporaneous with, the grant of certain limited partnership units. See “Our Organizational Structure.”

While Newmark Holdings limited partnership interests generally entitle our partners to participate in distributions of income from the operations of our business, upon leaving Newmark Holdings (or upon any other purchase of such limited partnership interests), any such partners will only be entitled to receive over time, and provided such partner does not violate certain partner obligations, an amount for their Newmark Holdings limited partnership interests that reflects such partner’s capital account or compensatory grant awards, excluding any goodwill or going concern value of our business unless Cantor, in the case of the founding partners, and we, as the general partner of Newmark Holdings, otherwise determine. Our partners will be able to receive the right to exchange their Newmark Holdings limited partnership interests for shares of our Class A common stock (if, in the case of founding partners, Cantor so determines and, in the case of working partners and limited partnership unit holders, we, as the Newmark Holdings general partner, with Cantor’s consent, determine otherwise) and thereby realize any higher value associated with our Class A common stock. We believe that employee equity ownership creates a sense of responsibility for the health and performance of our business and a strong incentive to maximize our revenues and profitability. See “Our Organizational Structure” and “Item 1A-Risk Factors-Risks Related to Our Relationship with Cantor and Its Respective Affiliates.”

Relationship with Cantor

See “Item 1A-Risk Factors-Risks Related to Our Relationship with Cantor and Its Respective Affiliates.”

Regulation

The brokerage of real estate sales and leasing transactions, property and facilities management, conducting real estate valuation and securing debt for clients and other business lines require that we comply with regulations affecting the real estate industry and maintain licenses in the various jurisdictions in which we operate. Like other market participants that operate in numerous jurisdictions and in various business lines, we must comply with numerous regulatory regimes.

We could be required to pay fines, return commissions, have a license suspended or revoked, or be subject to other adverse action if we conduct regulated activities without a license or violate applicable rules and regulations. Licensing requirements could also impact our ability to engage in certain types of transactions, change how we conduct business or affect the cost of conducting business. We and our licensed associates may be subject to various obligations and we could become subject to claims by regulators and/or participants in real estate sales or other services claiming that we did not fulfill our obligations. This could include claims with respect to alleged conflicts of interest where we act, or are perceived to be acting, for two or more clients. While management has overseen highly regulated businesses before and expects us to comply with all applicable regulations in a satisfactory manner, no assurance can be given that it will always be the case. In addition, federal, state and local laws and regulations impose various environmental zoning restrictions, use controls, and disclosure obligations that impact the management, development, use and/or sale of real estate. Such laws and regulations tend to discourage sales and leasing activities, as well as mortgage lending availability, with respect to such properties. In our role as property or facilities manager, we could incur liability under environmental laws for the investigation or remediation of hazardous or toxic substances or wastes relating to properties we currently or formerly managed. Such liability may be imposed without regard for the lawfulness of the original disposal activity, or our knowledge of, or fault for, the release or contamination. Further, liability under some of these may be joint and several, meaning that one of multiple liable parties could be responsible for all costs related to a contaminated site. Certain requirements governing the removal or encapsulation of asbestos-containing materials, as well as recently enacted local ordinances obligating property or facilities managers to inspect for and remove lead-based paint

in certain buildings, could increase our costs of regulatory compliance and potentially subject us to violations or claims by regulatory agencies or others. Additionally, under certain circumstances, failure by our brokerage professionals acting as agents for a seller or lessor to disclose environmental contamination at a property could result in liability to a buyer or lessee of an affected property.

We are required to meet and maintain various eligibility criteria from time to time established by the GSEs and HUD, as well as applicable state and local licensing agencies, to maintain our status as an approved lender. These criteria include minimum net worth, operational liquidity and collateral requirements, and compliance with reporting requirements. We also are required to originate our loans and perform our loan servicing functions in accordance with the applicable program requirements and guidelines from time to time established by the GSEs and HUD. For additional information, see “Item-1A-Risk Factors-Risks Related to Our Business-Regulatory/Legal-*The loss of relationships with the GSEs and HUD would, and changes in such relationships could, adversely affect our ability to originate commercial real estate loans through such programs. Compliance with the minimum collateral and risk-sharing requirements of such programs, as well as applicable state and local licensing agencies, could reduce our liquidity.*”

Newmark is subject to various capital requirements in connection with seller/servicer agreements that Newmark has entered into with the various GSEs. Failure to maintain minimum capital requirements could result in Newmark’s inability to originate and service loans for the respective GSEs and could have a direct material adverse effect on Newmark’s consolidated financial statements. As of December 31, 2021, Newmark has met all capital requirements. As of December 31, 2021, the most restrictive capital requirement was Fannie Mae’s net worth requirement. Newmark exceeded the minimum requirement by \$400.5 million.

Certain of Newmark’s agreements with Fannie Mae allow Newmark to originate and service loans under Fannie Mae’s DUS Program. These agreements require Newmark to maintain sufficient collateral to meet Fannie Mae’s restricted and operational liquidity requirements based on a pre-established formula. Certain of Newmark’s agreements with Freddie Mac allow Newmark to service loans under Freddie Mac’s Targeted Affordable Housing Program (“TAH”). These agreements require Newmark to pledge sufficient collateral to meet Freddie Mac’s liquidity requirement of 8% of the outstanding principal of TAH loans serviced by Newmark. As of December 31, 2020, Newmark has met all liquidity requirements.

In addition, as a servicer for Fannie Mae, GNMA and FHA, Newmark is required to advance to investors any uncollected principal and interest due from borrowers. As of December 31, 2021 and 2020, outstanding borrower advances were approximately \$0.9 million and \$0.8 million, respectively, and are included in “Other assets” in the accompanying consolidated balance sheets.

In order to continue our business in our current structure, we and Newmark Holdings must not be deemed investment companies under the Investment Company Act. We intend to take all legally permissible action to ensure that such entities not be subject to such act. For additional information, see “Item 1A-Risk Factors-Risks Related to Our Corporate and Partnership Structure-*If we or Newmark Holdings were deemed an “investment company” under the Investment Company Act, the Investment Company Act’s restrictions could make it impractical for us to continue our business and structure as contemplated and could materially adversely affect our business, financial condition, results of operations and prospects.*”

Human Capital Management

Human Capital Resources

As of December 31, 2021, our company-owned offices, together with our business partners, operate from approximately 160 offices with over 6,200 professionals in 25 countries across four continents. Within this total, full-time employees comprised 99% of the employee base and 84% are in the United States and 16% are in the rest of the world. Approximately 1,100 of those employees are fully reimbursed by clients, mainly in our property management and global corporate services businesses. We also receive support services from certain employees who also work for Cantor and its affiliates and who provide services to us pursuant to our Administrative Services Agreement with Cantor and devote some or all of their time to Newmark. As we continue to generate a higher percentage of our revenues from recurring and/or predictable businesses, we no longer plan to regularly disclose the number of brokers and revenue generating producers we employ. This is consistent with our full-service peers, who also do not disclose such figures. Generally, employees are not subject to any collective bargaining agreements, except approximately 200 employees in the United States, all of whom are fully reimbursed and for certain of our employees based in our European offices who are covered by the national, industry-wide collective bargaining agreements relevant to the countries/sectors in which they work.

Our non-U.S. headcount has grown this year due to our Knotel and Deskeo acquisitions and our India offshoring operation. We expect our international headcount to increase as we continue to expand our global operations.

We have invested significantly through acquisitions, technology spending and the hiring of new brokerage professionals, salespeople, managers and other front-office personnel. The market for these acquisitions has been competitive, and it is expected that these conditions will persist for the foreseeable future. We have attracted best-in-class professionals to our platform, known for scale, technology, experience and expertise.

Newmark is an organization built on strong values, employee engagement and ownership. At our core, we are committed to our employees by providing them with an opportunity to participate in our success. We believe that by cultivating a dynamic mix of people and ideas, we enrich our businesses' performance, the experience of an increasingly diverse employee base, and our communities' engagement.

Human Capital Measures and Objectives

We continually work to expand service offerings and geographies and seek to manage human capital resources to maximize profitability in the face of shifting client demands.

Our human capital measures and objectives include front-office employee headcount. During 2021 and into 2022, we have seen increased turnover for our back office and operational employees due to wage pressures. However, our retention rate for our brokers, salespeople, managers and other front-office personnel has remained relatively stable.

We continue to invest in the business by adding high profile and talented producers and other revenue generating professionals. In 2021, we hired approximately 144 new producers and other revenue generating professionals. Historically newly hired commercial real estate producers tend to achieve higher productivity in their second and third years with the Company although we incur related expenses immediately.

During the year, we continued our focus on alternative property types, such as life science, senior housing, medical office, self-storage and student housing, which, together with industrial and multifamily, contributed a significant percentage of transaction volume growth for Newmark in 2021 and are aligned to investor preferences. Newmark will continue to focus on the increasing the percentage of our total revenues from our recurring and/or predictable revenue businesses, such as Valuation & Advisory, Mortgage Servicing, Global Corporate Services, and Property Management. From a human capital perspective, we have made some key management hires in these areas in 2021 and expect them to be continued areas of growth in the future.

From time to time, we engage in cost-savings initiatives, including reducing the number of employees to improve margins. We are focused on driving margin expansion through the use of technology to improve our workforce's productivity and rationalize our cost structure to drive increased efficiencies and through the use of near shoring and offshoring where appropriate. Our India offshoring operation now consists of over 300 employees with plans to grow further in 2022.

Flexible, Safe and Empowering Work Environment

In order to retain and hire additional workforce, we have increased our flexible work arrangements, where appropriate, and made compensation adjustments, established additional corporate opportunities and provided additional benefits, including 401(k) match.

We have taken significant measures to develop a safe work environment which is conducive to work in our office locations, particularly for front-office brokers and revenue generating employees, subject to applicable state and local regulatory requirements. We have established a more flexible hybrid approach in many instances for non-revenue generating roles or for roles which are not office dependent, where appropriate. We have established vaccination requirements in accordance with applicable laws, including time-off for vaccines, coverage for COVID-19 testing and enhanced sick leave.

We have implemented measures to ensure the mental health and well-being of our employees during the pandemic, including increased access to Behavioral Health and Mental Health telemedicine, expanding access to Employee Assistance Program Services and providing employees with access to preventative mental health solutions.

We continue to take significant steps to protect our employees and encourage them all to be vaccinated.

Performance-Based and Highly Retentive Compensation Structure

Virtually all of our key executives and producers have equity or partnership stakes in the Company and its subsidiaries. Generally, they receive deferred equity, limited partnership units or restricted stock units as part of their compensation. As of

December 31, 2021, our employees and independent contractors, partners, executive officers and directors owned approximately 24% of our equity on a fully diluted basis.

We issue limited partnership units and other forms of equity-based compensation, such as restricted stock units, which:

- Provide liquidity to our partners and employees over time;
- Align the interests of our partners and employees and management with those of common stockholders;
- Help motivate and retain key partners and employees; and
- Encourage a collaborative culture that drives cross-selling and growth.

The non-exchangeable partnership units held by our partners are subject to forfeiture (such as if the non-compete, confidentiality or non-solicit provisions of the Newmark Holdings limited partnership agreement are violated), and unvested restricted stock units are subject to service conditions that must be met in order for them to vest into shares of Newmark common stock. In addition, any partnership amounts paid following termination of service generally are paid over a number of years to ensure compliance with partner obligations. This compensation structure has proven to be highly retentive, and since 2015, we have retained 92% of our top-performing brokers.

We also enter into various agreements with certain employees and partners. Many of these individuals receive loans that may be either wholly or in part repaid from the distribution earnings that the individual receives on some or all of their limited partnership units that may be forgiven over a period of time. These loans provide incentives and promote entrepreneurship and long-term engagement.

Human Capital and Social Policies and Practices

We are committed to our people, our stakeholders and the community as a whole. We have a variety of programs to incentivize and support our employees, from employee ownership to comprehensive benefits and training. We are also committed to equal opportunity, diversity and other policies and practices designed to fulfill our commitment to social and human capital development

Employee Diversity, Inclusion and Equal Opportunity

We believe that by cultivating a dynamic mix of people and ideas, we enrich the performance of our businesses, the experience of our increasingly diverse employee base, and the dynamism of our communities. We are committed to equal opportunity, diversity and other policies and practices that seek to further our development of a diverse and inclusive workplace. We consider all qualified applicants for job openings and promotions without regard to race, color, religion, gender, sexual orientation, gender identity, national origin or ancestry, age, disability, service in the armed forces, or any other characteristic that has no bearing on the ability of employees to do their jobs well. We continue to develop initiatives to support these values and have implemented a policy that requires the inclusion of qualified, diverse candidates in the final round of interviews for leadership roles.

We are dedicated to our efforts to achieve pay equity. Our promotion and compensation processes are designed to enable us to treat employees fairly, and our compensation decisions are differentiated based on performance.

Talent remains at the core of who we are as a company, and we remain committed to having a culture built around inclusion, equality and developing a diverse workforce. In 2020, we launched IDEA (Inclusion, Diversity, Equality and Access), a program designed to enhance our ability to attract, develop and retain top talent with an emphasis on increasing representation of traditionally underrepresented groups at all levels of the organization. Our goal is to build an even more successful organization that more closely reflects the population at large.

Our employee resource groups (“ERGs”) support the recruitment, development and retention of diverse professionals across our organization to advance our businesses and reputation. Our ERGs strive to offer a variety of opportunities and tools to help our employees make new professional contacts, find mentors and develop their careers. These events and activities also allow our employees to support one another through a valuable exchange of experiences, advice, and best practices for career success.

We are helping to shape future leaders from a wide variety of backgrounds. Initiatives include membership and active participation in the Mortgage Bankers Association Path to Diversity Scholarship Program and sponsorship of the Summer Enrichment and Analyst Development Programs run by Artemis Real Estate Partners – a female-owned financial firm with a strong track record in fostering diversity. We are also a Platinum Level Sponsor of the virtual internship program, run by the Real Estate Board of New York (REBNY) in partnership with the City University of New York (CUNY) and Project Destined. We further participate in job fairs and job boards that are focused on reaching a diverse applicant pool. We are also an investor

in a commercial real estate services firm that operates as E Smith Advisors, which is a certified minority-owned business enterprise offering a wide variety of real estate services in the U.S.

Newmark has begun to participate in the Corporate Equality Index, a national benchmarking tool measuring policies, practices and benefits pertinent to lesbian, gay, bisexual, transgender and queer (LGBTQ+) employees and was recently named to GlobeSt.'s 2021 Women of Influence 'Diversity Champion' list.

Employee Engagement, Communication, Management and Leadership Training and Development

We are investing in our employees' long-term development and engagement by delivering training and development programs and a culture where our people can thrive and maximize their potential. We require annual training in workplace respect and inclusion, anti-money laundering and anti-crime and cyber-security among other topics. We also provide or support periodic job-specific and other developmental training and support for our employees so they can maximize their potential, as well as tuition reimbursement program to eligible employees.

We provide leadership training to managers on topics, including management effectiveness, writing and delivering effective performance evaluations, unconscious bias and various other topics. This training is supplemented by a comprehensive library of on-line training courses that managers and employees may access. Finally, our individual business lines offer ongoing learning and development opportunities tied to deepening the subject matter expertise of their professionals.

Succession Planning

From time to time, the Board discusses succession planning, including our consideration of succession strategy, the impact of any potential absence due to illness or leave of certain key executive officers or employees, as well as competing demands on the time of certain of our executive officers who also provide services to Cantor, Newmark, and various other ventures and investments sponsored by Cantor. Our Board also discusses from time to time, as part of its succession planning, engagement and encouragement of future business leaders and the process of introducing directors to leaders in the Company's business lines. The Board also considers hiring and retention of leaders required for the changing business landscape and to lead future business lines. Additionally, we have implemented identification and tracking of diverse candidates as part of our succession planning efforts and plan to implement development plans for all high-potential successors this year.

Environmental, Social and Governance ("ESG") / Sustainability Information

We believe that our environmental, social and governance ("ESG") policies and practices will create sustainable long-term value for Newmark, our stockholders and other stakeholders, our clients and our employees while also helping us mitigate risks, reduce costs, protect brand value, and identify market opportunities. We are embedding social and human capital, employment, environmental, sustainability, charitable and corporate governance policies and practices into our corporate strategy, compensation, disclosure, and goals to maintain and advance long-term stockholder value.

Our Environmental Focus, Workplace Strategies and Sustainable Business Practices

We are focused on the environment and recognize the importance of treating our natural resources with the greatest respect, so that they are available to future generations. As a socially responsible business, we are acutely aware of climate change and other major issues affecting the environment. We also understand the impact commercial real estate can have on the health of the environment. That is why we encourage sustainable building practices, and in our Global Corporate Services business, recommend strategies to maximize energy efficiency, recycle materials and limit waste. These goals apply to Newmark's offices as well as to the work we do for our clients, whether in selecting a location, building out space or managing an asset.

In our workplaces, we are studying how to make our own contribution to state, national and global environmental initiatives and to expect the same of our vendors and suppliers when doing business with us. As part of this, we are considering how to minimize our future carbon footprint when planning office renovations and will continue to focus our attention in the near term on methods of reducing our greenhouse gas emissions, increasing use of renewable energy, conserving water, and reducing waste generation. Newmark is working with the landlords and Property Management teams that oversee the buildings we occupy to collect accurate and actionable energy data. As this data becomes more available, Newmark plans to implement energy efficiency initiatives where possible that will help lower our overall carbon footprint. We are also investigating the purchase of Renewable Energy supply where possible in deregulated energy markets. For all new leased space for Newmark we will consider Green Lease options and make sure the workplace is as sustainable as possible.

Newmark's Property, Facilities and Energy/Sustainability management teams work internally and with clients to reduce energy demand and carbon emissions. Newmark is increasingly collecting and measuring environmental data and this data is used to build client strategies around energy efficiency and renewable energy supply initiatives.

Newmark supports sustainable business practices and is focused on the steps necessary to establish a sustainability program both internally and for our clients. Building operations have a significant impact on the environment, and as technology continues to place greater demands on building systems for power and cooling, energy consumption is expected to continue to rise at an unsustainable rate. As one of the nation's largest real estate service providers, we believe it is our responsibility to improve energy efficiency and reduce energy consumption to protect the environment through continuous improvement of building practices. We understand that sustainable buildings provide a better work environment, increase building efficiency and reduce the environmental impact of building operations. We continue to work on these initiatives.

Newmark has developed an Energy and Sustainability Services Reference Guide which is available on our website at www.nmrk.com/esg which assists clients and property teams in reducing the environmental impact of property operations, maintenance and construction associated with real estate assets.

For more information about these initiatives and services provided to clients and within our own facilities as they evolve, please refer to our website at www.nmrk.com/esg/environmental.

To learn more about policies and practices and our continuing efforts related to human capital and ESG matters, please refer to the ESG/sustainability section of our website at nmrk.com/esg for further information. You may also find our Corporate Governance Guidelines, Code of Business Conduct and Ethics, the charters of the committees of our Board of Directors, Hedging Policy, information about our charitable initiatives and other sustainability and ESG policies and practices on our website and in the annual proxy statement. The information contained on, or accessed through, our website, is not part of, and not incorporated into, this Annual Report on Form 10-K.

Legal Proceedings

See the discussion of Legal Proceedings contained in "Note 31 - Commitments and Contingencies" to our Consolidated Financial Statements in Part II, Item 8 of this Annual Report on Form 10-K.

OUR ORGANIZATIONAL STRUCTURE

Current Organizational Structure

As of December 31, 2021, there were 194,046,885 shares of Newmark Class A common stock issued and 168,272,371 outstanding. Cantor and CFGM held no shares of Newmark Class A common stock. Each share of Newmark Class A common stock is generally entitled to one vote on matters submitted to a vote of our stockholders. As of December 31, 2021, Cantor and CFGM held 21,285,533 shares of Newmark Class B common stock representing all of the outstanding shares of Newmark Class B common stock. The shares of Newmark Class B common stock held by Cantor and CFGM, as of December 31, 2021, represented approximately 55.8% of our total voting power. Each share of Newmark Class B common stock is generally entitled to the same rights as a share of Newmark Class A common stock, except that, on matters submitted to a vote of our stockholders, each share of Newmark Class B common stock is entitled to 10 votes. The Newmark Class B common stock generally votes together with the Newmark Class A common stock on all matters submitted to a vote of our stockholders. We expect to retain our dual class structure, and there are no circumstances under which the holders of Newmark Class B common stock would be required to convert their shares of Newmark Class B common stock into shares of Newmark Class A common stock. Our amended and restated certificate of incorporation referred to herein as our certificate of incorporation does not provide for automatic conversion of shares of Newmark Class B common stock into shares of Newmark Class A common stock upon the occurrence of any event.

We hold the Newmark Holdings general partnership interest and the Newmark Holdings special voting limited partnership interest, which entitle us to remove and appoint the general partner of Newmark Holdings and serve as the general partner of Newmark Holdings, which entitles us to control Newmark Holdings. Newmark Holdings, in turn, holds the Newmark OpCo general partnership interest and the Newmark OpCo special voting limited partnership interest, which entitle Newmark Holdings to remove and appoint the general partner of Newmark OpCo, and serve as the general partner of Newmark OpCo, which entitles Newmark Holdings (and thereby us) to control Newmark OpCo. In addition, as of December 31, 2021, we directly held Newmark OpCo limited partnership interests consisting of approximately 54,015,613 units representing approximately 22.1% of the outstanding Newmark OpCo limited partnership interests (not including EPU's). We are a holding company that holds these interests, serves as the general partner of Newmark Holdings and, through Newmark Holdings, acts as the general partner of Newmark OpCo. As a result of our ownership of the general partnership interest in Newmark Holdings and Newmark Holdings' general partnership interest in Newmark OpCo, we consolidate Newmark OpCo's results for financial reporting purposes.

Cantor, founding partners, working partners and limited partnership unit holders directly hold Newmark Holdings limited partnership interests. Newmark Holdings, in turn, holds Newmark OpCo limited partnership interests and, as a result,

Cantor, founding partners, working partners and limited partnership unit holders indirectly have interests in Newmark OpCo limited partnership interests.

The Newmark Holdings limited partnership interests held by Cantor and CFGM are designated as Newmark Holdings exchangeable limited partnership interests. The Newmark Holdings limited partnership interests held by the founding partners are designated as Newmark Holdings founding partner interests. The Newmark Holdings limited partnership interests held by the working partners are designated as Newmark Holdings working partner interests. The Newmark Holdings limited partnership interests held by the limited partnership unit holders are designated as limited partnership units.

Each unit of Newmark Holdings limited partnership interests held by Cantor and CFGM is generally exchangeable with us for a number of shares of Class B common stock (or, at Cantor's option or if there are no additional authorized but unissued shares of Class B common stock, a number of shares of Class A common stock) equal to the exchange ratio.

As of December 31, 2021, 3,559,286 founding/working partner interests were outstanding. These founding/working partners were issued in the Separation to holders of BGC Holdings founding/working partner interests, who received such founding/working partner interests in connection with BGC Partners' acquisition of the BGC Partners business from Cantor in 2008. The Newmark Holdings limited partnership interests held by founding/working partners are not exchangeable with us unless (1) Cantor acquires Cantor units from Newmark Holdings upon termination or bankruptcy of the founding/working partners or redemption of their units by Newmark Holdings (which it has the right to do under certain circumstances), in which case such interests will be exchangeable with us for shares of Newmark Class A common stock or Newmark Class B common stock as described above, or (2) Cantor determines that such interests can be exchanged by such founding/working partners with us for Newmark Class A common stock, with each Newmark Holdings unit exchangeable for a number of shares of Newmark Class A common stock equal to the exchange ratio (which was initially one, but is subject to adjustment as set forth in the Separation and Distribution Agreement), on terms and conditions to be determined by Cantor (which exchange of certain interests Cantor expects to permit from time to time). Cantor has provided that certain founding/working partner interests are exchangeable with us for Class A common stock, with each Newmark Holdings unit exchangeable for a number of shares of Newmark Class A common stock equal to the exchange ratio (which was initially one, but is subject to adjustment as set forth in the Separation and Distribution Agreement), in accordance with the terms of the Newmark Holdings limited partnership agreement. Once a Newmark Holdings founding/working partner interest becomes exchangeable, such founding/working partner interest is automatically exchanged upon a termination or bankruptcy with us for Newmark Class A common stock.

Further, we provide exchangeability for partnership units under other circumstances in connection with (1) our partnership redemption, compensation and restructuring programs, (2) other incentive compensation arrangements and (3) business combination transactions.

As of December 31, 2021, 24,373,157 limited partnership units were outstanding (including founding/working partner interests and working partner interests, and units held by Cantor). Limited partnership units will be only exchangeable with us in accordance with the terms and conditions of the grant of such units, which terms and conditions are determined in our sole discretion, as the Newmark Holdings general partner, with the consent of the Newmark Holdings exchangeable limited partnership interest majority in interest, in accordance with the terms of the Newmark Holdings limited partnership agreement.

The exchange ratio between Newmark Holdings limited partnership interests and our common stock was initially one. However, this exchange ratio will be adjusted in accordance with the terms of the Separation and Distribution Agreement if our dividend policy and the distribution policy of Newmark Holdings are different. As of December 31, 2021, the exchange ratio was 0.9444.

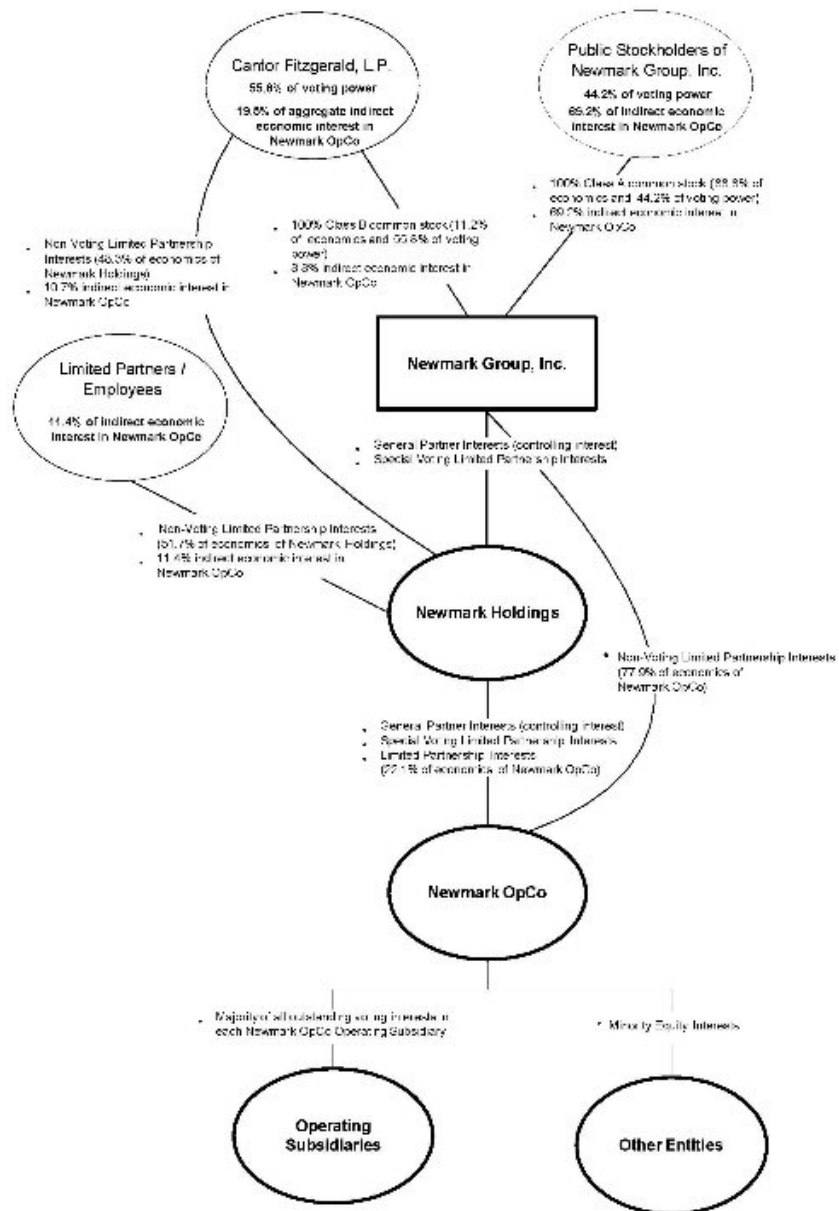
With each exchange, our direct and indirect interest in Newmark OpCo will proportionately increase because, immediately following an exchange, Newmark Holdings will redeem the Newmark Holdings unit so acquired for the Newmark OpCo limited partnership interest underlying such Newmark Holdings unit.

The profit and loss of Newmark OpCo and Newmark Holdings, as the case may be, are allocated based on the total number of Newmark OpCo units (not including EPUs) and Newmark Holdings units, as the case may be, outstanding.

The following diagram illustrates the ownership structure of Newmark as of December 31, 2021. The diagram does not reflect the various subsidiaries of Newmark, Newmark OpCo or Cantor (including certain operating subsidiaries that are organized as corporations whose equity is either wholly-owned by Newmark or whose equity is majority-owned by Newmark with the remainder owned by Newmark OpCo) or the results of any exchange of Newmark Holdings exchangeable limited partnership interests or, to the extent applicable, Newmark Holdings founding partner interests, Newmark Holdings working partner interests or Newmark Holdings limited partnership units. In addition, the diagram does not reflect the Newmark OpCo

exchangeable preferred limited partnership units, or EPU's, since they are not allocated any gains or losses of Newmark OpCo for tax purposes and are not entitled to regular distributions from Newmark OpCo.

STRUCTURE OF NEWMARK AS OF DECEMBER 31, 2021



Shares of Newmark Class B common stock are convertible into shares of Newmark Class A common stock at any time in the discretion of the holder on a one-for-one basis. Accordingly, if Cantor and CFGM converted all of their shares of Newmark Class B common stock into shares of Newmark Class A common stock, Cantor and CFGM would hold 11.2% of the voting power in Newmark and the stockholders of Newmark other than Cantor and CFGM would hold 88.8% of the voting power in Newmark (and the indirect economic interests in Newmark OpCo would remain unchanged). In addition, if Cantor and CFGM continued to hold shares of Newmark Class B common stock and if Cantor exchanged all of the exchangeable limited partnership units held by Cantor for shares of Newmark Class B common stock, Cantor and CFGM would hold 73.8% of the voting power in Newmark, and the stockholders of Newmark other than Cantor and CFGM would hold 26.2% of the voting power in Newmark.

The diagram reflects Newmark Class A common stock and Newmark Holdings partnership unit activity from January 1, 2021 through December 31, 2021 as follows: (a) an aggregate of 6,591,462 limited partnership units granted by Newmark Holdings; (b) 20,237,430 shares of Newmark Class A common stock repurchased by us; (c) 38,856 shares of Newmark Class A common stock forfeited; (d) 1,851,786 shares of Newmark Class A common stock issued for vested restricted stock units; (e) 794,952 shares of Class A common stock issued by us under our acquisition shelf Registration Statement on Form S-4 (Registration No. 333-231616), but not the 18,578,543 of such shares remaining available for issuance by us under such Registration Statement; (h) (94,980) terminated limited partnership units; (i) 18,137,416 shares of Newmark Class A common stock issued in exchange for 34,152,232 limited partnership units in relation to the Nasdaq Transaction, and (j) 167,894 purchased limited partnership units.

ITEM 1A. RISK FACTORS

An investment in shares of our Class A common stock or our 6.125% Senior Notes involves risks and uncertainties, including the potential loss of all or a part of your investment. The following are important risks and uncertainties that could affect our business, but we do not ascribe any particular likelihood or probability to them unless specifically indicated. Before making an investment decision to purchase our common stock or our 6.125% Senior Notes, you should carefully read and consider all of the risks and uncertainties described below, as well as other information included in this Annual Report on Form 10-K, including "Item 7- Management's Discussion and Analysis of Financial Condition and Results of Operations" and the consolidated financial statements and related notes included herein. The occurrence of any of the following risks or additional risks and uncertainties that are currently immaterial or unknown could materially and adversely affect our business, financial condition, liquidity, result of operations, cash flows or prospects.

RISKS RELATED TO OUR BUSINESS

Risks Related to the COVID-19 Pandemic

The ongoing COVID-19 pandemic has significantly disrupted and adversely affected the environment in which we and our clients and competitors operate, including the global economy, the U.S. economy, the global financial markets, and the commercial real estate services industry.

The ongoing COVID-19 pandemic has significantly disrupted and adversely affected the environment in which we and our clients and our competitors operate, including the global economy, the U.S. economy, the global financial markets, and the commercial real estate services industry. The spread of COVID-19 has caused illness, quarantines, cancellation of events and travel, business and school shutdowns, reduction in business activity and financial transactions, labor shortages, supply chain disruptions and overall economic and financial market instability. The ongoing effects of COVID-19 remain challenging to predict due to multiple uncertainties, including the transmissibility, severity, duration and resurgences of the outbreak; new virus variants and the potential extent of their spread; the application and effectiveness of health and safety measures that are voluntarily adopted by the public or required by government or public health authorities, including vaccines and treatments and public resistance thereto; the speed and strength of an economic recovery and the effect thereon of rising inflation and the increase in interest rates in response thereto; and the impact on our employees, operations, suppliers, and vendors, and our clients' operations.

We have taken, and continue to take, necessary and recommended precautions to protect the safety and well-being of our employees, including by means of conducting certain business activities and operations remotely. However, no assurance can be given that the steps being taken will be adequate, nor can we predict whether additional disruption which occur to our employees' ability to provide client support and service. We will continue to evaluate the nature and extent of the impact on our business.

The COVID-19 pandemic, and governmental measures taken in response thereto, have at times severely disrupted the conduct of business, and have disrupted, and may continue to disrupt, our clients' operations. Adverse conditions and developments in the commercial real estate industry may accelerate pre-existing long-term social and economic trends, or encourage new trends, that could materially reduce demand for commercial space and have a material adverse effect on the nature of and demand for our commercial real estate services. Changing market conditions and future prospects for the commercial real estate services industry have caused us to re-position aspects of our business to adapt to and better address the needs of our clients in the future. It could take additional time and expense to adjust to changes in the mix of demand for office and commercial space, including increased demand for flexible-use space and office space in suburban areas to the extent they may be replacing prior demand for urban office space, and increased demand for data storage, fulfillment and distribution centers, life sciences facilities and other alternative asset classes, replacing prior demand for downtown, urban and other high-density retail and commercial space. Adjusting to such changes may require us to enter into new geographic markets or lines of business, through expansion or acquisition of existing businesses.

The full extent to which the COVID-19 pandemic, or the emergence of new variants or another pandemic, and measures taken in response thereto, could continue to negatively affect the U.S. and global economy and, in turn, materially adversely affect our business, financial condition, results of operations and prospects will depend on future conditions and developments, which are highly uncertain and cannot be predicted. Any increase in the duration or impact of the pandemic, including any new variants or another pandemic, as well as measures taken in response thereto, could have a material adverse effect on our business, financial condition, results of operations and prospects.

Risks Related to Global Economic and Market Conditions in the Commercial Real Estate Services Industry

Negative general economic conditions and commercial real estate market conditions (including perceptions of such conditions) can have a material adverse effect on our business, financial condition, results of operations and prospects.

Commercial real estate markets are cyclical and traditionally relate to the condition of the economy or, at least, to the perceptions of investors and users as to the relevant economic outlook. For example, companies may be hesitant to expand their office space or enter into long-term real estate commitments if they are concerned about the general economic environment. Companies that are under financial pressure for any reason, including those exacerbated by Covid-19, or are attempting to more aggressively manage their expenses, may reduce the size of their workforces, limit capital expenditures, including with respect to their office space, permit more of their staff to work from home and/or seek corresponding reductions in office space and related management or other services.

Negative general economic conditions and declines in the demand for commercial real estate brokerage and related management services in several markets or in significant markets could also have a material adverse effect on our business, financial condition, results of operations, cash flows and prospects as a result of the following factors:

- A general decline in acquisition and disposition activity can lead to a reduction in the commissions and fees we receive for arranging such transactions, as well as in commissions and fees we earn for arranging the financing for acquirers.
- A general decline in the value and performance of commercial real estate and in rental rates can lead to a reduction in management and leasing commissions and fees. Additionally, such declines can lead to a reduction in commissions and fees that are based on the value of, or revenue produced by, the properties for which we provide services. This may include commissions and fees for appraisal and valuation, sales and leasing, and property and facilities management.
- Cyclicity in the commercial real estate markets may lead to volatility in our earnings, and the commercial real estate business can be highly sensitive to market perception of the economy generally and our industry specifically. Real estate markets are also thought to "lag" the broader economy. This means that, even when underlying economic fundamentals improve in a given market, it may take additional time for these improvements to translate into strength in the commercial real estate markets.
- In weaker economic environments, income-producing multifamily real estate may experience higher property vacancies, lower investor and tenant demand and reduced values. In such environments, we could experience lower transaction volumes and transaction sizes as well as fewer loan originations with lower relative principal amounts, as well as potential credit losses arising from risk-sharing arrangements with respect to certain GSE loans.

- Periods of economic weakness or recession, significantly rising interest rates, fiscal uncertainty, declining employment levels, declining demand for commercial real estate, falling real estate values, disruption to the global capital or credit markets, political uncertainty or the public perception that any of these events may occur, may negatively affect the performance of some or all of our business lines.
- Our ability to raise funding in the long-term or short-term debt capital markets or the equity capital markets, or to access secured lending markets could in the future be adversely affected by conditions in the United States and international economy and markets, with the cost and availability of funding adversely affected by illiquid credit markets and wider credit spreads and changes in interest rates.

Risks Related to Concentration of our Business

Our business is generally geographically concentrated and could be significantly affected by any adverse change in the regions in which we operate.

Our current business operations are primarily located in the United States, with other business operations in Canada, Latin America, the U.K, the EU and Asia. While we are expanding our business to new geographic areas and recently acquired offices in certain jurisdictions, we are still highly concentrated in the United States. Because we derived the large majority of our total revenues on a consolidated basis for the year ended December 31, 2021 from our operations in the United States, we are exposed to adverse competitive changes and economic downturns and changes in political conditions domestically. If we are unable to identify and successfully manage or mitigate these risks, our business, financial condition, results of operations, cash flows and prospects could be materially adversely affected.

The concentration of business with institutional owners and corporate clients can increase business risk, and our business can be adversely affected due to the loss of certain of these clients.

We value the expansion of business relationships with individual corporate clients because of the increased efficiency and economics that can result from developing recurring business from performing an increasingly broad range of services for the same client. Although our client portfolio is currently highly diversified-for the year ended December 31, 2021, our top 10 clients, collectively, accounted for approximately 6.9% of our total revenue on a consolidated basis, and our largest client accounted for approximately 1.8% of our total revenue on a consolidated basis. As we grow our business, relationships with certain institutional owners and corporate clients may increase, and our client portfolio may become increasingly concentrated. Having increasingly large and concentrated clients also can lead to greater or more concentrated risks if, among other possibilities, any such client;

- experiences its own financial problems;
- becomes bankrupt or insolvent, which can lead to our failure to be paid for services we have previously provided or funds we have previously advanced;
- decides to reduce its operations or its real estate facilities;
- makes a change in its real estate strategy, such as no longer outsourcing its real estate operations;
- decides to change its providers of real estate services; or
- merges with another corporation or otherwise undergoes a change of control, which may result in new management taking over with a different real estate philosophy or in different relationships with other real estate providers.

Risks Related to Competition in the Commercial Real Estate Services Industry

We operate in a highly competitive industry with numerous competitors, some of which may have greater financial and operational resources than we do.

We compete to provide a variety of services within the commercial real estate services industry. Each of these business disciplines is highly competitive on a local, regional, national and global level. We face competition not only from other national real estate service companies, but also from global real estate services companies, boutique real estate advisory firms, and consulting and appraisal firms. Depending on the product or service, we also face competition from other real estate service providers, institutional lenders, insurance companies, investment banking firms, commercial banks, investment managers and accounting firms, some of which may have greater financial resources than we do. Although many of our competitors are local or regional firms that are substantially smaller than we are, some of our competitors are substantially larger than us on a local, regional, national or international basis and have similar service competencies to ours. Such competitors include CBRE Group,

Inc., Jones Lang LaSalle Incorporated., Cushman & Wakefield plc, Savills plc., and Colliers International Group, Inc. In addition, more specialized firms like Marcus & Millichap Inc., Eastdil Secured LLC and Walker & Dunlop, Inc. compete with us in certain product offerings. Our industry has continued to consolidate, and there is an inherent risk that competitive firms may be more successful than we are at growing through merger and acquisition activity. See “Item 1-Business-Competition.” In general, there can be no assurance that we will be able to continue to compete effectively with respect to any of our commercial real estate business lines or on an overall basis, to maintain current commission and fee levels or margins, or to maintain or increase our market share.

Additionally, competitive conditions, particularly in connection with increasingly large clients, may require us to compromise on certain contract terms with respect to the extent of risk transfer, acting as principal rather than agent in connection with supplier relationships, liability limitations and other terms and conditions. Where competitive pressures result in higher levels of potential liability under our contracts, the cost of operational errors and other activities for which we have indemnified our clients will be greater and may not be fully insured.

Risks Related to New Opportunities/Possible Transactions and Hires

We may pursue opportunities including strategic alliances, acquisitions, dispositions, joint ventures or other growth opportunities (including hiring new brokers and other professionals), which could present unforeseen integration obstacles or costs and could dilute our stockholders. We may also face competition in our acquisition strategy, and such competition may limit such opportunities.

We have explored and continue to explore a wide range of strategic alliances, acquisitions and joint ventures with other real estate services firms, including maintaining or developing relationships with independently owned offices, and with other companies that have interests in businesses in which there are brokerage, management or other strategic opportunities. These arrangements may be terminable by either party or may be subject to amendment. Such transactions may be necessary in order for us to enter into or develop new products or services or markets, as well as to strengthen our current ones.

These opportunities and activities involve a number of risks and challenges, including:

- potential disruption of our ongoing business and product, service and market development and distraction of management;
- difficulty retaining and integrating personnel and integrating administrative, operational, financial reporting, internal control, compliance, technology and other systems;
- the necessity of hiring additional managers and other critical professionals and integrating them into current operations;
- increasing the scope, geographic diversity and complexity of our operations;
- the risks relating to integrating accounting and financial systems and accounting policies and the related risk of having to restate our historical financial statements;
- potential dependence upon, and exposure to liability, loss or reputational damage relating to systems, controls and personnel that are not under our control;
- addition of business lines in which we have not previously engaged;
- potential unfavorable reaction to our strategy by our customers, counterparties, and employees;
- the upfront costs associated with pursuing transactions and recruiting personnel, which efforts may be unsuccessful in the increasingly competitive marketplace for the most talented producers and managers;
- conflicts or disagreements between any strategic alliance or joint venture partner and us;
- exposure to potential unknown liabilities of any acquired business, strategic alliance or joint venture that are significantly larger than we anticipate at the time of acquisition, and unforeseen increased expenses or delays associated with acquisitions, including costs in excess of the cash transition costs that we estimate at the outset of a transaction;
- reduction in availability of financing due to tightened credit markets or credit ratings downgrades or defaults by us, in connection with these activities;
- a significant increase in the level of our indebtedness in order to generate cash resources that may be required to effect acquisitions;

- dilution resulting from any issuances of shares of our Class A common stock or limited partnership units in connection with these activities in the event that these arrangements are amended or terminated;
- a reduction of the diversification of our business resulting from any dispositions;
- the necessity of replacing certain functions that are sold in dispositions;
- the cost of rebranding and the impact on our market awareness of dispositions;
- the impact of any reduction in our asset base resulting from dispositions on our ability to obtain financing or the terms thereof; and
- a lag in the realization of financial benefits from these transactions and arrangements.

We face competition for acquisition targets, which may limit our number of acquisitions and growth opportunities and may lead to higher acquisition prices or other less favorable terms. Our international acquisitions and expansion have required compliance and other regulatory actions. As we choose to continue to grow internationally we may experience additional expenses or obstacles. There can be no assurance that we will be able to identify, acquire or profitably manage additional businesses or integrate successfully any acquired businesses without substantial costs, delays or other operational or financial difficulties.

Any future growth will be partially dependent upon the continued availability of suitable transactional candidates at favorable prices and upon advantageous terms and conditions, which may not be available to us, as well as sufficient liquidity to fund these transactions. Future transactions and any necessary related financings also may involve significant transaction-related expenses, which include payment of break-up fees, assumption of liabilities, including compensation, severance, lease termination, and other restructuring costs, and transaction and deferred financing costs, among others. In addition, there can be no assurance that such transactions will be accretive or generate favorable operating margins. The success of these transactions will also be determined in part by the ongoing performance of the acquired companies and the acceptance of acquired employees of our equity-based compensation structure and other variables which may be different from the existing industry standards or practices at the acquired companies.

We will need to successfully manage the integration of recent acquisitions and future growth effectively. The integration and additional growth may place a significant strain upon our management, administrative, operational, financial reporting, internal control and compliance infrastructure. Our ability to grow depends upon our ability to successfully hire, train, supervise and manage additional employees, expand our management, administrative, operational, financial reporting, compliance and other control systems effectively, allocate our human resources optimally, maintain clear lines of communication between our transactional and management functions and our finance and accounting functions, and manage the pressure on our management, administrative, operational, financial reporting, and compliance and other control infrastructure. Additionally, managing future growth may be difficult due to our new geographic locations, markets and business lines. We may not realize the full benefits that we anticipate from strategic alliances, acquisitions, joint ventures or other growth opportunities. There can be no assurance that we will be able to accurately anticipate and respond to the changing demands we will face as we integrate and continue to expand our operations, and we may not be able to manage growth effectively or to achieve growth at all.

From time to time, we may also seek to dispose of portions of our business, or otherwise reduce our ownership or minority investments in other businesses, each of which could materially affect our cash flows and results of operations. Dispositions involve significant risks and uncertainties, such as the ability to sell such businesses on satisfactory price and terms and in a timely manner (including long and costly sales processes and the possibility of lengthy and potentially unsuccessful attempts by a buyer to receive required regulatory approvals), or at all, disruption to other parts of the businesses and distraction of management, loss of key employees or customers, exposure to unanticipated liabilities or ongoing obligations to support the businesses following such dispositions. In addition, if such dispositions are not completed for any reason, the market price of our Class A common stock may reflect a market assumption that such transactions will occur, and a failure to complete such transactions could result in a decline in the market price of our Class A common stock. Any of these factors could have a material adverse effect on our business, financial condition, results of operations and prospects.

As we grow our business internationally, we will be exposed to political, economic, legal, regulatory, operational and other risks, including with respect to the outbreak of hostilities or other instability, inherent in operating in foreign countries.

As we grow our business internationally, we will be exposed to political, economic, legal, regulatory, operational and other risks that are inherent in operating in foreign countries, including risks of possible nationalization and/or foreign

ownership restrictions, expropriation, price controls, capital controls, foreign currency fluctuations, regulatory and tax requirements, economic and/or political instability, geographic, time zone, language and cultural differences among personnel in different areas of the world, exchange controls and other restrictive government actions, as well as the outbreak of hostilities such as Russia's invasion of Ukraine and the impact of it and measures taken in response thereto, including sanctions imposed by governments and related counter-sanctions.

Risks Related to Regulatory Compliance and Potential Liabilities

We may have liabilities in connection with our business, including appraisal and valuation, sales and leasing and property and facilities management activities.

As a licensed real estate broker and provider of commercial real estate services, we and our licensed sales professionals and independent contractors that work for us are subject to statutory due diligence, disclosure and standard-of-care obligations. Failure to fulfill these obligations could subject us or our sales professionals or independent contractors to litigation from parties who purchased, sold or leased properties that we brokered or managed.

We could become subject to claims by participants in real estate sales and leasing transactions, as well as building owners and companies for whom we provide management services, claiming that we did not fulfill our obligations. We could also become subject to claims made by clients for whom we provided appraisal and valuation services and/or third parties who perceive themselves as having been negatively affected by our appraisals and/or valuations. We also could be subject to audits and/or fines from various local real estate authorities if they determine that we are violating licensing laws by failing to follow certain laws, rules and regulations. While these liabilities have been insignificant in the past, we have no assurance that this will continue to be the case.

In our property and facilities management business, we hire and supervise third-party contractors to provide services for our managed properties. We may be subject to claims for defects, negligent performance of work or other similar actions or omissions by third parties we do not control. Moreover, our clients may seek to hold us accountable for the actions of contractors because of our role as property or facilities manager or project manager, even if we have disclaimed liability as a contractual matter, in which case we may be pressured to participate in a financial settlement for purposes of preserving the client relationship. While these liabilities have been insignificant in the past, there is no assurance that this will continue to be the case.

Because we employ large numbers of building staff in facilities that we manage, we face risk in potential claims relating to employment injuries, termination and other employment matters. While these risks are generally passed back to the building owner, there is no assurance it will continue to be the case.

Adverse outcomes of property and facilities management disputes or litigation could have a material adverse effect on our business, financial condition, results of operations and prospects, particularly to the extent we may be liable on our contracts, or if our liabilities exceed the amounts of the insurance coverage procured and maintained by us. Some of these litigation risks may be mitigated by any commercial insurance we maintain in amounts we believe are appropriate. However, in the event of a substantial loss or certain types of claims, our insurance coverage and/or self-insurance reserve levels might not be sufficient to pay the full damages. Additionally, in the event of grossly negligent or intentionally wrongful conduct, insurance policies that we may have may not cover us at all. Further, the value of otherwise valid claims we hold under insurance policies could become uncollectible in the event of the covering insurance company's insolvency, although we seek to limit this risk by placing our commercial insurance only with highly rated companies. Any of these events could materially negatively impact our business, financial condition, results of operations and prospects. While these liabilities have been insignificant in the past, we have no assurance that this will continue to be the case.

A U.K. exit from the EU could materially adversely impact our customers, counterparties, businesses, financial condition, results of operations and prospects.

On January 1, 2021, the U.K. formally left the EU and U.K.-EU trade became subject to a new agreement that was concluded in December of 2020. The exit from the EU is commonly referred to as Brexit. In light of ongoing uncertainties, market participants are still adjusting. The exact impact of Brexit on the U.K.-EU flow of services therefore remains unknown. This same uncertainty applies to the consequences for the economies of the U.K. and the EU member states as a result of the U.K.'s withdrawal from the EU.

Market access risks and uncertainties have had and could continue to have a material adverse effect on our customers, businesses, prospects, financial condition and results of operations. Furthermore, in the future the U.K.'s and EU's regulation may diverge, which could disrupt and increase the costs of our operations, and result in a loss of existing levels of cross-border market access.

As we continue to grow in the internationally, these and other risks and uncertainties could have an adverse effect on our businesses, prospects, financial condition and results of operations.

If we fail to comply with laws, rules and regulations applicable to commercial real estate brokerage, valuation and advisory and mortgage transactions and our other business lines, then we may incur significant financial penalties.

Due to the broad geographic scope of our operations and the commercial real estate services we perform, we are subject to numerous federal, state, local and foreign laws, rules and regulations specific to our services. For example, the brokerage of real estate sales and leasing transactions and other related activities require us to maintain brokerage licenses in each state in which we conduct activities for which a real estate license is required. We also maintain certain state licenses in connection with our lending, servicing and brokerage of commercial and multifamily mortgage loans. If we fail to maintain our licenses or conduct brokerage activities without a license or violate any of the laws, rules and regulations applicable to our licenses, then we may be subject to audits, required to pay fines (including treble damages in certain states) or be prevented from collecting commissions owed, be compelled to return commissions received or have our licenses suspended or revoked.

In addition, because the size and scope of commercial real estate transactions have increased significantly during the past several years, both the difficulty of ensuring compliance with the numerous state licensing and regulatory regimes and the possible loss resulting from non-compliance have increased. Furthermore, the laws, rules and regulations applicable to our business lines also may change in ways that increase the costs of compliance. The failure to comply with federal, state, local and foreign laws, rules and regulations could result in significant financial penalties that could have a material adverse effect on our business, financial condition, results of operations and prospects.

Environmental regulations may adversely impact our commercial real estate business and/or cause us to incur costs for cleanup of hazardous substances or wastes or other environmental liabilities.

Federal, state, local and foreign laws, rules and regulations impose various environmental zoning restrictions, use controls, and disclosure obligations which impact the management, development, use and/or sale of real estate. Such laws and regulations tend to discourage sales and leasing activities, as well as mortgage lending availability, with respect to some properties. A decrease or delay in such transactions may materially and adversely affect our business, financial condition, results of operations and prospects. In addition, a failure by us to disclose environmental concerns in connection with a real estate transaction may subject us to liability to a buyer/seller or lessee/lessor of property. While historically we have not incurred any significant liability in connection with these types of environmental issues, there is no assurance that this will continue to be the case.

In addition, in our role as property or facilities manager, we could incur liability under environmental laws for the investigation or remediation of hazardous or toxic substances or wastes relating to properties we currently or formerly managed. Such liability may be imposed without regard to the lawfulness of the original disposal activity, or our knowledge of, or fault for, the release or contamination. Further, liability under some of these laws may be joint and several, meaning that one liable party could be held responsible for all costs related to a contaminated site. Insurance for such matters may not be available or sufficient. While historically we have not incurred any significant liability under these laws, this may not always be the case.

Certain requirements governing the removal or encapsulation of asbestos-containing materials, as well as recently enacted local ordinances obligating property or facilities managers to inspect for and remove lead-based paint in certain buildings, could increase our costs of legal compliance and potentially subject us to violations or claims. More stringent enforcement of existing regulations could cause us to incur significant costs in the future, and/or materially and adversely impact our commercial real estate brokerage and management services business. While historically we have not incurred any significant liability under these laws, this may not always be the case.

Our operations are affected by federal, state and/or local environmental laws in the jurisdictions in which we maintain office space for our own operations and where we manage properties for clients, and we may face liability with respect to environmental issues occurring at properties that we occupy or manage.

Various laws, rules and regulations restrict the levels of certain substances that may be discharged into the environment by properties and such laws, rules and regulations may impose liability on current or previous real estate owners or operators for the cost of investigating, cleaning up or removing contamination caused by hazardous or toxic substances at the property. We may face costs or liabilities under these laws as a result of our role as an on-site property manager. While we believe that we have taken adequate measures to prevent any such losses, no assurances can be given that these events will not occur. Within our own operations, we may face additional costs from rising costs of environmental compliance, which may make it more expensive to operate our corporate offices. Our operations are conducted within leased office building space, and, accordingly, we do not currently anticipate that regulations restricting the emissions of greenhouse gases, or taxes that may be imposed on their release, would result in material costs or capital expenditures. However, we cannot be certain about the extent to which such regulations will develop as there are higher levels of understanding and commitments by different governments in the United States and around the world regarding risks related to the climate and how they should be mitigated.

Risks Related to Our Mortgage Servicing Business

The loss of relationships with the GSEs and HUD would, and changes in such relationships could, adversely affect our ability to originate commercial real estate loans through such programs. Compliance with the minimum collateral and risk-sharing requirements of such programs, as well as applicable state and local licensing agencies, could reduce our liquidity.

Currently, through our real estate capital markets business we originate a significant percentage of our loans for sale through the GSEs and HUD programs. Berkeley Point Capital LLC, a subsidiary within our real estate capital markets business, is approved as a Fannie Mae DUS lender, a Freddie Mac Optigo seller/servicer, a Freddie Mac Targeted Affordable Housing Seller, a HUD MAP lender nationwide, and a Ginnie Mae issuer. Our status as an approved lender affords us a number of advantages, which may be terminated by the applicable GSE or HUD at any time. Although we intend to take all actions to remain in compliance with the requirements of these programs, as well as applicable state and local licensing agencies, the loss of such status would, or changes in our relationships with the GSEs and HUD could, prevent us from being able to originate commercial real estate loans for sale through the particular GSE or HUD, which could have a material adverse effect on our business, financial condition, results of operations and prospects. It could also result in a loss of similar approvals from the GSEs or HUD. As of December 31, 2021, we exceeded the most restrictive applicable net worth requirement of these programs by approximately \$400.5 million, but there is no assurance that this will continue to be the case.

We are subject to risk of loss in connection with defaults on loans sold under the Fannie Mae DUS program that could materially and adversely affect our results of operations and liquidity.

Under the Fannie Mae DUS program, we originate and service multifamily loans for Fannie Mae without having to obtain Fannie Mae's prior approval for certain loans, as long as the loans meet the underwriting guidelines set forth by Fannie Mae. In return for the delegated authority from Fannie Mae to make loans and Fannie Mae's commitment to purchase such loans, we must maintain minimum collateral and generally are required to share risk of loss on loans sold through Fannie Mae. With respect to most loans, we are generally required to absorb approximately one-third of any losses on the unpaid principal balance of a loan at the time of loss settlement. Some of the loans that we originate under the Fannie Mae DUS program are subject to reduced levels or no risk-sharing. However, we generally receive lower servicing fees with respect to such loans. Although our real estate capital markets business's average annual losses from such risk-sharing programs have been a minimal percentage of the aggregate principal amount of such loans to date, if loan defaults increase, actual risk-sharing obligation payments under the Fannie Mae DUS program could increase, and such defaults could have a material adverse effect on our business, financial condition, results of operations and prospects. In addition, a material failure to pay our share of losses under the Fannie Mae DUS program could result in the revocation of our license from Fannie Mae and the exercise of various remedies available to Fannie Mae under the Fannie Mae DUS program.

A change to the conservatorship of Fannie Mae and Freddie Mac and related actions, along with any changes in laws and regulations affecting the relationship between Fannie Mae and Freddie Mac and the U.S. federal government or the existence of Fannie Mae and Freddie Mac, could have a material adverse effect on our business, financial condition, results of operations and prospects.

Each GSE has been created under a conservatorship established by its regulator, the Federal Housing Finance Agency, since 2008. The conservatorship is a statutory process designed to preserve and conserve the GSEs' assets and property and put them in a sound and solvent condition. The conservatorships have no specified termination dates. There has been significant uncertainty regarding the future of the GSEs, including how long they will continue to exist in their current forms. Changes in such forms could eliminate or substantially reduce the number of loans we originate with the GSEs. Policymakers and others

have focused significant attention in recent years on how to reform the nation's housing finance system, including what role, if any, the GSEs should play. Such reforms could significantly limit the role of the GSEs in the nation's housing finance system. Any such reduction in the loans we originate with the GSEs could lead to a reduction in fees related to the loans we originate or service. These effects could cause our real estate capital markets business to realize significantly lower revenues from its loan originations and servicing fees, and ultimately could have a material adverse effect on our business, financial condition, results of operations and prospects.

Risks Related to Our Intellectual Property

We may not be able to protect our intellectual property rights or may be prevented from using intellectual property used in our business.

Our success is dependent, in part, upon our intellectual property. We rely primarily on trade secret, contract, patent, copyright and trademark law in the United States and other jurisdictions as well as confidentiality procedures and contractual provisions to establish and protect our intellectual property rights to proprietary technologies, products, services or methods, and our brand.

Unauthorized use of our intellectual property could make it more expensive to do business and harm our operating results. We cannot ensure that our intellectual property rights are sufficient to protect our competitive advantages or that any particular patent, copyright or trademark is valid and enforceable, and all patents ultimately expire. In addition, the laws of some foreign countries may not protect our intellectual property rights to the same extent as the laws in the United States, or at all. Any significant impairment of our intellectual property rights could harm our business or our ability to compete.

Protecting our intellectual property rights is costly and time consuming. Although we have taken steps to protect ourselves, there can be no assurance that we will be aware of all patents, copyrights or trademarks that may pose a risk of infringement by our products and services. Generally, it is not economically practicable to determine in advance whether our products or services may infringe the present or future rights of others.

Accordingly, we may face claims of infringement or other violations of intellectual property rights that could interfere with our ability to use intellectual property or technology that is material to our business. The number of such third-party claims may grow. Our technologies may not be able to withstand such third-party claims or rights against their use.

We may have to rely on litigation to enforce our intellectual property rights, protect our trade secrets, determine the validity and scope of the rights of others or defend against claims of infringement or invalidity.

If our software licenses or services from third parties are terminated or adversely changed or amended or contain material defects or errors, or if any of these third parties were to cease doing business, or if products or services offered by third parties were to contain material defects or errors, our ability to operate our businesses may be materially adversely affected.

We license databases, software and services from third parties, much of which is integral to our systems and our business. The licenses are terminable if we breach or have been perceived to have breached our obligations under the license agreements. If any material licenses were terminated or adversely changed or amended, if any of these third parties were to cease doing business or if any licensed software or databases licensed by these third parties were to contain material defects or errors, we may be forced to spend significant time and money to replace the licensed software and databases, and our ability to operate our business may be materially adversely affected. Further, any errors or defects in third-party services or products (including hardware, software, databases, cloud computing and other platforms and systems) or in services or products that we develop ourselves, could result in errors in, or a failure of our services or products, which could harm our business. Although we take steps to locate replacements, there can be no assurance that the necessary replacements will be available on acceptable terms, if at all. There can be no assurance that we will have an ongoing license to use all intellectual property which our systems require, the failure of which could have a material adverse effect on our business, financial condition, results of operations and prospects.

Risks Related to Our IT Systems and Cyber-Security

Defects or disruptions in our technology or services could diminish demand for our products and services and subject us to liability.

Because our technology, products and services are complex and use or incorporate a variety of computer hardware, software and databases, both developed in-house and acquired from third-party vendors, our technology, products and services may have errors or defects. Errors and defects could result in unanticipated downtime or failure, and could cause financial loss and harm to our reputation and our business. Furthermore, if we acquire companies, we may encounter difficulty in incorporating the acquired technologies and maintaining the quality standards that are consistent with our technology, products and services.

Malicious cyber-attacks and other adverse events affecting our operational systems or infrastructure, or those of third parties, could disrupt our business, result in the disclosure of confidential information, damage our reputation and cause losses or regulatory penalties.

Developing and maintaining our operational systems and infrastructure are challenging, particularly as a result of rapidly evolving legal and regulatory requirements and technological shifts. Our financial, accounting, data processing or other operating and compliance systems and facilities may fail to operate properly or become disabled as a result of events that are wholly or partially beyond our control, such as a malicious cyber-attack or other adverse events, which may adversely affect our ability to provide services.

In addition, our operations rely on the secure processing, storage and transmission of confidential and other information on our computer systems and networks. Although we take protective measures such as software programs, firewalls and similar technology, to maintain the confidentiality, integrity and availability of our and our clients' information, and endeavor to modify these protective measures as circumstances warrant, the nature of cyber threats continues to evolve. As a result, our computer systems, software and networks may be vulnerable to unauthorized access, loss or destruction of data (including confidential client information), account takeovers, unavailability or disruption of service, computer viruses, acts of vandalism, or other malicious code, ransomware, hacking, phishing and other cyber-attacks and other adverse events that could have an adverse security impact. Despite the defensive measures we have taken, these threats may come from external forces such as governments, nation-state actors, organized crime, hackers, and other third parties such as outsource or infrastructure-support providers and application developers, or may originate internally from within us.

We also face the risk of operational disruption, failure, termination or capacity constraints of any of the third parties that facilitate our business activities. Such parties could also be the source of a cyber-attack on or breach of our operational systems, data or infrastructure. Malicious actors may also attempt to compromise or our induce employees, clients or other users of our systems to disclose sensitive information or provide access to our data, and these types of risks may be difficult to detect or prevent.

There have been an increasing number of ransomware, hacking, phishing and other cyber-attacks in recent years in various industries, and cyber-security risk management has been the subject of increasing focus by our regulators. Like other companies, we have on occasion experienced, and may continue to experience, threats to our systems, including viruses, phishing and other cyber-attacks. The number and complexity of these attacks continue to increase over time. The techniques used in these attacks are increasingly sophisticated, change frequently and are often not recognized until launched. If one or more cyber-attacks occur, it could potentially jeopardize the confidential, proprietary and other information processed and stored in, and transmitted through, our computer systems and networks, or otherwise cause interruptions or malfunctions in our, as well as our clients' or other third parties', operations, which could result in reputational damage, financial losses and/or client dissatisfaction, which may not in all cases be covered by insurance. If an actual, threatened or perceived cyber-attack or breach of our security occurs, our clients could lose confidence in our platforms and solutions, security measures and reliability, which would materially harm our ability to retain existing clients and gain new clients. As a result of any such attack or breach, we may be required to expend significant resources to repair system, network or infrastructure damage and to protect against the threat of future cyber-attacks or security breaches. We could also face litigation or other claims from impacted individuals as well as substantial regulatory sanctions or fines.

The extent of a particular cyber- attack and the steps that we may need to take to investigate the attack may not be immediately clear, and it may take a significant amount of time before such an investigation can be completed and full and reliable information about the attack is known. While such an investigation is ongoing, we may not necessarily know the full extent of the harm caused by the cyber-attack, and any resulting damage may continue to spread. Furthermore, it may not be clear how best to contain and remediate the harm caused by the cyber-attack, and certain errors or actions could be repeated or compounded before they are discovered and remediated. Any or all of these factors could further increase the costs and consequences of a cyber-attack.

A technological breakdown could also interfere with our ability to comply with financial reporting requirements. The SEC has issued guidance stating that, as a public company, we are expected to have controls and procedures that relate to cyber-security disclosure, and are required to disclose information relating to certain cyber-attacks or other information security breaches in disclosures required to be made under the federal securities laws. Any such cyber incidents involving our computer systems and networks, or those of third parties important to our business, could have a material adverse effect on our business, financial condition, results of operations and prospects.

Additionally, data privacy is subject to frequently changing rules and regulations in countries where we do business. For example, the GDPR requires entities both in the European Economic Area and outside to comply with new regulations regarding the handling of personal data. We are also subject to certain U.S. federal and state laws governing the protection of personal data. These laws and regulations are increasing in complexity and number. In addition to the increased cost of compliance, our failure to successfully implement or comply with appropriate processes to adhere to the GDPR and other laws and regulations relating to personal data could result in substantial financial penalties for non-compliance, expose us to litigation risk and could harm our reputation.

Risks Related to Our Key Personnel and Employee Turnover

The loss of one or more of our key executives, the development of future talent, and the ability of certain key employees to devote adequate time and attention to us are a key part of the success of our business, and failure to continue to employ and have the benefit of these executives may adversely affect our businesses and prospects.

Our people are our most important resource. We must retain the services of our key employees and strategically recruit and hire new talented employees to attract clients and transactions. Further, as we diversify into future business lines or geographic regions, hiring and engagement of effective management in these areas will impact our future success. In addition, like other companies, we are experiencing turnover among operational and support staff as a result of wage pressures occurring throughout the economy. See “Item 1-Business-Human Capital Management.” If our retention efforts are not successful or our turnover rate continues to increase in the future, our business, results of operations and financial condition could be materially adversely affected.

Effective succession planning is also important to our long-term success. Failure to transition smoothly and effectively transfer knowledge to future executive officers and key employees could hinder our strategic planning and execution. From time to time, senior management, outside directors or other key employees may leave our Company or be absent due to illness or other factors. While we strive to reduce the negative impact of such changes, losing certain key employee could result in significant disruptions to our operations. Hiring, training, and successfully integrating replacement critical personnel is time consuming, and if unsuccessful, could disrupt our operations, and as a result could materially adversely affect our business, financial condition, results of operations and prospects.

Howard W. Lutnick, who serves as our Chairman, is also the Chairman and Chief Executive Officer of Cantor, Chairman and Chief Executive Officer of CFGM, the managing general partner of Cantor, and Chairman of the Board and Chief Executive Officer of BGC Partners. Stephen M. Merkel, our Executive Vice President and Chief Legal Officer, is employed as Executive Managing Director, General Counsel and Secretary of Cantor and Executive Vice President and General Counsel of BGC. In addition, Messrs. Lutnick and Merkel hold offices at various other affiliates of Cantor. These two key employees are not subject to an employment agreement with us or any of our subsidiaries.

Currently, Mr. Lutnick expects to spend approximately 33% of his time on our matters and Mr. Merkel expects to spend approximately 25% of his time on our matters. These percentages may vary depending on business developments at Newmark, Cantor, BGC Partners or any of our or their other affiliates, including SPACs. As a result, these key employees dedicate only a portion of their professional efforts to our business and operations. Mr. Lutnick received a retention bonus in December 2021 which provides for certain cash payments contingent upon Mr. Lutnick's continued service as our Chairman and principal executive officer. There is no contractual obligation for such executives to spend a specific amount of their time with us and/or BGC Partners or Cantor and their respective affiliates. These two key employees may not be able to dedicate adequate time and attention to our business and operations, and we could experience an adverse effect on our operations due to the demands placed on our management team by other professional obligations. In addition, these key employees' other responsibilities could cause conflicts of interest with us. The Newmark Holdings limited partnership agreement, which includes

non-competition and other arrangements applicable to our key employees who are limited partners of Newmark Holdings, may not prevent certain of our key employees, including Messrs. Lutnick and Merkel whose employment by Cantor and BGC Partners is not subject to these provisions in the Newmark Holdings limited partnership agreement, from resigning or competing against us.

Should Mr. Lutnick or our other most senior executives leave or otherwise become unavailable to render services to us, their loss could disrupt our operations, adversely impact employee retention and morale, and seriously harm our business.

In addition, our success has largely been dependent on executive officers such as Barry M. Gosin, who serves as our Chief Executive Officer, and other key employees, including some who have been hired in connection with acquisitions. If any of our key employees were to join an existing competitor, form a competing company, offer services to Cantor or any affiliates that compete with our products, services or otherwise leave us, some of our clients could choose to use the services of that competitor or another competitor instead of our services, which could adversely affect our revenues and as a result could materially adversely affect our business, financial condition, results of operations and prospects.

Risks Related to Seasonality

Our business is generally affected by seasonality, which could have a material adverse effect on our results of operations in a given period.

Due to the strong desire of many market participants to close real estate transactions prior to the end of a calendar year, our business exhibits certain seasonality, with our revenue tending to be lowest in the first quarter and strongest in the fourth quarter. This could have a material effect on our results of operations in any given period.

The seasonality of our business makes it difficult to determine during the course of the year whether planned results will be achieved and to adjust to changes in expectations. To the extent that we are not able to identify and adjust for changes in expectations or we are confronted with negative conditions that inordinately impact seasonal norms, our business, financial condition, results of operations and prospects could be materially adversely affected.

Risks Relating to our Commercial Contracts and Arrangements

We may not be able to replace partner offices when affiliation agreements are terminated, which may decrease our scope of services and geographic reach.

We have agreements in place to operate on a collaborative and cross-referral basis with certain offices in the United States, elsewhere in the Americas and in Europe in return for contractual and referral fees paid to us and/or certain mutually beneficial co-branding and other business arrangements. These independently owned offices generally use some variation of Newmark in their names and marketing materials. These agreements are normally multi-year contracts, and generally provide for mutual referrals in their respective markets, generating additional contract and brokerage fees. Through these independently owned offices, our clients have access to additional brokers with local market research capabilities as well as other commercial real estate services in locations where we do not have a physical presence. From time to time our arrangement with these independent firms may be terminated pursuant to the terms of the individual license agreements. The opening of a Company-owned office to replace an independent office requires us to invest capital, which in some cases could be significant. Certain of these agreements or relationships could be impacted in the event that we rebrand or our market awareness is changed. There can be no assurance that, if we lose additional independently owned offices, we will be able to identify suitable replacement partners or fund the establishment or acquisition of an owned office. In addition, although we do not control the activities of these independently owned offices and are not responsible for their liabilities, we may face reputational risk if any of these independently owned offices are involved in or accused of illegal, unethical or similar behavior. Failure to maintain coverage in important geographic markets may negatively impact our operations, reputation and ability to attract and retain key employees and expand domestically and internationally and could have a material adverse effect on our business, financial condition, results of operations and prospects.

Declines in or terminations of servicing engagements or breaches of servicing agreements could have a material adverse effect on our business, financial condition, results of operations and prospects.

We expect that loan servicing fees will continue to constitute a significant portion of our revenues from the real estate capital markets business for the foreseeable future. Nearly all of these fees are derived from loans that our real estate capital

markets business originates and sells through the agencies' programs or places with institutional investors. A decline in the number or value of loans that we originate for these investors or terminations of our servicing engagements will decrease these fees. HUD has the right to terminate our real estate capital markets business' current servicing engagements for cause. In addition to termination for cause, Fannie Mae and Freddie Mac may terminate our real estate capital markets business' servicing engagements without cause by paying a termination fee. Institutional investors typically may terminate servicing engagements with our real estate capital markets business at any time with or without cause, without paying a termination fee. We are also subject to losses that may arise from servicing errors, such as a failure to maintain insurance, pay taxes, or provide notices. If we breach our servicing obligations to the agencies or institutional investors, including as a result of a failure to perform by any third parties to which we have contracted certain routine back-office aspects of loan servicing, the servicing engagements may be terminated. Significant declines or terminations of servicing engagements or breaches of such obligations, in the absence of replacement revenue sources, could materially and adversely affect our business, financial condition and results of operations.

Reductions in loan servicing fees as a result of defaults or prepayments by borrowers could have a material adverse effect on our business, financial condition, results of operations and prospects.

In addition to exposure to potential loss sharing, our loan servicing business is also subject to potential reductions in loan servicing fees if the borrower defaults on a loan originated thereby, as the generation of loan servicing fees depends upon the continued receipt and processing of periodic installments of principal, interest and other payments such as amounts held in escrow to pay property taxes and other required expenses. The loss of such loan servicing fees would reduce the amount of cash actually generated from loan servicing and from interest on amounts held in escrow. The expected loss of future loan servicing fees would also result in non-cash impairment charges to earnings. Such cash and non-cash charges could have a material adverse effect on our business, financial condition, results of operations and prospects.

Risks Relating to Change in LIBOR

We may be adversely affected by the transition away from LIBOR and the use of SOFR or other alternative reference rates.

LIBOR is a basic rate of interest used in lending between banks on the London interbank market and is widely used as a reference for setting the interest rate on loans globally. The United Kingdom's Financial Conduct Authority and the administrator of LIBOR have announced that the publication of the most commonly used U.S. dollar LIBOR settings will cease to be published or cease to be representative after June 30, 2023, and the publication of all other LIBOR settings will cease to be published as of December 31, 2021. Starting January 1, 2022, banks in the United States have ceased entering into new credit and other contractual agreements using US dollar LIBOR as a reference rate, and instead began incorporating alternative reference rates, such as the Secured Overnight Financing Rate ("SOFR"), within such agreements. We have begun working and will continue to work with our funding providers to incorporate alternative reference rates (such as SOFR) within our credit facility and other funding arrangements, as opportunities arise to do so.

The expected withdrawal and replacement of LIBOR with SOFR or other alternative benchmarks introduces risks for us, our clients and the commercial real estate services industry. These risks include legal implementation risks, as extensive changes to documentation for new and existing clients, including lenders and real estate investors/owners, may be required. There are also financial risks arising from any changes in the valuation of financial instruments, which may impact our valuation and advisory business, our real estate capital markets services business, and our lending and loan servicing business. There are also operational risks due to the potential requirement to adapt information technology systems and operational processes to address the replacement of LIBOR. In addition, replacement of LIBOR may temporarily reduce or delay transaction volume and could lead to various complexities and uncertainties related to our industry.

Additionally, Fannie Mae and Freddie Mac has stopped accepting adjustable-rate mortgages ("ARMs") based on LIBOR and began accepting ARMs based on SOFR in 2020. They are working on guidance for the transition of legacy products to a SOFR based alternative rate/conversion. They expect to announce a plan with specific timelines prior to the sun setting of LIBOR in order to give GSE Servicers ample time to make the necessary process and system changes needed for the legacy transition to a SOFR based product.

While it is not currently possible to determine precisely whether, or to what extent, the replacement of LIBOR would affect us, the implementation of alternative benchmark rates to LIBOR could have a material adverse effect on our business, financial condition, results of operations and prospects.

Risks Related to Liquidity, Funding and Indebtedness

Liquidity is essential to our business, and insufficient liquidity could have a material adverse effect on our business, financial condition, results of operations and prospects.

Liquidity is essential to our business. Our liquidity position could be impaired due to circumstances that we may be unable to control, such as a general market disruption or idiosyncratic events that affect our clients, other third parties or us.

We are a holding company with no direct operations. We conduct substantially all of our operations through our operating subsidiaries. We do not have any material assets other than our direct and indirect ownership in the equity of our subsidiaries. As a result, our operating cash flow as well as our liquidity position are dependent upon the earnings of our subsidiaries. In addition, we are dependent on the distribution of earnings, loans or other payments by our subsidiaries to us. In the event of a bankruptcy, liquidation, dissolution, reorganization or similar proceeding with respect to any of our subsidiaries, we, as an equity owner of such subsidiary, and therefore holders of our securities, including our Class A common stock, will be subject to the prior claims of such subsidiary's creditors, including trade creditors, and any preferred equity holders. Any dividends declared by us, any payment by us of our indebtedness or other expenses, and all applicable taxes payable in respect of our net taxable income, if any, are paid from cash on hand and funds received from distributions, loans or other payments, primarily from our subsidiaries. Regulatory, tax restrictions or elections, and other legal or contractual restrictions may limit our ability to transfer funds freely from our subsidiaries. These laws, regulations and rules may hinder our ability to access funds that we may need to meet our obligations. Certain debt and security agreements entered into by our subsidiaries contain or may contain various restrictions, including restrictions on payments by our subsidiaries to us and the transfer by our subsidiaries of assets pledged as collateral. To the extent that we need funds to pay dividends and repurchase shares or purchase limited partnership units, repay indebtedness and meet other expenses, or to pay taxes on our share of Newmark OpCo's net taxable income, and Newmark OpCo or its subsidiaries are restricted from making such distributions under applicable law, regulations, or agreements, or are otherwise unable to provide such funds, it could materially adversely affect our business, financial condition, results of operations and prospects, including our ability to maintain adequate liquidity or to raise additional funding, including through access to the debt and equity capital markets.

Our ability to raise funding in the long-term or short-term debt capital markets or the equity capital markets, or to access lending markets could in the future be adversely affected by conditions in the United States and international economy and markets, or idiosyncratic events, with the cost and availability of funding adversely affected by wider credit spreads, changes in interest rates and dislocations in capital markets, as well as various business, governance, tax, accounting and other considerations. To the extent we are unable to access the debt capital markets on acceptable terms in the future, we may seek to raise funding and capital through equity issuances or other means.

Turbulence in the U.S. and international economy or markets may adversely affect our liquidity and funding positions, financial condition and the willingness of certain clients to do business with each other or with us. Acquisitions and financial reporting obligations related thereto may impact our ability to access capital markets on a timely basis and may necessitate greater short-term borrowings during certain times, which in turn may adversely affect our cost of borrowing, financial condition, and creditworthiness, and as a result, potentially impact our credit ratings and associated outlooks.

We may need to access short-term funding sources in order to meet a variety of business needs from time to time, including financing acquisitions as well as, ongoing business operations or activities such as hiring or retaining real estate brokers, salespeople, managers and other professionals. While we have a credit facility in place, to the extent that our capital or other needs exceed the capacity of our existing funding sources or we are not able to access any of these sources, this could have a material adverse effect on our business, financial condition, results of operations and prospects.

As of December 31, 2021, our GSE business had \$1.5 billion of committed loan funding available through multiple commercial banks, and an uncommitted \$700 million Fannie Mae loan repurchase facility. Consistent with industry practice, our real estate capital markets business' existing warehouse facilities are short-term, requiring annual renewal. If any of the committed facilities are terminated or are not renewed or the uncommitted facility is not honored, we would be required to obtain replacement financing, which we may be unable to find on favorable terms, or at all, and, in such event, we might not be able to originate loans, which could have a material adverse effect on mortgage servicing rights and on our business, financial condition, results of operations and prospects.

We are subject to the risk of failed loan deliveries, and even after a successful closing and delivery, may be required to repurchase the loan or to indemnify the investor if there is a breach of a representation or warranty made by us in

connection with the sale of loans, which could have a material adverse effect on our business, financial condition, results of operations and prospects.

We bear the risk that a borrower will not close on a loan that has been pre-sold to an investor and the amount of such borrower's rate lock deposit and any amounts recoverable from such borrower for breach of its obligations are insufficient to cover the investor's losses. In addition, the investor may choose not to take delivery of the loan if a catastrophic change in the condition of a property occurs after we fund the loan and prior to the investor purchase date. We also have the risk of errors in loan documentation which prevent timely delivery of the loan prior to the investor purchase date. A complete failure to deliver a loan could be a default under the warehouse facilities collateralized by U.S. Government Sponsored Enterprises used to finance the loan. While we have not experienced failed deliveries in the past, no assurance can be given that we will not experience failed deliveries in the future or that any losses will not have a material adverse effect on our business, financial condition, results of operations or prospects.

We must make certain representations and warranties concerning each loan we originate for the GSEs' and HUD's programs or securitizations. The representations and warranties relate to our practices in the origination and servicing of the loans and the accuracy of the information being provided by it. In the event of a material breach of representations or warranties concerning a loan, even if the loan is not in default, investors could, among other things, require us to repurchase the full amount of the loan and seek indemnification for losses from it, or, for Fannie Mae DUS loans, increase the level of risk-sharing on the loan. Our obligation to repurchase the loan is independent of our risk-sharing obligations. Our ability to recover on a claim against the borrower or any other party may be contractually limited and would also be dependent, in part, upon the financial condition and liquidity of such party. Although these obligations have not had a significant impact on our results to date, significant repurchase or indemnification obligations imposed on us could have a material adverse effect on our business, financial condition, results of operations and prospects.

We have debt, which could adversely affect our ability to raise additional capital to fund our operations and activities, limit our ability to react to changes in the economy or the commercial real estate services industry, expose us to interest rate risk, impact our ability to obtain favorable credit ratings and prevent us from meeting or refinancing our obligations under our indebtedness, which, depending on the impact of the COVID-19 pandemic, could have a material adverse effect on our business, financial condition, results of operations and prospects.

Our indebtedness, which at December 31, 2021 was approximately \$545.2 million, may have important, adverse consequences to us and our investors, including:

- it may limit our ability to borrow money, dispose of assets or sell equity to fund our working capital, capital expenditures, dividend payments, debt service, strategic initiatives or other obligations or purposes;
- it may limit our flexibility in planning for, or reacting to, changes in the economy, the markets, regulatory requirements, our operations or business;
- our financial leverage may be higher than some of our competitors, which may place us at a competitive disadvantage;
- it may make us more vulnerable to downturns in the economy or our business;
- it may require a substantial portion of our cash flow from operations to make interest payments;
- it may make it more difficult for us to satisfy other obligations;
- it may increase the risk of a future downgrade of our credit ratings or otherwise impact our ability to obtain or maintain investment grade credit ratings, which could increase the interest rates under certain of our debt agreements, increase future debt costs and limit the future availability of debt financing;
- we may not be able to borrow additional funds or refinance existing debt as needed or take advantage of business opportunities as they arise, pay cash dividends or repurchase common stock; and
- there would be a material adverse effect on our business, financial condition, results of operations and prospects if we were unable to service our indebtedness or obtain additional financing or refinance our existing debt on terms acceptable to us.

While our liquidity exceeds our debt at December 31, 2021, that may not always be the case. Our indebtedness excludes the warehouse facilities collateralized by GSEs because these lines are used to fund short term loans held for sale that are generally sold within 45 days from the date the loan is funded. All of the loans held for sale were either under commitment to be purchased by Freddie Mac or had confirmed forward trade commitments for the issuance and purchase of Fannie Mae or Ginnie Mae mortgage-backed securities that will be secured by the underlying loans.

Some of our borrowings have variable interest rates. As a result, a change in market interest rates could have a material adverse effect on our interest expense. In periods of rising interest rates, our cost of funds will increase, which could reduce our net income. In an effort to limit our exposure to interest rate fluctuations, we may rely on interest rate hedging or other interest rate risk management activities. These activities may limit our ability to participate in the benefits of lower interest rates with respect to the hedged borrowings. Adverse developments resulting from changes in interest rates or hedging transactions could have a material adverse effect on our business, financial condition, results of operations and prospects.

To the extent that we incur additional indebtedness or seek to refinance our existing debt, or the COVID-19 pandemic continues to negatively affect the local, national and global economies, the risks described above could increase. In addition, our actual cash requirements in the future may be greater than expected. Our cash flow from operations may not be sufficient to service our outstanding debt or to repay the outstanding debt as it becomes due, and we may not be able to borrow money, sell assets or otherwise raise funds on acceptable terms, or at all, to service or refinance our debt.

We may incur substantially more debt or take other actions which would intensify the risks discussed herein.

We may incur substantial additional debt in the future, some of which may be secured debt. Under the terms of our existing debt, we are permitted under certain circumstances to incur additional debt, grant liens on our assets to secure existing or future debt, recapitalize our debt or take a number of other actions that could have the effect of diminishing our ability to make payments on our debt when due. To the extent that we borrow additional funds, the terms of such borrowings may include higher interest rates, more stringent financial covenants, change of control provisions, make-whole provisions or other terms that could have a material adverse effect on our business, financial condition, results of operations and prospects.

Credit ratings downgrades or defaults by us could adversely affect us.

Our credit ratings and associated outlooks are critical to our reputation and operational and financial success. Our credit ratings and associated outlooks are influenced by a number of factors, including: operating environment, regulatory environment, earnings and profitability trends, the rating agencies' view of our funding and liquidity management practices, balance sheet size/composition and resulting leverage, cash flow coverage of interest, composition and size of the capital base, available liquidity, outstanding borrowing levels, our competitive position in the industry, our relationships in the industry, our relationship with Cantor, acquisitions or dispositions of assets and other matters. A credit rating and/or the associated outlook can be revised upward or downward at any time by a rating agency if such rating agency decides that circumstances of the company or related companies warrant such a change. Any adverse ratings change or a downgrade in the credit ratings of Newmark, Cantor or any of their other affiliates, and/or the associated rating outlooks could adversely affect the availability of debt financing to us on acceptable terms, as well as the cost and other terms upon which we may obtain any such financing. In addition, our credit ratings and associated outlooks may be important to clients of ours in certain markets and in certain transactions. A company's contractual counterparties may, in certain circumstances, demand collateral in the event of a credit ratings or outlook downgrade of that company. Further, interest rates, including with respect to our 6.125% Senior Notes, may increase in the event that our ratings get downgraded.

Currently, long-term credit ratings from Japan Credit Rating Agency, Ltd is BBB+ with a stable outlook, both Fitch Ratings Inc. and Kroll Bond Rating Agency are BBB- and the associated outlooks are stable. Our long-term credit rating from Standard & Poor's is BB+ with an associated outlook of stable. No assurance can be given that our credit ratings and associated outlooks will remain unchanged in the future.

Our acquisitions may require significant cash resources and may lead to a significant increase in the level of our indebtedness.

Potential future acquisitions may lead to a significant increase in the level of our indebtedness. We may enter into short- or long-term financing arrangements in connection with acquisitions which may occur from time to time. In addition, we may incur substantial nonrecurring transaction costs, including break-up fees, assumption of liabilities and expenses and compensation expenses. The increased level of our consolidated indebtedness in connection with potential acquisitions may restrict our ability to raise additional funding or capital on favorable terms, and such leverage, and any resulting liquidity or credit issues, could have a material adverse effect on our business, financial condition, results of operations and prospects.

We may face difficulties in monetizing the remaining approximately 1.1 million Nasdaq shares we still hold without taking some discounts to the per share market price of Nasdaq common stock. Additionally, we will have the risk of

fluctuations in the market price of any Nasdaq shares we hold; we may not be able enter into new hedging arrangements with respect to the Nasdaq shares on favorable terms or at all; and we may face various regulatory issues raised by receiving, holding, pledging, hedging and selling the Nasdaq shares.

On February 2, 2021, Nasdaq announced that it entered into a definitive agreement to sell its U.S. fixed income business to Tradeweb. On June 25, 2021, Nasdaq announced the close of the sale of its U.S. fixed income business, which accelerated Newmark's receipt of Nasdaq shares. Newmark received 6,222,340 Nasdaq shares and subsequently on June 25, 2021, the SPV notified RBC of its decision to settle the third and fourth Nasdaq Forwards using the Nasdaq shares the SPV received on June 25, 2021. On July 2, 2021, Newmark settled the third and the fourth Nasdaq Forwards with 944,329 Nasdaq shares. As of February 25, 2022, we held approximately 1.1 million Nasdaq shares with a value of approximately \$187.2 million.

We will have the risk of fluctuations in the market price of the remaining approximately 1.1 million Nasdaq shares we still hold. Additionally, we may also face difficulties monetizing the remaining Nasdaq shares without taking some discounts to the per share market price of Nasdaq common stock, and we may not be able to enter into new hedging arrangements with respect to the Nasdaq shares on favorable terms, or at all. Additionally, we may face various regulatory issues raised by receiving, holding, pledging, hedging and selling the remaining Nasdaq shares. Each of these factors could have a material adverse effect on our business, financial condition, results of operations and prospects.

Risks Relating to our 6.125% Senior Notes

We may not have the funds necessary to repurchase the 6.125% Senior Notes upon a change of control triggering event as required by the indenture governing these notes.

Upon the occurrence of a "change of control triggering event" (as defined in the indenture governing the 6.125% Senior Notes) unless we have exercised our right to redeem the notes, holders of the notes will have the right to require us to repurchase all or any part of their notes at a price in cash equal to 101% of the then-outstanding aggregate principal amount of the notes repurchased plus accrued and unpaid interest, if any. If we experience a "change of control triggering event", we can offer no assurance that we would have sufficient, financial resources readily available to satisfy our obligations to repurchase any or all of the notes should any holder elect to cause us to do so. Our failure to repurchase the notes as required would result in a default under the indenture, which in turn could result in defaults under agreements governing certain of our other indebtedness, including the acceleration of the payment of any borrowings thereunder, and which could have a material adverse effect on our business, financial condition, results of operations and prospects.

The requirement to offer to repurchase the 6.125% Senior Notes upon a change of control triggering event may delay or prevent an otherwise beneficial takeover attempt of us.

The requirement to offer to repurchase the 6.125% Senior Notes upon a change of control triggering event may in certain circumstances delay or prevent a takeover of us and/or the removal of incumbent management that might otherwise be beneficial to investors in our Class A common stock.

RISKS RELATED TO OUR CORPORATE AND PARTNERSHIP AND EQUITY STRUCTURE

We are a holding company, and accordingly we are dependent upon distributions from Newmark OpCo to pay dividends, taxes and indebtedness and other expenses and to make repurchases.

We are a holding company with no direct operations, and we will be able to pay dividends, taxes and other expenses, and to make repurchases of shares of our Class A common stock and purchases of Newmark Holdings limited partnership interests or other equity interests in our subsidiaries, only from our available cash on hand and funds received from distributions, loans or other payments, primarily from Newmark OpCo. Tax restrictions or elections and other legal or contractual restrictions may limit our ability to transfer funds freely from our subsidiaries. In addition, any unanticipated accounting, tax or other charges against net income could adversely affect our ability to pay dividends and to make repurchases.

Our Board of Directors and Audit Committee authorized repurchases of shares of our Class A common stock and purchases of limited partnership interests or other equity interests in our subsidiaries up to \$400 million. This authorization includes repurchases of stock or units from executive officers, other employees and partners, including Cantor, as well as other affiliated persons or entities. From time to time, we may repurchase shares or purchase units. See "Liquidity", Funding and

Indebtedness -Liquidity is essential to our business, and insufficient liquidity could have a material adverse effect on our business, financial condition, results of operations and prospects.”

Reductions in our quarterly cash dividend and corresponding reductions in distributions by Newmark Holdings to its partners may reduce the value of our common stock and the attractiveness of our equity-based compensation and limit the ability of our partners to repay employee loans.

Our Board has traditionally authorized a dividend policy which generally provides that we expect to pay a quarterly cash dividend to our common stockholders based on our post-tax Adjusted Earnings per fully diluted share. On February 10, 2022, our Board declared a quarterly qualified cash dividend of \$0.01 per share to Class A and Class B common stockholders of record as of March 1, 2022. Our Board took the step in the first quarter of 2020 of reducing the quarterly dividend to \$0.01 per share in order to increase our financial flexibility as the real estate markets face difficult and unprecedented macroeconomic conditions due to the COVID-19 pandemic. Investors seeking a high short-term dividend yield may find our Class A common stock less attractive than securities of issuers with higher dividend yields.

Our ability to pay dividends is dependent upon our available cash on hand and funds received from distributions, loans or other payments from Newmark OpCo. Newmark OpCo intends to distribute to its limited partners, including us, on a pro rata and quarterly basis, cash in an amount that will be determined by Newmark Holdings, its general partner, of which we are the general partner. Newmark OpCo’s ability, and in turn our ability, to make such distributions will depend upon the continuing profitability and strategic and operating needs of our business. We may not pay the same dividend to our shares as the distribution paid by Newmark OpCo to its limited partners.

Additionally, beginning in the first quarter of 2020, Newmark Holdings reduced its distributions to or on behalf of its partners. The distributions to or on behalf of partners are expected to at least cover their related tax payments. Whether any given post-tax amount is equivalent to the amount received by a stockholder also on an after-tax depends upon stockholders’ and partners’ domiciles and tax status. Current or potential partners may find our equity-based compensation structure less attractive as a result. Moreover, we have entered into various agreements with certain partners, whereby these partners receive loans that may be either wholly or in part repaid from distributions that the partners receive on some or all of their limited partner units or may be forgiven over a period of time. The reduction in Newmark Holdings distributions may adversely affect the ability of such partners to repay such loans. The inability of partners to repay the loans may require us to forgive a greater portion of such loans, increasing our compensation expense.

We believe that these actions reinforced the Company’s ability to maintain financial flexibility during the pandemic and enabled us to emerge from the crisis with market share gains. We prioritized stock repurchases over increased dividends and distributions during 2021, but we cannot assure you that such steps will prevent a decline in our financial condition. In August 2021 and again in February 2022, our Board of Directors reauthorized our stock and unit repurchase authorization to \$400 million. In addition, from time to time, we may reinvest all or a portion of the distributions we receive in Newmark OpCo’s business. Accordingly, there can be no assurance that future dividends will be paid, that dividend amounts will be maintained or that repurchases or purchases will be made at current or future levels. See “Item 5-Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities-Dividend Policy.”

Because our voting control is concentrated among the holders of our Class B common stock, the market price of our Class A common stock may be materially adversely affected by its disparate voting rights.

The holders of our Class A common stock and Class B common stock have substantially identical economic rights, but their voting rights are different. Holders of Class A common stock are entitled to one vote per share, while holders of Class B common stock are entitled to 10 votes per share on all matters to be voted on by stockholders in general.

As of December 31, 2021, Cantor and CFGM held no shares of our Class A common stock. As of December 31, 2021, Cantor and CFGM held 21,285,533 shares of our Class B common stock, which represented all of the outstanding shares of our Class B common stock. The shares of Class B common stock held by Cantor and CFGM as of December 31, 2021 represented approximately 55.8% of our total voting power. In addition, Cantor has the right to exchange exchangeable partnership interests in Newmark Holdings into additional shares of Class A or Class B common stock, and pursuant to the exchange agreement, Cantor, CFGM and other Cantor affiliates entitled to hold Class B common stock under our certificate of incorporation have the right to exchange from time to time, on a one-to-one basis, subject to adjustment, shares of our Class A common stock now owned or subsequently acquired by such persons for shares of our Class B common stock, up to the number of shares of Class B common stock that are authorized but unissued under our certificate of incorporation. Cantor has pledged 5.0 million shares

of Class B common stock held by it to Bank of America in connection with certain partner loans. We expect to retain our dual class structure, and there are no circumstances under which the holders of Class B common stock would be required to convert their shares of Class B common stock into shares of Class A common stock, absent the exercise of the pledge in the event of foreclosure.

As long as Cantor beneficially owns a majority of our total voting power, it will have the ability, without the consent of the other holders of our Class A common stock, to elect all of the members of our Board of Directors and to control our management and affairs. In addition, it will be able to in its sole discretion determine the outcome of matters submitted to a vote of our stockholders for approval and will be able to cause or prevent a change of control of us. In certain circumstances, the shares of Class B common stock issued to Cantor may be transferred without conversion to Class A common stock such as when the shares are transferred to an entity controlled by Cantor or Mr. Lutnick.

The Class B common stock is controlled by Cantor and will not be subject to conversion or redemption by us. Our certificate of incorporation does not provide for automatic conversion of shares of Class B common stock into shares of Class A common stock upon the occurrence of any event. Furthermore, the Class B common stock is only issuable to Cantor, Mr. Lutnick or certain persons or entities controlled by them. The difference in the voting rights of Class B common stock could adversely affect the market price of our Class A common stock.

The dual class structure of our common stock may adversely affect the trading market for our Class A common stock.

S&P Dow Jones and FTSE Russell previously announced changes to their eligibility criteria for inclusion of shares of public companies on certain indices, including the S&P 500, to exclude companies with multiple classes of shares of common stock from being added to such indices or limit their inclusion in them. In addition, several shareholder advisory firms have announced their opposition to the use of multiple class structures. As a result, the dual class structure of our common stock may prevent the inclusion of our Class A common stock in such indices and may cause shareholder advisory firms to publish negative commentary about our corporate governance practices or otherwise seek to cause us to change our capital structure. Any such exclusion from indices could result in a less active trading market for our Class A common stock. Any actions or publications by shareholder advisory firms critical of our corporate governance practices or capital structure could also adversely affect the value of our Class A common stock.

Delaware law may protect decisions of our Board of Directors that have a different effect on holders of our Class A common stock and Class B common stock.

Stockholders may not be able to challenge decisions that have an adverse effect upon holders of our Class A common stock compared to holders of our Class B common stock if our Board of Directors acts in a disinterested, informed manner with respect to these decisions, in good faith and in the belief that it is acting in the best interests of our stockholders. Delaware law generally provides that a Board of Directors owes an equal duty to all stockholders, regardless of class or series, and does not have separate or additional duties to different groups of stockholders, subject to applicable provisions set forth in a corporation's certificate of incorporation and general principles of corporate law and fiduciary duties.

If we or Newmark Holdings were deemed an "investment company" under the Investment Company Act, the Investment Company Act's restrictions could make it impractical for us to continue our business and structure as contemplated and could materially adversely affect our business, financial condition, results of operations and prospects.

Generally, an entity is deemed an "investment company" under Section 3(a)(1)(A) of the Investment Company Act if it is primarily engaged in the business of investing, reinvesting, or trading in securities, and is deemed an "investment company" under Section 3(a)(1)(C) of the Investment Company Act if it owns "investment securities" having a value exceeding 40% of the value of its total assets (exclusive of U.S. Government securities and cash items) on an unconsolidated basis. We believe that neither we nor Newmark Holdings should be deemed an "investment company" as defined under Section 3(a)(1)(A) because neither of us is primarily engaged in the business of investing, reinvesting, or trading in securities. Rather, through our operating subsidiaries, we and Newmark Holdings are primarily engaged in the operation of various types of commercial real estate services businesses as described in this Annual Report on Form 10-K. Neither we nor Newmark Holdings is an "investment company" under Section 3(a)(1)(C) because more than 60% of the value of our total assets on an unconsolidated basis are interests in majority-owned subsidiaries that are not themselves "investment companies. In particular, Berkeley Point, a significant majority-owned subsidiary, is entitled to rely on, among other things, the mortgage banker exemption in Section 3(c)(5)(C) of the Investment Company Act.

To ensure that we and Newmark Holdings are not deemed “investment companies” under the Investment Company Act, we need to be primarily engaged, directly or indirectly, in the non-investment company businesses of our operating subsidiaries. If we were to cease participation in the management of Newmark Holdings, if Newmark Holdings, in turn, were to cease participation in the management of Newmark OpCo, or if Newmark OpCo, in turn, were to cease participation in the management of our operating subsidiaries, that would increase the possibility that we and Newmark Holdings could be deemed “investment companies.” Further, if we were deemed not to have a majority of the voting power of Newmark Holdings (including through our ownership of the Special Voting Limited Partnership Interest), if Newmark Holdings, in turn, were deemed not to have a majority of the voting power of Newmark OpCo (including through its ownership of the Special Voting Limited Partnership Interest), or if Newmark OpCo, in turn, were deemed not to have a majority of the voting power of our operating subsidiaries, that would increase the possibility that we and Newmark Holdings could be deemed “investment companies.” Finally, if any of our operating subsidiaries were deemed “investment companies,” our interests in Newmark Holdings and Newmark OpCo, and Newmark Holdings’ interests in Newmark OpCo, could be deemed “investment securities,” and we and Newmark Holdings could be deemed “investment companies.”

We expect to take all legally permissible action to ensure that we and Newmark Holdings are not deemed investment companies under the Investment Company Act, but no assurance can be given that this will not occur.

The Investment Company Act and the rules thereunder contain detailed prescriptions for the organization and operations of investment companies. Among other things, the Investment Company Act and the rules thereunder limit or prohibit transactions with affiliates, limit the issuance of debt and equity securities, prohibit the issuance of stock options and impose certain governance requirements. If anything were to happen that would cause us or Newmark Holdings to be deemed to be an investment company under the Investment Company Act, the Investment Company Act would limit our or its capital structure, ability to transact business with affiliates (including Cantor, Newmark Holdings or Newmark OpCo, as the case may be) and ability to compensate key employees. Therefore, if we or Newmark Holdings became subject to the Investment Company Act, it could make it impractical to continue our business in this structure, impair agreements and arrangements and impair the transactions contemplated by those agreements and arrangements, between and among us, Newmark Holdings and Newmark OpCo, or any combination thereof, and materially adversely affect our business, financial condition, results of operations and prospects.

RISKS RELATED TO THE SEPARATION AND THE SPIN-OFF

If there is a determination that the Spin-Off was taxable for U.S. federal income tax purposes because the facts, assumptions, representations or undertakings underlying the tax opinion with respect to the Spin-Off were incorrect or for any other reason, then BGC Partners and its stockholders could incur significant U.S. federal income tax liabilities, and we could incur significant liabilities.

BGC Partners received an opinion of Wachtell, Lipton, Rosen & Katz, outside counsel to BGC Partners, to the effect that the Spin-Off, together with certain related transactions, qualified as a transaction that is described in Sections 355 and 368(a)(1)(D) of the Internal Revenue Code of 1986, as amended (which we refer to as the “Code”). The opinion relied on certain facts, assumptions, representations and undertakings from BGC Partners and us regarding the past and future conduct of the companies’ respective businesses and other matters. If any of these facts, assumptions, representations or undertakings are incorrect or not otherwise satisfied, BGC Partners and its stockholders may not be able to rely on the opinion of tax counsel.

Moreover, notwithstanding this opinion of counsel, the IRS could determine on audit that the separation or the Spin-Off is taxable if it determines that any of these facts, assumptions, representations or undertakings are not correct or have been violated or if it disagrees with the conclusions in the opinion, or for other reasons, including as a result of certain significant changes in the stock ownership of BGC Partners or us after the separation or Spin-Off. If the separation or Spin-Off is determined to be taxable for U.S. federal income tax purposes, BGC Partners and its stockholders could incur significant U.S. federal income tax liabilities and we may be required to indemnify BGC Partners for all or a portion of any such tax liabilities under the tax matters agreement. Any such liabilities could be substantial, and could have a material adverse effect on our business, financial condition, results of operations and prospects.

We may be required to pay Cantor for a significant portion of the tax benefit, if any, relating to any additional tax depreciation or amortization deductions we claim as a result of any step up in the tax basis of the assets of Newmark OpCo resulting from exchanges of interests in Newmark Holdings for our common stock.

Certain partnership interests in Newmark Holdings may be exchanged for shares of Newmark Group common stock. In the vast majority of cases, the partnership units that become exchangeable for shares of Newmark common stock are units that have been granted as compensation, and, therefore, the exchange of such units will not result in an increase in Newmark's share of the tax basis of the tangible and intangible assets of Newmark OpCo. However, exchanges of other partnership units-including non-tax-free exchanges of units by Cantor-could result in an increase in the tax basis of such tangible and intangible assets that otherwise would not have been available, although the Internal Revenue Service may challenge all or part of that tax basis increase, and a court could sustain such a challenge by the Internal Revenue Service. These increases in tax basis, if sustained, may reduce the amount of tax that Newmark would otherwise be required to pay in the future. In such circumstances, the tax receivable agreement that Newmark entered into with Cantor provides for the payment by Newmark to Cantor of 85% of the amount of cash savings, if any, in the U.S. federal, state and local income tax or franchise tax that Newmark actually realizes as a result of these increases in tax basis and certain other tax benefits related to its entering into the tax receivable agreement, including tax benefits attributable to payments under the tax receivable agreement. It is expected that Newmark will benefit from the remaining 15% cash savings, if any, in income tax that we realize.

RISKS RELATED TO OUR RELATIONSHIP WITH CANTOR AND ITS AFFILIATES

We are controlled by Cantor. Cantor's interests may conflict with our interests and Cantor may exercise its control in a way that favors its respective interests to our detriment.

As of December 31, 2021, Cantor and CFGM held no shares of our Class A common stock. As of December 31, 2021, Cantor and CFGM held 21,285,533 shares of our Class B common stock, which represented all of the outstanding shares of our Class B common stock. The shares of Class B common stock held by Cantor and CFGM as of December 31, 2021 represented approximately 55.8% of our total voting power. Cantor and CFGM also own 24,251,264 exchangeable limited partnership units of Newmark Holdings. If Cantor and CFGM were to exchange such units into shares of our **Class B** common stock, Cantor would have approximately 73.8% of our total voting power as of December 31, 2021 (58.7% if Cantor were to exchange such units into shares of our Class A common stock). We expect to retain our dual class structure, and there are no circumstances under which the holders of Class B common stock would be required to convert their shares of Class B common stock into shares of Class A common stock.

As a result, Cantor, directly through its ownership of shares of our Class A common stock and Class B common stock, and Mr. Lutnick, indirectly through his control of Cantor, are each able to exercise control over our management and affairs and all matters requiring stockholder approval, including the election of our directors and determinations with respect to acquisitions and dispositions, as well as material expansions or contractions of our business, entry into new lines of business and borrowings and issuances of our Class A common stock and Class B common stock or other securities. Cantor's voting power may also have the effect of delaying or preventing a change of control of us.

Cantor's and Mr. Lutnick's ability to exercise control over us could create or appear to create potential conflicts of interest. Conflicts of interest may arise between us and Cantor in a number of areas relating to our past and ongoing relationships, including:

- potential acquisitions and dispositions of businesses;
- the issuance, acquisition or disposition of securities by us;
- the election of new or additional directors to our Board of Directors;
- the payment of dividends by us (if any), distribution of profits by Newmark OpCo and/or Newmark Holdings and repurchases of shares of our Class A common stock or purchases of Newmark Holdings limited partnership interests or other equity interests in our subsidiaries, including from Cantor or our executive officers, other employees, partners and others;
- any loans to or from us or Cantor;
- business operations or business opportunities of ours and Cantor's that would compete with the other party's business opportunities;
- intellectual property matters;
- business combinations involving us; and
- the nature, quality and pricing of administrative services and transition services to be provided to or by BGC Partners or Cantor or their respective affiliates.

Potential conflicts of interest could also arise if we decide to enter into any new commercial arrangements with Cantor in the future or in connection with Cantor's desire to enter into new commercial arrangements with third parties.

We also expect Cantor to manage its ownership of us so that it will not be deemed to be an investment company under the Investment Company Act, including by maintaining its voting power in us above a majority absent an applicable exemption from the Investment Company Act. This may result in conflicts with us, including those relating to acquisitions or offerings by us involving issuances of shares of our Class A common stock, or securities convertible or exchangeable into shares of Class A common stock, that would dilute Cantor's voting power in us.

In addition, Cantor has from time to time in the past and may in the future consider possible strategic realignments of its own businesses and/or of the relationships that exist between and among Cantor and its other affiliates and us. Any future material related-party transaction or arrangement between Cantor and its other affiliates and us is subject to the prior approval by our audit committee, but generally does not require the separate approval of our stockholders, and if such stockholder approval is required, Cantor may retain sufficient voting power to provide any such requisite approval without the affirmative consent of our other stockholders. Further, our regulators may require the consolidation, for regulatory purposes, of Cantor and/or its other affiliates and us or require other restructuring of the group. There is no assurance that such consolidation or restructuring would not result in a material expense or disruption to our business.

We also have entered into agreements that provide certain rights to the holder of a majority of the Newmark Holdings exchangeable limited partnership interest, which is currently Cantor. For example, the Separation and Distribution Agreement provides that dividends for a year to our common stockholders that are 25% or more of our post-tax Adjusted Earnings per fully diluted share for such year shall require the consent of the holder of a majority of the Newmark Holdings exchangeable limited partnership interests. In addition, the Separation and Distribution Agreement requires Newmark to contribute any reinvestment cash (*i.e.*, any cash that Newmark retains, after the payment of taxes, as a result of distributing a smaller percentage than Newmark Holdings from the distributions they receive from Newmark OpCo), as an additional capital contribution with respect to its existing limited partnership interest in Newmark OpCo, unless Newmark and the holder of a majority of the Newmark Holdings exchangeable limited partnership interests agree otherwise. It is possible that Cantor, as the holder of a majority of the Newmark Holdings exchangeable limited partnership interest, will not agree to a higher dividend percentage or a different use of reinvestment cash, even if doing so might be more advantageous to the Newmark stockholders.

Our agreements and other arrangements with BGC Partners and Cantor, including the Separation and Distribution Agreement, may be amended upon agreement of the parties to those agreements and approval of our audit committee. During the time that we are controlled by Cantor, Cantor may be able to require us to agree to amendments to these agreements. We may not be able to resolve any potential conflicts, and, even if we do, the resolution may be less favorable to us than if we were dealing with an unaffiliated party. In order to address potential conflicts of interest between or among BGC Partners, Cantor and their respective representatives and us, our amended and restated certificate of incorporation contains provisions regulating and defining the conduct of our affairs as they may involve BGC Partners and/or Cantor and their respective representatives, and our powers, rights, duties and liabilities and those of our representatives in connection therewith.

Cantor may compete with us for acquisitions or other business opportunities.

Cantor has existing real estate-related businesses, and Newmark and Cantor are partners in a real estate-related joint venture, Real Estate LP and are co-sponsors of a special purpose acquisition company, named Newmark Acquisition Corp. (the "SPAC"). In addition, from time to time, Cantor may sponsor other SPACs or invest in other ventures which have a real estate focus. While these businesses do not currently compete with Newmark, it is possible that, in the future, real estate-related opportunities in which Newmark would be interested may also be pursued by Cantor and/or Real Estate LP, and Real Estate LP may conduct activities in any real estate-related business or asset-backed securities-related business or any extensions thereof and ancillary activities thereto. For example, Cantor's commercial lending business has historically offered conduit loans to the multifamily market. While conduit loans have certain key differences versus multifamily agency loans, such as those offered by our real estate capital markets business, there can be no assurance that Cantor's and/or Real Estate LP's lending businesses will not seek to offer multifamily loans to our existing and potential multifamily customer base.

Moreover, the service of officers or partners of Cantor as our executive officers and directors, and those persons' ownership interests in and payments from Cantor and its affiliates, SPACs and similar investments or other entities, could create conflicts of interest when we and those directors or executive officers are faced with decisions that could have different implications for us and them.

Our certificate of incorporation provides that, to the greatest extent permitted by law, no Cantor Company or BGC Partners Company, each as defined in our certificate of incorporation, or any of the representatives, as defined in our certificate of incorporation, of a Cantor Company or BGC Partners Company will, in its capacity as our stockholder or affiliate, owe or be liable for breach of any fiduciary duty to us or any of our stockholders. In addition, to the greatest extent permitted by law, none of any Cantor Company, BGC Partners Company or any of their respective representatives will owe any duty to refrain from engaging in the same or similar activities or lines of business as us or our representatives or doing business with any of our or our representatives' clients or customers. If any Cantor Company, BGC Partners Company or any of their respective representatives acquires knowledge of a potential transaction or matter that may be a corporate opportunity (as defined in our certificate of incorporation) for any such person, on the one hand, and us or any of our representatives, on the other hand, such person will have no duty to communicate or offer such corporate opportunity to us or any of our representatives, and will not be liable to us, any of our stockholders or any of our representatives for breach of any fiduciary duty by reason of the fact that they pursue or acquire such corporate opportunity for themselves, direct such corporate opportunity to another person or do not present such corporate opportunity to us or any of our representatives, subject to the requirement described in the following sentence. If a third party presents a corporate opportunity to a person who is both our representative and a representative of a BGC Partners Company and/or a Cantor Company, expressly and solely in such person's capacity as our representative, and such person acts in good faith in a manner consistent with the policy that such corporate opportunity belongs to us, then such person will be deemed to have fully satisfied and fulfilled any fiduciary duty that such person has to us as our representative with respect to such corporate opportunity, provided that any BGC Partners Company, any Cantor Company or any of their respective representatives may pursue such corporate opportunity if we decide not to pursue such corporate opportunity.

The corporate opportunity policy that is included in our amended and restated certificate of incorporation is designed to resolve potential conflicts of interest between us and our representatives and BGC Partners, Cantor and their respective representatives. The Newmark Holdings and Newmark OpCo limited partnership agreements contain similar provisions with respect to us and/or BGC Partners and Cantor and each of our respective representatives. This policy, however, could make it easier for BGC Partners or Cantor to compete with us. If BGC Partners or Cantor competes with us, it could materially harm our business, financial condition, results of operations and prospects.

Mr. Lutnick has actual or potential conflicts of interest because of his positions with BGC Partners and/or Cantor or its other affiliates.

Mr. Lutnick serves as Chairman of the Board and Chief Executive Officer of BGC Partners and as Chairman and Chief Executive Officer of Cantor and holds offices at various other affiliates of Cantor and serves as an officer and director of several SPACs. He has and may in the future also join the board of other public companies from time to time. In addition, Mr. Lutnick owns BGC Partners common stock, other BGC Partners' equity awards or partnership interests in BGC Holdings, or equity interests in Cantor or any of its other affiliates. These interests may be significant compared to his total assets. Although BGC Partners is no longer our parent following the Spin-Off, Cantor controls both us and BGC. Mr. Lutnick's positions at BGC Partners and/or Cantor and the ownership of any such equity or the equity of any of Cantor's other affiliates create, or may create the appearance of, conflicts of interest when he is faced with decisions that could have different implications for BGC Partners, Cantor or any of such other affiliates than the decisions have for us.

Agreements between us and BGC Partners and/or Cantor are between related parties, and the terms of these agreements may be less favorable to us than those that we could negotiate with third parties and may subject us to litigation.

Our relationship with BGC Partners and/or Cantor may result in agreements with BGC Partners and/or Cantor that are between related parties. For example, we provide to and receive from Cantor and its affiliates various administrative services and transition services. As a result, the prices charged to us or by us for services provided under any agreements with BGC Partners and Cantor may be higher or lower than prices that may be charged by third parties, and the terms of these agreements may be less favorable to us than those that we could have negotiated with third parties. Any future material related-party transaction or arrangement between us and BGC Partners and/or Cantor is subject to the prior approval by our audit committee, but generally does not require the separate approval of our stockholders, and if such stockholder approval were required, Cantor may retain sufficient voting power to provide any such requisite approval without the affirmative consent of our other stockholders. These related-party relationships may also from time to time subject us to litigation.

We are controlled by Cantor. Cantor controls its wholly owned subsidiary, CF&Co, which may provide us with investment banking services. From time to time, in addition, Cantor, CF&Co and their affiliates may provide us with advice and services from time to time.

We are controlled by Cantor. Cantor, in turn, controls its wholly owned subsidiary, CF&Co. Cantor, CF&Co and their affiliates may provide investment banking services to us and our affiliates, including acting as our financial advisor in connection with business combinations, dispositions or other transactions, and placing or recommending to us various investments, stock loans or cash management vehicles. They would receive customary fees and commissions for these services in accordance with our investment banking engagement letter with CF&Co. They may also receive brokerage and market data and analytics products and services from us and our respective affiliates.

Real Estate LP may engage in a broad range of commercial real estate activities, and we will have limited influence over the selection or management of such activities.

We own approximately 27% of the capital in Real Estate LP. Cantor controls the remaining 73% of its capital and controls the general partner of Real Estate LP, who manages Real Estate LP. Real Estate LP collaborates with Cantor's significant existing real estate finance business, and Real Estate LP may conduct activities in any real estate-related business or asset-backed securities-related business or any extensions thereof and ancillary activities thereto. Accordingly, we have limited to no influence on the selection or management of the activities conducted by Real Estate LP, each of which may have different risks and uncertainty associated with it and that are each beyond our control. See "--Risks Related to Our Relationship with Cantor and Its Respective Affiliates. We are controlled by Cantor. Cantor's interests may conflict with our interests and Cantor may exercise its control in a way that favors its respective interests to our detriment."

RISKS RELATED TO OWNERSHIP OF OUR CLASS A COMMON STOCK AND OUR STATUS AS A PUBLIC COMPANY

If we fail to implement and maintain an effective internal control environment, our operations, reputation and stock price could suffer, we may need to restate our financial statements and we may be delayed in or prevented from accessing the capital markets.

As a public company, we are required, under Section 404 of the Sarbanes-Oxley Act, to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting. This assessment is required to include disclosure of any material weaknesses identified by our management in our internal control over financial reporting. A material weakness is a control deficiency or combination of control deficiencies that results in more than a remote likelihood that a material misstatement of annual or interim financial statements will not be prevented or detected. To achieve compliance with Section 404 within the prescribed period, we will be engaged in a process to document and evaluate our internal control over financial reporting, which is both costly and challenging.

Internal controls over financial reporting, no matter how well designed, has inherent limitations. Therefore, internal controls determined to be effective can provide only reasonable assurance with respect to financial statement preparation and may not prevent or detect all misstatements. Due to the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by management override of the controls. Moreover, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate due to changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. As such, we could lose investor confidence in the accuracy and completeness of our financial reports, which may have a material adverse effect on our reputation and stock price.

Our ability to identify and remediate any material weaknesses in our internal controls over financial reporting could affect our ability to prepare financial reports in a timely manner, control our policies, procedures, operations and assets, assess and manage our operational, regulatory and financial risks, and integrate our acquired businesses. Similarly, we need to effectively manage any growth that we achieve in such a way as to ensure continuing compliance with all applicable control, financial reporting and legal and regulatory requirements. Any material failures to ensure full compliance with control and financial reporting requirements could result in restatement, delay or prevent us from accessing the capital markets and harm our reputation and the market price for our Class A common stock.

Purchasers of our Class A common stock, as well as existing stockholders, may experience significant dilution as a result of sales of shares of our Class A common stock by us or by our partners and employees. Our management will have broad discretion as to the timing and amount of sales of our Class A common stock in any offering by us, as well as the application of the net proceeds of any such sales. In addition, sales of substantial amounts of our Class A common stock, or the perception that such sales could occur, may adversely affect prevailing market prices for our stock.

We may sell shares of our Class A common stock from time to time, including, without limitation, in connection with underwritten offerings, any “at-the-market” controlled equity offering program we may establish, or to our employees and partners. We may also facilitate other potential forms of employee share monetization including issuance of shares to employees and partners which may be sold through broker transactions. As a well-known seasoned issuer, we may file an automatic shelf registration statement and commence an offering immediately thereafter.

We have an effective registration statement on Form S-4 filed on May 20, 2019 (the “Acquisition Shelf Registration Statement”), with respect to the offer and sale of up to 20 million shares of our Class A common stock from time to time in connection with business combination transactions, including acquisitions of other businesses, assets, properties or securities. As of December 31, 2021, we have issued an aggregate of 1,421,457 shares of our Class A common stock under the Acquisition Shelf Registration Statement. We have filed registration statements on Form S-8 pursuant to which we have registered the shares underlying the Newmark Group Long Term Incentive Plan. As of December 31, 2021, there were 45.5 million shares remaining for sale under such registration statements.

The prices at which shares may be sold in any offering of our Class A common stock will vary, and these variations may be significant. Purchasers of these shares may suffer significant dilution if the price they pay is higher than the price paid by other purchasers of shares of our Class A common stock in any offerings of shares of our Class A common stock.

Our management will have broad discretion as to the timing and amount of sales of our Class A common stock in any offering by us, as well as the application of the net proceeds of any such sales. Accordingly, purchasers in any such offering will be relying on the judgment of our management with regard to the use of such net proceeds, and purchasers will not have the opportunity, as part of their investment decision, to assess whether the proceeds are being used appropriately. It is possible that the proceeds will be invested in a way that does not yield a favorable, or any, return for us and cause the price of our Class A common stock to decline.

We cannot predict the effect, if any, of future sales of our Class A common stock, or the availability of shares for future sales, on the market price of our Class A common stock. Sales of substantial amounts of our Class A common stock, or the perception that such sales could occur, could dilute existing holders of our Class A common stock and may adversely affect prevailing market prices for our Class A common stock.

In addition, the sale by us of any shares of our Class A common stock may decrease our existing Class A common stockholders’ proportionate ownership interest in us, reduce the amount of cash available per share for dividends payable on shares of our Class A common stock and diminish the relative voting strength of each previously outstanding share of our Class A common stock.

Delaware law, our corporate organizational documents and other requirements may impose various impediments to the ability of a third party to acquire control of us, which could deprive our investors of the opportunity to receive a premium for their shares.

We are a Delaware corporation, and the anti-takeover provisions of the Delaware General Corporation Law (which we refer to as the “DGCL”), our amended and restated certificate of incorporation and our amended and restated bylaws (which we refer to as our “bylaws”) impose various impediments to the ability of a third party to acquire control of us, even if a change of control would be beneficial to our Class A stockholders.

These provisions, summarized below, may discourage coercive takeover practices and inadequate takeover bids. These provisions may also encourage persons seeking to acquire control of us to first negotiate with our Board of Directors. We believe that the benefits of increased protection give us the potential ability to negotiate with the initiator of an unfriendly or unsolicited proposal to acquire or restructure us and outweigh the disadvantages of discouraging those proposals because negotiation of them could result in an improvement of their terms.

Our bylaws provide that special meetings of stockholders may be called only by the Chairman of our Board of Directors, or in the event the Chairman of our Board of Directors is unavailable, by the Chief Executive Officer or by the holders of a majority of the voting power of our Class B common stock, which are currently held by Cantor and CFGM. In addition, our certificate of incorporation permits us to issue “blank check” preferred stock.

Our bylaws require advance written notice prior to a meeting of our stockholders of a proposal or director nomination which a stockholder desires to present at such a meeting, which generally must be received by our Secretary not later than 120 days prior to the first anniversary of the date of our proxy statement for the preceding year’s annual meeting. In the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the

stockholder to be timely must be so delivered not later than the close of business on the later of the 120th day prior to the date of such proxy statement or the 10th day following the day on which public announcement of the date of such meeting is first made by us. Our bylaws provide that all amendments to our bylaws must be approved by either the holders of a majority of the voting power of all of our outstanding capital stock entitled to vote or by a majority of our Board of Directors.

We have elected in our amended and restated certificate of incorporation not to be subject to Section 203 of the DGCL, which generally prohibits a publicly held Delaware corporation from engaging in a business combination, such as a merger, with a person or group owning 15% or more of the corporation's voting stock, for a period of three years following the date on which the person became an interested stockholder, unless (with certain exceptions) the business combination or the transaction in which the person became an interested stockholder is approved in accordance with Section 203. Accordingly, we are not subject to the anti-takeover effects of Section 203. However, our certificate of incorporation contains provisions that have the same effect as Section 203, except that they provide that each of the Qualified Class B Holders and certain of their direct transferees will not be deemed to be "interested stockholders," and accordingly will not be subject to such restrictions.

Further, our Equity Plan contains provisions pursuant to which grants that are unexercisable or unvested may automatically become exercisable or vested as of the date immediately prior to certain change of control events. Additionally, change in control and employment agreements between us and our named executive officers also provide for certain grants, payments and grants of exchangeability, and exercisability in the event of certain change of control events.

The foregoing factors, as well as the significant common stock ownership by Cantor including shares of our Class B common stock, and rights to acquire additional such shares, and the provisions of any debt agreements could impede a merger, takeover or other business combination or discourage a potential investor from making a tender offer for our Class A common stock that could result in a premium over the market price for shares of Class A common stock.

Our certificate of incorporation provides that a state court located within the State of Delaware (or, if no state court located within the State of Delaware has jurisdiction, the federal court for the District of Delaware) shall be the sole and exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees or agents.

Our certificate of incorporation provides that, unless we consent to the selection of an alternative forum, a state court located within the State of Delaware (or, if no state court located within the State of Delaware has jurisdiction, the federal court for the District of Delaware) shall be the sole and exclusive forum for any derivative action or proceeding brought on our behalf; any action asserting a claim for or based on a breach of duty or obligation owed by any current or former director, officer, employee or agent of ours to us or to our stockholders, including any claim alleging the aiding and abetting of such a breach; any action asserting a claim against us or any current or former director, officer, employee or agent of ours arising pursuant to any provision of the DGCL or our certificate of incorporation or bylaws; any action asserting a claim related to or involving us that is governed by the internal affairs doctrine; or any action asserting an "internal corporate claim" as that term is defined in Section 115 of the DGCL. This choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, employees or agents, which may discourage such lawsuits against us and our directors, officers, employees and agents. Alternatively, if a court were to find the choice of forum provision contained in our certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could have a material adverse effect on our business, financial condition, results of operations and prospects.

ITEM 1B. UNRESOLVED STAFF COMMENTS

Not Applicable.

ITEM 2. PROPERTIES

Our principal executive offices are located at 125 Park Avenue, New York, New York 10017. They consist of approximately 150,000 square feet of space under a lease that expires in 2031.

We operate out of more than 140 offices. In addition, we have licensed our name to 10 commercial real estate providers that operate out of 16 offices in certain locations where we do not have our own offices. We believe our facilities are sufficient for our current needs.

ITEM 3. LEGAL PROCEEDINGS

See Note 30 — “Commitments and Contingencies” to the Company’s Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K for a description of our legal proceedings which is incorporated by reference herein.

ITEM 4. MINE SAFETY DISCLOSURES

Not Applicable.

PART II

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

Our Class A common stock is traded on the NASDAQ Global Select Market under the symbol "NMRK." There is no public trading market for our Class B common stock, which is held by Cantor and CFGM.

As of February 23, 2022, there were 784 holders of record of our Class A common stock and two holders of record of our Class B common stock.

Capital Deployment Priorities, Dividend Policy and Repurchase and Redemption Program

Our near-term capital allocation priorities are to invest in growth and margin expansion at attractive returns and to return capital to stockholders through dividends and share and unit repurchases.

Traditionally, our dividend policy provided that we expect to pay a quarterly cash dividend to our common stockholders based on our post-tax Adjusted Earnings per fully diluted share. Please see below for a detailed definition of post-tax Adjusted Earnings per fully diluted share. Beginning in the first quarter of 2020, and for all of the quarterly periods in 2020 and in 2021, the Board reduced the quarterly dividend to \$0.01 per share in order to strengthen the Company's balance sheet as the real estate markets faced difficult and unprecedented macroeconomic conditions due to the COVID-19 pandemic. Additionally, beginning with the first quarter 2020, Newmark Holdings reduced its distributions to or on behalf of its partners. As Newmark's financial condition has improved substantially year-over-year, and as the economy has rebounded, the Company has repurchased and/or redeemed a meaningful number of shares and/or units in 2021 as part of its overall capital return policy. See Note 6 "Stock Transactions and Unit Redemptions" to our accompanying audited condensed consolidated financial statements in Part II, Item 8 of this Annual Report on Form 10-K for more information.

Any dividends, if and when declared by our Board, will be paid on a quarterly basis. The dividend to our common stockholders is expected to be calculated based on post-tax Adjusted Earnings allocated to us and generated over the fiscal quarter ending prior to the record date for the dividend. No assurance can be made, however, that a dividend will be paid each quarter. The declaration, payment, timing, and amount of any future dividends payable by us will be at the sole discretion of our Board. With respect to any distributions which are declared, amounts paid to or on behalf of partners will at least cover their related tax payments. Whether any given post-tax amount is equivalent to the amount received by a stockholder also on an after-tax basis depends upon stockholders' and partners' domiciles and tax status.

We received 6,222,340 Nasdaq shares worth \$1,093.9 million as of June 30, 2021. On July 2, 2021, we settled the third and fourth Nasdaq Forwards with 944,329 Nasdaq shares worth \$166.0 million. In connection with the 2021 Equity Event, we used \$484.4 million, of which \$203.5 million was to reduce our fully diluted share count by 16.3 million.

We are a holding company, with no direct operations, and therefore we are able to pay dividends only from our available cash on hand and funds received from distributions from Newmark OpCo. Our ability to pay dividends may also be limited by regulatory considerations as well as by covenants contained in financing or other agreements. In addition, under Delaware law, dividends may be payable only out of surplus, which is our net assets minus our capital (as defined under Delaware law), or, if we have no surplus, out of our net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year. Accordingly, any unanticipated accounting, tax, regulatory or other charges against net income may adversely affect our ability to declare and pay dividends. While we intend to declare and pay dividends quarterly, there can be no assurance that our Board will declare dividends at all or on a regular basis or that the amount of our dividends will not change.

Stock and Unit Repurchase and Redemption Program and 2021 Activity

On August 5, 2021 and again on February 10, 2022, the Newmark Board of Directors and Audit Committee re-authorized repurchases of shares of Newmark Class A common stock and purchases of limited partnership interests or other equity interests in Newmark's subsidiaries up to \$400 million. This authorization includes repurchases of shares or purchase of units from executive officers, other employees and partners, including of BGC and Cantor, as well as other affiliated persons or entities. From time to time, Newmark may actively continue to repurchase shares and/or purchase units.

During the year ended December 31, 2021, Newmark repurchased 20,237,430 shares of Class A common stock at an average price of \$14.37. During the year ended December 31, 2021, we redeemed 167,894 limited partnership interests at an aggregate price of \$2.0 million for a weighted-average price of \$11.91 per unit.

From January 1, 2022 to February 28, 2022, we repurchased 1,516,606 shares of our Class A common stock at an aggregate price of \$28.1 million for a weighted-average price of \$18.54 per share. From January 1, 2022 to February 28, 2022, no limited partnership interests were redeemed

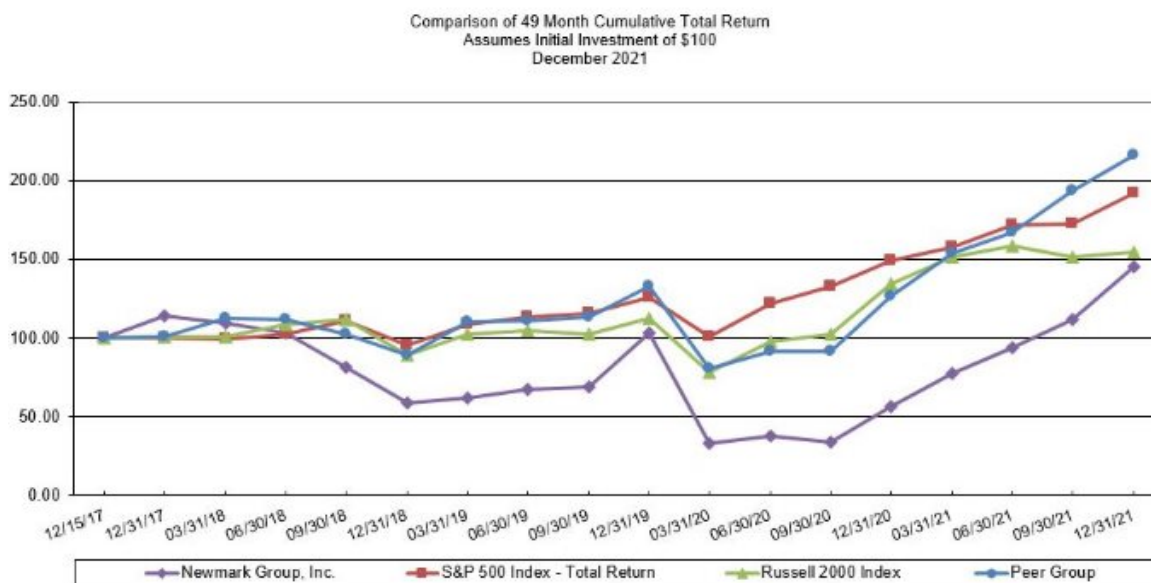
As of December 31, 2021 and February 28, 2022, Newmark had \$165.0 million and \$400.0 million remaining from its share repurchase and unit purchase authorization, respectively.

The following table details our share repurchase activity during the fourth quarter of 2021, including the total number of shares purchased, the average price paid per share, the number of shares repurchased as part of our publicly announced repurchase program and the approximate value that may yet be purchased under such program as of December 31, 2021:

	Total Number of Shares Repurchased/Purchased	Average Price Paid per Unit or Share	Total Number of Shares Repurchased as Part of Publicly Announced Program	Approximate Dollar Value of Units and Shares That May Yet Be Repurchased/ Purchased Under the Program
Repurchases/Purchases				
October 1, 2021 - October 31, 2021	3,064,959	\$14.71	3,064,959	—
November 1, 2021 - November 30, 2021	2,085,492	16.20	2,085,492	—
December 1, 2021 - December 31, 2021	4,286,836	16.77	4,286,836	—
October 1, 2021 - December 31, 2021	<u>9,437,287</u>	<u>\$15.98</u>	<u>9,437,287</u>	<u>165,017,712</u>

Performance Graph

The performance graph below shows a comparison of the cumulative total stockholder return, on a net dividend reinvestment basis, of \$100 invested on December 15, 2017, measured on December 31, 2017; March 31, 2018; June 30, 2018; September 30, 2018; December 31, 2018; March 31, 2019; June 30, 2019; September 30, 2019; December 31, 2019; March 31, 2020; June 30, 2020; September 30, 2020; December 31, 2020; March 31, 2021; June 30, 2021; September 30, 2021; and December 31, 2021. The Peer Group consists of CBRE Group, Inc., Colliers International Group Inc., Cushman & Wakefield plc, Jones Lang LaSalle Incorporated, and Savills plc. The returns of the peer group companies have been weighted according to their U.S. dollar stock market capitalization for purposes of arriving at a peer group average. Total returns are shown on a “net dividend” basis, which reflects tax effects on dividend reinvestments from companies operating under certain U.K. and European tax jurisdictions, according to local tax laws. The chart includes the Russell 2000 Index, of which we are a member. Because this Index includes small cap U.S.-listed companies, and because we are not a part of the S&P 500 Index, we believe that the Russell 2000 Index is a better measure of our stock's relative performance.



Note: Peer group indices use beginning of period market capitalization weighting. The above graph was prepared by Zacks Investment Research, Inc. and used with their permission, all rights reserved, Copyright 1980-2022. S&P 500 is Copyright © 2022 S&P Dow Jones Indices LLC, a division of S&P Global, all rights reserved. Russell 2000 Copyright © 2022 Russell Investments. Used with permissions, all rights reserved.

Non-GAAP Financial Measures

Newmark uses non-GAAP financial measures that differ from the most directly comparable measures calculated and presented in accordance with Generally Accepted Accounting Principles in the United States ("GAAP"). Non-GAAP financial measures used by the Company include "Adjusted Earnings before noncontrolling interests and taxes", which is used interchangeably with "pre-tax Adjusted Earnings"; "Post-tax Adjusted Earnings to fully diluted shareholders", which is used interchangeably with "post-tax Adjusted Earnings"; "Adjusted EBITDA"; and "Liquidity". The definitions of these terms are below.

Adjusted Earnings Defined

Newmark uses non-GAAP financial measures, including "Adjusted Earnings before noncontrolling interests and taxes" and "Post-tax Adjusted Earnings to fully diluted shareholders" which are supplemental measures of operating results used by management to evaluate the financial performance of the Company and its consolidated subsidiaries. Newmark believes that Adjusted Earnings best reflect the operating earnings generated by the Company on a consolidated basis and are the earnings which management considers when managing its business.

As compared with "Income (loss) before income taxes and noncontrolling interests" and "Net income (loss) for fully diluted shares" both prepared in accordance with GAAP, Adjusted Earnings calculations primarily exclude certain non-cash items and other expenses that generally do not involve the receipt or outlay of cash by the Company and/or which do not dilute existing stockholders. In addition, Adjusted Earnings calculations exclude certain gains and charges that management believes do not best reflect the ordinary results of Newmark. Adjusted Earnings is calculated by taking the most comparable GAAP measures and making adjustments for certain items with respect to compensation expenses, non-compensation expenses, and other income, as discussed below.

Calculations of Compensation Adjustments for Adjusted Earnings and Adjusted EBITDA

Treatment of Equity-Based Compensation under Adjusted Earnings and Adjusted EBITDA

The Company's Adjusted Earnings and Adjusted EBITDA measures exclude all GAAP charges included in the line item "Equity-based compensation and allocations of net income to limited partnership units and FPU's" (or "equity-based

compensation” for purposes of defining the Company’s non-GAAP results) as recorded on the Company’s GAAP Consolidated Statements of Operations and GAAP Consolidated Statements of Cash Flows. These GAAP equity-based compensation charges reflect the following items:

- Charges with respect to grants of exchangeability, which reflect the right of holders of limited partnership units with no capital accounts, such as LPUs and PSUs, to exchange these units into shares of common stock, as well as cash paid with respect to taxes withheld or expected to be owed by the unit holder upon such exchange. The withholding taxes related to the exchange of certain non-exchangeable units without a capital account into either common shares or units with a capital account may be funded by the redemption of preferred units such as PPSUs.
- Charges with respect to preferred units. Any preferred units would not be included in the Company’s fully diluted share count because they cannot be made exchangeable into shares of common stock and are entitled only to a fixed distribution. Preferred units are granted in connection with the grant of certain limited partnership units that may be granted exchangeability or redeemed in connection with the grant of shares of common stock at ratios designed to cover any withholding taxes expected to be paid. This is an acceptable alternative to the common practice among public companies of issuing the gross amount of shares to employees, subject to cashless withholding of shares, to pay applicable withholding taxes.
- GAAP equity-based compensation charges with respect to the grant of an offsetting amount of common stock or partnership units with capital accounts in connection with the redemption of non-exchangeable units, including PSUs and LPUs.
- Charges related to amortization of RSUs and limited partnership units.
- Charges related to grants of equity awards, including common stock or partnership units with capital accounts.
- Allocations of net income to limited partnership units and FPU’s. Such allocations represent the pro-rata portion of post-tax GAAP earnings available to such unit holders.

The amount of certain quarterly equity-based compensation charges is based upon the Company’s estimate of such expected charges during the annual period, as described further below under “Methodology for Calculating Adjusted Earnings Taxes”.

Virtually all of Newmark’s key executives and producers have equity or partnership stakes in the Company and its subsidiaries and generally receive deferred equity or limited partnership units as part of their compensation. A significant percentage of Newmark’s fully diluted shares are owned by its executives, partners, and employees. The Company issues limited partnership units as well as other forms of equity-based compensation, including grants of exchangeability into shares of common stock, to provide liquidity to its employees, to align the interests of its employees and management with those of common stockholders, to help motivate and retain key employees, and to encourage a collaborative culture that drives cross-selling and growth.

All share equivalents that are part of the Company’s equity-based compensation program, including REUs, PSUs, LPUs, and other units that may be made exchangeable into common stock, as well as RSUs (which are recorded using the treasury stock method), are included in the fully diluted share count when issued or at the beginning of the subsequent quarter after the date of grant. Generally, limited partnership units other than preferred units are expected to be paid a pro-rata distribution based on Newmark’s calculation of Adjusted Earnings per fully diluted share.

Certain Other Compensation-Related Items under Adjusted Earnings and Adjusted EBITDA

Newmark also excludes various other GAAP items that management views as not reflective of the Company’s underlying performance for the given period from its calculation of Adjusted Earnings and Adjusted EBITDA. These may include compensation-related items with respect to cost-saving initiatives, such as severance charges incurred in connection with headcount reductions as part of broad restructuring and/or cost savings plans.

The Company also excludes compensation charges related to non-cash GAAP gains attributable to originated mortgage servicing rights (which Newmark refers to as “OMSRs”) because these gains are also excluded from Adjusted Earnings and Adjusted EBITDA.

Excluded Compensation-Related Items with Respect to the 2021 Equity Event under Adjusted Earnings and Adjusted EBITDA (Beginning in Third Quarter 2021, as Updated)

Newmark does not view the GAAP compensation charges related to 2021 Equity Event that were not equity-based compensation as being reflective of its ongoing operations (the “Impact of the 2021 Equity Event”). These consisted of charges relating to cash paid to independent contractors for their withholding taxes and the cash redemption of HDUs. These were recorded as expenses based on Newmark’s previous non-GAAP results, but were excluded in the recast non-GAAP results beginning in the third quarter of 2021 for the following reasons:

- But for the 2021 Equity Event, the items comprising such charges would have otherwise been settled in shares and been recorded as equity-based compensation in future periods, as is the Company's normal practice. Had this occurred, such amounts would have been excluded from Adjusted Earnings and Adjusted EBITDA, and would also have resulted in higher fully diluted share counts, all else equal.
- Newmark views the fully diluted share count reduction related to the 2021 Equity Event to be economically similar to the common practice among public companies of issuing the net amount of common shares to employees for their vested stock-based compensation, selling a portion of the gross shares pay applicable withholding taxes, and separately making open market repurchases of common shares.
- There was nothing comparable to the 2021 Equity Event in 2020 and nothing similar is currently contemplated after 2021. Accordingly, the only prior period recast with respect to the 2021 Equity Event was the second quarter of 2021.

Calculation of Non-Compensation Expense Adjustments for Adjusted Earnings

Newmark's calculation of pre-tax Adjusted Earnings excludes non-cash GAAP charges related to the following:

- Amortization of intangibles with respect to acquisitions.
- Amortization of mortgage servicing rights (which Newmark refers to as "MSRs"). Under GAAP, the Company recognizes OMSRs equal to the fair value of servicing rights retained on mortgage loans originated and sold. Subsequent to the initial recognition at fair value, MSRs are carried at the lower of amortized cost or fair value and amortized in proportion to the net servicing revenue expected to be earned. However, it is expected that any cash received with respect to these servicing rights, net of associated expenses, will increase Adjusted Earnings and Adjusted EBITDA in future periods.
- Various other GAAP items that management views as not reflective of the Company's underlying performance for the given period, including non-compensation-related charges incurred as part of broad restructuring and/or cost savings plans. Such GAAP items may include charges for exiting leases and/or other long-term contracts as part of cost-saving initiatives, as well as non-cash impairment charges related to assets, goodwill and/or intangibles created from acquisitions.

Non-Cash Adjustment for Originated Mortgage Servicing Rights Revenue for Adjusted Earnings

Newmark's calculation of pre-tax Adjusted Earnings excludes non-cash GAAP gains attributable to OMSRs. Beginning in the fourth quarter of 2020, OMSRs are no longer included in non-compensation adjustments for Adjusted Earnings but instead shown as a separate line item in the Company's "Reconciliation of GAAP Net Income Available to Common Stockholders to Adjusted Earnings Before Noncontrolling Interests and Taxes and GAAP Fully Diluted EPS to Post-Tax Adjusted EPS". This presentation has no impact on previously reported Adjusted Earnings.

Calculation of Other (income) losses for Adjusted Earnings and Adjusted EBITDA

Adjusted Earnings calculations also exclude certain other non-cash, non-dilutive, and/or non-economic items, which may, in some periods, include:

- Unusual, one-time, non-ordinary or non-recurring gains or losses.
- Non-cash GAAP asset impairment charges.
- The impact of any unrealized non-cash mark-to-market gains or losses on "Other income (loss)" related to the variable share forward agreements with respect to Newmark's receipt of the Nasdaq payments in 2021 and 2022 and the 2020 Nasdaq payment (the "Nasdaq Forwards").
- Mark-to-market adjustments for non-marketable investments.
- Certain other non-cash, non-dilutive, and/or non-economic items.

Due to the sale of Nasdaq's U.S. fixed income business in the second quarter of 2021, the Nasdaq Earn-out and related Forward settlements were accelerated, less certain previously disclosed adjustments. Because these shares were originally expected to be received over a 15 year period ending in 2027, the Earn-out had been included in calculations of Adjusted Earnings and Adjusted EBITDA under Newmark's previous non-GAAP methodology. Due to the acceleration of the Earn-out and the Nasdaq Forwards, the Company now views results excluding certain items related to the Earn-out to be a better reflection of the underlying performance of Newmark's ongoing operations. Therefore, beginning with the third quarter of 2021, other (income) losses for Adjusted Earnings and Adjusted EBITDA also excludes the impact of the below items. These items may collectively be referred to as the "Impact of Nasdaq".

- Realized gains related to the accelerated receipt on June 25, 2021 of Nasdaq shares.

- Realized gains or losses and unrealized mark-to-market gains or losses with respect to Nasdaq shares received prior to the Earn-out acceleration.
- Dividend income on Nasdaq shares.
- The impact of any unrealized non-cash mark-to-market gains or losses on “Other income (loss)” related to the variable share forward agreements with respect to Newmark’s receipt of the Nasdaq payments in 2021 and 2022 and the 2020 Nasdaq payment (the “Nasdaq Forwards”). This item was historically excluded under the previous non-GAAP definitions.
- Other items related to the Earn-out

Upon further consideration, Newmark's calculations of non-GAAP “Other income (loss)” will continue to include dividend income on Nasdaq shares, as these dividends contribute to cash flow and are generally correlated to Newmark's interest expense on short term borrowing against such shares. All other things being equal, as Newmark sells Nasdaq shares, both its interest expense and dividend income will decline.

Methodology for Calculating Adjusted Earnings Taxes

Although Adjusted Earnings are calculated on a pre-tax basis, Newmark also reports post-tax Adjusted Earnings to fully diluted shareholders. The Company defines post-tax Adjusted Earnings to fully diluted shareholders as pre-tax Adjusted Earnings reduced by the non-GAAP tax provision described below and net income (loss) attributable to noncontrolling interest for Adjusted Earnings.

The Company calculates its tax provision for post-tax Adjusted Earnings using an annual estimate similar to how it accounts for its income tax provision under GAAP. To calculate the quarterly tax provision under GAAP, Newmark estimates its full fiscal year GAAP income before noncontrolling interests and taxes and the expected inclusions and deductions for income tax purposes, including expected equity-based compensation during the annual period. The resulting annualized tax rate is applied to Newmark’s quarterly GAAP income before income taxes and noncontrolling interests. At the end of the annual period, the Company updates its estimate to reflect the actual tax amounts owed for the period.

To determine the non-GAAP tax provision, Newmark first adjusts pre-tax Adjusted Earnings by recognizing any, and only, amounts for which a tax deduction applies under applicable law. The amounts include charges with respect to equity-based compensation; certain charges related to employee loan forgiveness; certain net operating loss carryforwards when taken for statutory purposes; and certain charges related to tax goodwill amortization. These adjustments may also reflect timing and measurement differences, including treatment of employee loans; changes in the value of units between the dates of grants of exchangeability and the date of actual unit exchange; variations in the value of certain deferred tax assets; and liabilities and the different timing of permitted deductions for tax under GAAP and statutory tax requirements.

After application of these adjustments, the result is the Company’s taxable income for its pre-tax Adjusted Earnings, to which Newmark then applies the statutory tax rates to determine its non-GAAP tax provision. Newmark views the effective tax rate on pre-tax Adjusted Earnings as equal to the amount of its non-GAAP tax provision divided by the amount of pre-tax Adjusted Earnings.

Generally, the most significant factor affecting this non-GAAP tax provision is the amount of charges relating to equity-based compensation. Because the charges relating to equity-based compensation are deductible in accordance with applicable tax laws, increases in such charges have the effect of lowering the Company’s non-GAAP effective tax rate and thereby increasing its post-tax Adjusted Earnings.

Newmark incurs income tax expenses based on the location, legal structure, and jurisdictional taxing authorities of each of its subsidiaries. Certain of the Company’s entities are taxed as U.S. partnerships and are subject to the Unincorporated Business Tax (“UBT”) in New York City. Any U.S. federal and state income tax liability or benefit related to the partnership income or loss, with the exception of UBT, rests with the unit holders rather than with the partnership entity. The Company’s consolidated financial statements include U.S. federal, state, and local income taxes on the Company’s allocable share of the U.S. results of operations. Outside of the U.S., Newmark is expected to operate principally through subsidiary corporations subject to local income taxes. For these reasons, taxes for Adjusted Earnings are expected to be presented to show the tax provision the consolidated Company would expect to pay if 100% of earnings were taxed at global corporate rates.

Calculations of Pre- and Post-Tax Adjusted Earnings per Share

Newmark’s pre- and post-tax Adjusted Earnings per share calculations assume either that:

- The fully diluted share count includes the shares related to any dilutive instruments, but excludes the associated expense, net of tax, when the impact would be dilutive; or

- The fully diluted share count excludes the shares related to these instruments, but includes the associated expense, net of tax.

The share count for Adjusted Earnings excludes certain shares and share equivalents expected to be issued in future periods but not yet eligible to receive dividends and/or distributions. Each quarter, the dividend payable to Newmark's stockholders, if any, is expected to be determined by the Company's Board of Directors with reference to a number of factors, including post-tax Adjusted Earnings per share. Newmark may also pay a pro-rata distribution of net income to limited partnership units, as well as to Cantor for its noncontrolling interest. The amount of this net income, and therefore of these payments per unit, would be determined using the above definition of Adjusted Earnings per share on a pre-tax basis.

The declaration, payment, timing, and amount of any future dividends payable by the Company will be at the discretion of its Board of Directors using the fully diluted share count. In addition, the non-cash preferred dividends are excluded from Adjusted Earnings per share as Newmark expected to redeem the related exchangeable preferred limited partnership units ("EPUs") with Nasdaq shares.

Management Rationale for Using Adjusted Earnings

Newmark's calculation of Adjusted Earnings excludes the items discussed above because they are either non-cash in nature, because the anticipated benefits from the expenditures are not expected to be fully realized until future periods, or because the Company views results excluding these items as a better reflection of the underlying performance of Newmark's ongoing operations. Management uses Adjusted Earnings in part to help it evaluate, among other things, the overall performance of the Company's business, to make decisions with respect to the Company's operations, and to determine the amount of dividends payable to common stockholders and distributions payable to holders of limited partnership units. Dividends payable to common stockholders and distributions payable to holders of limited partnership units are included within "Distributions to stockholders" and "Earnings distributions to limited partnership interests and noncontrolling interests," respectively, in our consolidated statements of cash flows.

The term "Adjusted Earnings" should not be considered in isolation or as an alternative to GAAP net income (loss). The Company views Adjusted Earnings as a metric that is not indicative of liquidity, or the cash available to fund its operations, but rather as a performance measure. Pre- and post-tax Adjusted Earnings, as well as related measures, are not intended to replace the Company's presentation of its GAAP financial results. However, management believes that these measures help provide investors with a clearer understanding of Newmark's financial performance and offer useful information to both management and investors regarding certain financial and business trends related to the Company's financial condition and results of operations. Management believes that the GAAP and Adjusted Earnings measures of financial performance should be considered together.

For more information regarding Adjusted Earnings, see the sections of the Company's most recent financial results press release titled "Reconciliation of GAAP Income to Adjusted Earnings and GAAP Fully Diluted EPS to Post-tax Adjusted EPS", including the related footnotes, for details about how Newmark's non-GAAP results are reconciled to those under GAAP.

Adjusted EBITDA Defined

Newmark also provides an additional non-GAAP financial performance measure, "Adjusted EBITDA" which it defines as GAAP "Net income (loss) available to common stockholders" adjusted for the following items:

- Net income (loss) attributable to noncontrolling interest.
- Provision (benefit) for income taxes.
- OMSR revenue.
- MSR amortization.
- Compensation charges related to OMSRs.
- Other depreciation and amortization.
- Equity-based compensation and allocations of net income to limited partnership units and FPU.
- Various other GAAP items that management views as not reflective of the Company's underlying performance for the given period. These may include compensation-related items with respect to cost-saving initiatives, such as severance charges incurred in connection with headcount reductions as part of broad restructuring and/or cost savings plans; charges for exiting leases and/or other long-term contracts as part of cost-saving initiatives; and non-cash impairment charges related to assets, goodwill and/or intangibles created from acquisitions.
- Other non-cash, non-dilutive, and/or non-economic items, which may, in certain periods, include the impact of any unrealized non-cash mark-to-market gains or losses on "other income (loss)" related to the variable

share forward agreements with respect to Newmark's receipt of the Nasdaq payments in 2021 and 2022 and the 2020 Nasdaq payment (the "Nasdaq Forwards"), as well as mark-to-market adjustments for non-marketable investments.

- Interest expense.

Beginning with the third quarter of 2021, calculation of Adjusted EBITDA will also exclude the "Impact of Nasdaq" and the "Impact of the 2021 Equity Event", which are defined above.

Newmark's calculation of Adjusted EBITDA excludes certain items discussed above because they are either non-cash in nature, because the anticipated benefits from the expenditures are not expected to be fully realized until future periods, or because the Company views excluding these items as a better reflection of the underlying performance Newmark's ongoing operations. The Company's management believes that its Adjusted EBITDA measure is useful in evaluating Newmark's operating performance, because the calculation of this measure generally eliminates the effects of financing and income taxes and the accounting effects of capital spending and acquisitions, which would include impairment charges of goodwill and intangibles created from acquisitions. Such items may vary for different companies for reasons unrelated to overall operating performance. As a result, the Company's management uses this measure to evaluate operating performance and for other discretionary purposes. Newmark believes that Adjusted EBITDA is useful to investors to assist them in getting a more complete picture of the Company's financial results and operations.

Since Newmark's Adjusted EBITDA is not a recognized measurement under GAAP, investors should use this measure in addition to GAAP measures of net income when analyzing Newmark's operating performance. Because not all companies use identical EBITDA calculations, the Company's presentation of Adjusted EBITDA may not be comparable to similarly titled measures of other companies. Furthermore, Adjusted EBITDA is not intended to be a measure of free cash flow or GAAP cash flow from operations because the Company's Adjusted EBITDA does not consider certain cash requirements, such as tax and debt service payments.

For more information regarding Adjusted EBITDA, see the section of the Company's most recent financial results press release titled "Reconciliation of GAAP Income to Adjusted EBITDA" including the related footnotes, for details about how Newmark's non-GAAP results are reconciled to those under GAAP EPS.

Timing of Outlook for Certain GAAP and Non-GAAP Items

Newmark anticipates providing forward-looking guidance for GAAP revenues and for certain non-GAAP measures from time to time. However, the Company does not anticipate providing an outlook for other GAAP results. This is because certain GAAP items, which are excluded from Adjusted Earnings and/or Adjusted EBITDA, are difficult to forecast with precision before the end of each period. The Company therefore believes that it is not possible for it to have the required information necessary to forecast GAAP results or to quantitatively reconcile GAAP forecasts to non-GAAP forecasts with sufficient precision without unreasonable efforts. For the same reasons, the Company is unable to address the probable significance of the unavailable information. The relevant items that are difficult to predict on a quarterly and/or annual basis with precision and may materially impact the Company's GAAP results include, but are not limited to the following:

- Certain equity-based compensation charges that may be determined at the discretion of management throughout and up to the period-end;
- Unusual, one-time, non-ordinary, or non-recurring items;
- The impact of gains or losses on certain marketable securities, as well as any gains or losses related to associated mark-to-market movements and/or hedging. These items are calculated using period-end closing prices;
- Non-cash asset impairment charges, which are calculated and analyzed based on the period-end values of the underlying assets. These amounts may not be known until after period-end;
- Acquisitions, dispositions and/or resolutions of litigation, which are fluid and unpredictable in nature.

Liquidity Defined

Newmark may also use a non-GAAP measure called "liquidity." The Company considers liquidity to be comprised of the sum of cash and cash equivalents, marketable securities, and reverse repurchase agreements (if any), less securities lent out in securities loaned transactions and repurchase agreements. The Company considers liquidity to be an important metric for determining the amount of cash that is available or that could be readily available to the Company on short notice.

For more information regarding liquidity, see the section of the Company's most recent financial results press release titled "Liquidity Analysis," including any related footnotes, for details about how Newmark's non-GAAP results are reconciled to those under GAAP.

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

The following discussion of Newmark's financial condition and results of operations should be read together with Newmark's accompanying consolidated financial statements and related notes, as well as the caution "Special Note Regarding Forward-Looking Information" relating to forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), included in Newmark's Annual report on Form 10-K and in this report. When used herein, the terms "Newmark," the "Company," "we," "us," and "our" refer to Newmark Group, Inc. and its consolidated subsidiaries.

This discussion summarizes the significant factors affecting our results of operations and financial condition during the years ended December 31, 2021, 2020 and 2019. We operate in one reportable segment, real estate services. This discussion is provided to increase the understanding of, and should be read in conjunction with, our accompanying consolidated financial statements and the notes thereto included elsewhere in this report.

Forward-Looking Cautionary Statements

Our actual results and the outcome and timing of certain events may differ significantly from the expectations discussed in the forward-looking statements. Factors that might cause or contribute to such a discrepancy include, but are not limited to, the factors set forth below:

- macroeconomic and other challenges and uncertainties resulting from the coronavirus ("COVID-19") pandemic, including any successive waves or variants of the virus, the complications in the implementation of vaccination programs, effectiveness and public acceptance of vaccines, and governmental and public reactions thereto, including the adoption of vaccine mandates and of vaccine passport requirements or other documentation by governmental authorities or private operators of public spaces, the impact on the economy, the commercial real estate services industry and the global financial markets, and consumer and corporate clients and customers, including the effect on demand for commercial real estate including office space, levels of new lease activity and renewals, frequency of loan defaults and forbearance, and fluctuations in the mortgage-backed securities market;
- challenges relating to our repositioning of certain aspects of our business to adapt to and better address the needs of our clients in the future as a result of the acceleration of pre-existing long-term social and economic trends, or emergence of new trends resulting from the COVID-19 pandemic and governmental measures taken in response thereto, including changes in the mix of demand for commercial real estate space, including decreased demand for urban office and retail space generally, which may be offset in whole or in part by increased demand for suburban office, data storage, fulfillment, and distribution centers and life sciences facilities, that could materially reduce demand for commercial space and have a material adverse effect on the nature of and demand for our commercial real estate services, including the time and expense related to such repositioning, as well as risks related to our entry into new geographic markets or lines of business;
- the impact of the COVID-19 pandemic, including any successive waves or variants of the virus, on our operations, including the continued ability of our executives, employees, clients and third-party service providers to perform their functions at normal levels, as well as the cybersecurity risks of remote working, and our ability to continue providing on-site commercial property management services;
- market conditions, transaction volumes, possible disruptions in transactions, potential deterioration of equity and debt capital markets for commercial real estate and related services, impact of significant changes in interest rates and our ability to access the capital markets as needed or on reasonable terms and conditions;
- pricing, commissions and fees, and market position with respect to any of our products and services and those of our competitors;
- the effect of industry concentration and reorganization, reduction of customers and consolidation;
- uncertainties related to integrating certain assets of Knotel, Inc. ("Knotel") and Space Management (DBA "Deskeo") as we build out our international flexible office business;
- liquidity, regulatory requirements and the impact of credit market events, including the impact of COVID-19 and actions taken by governments and businesses in responses thereto on the credit markets and interest rates;
- our relationship and transactions with Cantor Fitzgerald, L.P. ("Cantor") and its affiliates, Newmark's structure, including Newmark Holdings, L.P. ("Newmark Holdings"), which is owned by Newmark, Cantor, Newmark's employee partners and other partners, and our operating partnership, which is owned jointly by us and Newmark Holdings (which we refer to as "Newmark OpCo") any related transactions, conflicts of interest, or litigation, any loans to or from Newmark or Cantor, Newmark Holdings or Newmark OpCo, including the balances and interest

rates thereof from time to time and any convertible or equity features of any such loans, competition for and retention of brokers and other managers and key employees;

- the impact on our stock price from the reduction of our dividend and potential future changes in our capital deployment priorities, including repurchases of shares, purchases of limited partnership interests, and our dividend policy, and in Newmark Holdings distributions to partners and the related impact of such reductions, as well as the effect of layoffs, furloughs, salary cuts, and expected lower commissions or bonuses on the repayment of partner loans;
- market volatility as a result of the effects of COVID-19 or other market conditions, which may not be sustainable or predictable in future periods;
- our ability to grow in other geographic regions and to manage our continued overseas growth and the impact of the COVID-19 pandemic on these regions and transactions;
- our ability to maintain or develop relationships with independently owned offices or affiliated businesses or partners in our business;
- the impact of any restructuring or similar transaction on our business and financial results in current or future periods, including with respect to any assumed liabilities or indemnification obligations with respect to such transactions, the integration of any completed acquisitions and the use of proceeds of any completed dispositions;
- our ability to effectively deploy the proceeds of our Nasdaq, Inc. (“Nasdaq”) shares to repurchase shares or limited partnership interests, reduce our debt, and invest in growing our business;
- risks related to changes in our relationships with the Government Sponsored Enterprises (“GSEs”) and Housing and Urban Development (“HUD”), including the impact of COVID-19 and related changes in the credit markets, changes in prevailing interest rates and the risk of loss in connection with loan defaults;
- risks related to changes in the future of the GSEs, including changes in the terms of applicable conservatorships and changes in their capabilities;
- economic or geopolitical conditions or uncertainties, the actions of governments or central banks, including the impact of COVID-19 on the global markets and government responses, and restrictions on business and commercial activity, uncertainty regarding the nature, timing and consequences of the United Kingdom (“U.K.”)’s exit from the European Union (“EU”) following the withdrawal process, including potential reduction in investment in the U.K., and the pursuit of trade, border control or other related policies by the U.S. and/or other countries (including U.S. - China trade relations), political and civil unrest in the U.S., including demonstrations, riots, rising tensions with law enforcement, the impact of the recent or upcoming U.S. Presidential and Congressional elections, response to governmental mandates and other restrictions related to COVID-19 in the U.S. or abroad, political and labor unrest in France, Hong Kong, China and other jurisdictions, conflict in the Middle East, Russia, Ukraine, or other jurisdictions, the impact of U.S. government shutdowns or impasses, the impact of terrorist acts, acts of war or other violence or political unrest, as well as natural disasters or weather-related or similar events, including hurricanes as well as power failures, communication and transportation disruptions, and other interruptions of utilities or other essential services, and the impact of pandemics and other international health incidents, including COVID-19;
- the effect on our business, clients, the markets in which we operate, and the economy in general of inflationary pressures and the Federal Reserve's response thereto, infrastructure spending, changes in the U.S. and foreign tax and other laws, including changes in tax rates, repatriation rules, and deductibility of interest, potential policy and regulatory changes in Mexico and other countries, sequestrations, uncertainties regarding the debt ceiling and the federal budget, and future changes to tax policy and other potential political policies resulting from elections and changes in governments;
- our dependence upon our key employees, our ability to build out successful succession plans, the impact of absence due to illness or leave of certain key executive officers or employees and our ability to attract, retain, motivate and integrate new employees, as well as the competing demands on the time of certain of our executive officers who also provide services to Cantor, BGC and various other ventures and investments sponsored by Cantor;
- the effect on our business of changes in interest rates, changes in benchmarks, including the transition away from LIBOR, the transition to alternative benchmarks such as SOFR, and federal and state legislation relating thereto, the level of worldwide governmental debt issuances, austerity programs, government stimulus packages, including those related to COVID-19, increases or decreases in deficits and the impact of increased government tax rates, and other changes to monetary policy, and potential political impasses or regulatory requirements, including increased capital requirements for banks and other institutions or changes in legislation, regulations and priorities;

- extensive regulation of our business and clients, changes in regulations relating to commercial real estate and other industries, and risks relating to compliance matters, including regulatory examinations, inspections, investigations and enforcement actions, and any resulting costs, increased financial and capital requirements, enhanced oversight, remediation, fines, penalties, sanctions, and changes to or restrictions or limitations on specific activities, operations, compensatory arrangements, and growth opportunities, including acquisitions, hiring, and new businesses, products, or services, as well as risks related to our taking actions to ensure that we and Newmark Holdings are not deemed investment companies under the Investment Company Act of 1940;
- the impact of illness or governmental actions preventing a significant portion of our workforce or the workforce of our clients or third-party vendors from performing functions that can only be conducted in-person, including on-site tours and inspections of buildings;
- factors related to specific transactions or series of transactions as well as counterparty failure;
- costs and expenses of developing, maintaining and protecting our intellectual property, as well as employment, regulatory, and other litigation, proceedings and their related costs, including related to acquisitions and other matters, including judgments, fines, or settlements paid, reputational risk, and the impact thereof on our financial results and cash flow in any given period;
- our ability to maintain continued access to credit and availability of financing necessary to support our ongoing business needs, including to refinance indebtedness, and the risks associated with the resulting leverage, as well as fluctuations in interest rates;
- certain other financial risks, including the possibility of future losses, indemnification obligations, assumed liabilities, reduced cash flows from operations, increased leverage, reduced availability under our Credit Facility and CF Secured Borrowing Facility, and the need for short or long-term borrowings, including from Cantor, the ability of Newmark to refinance our indebtedness, including in the credit markets, and our ability to satisfy eligibility criteria for government-sponsored loan programs and changes to interest rates and market liquidity or our access to other sources of cash relating to acquisitions, dispositions, or other matters, potential liquidity and other risks relating to our ability to maintain continued access to credit and availability of financing necessary to support ongoing business needs on terms acceptable to us, if at all, and risks associated with the resulting leverage, including potentially causing a reduction in credit ratings and the associated outlooks and increased borrowing costs as well as interest rate and foreign currency exchange rate fluctuations;
- risks associated with the temporary or longer-term investment of our available cash, including in Newmark OpCo, defaults or impairments on the Company's investments (including investments in non-marketable securities), joint venture interests, stock loans or cash management vehicles and collectability of loan balances owed to us by partners, employees, Newmark OpCo or others;
- the impact of any reduction in the willingness of commercial property owners to outsource their property management needs;
- our ability to enter new markets or develop new products or services and to induce clients to use these products or services and to secure and maintain market share, and the impact of COVID-19 generally and on the commercial real estate services business in particular;
- our ability to enter into marketing and strategic alliances, business combinations, restructuring, rebranding or other transactions, including acquisitions, dispositions, reorganizations, partnering opportunities and joint ventures, the anticipated benefits of any such transactions, relationships or growth and the future impact of any such transactions, relationships or growth on other businesses and financial results for current or future periods, the integration of any completed acquisitions and the use of proceeds of any completed dispositions, the impact of amendments and/or terminations of any strategic arrangements, and the value of any hedging entered into in connection with consideration received or to be received in connection with such dispositions and any transfers thereof;
- our estimates or determinations of potential value with respect to various assets or portions of the Company's business, including with respect to the accuracy of the assumptions or the valuation models or multiples used;
- the impact of near- or off-shoring on our business, including on our ability to manage turnover and hire and retain personnel, including brokerage professionals, salespeople, managers, and other professionals;
- our ability to effectively manage any growth that may be achieved, including outside of the U.S., while ensuring compliance with all applicable financial reporting, internal control, legal compliance, and regulatory requirements;
- our ability to identify and remediate any material weaknesses or significant deficiencies in internal controls that could affect our ability to properly maintain books and records, prepare financial statements and reports in a timely manner, control policies, practices and procedures, operations and assets, assess and manage the

Company's operational, regulatory and financial risks, and integrate acquired businesses and brokers, salespeople, managers and other professionals;

- the impact of unexpected market moves and similar events;
- information technology risks, including capacity constraints, failures, or disruptions in our systems or those of clients, counterparties, or other parties with which we interact, increased demands on such systems and on the telecommunications infrastructure from remote working during the COVID-19 pandemic, including cyber-security risks and incidents, compliance with regulations requiring data minimization and protection and preservation of records of access and transfers of data, privacy risk and exposure to potential liability and regulatory focus;
- the impact of our reductions to our dividends and distributions and the timing and amounts of any future dividends or distributions and our increased stock and unit repurchase authorization, including our ability to meet expectations with respect to payment of dividends and repurchases of common stock or purchases of Newmark Holdings limited partnership interests or other equity interests in subsidiaries, including Newmark OpCo, including from Cantor or our executive officers, other employees, partners and others and the effect on the market for and trading price of our Class A common stock as a result of any such transactions;
- the effectiveness of our governance, risks management, and oversight procedures and the impact of any potential transactions or relationships with related parties;
- the impact of our environmental, social and governance ("ESG") or "sustainability" ratings on the decisions by clients, investors, potential clients and other parties with respect to our business, investments in us or the market for and trading price of Newmark Class A common stock or other matters;
- the fact that the prices at which shares of our Class A common stock are or may be sold in offerings or other transactions may vary significantly, and purchasers of shares in such offerings or other transactions, as well as existing stockholders, may suffer significant dilution if the price they paid for their shares is higher than the price paid by other purchasers in such offerings or transactions;
- the effect on the markets for and trading prices of our Class A common stock due to market factors, as well as on various offerings and other transactions, including offerings of Class A common stock and convertible or exchangeable debt or other securities, repurchases of shares of Class A common stock and purchases or redemptions of Newmark Holdings limited partnership interests or other equity interests in us or its subsidiaries, any exchanges by Cantor of shares of Class A common stock for shares of Class B common stock, any exchanges or redemptions of limited partnership units and issuances of shares of Class A common stock in connection therewith, including in corporate or partnership restructurings, payment of dividends on Class A common stock and distributions on limited partnership interests of Newmark Holdings and Newmark OpCo, convertible arbitrage, hedging, and other transactions engaged in by us or holders of outstanding shares, debt or other securities, share sales and stock pledge, stock loans, and other financing transactions by holders of shares or units (including by Cantor executive officers, partners, employees or others), including of shares acquired pursuant to employee benefit plans, unit exchanges and redemptions, corporate or partnership restructurings, acquisitions, conversions of shares of our Class B common stock and other convertible securities into shares of our Class A common stock, stock pledge, stock loans, or other financing transactions, distributions of our Class A common stock by Cantor to its partners, including deferred distribution rights shares.

The foregoing risks and uncertainties, as well as those risks and uncertainties discussed under the headings "Item 1A-Risk Factors," and "Item 7A-Quantitative and Qualitative Disclosures About market Risk" and elsewhere in this Form 10-K, may cause actual results and events to differ materially from the forward-looking statements. The information included herein is given as of the filing date of this Form 10-K with the Securities and Exchange Commission (the "SEC"), and future results or events could differ significantly from these forward-looking statements. We do not undertake to publicly update or revise any forward-looking statements, whether as a result of new information, future events, or otherwise.

Overview

Newmark is a leading full-service commercial real estate services business. We offer a diverse array of integrated services and products designed to meet the full needs of both real estate investors/owners and occupiers. Our investor/owner services and products include capital markets, which consists of investment sales, debt and structured finance and loan sales, agency leasing, property management, valuation and advisory, commercial real estate due diligence consulting and advisory services and government sponsored enterprise ("GSE") lending and loan servicing, mortgage broking and equity-raising. Our occupier services and products include tenant representation, real estate management technology systems, workplace and occupancy strategy, global corporate consulting services, project management, lease administration and facilities management. We enhance these services and products through innovative real estate technology solutions and data analytics that enable our

clients to increase their efficiency and profits by optimizing their real estate portfolio. We have relationships with many of the world's largest commercial property owners, real estate developers and investors, as well as Fortune 500 and Forbes Global 2000 companies.

We generate revenues from commissions on leasing and capital markets transactions, consulting and technology user fees, property and facility management fees, and mortgage origination and loan servicing fees.

Our growth has historically been focused in North America. During 2021, we ended our affiliation with Knight Frank and have accelerated our global growth plans by acquiring Space Management (DBA "Deskeo") and Knotel Inc. ("Knotel"), both of which are European leaders in flexible and serviced office space, and announced the addition of industry-leading international professionals in Global Corporate Services and Capital Markets. As of December 31, 2021, we had approximately 5,900 employees, including approximately 1,700 revenue-generating producers (across leasing, capital markets, and origination) in over 140 offices in more than 115 cities. In addition, Newmark has licensed its name to 1 commercial real estate providers that operate out of 21 offices in certain locations where Newmark does not have its own offices.

The discussion of our financial results reflects only the business owned by us and does not include the results for independently owned offices that use some variation of the Newmark name in their branding or marketing.

We are a leading capital markets business in the United States. We have access to many of the world's largest owners of commercial real estate, and this will drive growth throughout the life cycle of each real estate asset by allowing us to provide best-in-class agency leasing and property management during the ownership period. We also provide investment sales and arrange debt and equity financing to assist owners in maximizing the return on investment in each of their real estate assets. Specifically, with respect to multifamily assets, we are a leading GSE lender by loan origination volume and servicer with a servicing portfolio of approximately \$70.4 billion as of December 31, 2021 (of which 2.8% relates to special servicing). This servicing portfolio provides a steady stream of income over the life of the serviced loans.

We continue to invest in the business by adding high profile and talented producers and other revenue-generating professionals. Historically, newly hired commercial real estate producers tend to achieve dramatically higher productivity in their second and third years with our company, although we incur related expenses immediately. As newly hired producers increase their production, our commission revenue and earnings growth accelerate, thus reflecting our operating leverage.

Our pre-tax margins are impacted by the mix of revenues generated. For example, servicing revenues tend to have higher pre-tax margins than Newmark as a whole, and margins from "Gains from mortgage banking activities/originations, net" tend to be lower as we retain rights to service loans over time. Capital markets transactions tend to have higher pre-tax margins than leasing advisory transactions. Pre-tax earnings margins on our property and facilities management, along with certain of our other Global Corporate Services ("GCS") products, are at the lower end of margins for our business as a whole.

Business Environment

During 2021, activity in the U.S. economy has picked up rapidly as it has rebounded from the Covid-19 downturn in 2020. According to the U.S. Centers for Disease Control and Prevention (the "CDC") as of February 16, 2022, approximately 43.1% of the American population have been fully vaccinated and received a booster, 64.6% of the American population has been fully vaccinated against COVID-19, and 76.1% has received at least one dose, although there is persistent vaccine reluctance in the currently unvaccinated population. Mask mandates are also being revised in many areas. Many companies are requiring employees to come back to the office as business and the government continues to reopen both in the US and around the world.

Although there continues to be some uncertainty around COVID-19, the measures taken by the federal and state governments and the speed and voracity of a recovery appear to be positive. Our capital markets have shown significant growth, as our investments in the business have coincided with record investment sales and debt volumes. For example, according to RCA, investment sales volumes in the US were a record \$809 billion for 2021, or more than 25% higher than in 2019, which was the previous best-ever year. COVID-19 has created new opportunities in our management services businesses, which continued to perform well during 2021 as our clients turned to Newmark for advice on their real estate portfolios, including new environmental safety requirements, managing costs associated with implementing these new standards as well as assessing facility and employee readiness as companies plan their return to offices in the wake of the pandemic. In addition, consulting fee revenues from tenant restructuring and portfolio optimization are expected to continue in the near-term. In early 2021, we hired a head of global corporate services to expand these critical offerings for occupiers as they formulate their post pandemic real estate plans.

Impact of COVID-19 on Employees

Newmark has taken steps to help its employees during this global pandemic and subsequent recovery. These policies and practices protect the health, safety and welfare of the Company's workforce while enabling employees to maintain a high level of performance. Certain of these items are summarized below.

- Effective June 1, 2021, we welcomed our employees back to our offices subject to CDC guidelines and state and local guidelines and regulations in each location;
- We are focused on maximizing productivity regardless of where our employees work. In all cases, the Company has mandated appropriate social distancing measures;
- The Company has developed standardized procedures for reopening its offices safely in accordance with state and local regulatory requirements;
- The Company provides ongoing informational COVID-19-related messages and notices;
- Where applicable, Newmark has applied and is continuing to apply more frequent and vigorous hygiene and sanitation measures and providing personal protective equipment (PPE);
- Nonessential business travel has been restricted while personal travel has been discouraged, particularly in areas most affected by the pandemic;
- The Company's medical plans have waived applicable member cost sharing for all medically necessary diagnostic testing related to COVID-19;
- The Company also introduced zero co-pay telemedicine for COVID-related visits for participants in the U.S. medical plans and their dependents. Newmark has encouraged the use of telemedicine during the pandemic;
- The Company has reminded employees about its Employee Assistance Program and the ways it can assist them during this challenging time;
- Newmark provides paid leave in accordance with its policies and applicable COVID-19 related laws and regulations.

Acquisitions

On March 24, 2021, Newmark acquired the business of Knotel, a global flexible workspace provider. Newmark agreed to provide approximately \$19.8 million of debtor-in-possession financing as part of a \$70 million credit bid to acquire the business through Knotel's Chapter 11 sales process, subject to approval of the U.S. Bankruptcy Court. On March 18, 2021, the United States Bankruptcy Court approved the transaction under Section 363 of the United States Bankruptcy Code. See Note 4 — "Acquisitions" to our accompanying Consolidated Financial Statements included in Part I, Item I of this Annual Report on Form 10-K for additional information.

On September 6, 2021, Newmark acquired Deskeo, France's leader in flexible and serviced office space for enterprise clients. Based in Paris, France Deskeo adds over 50 locations to Newmark's international flexible office portfolio. See Note 4 — "Acquisitions" to our accompanying consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K for additional information.

Debt Credit Agreements

On November 6, 2018, Newmark closed its offering of \$550.0 million aggregate principal amount of 6.125% Senior Notes due 2023 ("6.125% Senior Notes"). The 6.125% Senior Notes are general senior unsecured obligations of Newmark. The 6.125% Senior Notes, which were priced on November 1, 2018 at 98.94% to yield 6.375%, were offered and sold by Newmark in a private offering exempt from the registration requirements under the Securities Act. Newmark received net proceeds of \$537.6 million, net of debt issue costs and debt discount. The 6.125% Senior Notes bear an interest rate of 6.125% per annum, payable on each May 15 and November 15, beginning on May 15, 2019 and will mature on November 15, 2023. The 6.125% Senior Notes were subsequently exchanged for notes with substantially similar terms that were registered under the Securities Act. As of December 31, 2021 and December 31, 2020, the carrying amount of the 6.125% Senior Notes was \$545.2 million and \$542.8 million, respectively.

On November 28, 2018, Newmark entered into a credit agreement by and among Newmark, the several financial institutions from time to time party thereto, as Lenders, and Bank of America N.A., as administrative agent (the "Credit Agreement"). The Credit Agreement provides for a \$250.0 million three-year unsecured senior revolving credit facility (the "Credit Facility").

On February 26, 2020, Newmark entered into an amendment to the Credit Agreement (the “Amended Credit Agreement”), increasing the size of the Credit Facility to \$425.0 million (“the Credit Facility”) and extending the maturity date to February 26, 2023. The interest rate on the Credit Facility was reduced to LIBOR plus 1.75% per annum, subject to a pricing grid linked to Newmark’s credit ratings from Standard & Poor’s and Fitch.

On March 16, 2020, Newmark entered into a second amendment to the Credit Agreement (the “Second Amended Credit Agreement”), increasing the size of the Credit Facility to \$465.0 million. The interest rate on the Amended Credit Facility is LIBOR plus 1.75% per annum, subject to a pricing grid linked to Newmark’s credit ratings from Standard & Poor’s and Fitch. As of December 31, 2021, Newmark did not have an outstanding amount on the Credit Facility. As of, December 31, 2020, the carrying amount of the Credit Facility was \$137.6 million.

On June 16, 2020, the Company’s Board of Directors and its Audit Committee authorized a debt repurchase program for the repurchase by the Company in the amount of up to \$50.0 million of the Company’s 6.125% Senior Notes and any future debt securities issued by the Company hereafter (collectively, “Company debt securities”). Repurchases of Company debt securities, if any, are expected to reduce future cash interest payments, as well as future amounts due at maturity or upon redemption.

Under the authorization, the Company may make repurchases of Company debt securities for cash from time to time in the open market or in privately negotiated transactions upon such terms and at such prices as management may determine. Additionally, the Company is authorized to make any such repurchases of Company debt securities through Cantor Fitzgerald & Co. (“Cantor”) (or its affiliates), in its capacity as agent or principal, or such other broker-dealers as management shall determine to utilize from time to time upon customary market terms or commissions.

As of December 31, 2021, the Company had \$50.0 million remaining from its debt repurchase authorization.

On June 19, 2020, Newmark established a \$125.0 million sublimit line of credit to fund potential principal and interest servicing advances on its Fannie Mae portfolio during the forbearance period related to the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). The sublimit is now included within the Company’s existing \$450 million warehouse facility due June 15, 2022. The advance line will provide 100% of the principal and interest advance payment at a rate of 1-month LIBOR plus 1.80% and will be collateralized by Fannie Mae’s commitment to repay advances. Newmark has two Fannie Mae loans that were in default, with \$0.1 million outstanding as of December 31, 2021.

On November 30, 2018, Newmark entered into an unsecured credit agreement (the “Cantor Credit Agreement”) with Cantor. The Cantor Credit Agreement provides for each party to issue loans to the other party in the lender’s discretion. Pursuant to the Cantor Credit Agreement, the parties and their respective subsidiaries (with respect to CFLP, other than BGC Partners, Inc. (“BGC”) and its subsidiaries) may borrow up to an aggregate principal amount of \$250.0 million from each other from time to time at an interest rate which is the higher of Cantor’s or Newmark’s short-term borrowing rate then in effect, plus 1.0%. As of December 31, 2021 and 2020, the Company did not have an outstanding balance under this facility.

Securities Financing

On August 2, 2021, our subsidiary Newmark OpCo, entered into a Master Repurchase Agreement (the “Repurchase Agreement”) with CF Secured, LLC (“CF Secured”), an affiliate of Newmark’s majority stockholder, Cantor, pursuant to which Newmark may seek, from time-to-time, to execute short-term secured financing transactions. Repurchase Agreements effect equity financing. The Company, under the Repurchase agreement, may seek to sell securities, in this case common shares of Nasdaq, owned by the Company, to CF Secured, under the Repurchase Agreement, and agrees to repurchase those securities on a date certain at a repurchase price generally equal to the original purchase price plus interest.

Pursuant to the Repurchase Agreement, the Company and CF Secured agreed to enter into a repurchase transaction, wherein CF Secured will deliver the cash of such repurchase transaction to the Company on an overnight basis at an initial rate of 0.95% per annum (approximately 1.00% less expensive than Newmark’s revolving credit facility), and the Company will deliver to CF Secured the number of shares of Nasdaq as collateral so that the market value of such shares equals 130% of such cash proceeds. The Nasdaq shares will be marked to market daily, and the minimum maintenance margin requirement, should the share price decline, will be 120% of such cash proceeds. The Company will be required to transfer additional collateral (securities and/or cash) in the event of a margin percentage decline below 120%.

The initial repurchase or financing transaction was executed on August 2, 2021 and consisted of Newmark receiving \$260 million in cash and Newmark delivering 1,818,000 Nasdaq shares as collateral. The repurchase transaction may be rolled over daily (or for a term greater than one day at a time), subject to terms mutually acceptable to the Company and CF Secured,

including the rate and minimum margin requirement, both of which can fluctuate based upon general funding rates and other factors in the repurchase funding market.

The Repurchase Agreement is subject to ongoing compliance with various covenants and contains customary events of default. If an event of default occurs, the repurchase date for each transaction under the Repurchase Agreement may be accelerated to the date of default. For events of default relating to insolvency and receivership, the repurchase date for each transaction under the Repurchase Agreement is automatically accelerated to the date of default.

Newmark still receives dividends on the common shares of Nasdaq it owns, including those shares used as collateral.

The Company intends to utilize the cash proceeds from the repurchase transaction to lower its debt costs. The Company expects to repay the cash proceeds under the repurchase transaction with proceeds of periodic sales of Nasdaq shares and from its operating cash.

The Repurchase Agreement and related initial repurchase transaction are on market terms and rates and were approved by Newmark's Audit Committee. As of December 31, 2021, Cantor facilitated Repurchase Agreements between the Company and Cantor in the amount of \$140.0 million. The market value of the securities loaned as of December 31, 2021, were \$182.0 million. See Note 7 — "Marketable Securities" and Note 27 — "Related Party Transactions" to our accompanying consolidated financial statements in Part II, Item 8 of this Annual Report on Form 10-K.

Credit Ratings

Newmark has a stand-alone BBB+ Stable credit rating from JCRA, BBB- Stable credit ratings from Fitch Ratings, Inc. and Kroll Bond Rating Agency, and a BB+ Stable credit rating from Standard & Poor's.

Nasdaq Monetization Transactions

On June 28, 2013, BGC sold certain assets of its on-the-run, electronic benchmark U.S. Treasury platform ("eSpeed") to Nasdaq, Inc ("Nasdaq"). The total consideration received in the transaction included \$750.0 million in cash paid upon closing and an Earn-out of up to 14,883,705 shares of Nasdaq shares to be paid ratably over 15 years (subject to acceleration and present value discount as discussed below), provided that Nasdaq, as a whole, produces at least \$25.0 million in consolidated gross revenues each year. The remaining rights under the Nasdaq Earn-out were transferred to Newmark on September 28, 2017. See Note 7 — "Marketable Securities" to our accompanying Consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K for additional information.

Exchangeable Preferred Partnership Units and Forward Contracts

On June 18, 2018, Newmark's principal operating subsidiary, Newmark OpCo, issued \$175.0 million of exchangeable preferred partnership units ("EPUs") in a private transaction to the Royal Bank of Canada ("RBC"). Newmark received \$152.9 million of cash with respect to this transaction.

On September 26, 2018, Newmark entered into a second agreement to issue \$150.0 million of additional EPUs to RBC, similar to the June 18, 2018 transaction (together the "Newmark OpCo Preferred Investment"). Newmark received \$113.2 million of cash with respect to this transaction.

The EPUs were issued in four tranches and are separately convertible by either RBC or Newmark into a fixed number of shares of Newmark Class A common stock, subject to a revenue hurdle in each of the fourth quarters of 2020 through 2022 for each of the respective four tranches. The ability to convert the EPUs into Newmark Class A common stock is subject to the special purpose vehicle (the "SPV") SPV's option to settle the postpaid forward contracts as described below. As the EPUs represent equity ownership of a consolidated subsidiary of Newmark, they have been included in "Noncontrolling interests" on our accompanying consolidated balance sheets and consolidated statements of changes in equity. The EPUs were entitled to a preferred payable-in-kind dividend, which is recorded as accretion to the carrying amount of the EPUs through "Retained earnings" on our accompanying consolidated statements of changes in equity and are reductions to "Net income (loss) available to common stockholders" for the purpose of calculating earnings per share.

Contemporaneously with the issuance of the EPUs, the SPV that is a consolidated subsidiary of Newmark entered into variable postpaid forward contracts with RBC (together, the "Nasdaq Forwards"). The SPV is an indirect subsidiary of Newmark whose sole assets are the Nasdaq Earn-outs for 2019 through 2022. The Nasdaq Forwards provide the SPV the option to settle using up to 992,247 Nasdaq shares, to be received by the SPV pursuant to the Nasdaq Earn-out (see Note 7 — "Marketable Securities" to our accompanying Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K), or Newmark Class A common stock, in exchange for either cash or redemption of the EPUs, notice of

which must be provided to RBC prior to November 1 of each year from 2019 through 2022 (subject to acceleration due to Nasdaq's transaction with Tradeweb Markets, Inc ("Tradeweb")).

During the year ended December 31, 2021, Newmark sold 3,030,922 of the Nasdaq shares inclusive of the 944,329 shares used to settle the third and fourth Nasdaq Forwards on June 2021 (please see "Acceleration of Nasdaq Earnout"). There were no remaining Nasdaq shares from the shares received from Nasdaq in 2020.

In September 2020, the SPV notified RBC of its decision to settle the second Nasdaq Forward using the Nasdaq shares the SPV received in November 2020 in exchange for the second tranche of the EPU's, which resulted in a payable to RBC that was settled upon receipt of Nasdaq Earn-out shares. The fair value of the Nasdaq shares that Newmark received was \$121.9 million. On November 30, 2020, Newmark settled the second Nasdaq Forward with 741,505 Nasdaq shares, with a fair value of \$93.5 million and Newmark retained 250,742 Nasdaq shares.

In September 2019, the SPV notified RBC of its decision to settle the first Nasdaq Forward using the Nasdaq shares the SPV received in November 2019 in exchange for the first tranche of the EPU's, which resulted in a payable to RBC that was settled upon receipt of Nasdaq Earn-out shares. The fair value of the Nasdaq shares that Newmark received was \$98.6 million. On December 2, 2019, Newmark settled the first Nasdaq Forward with 898,685 Nasdaq shares, with a fair value of \$93.5 million and Newmark retained 93,562 Nasdaq shares.

Acceleration of Nasdaq Earn-out

On February 2, 2021, Nasdaq announced that it entered into a definitive agreement to sell its U.S. fixed income business to Tradeweb. On June 25, 2021, Nasdaq announced the close of the sale of its U.S. fixed income business, which accelerated Newmark's receipt of Nasdaq shares. Newmark received 6,222,340 Nasdaq shares, with a fair value of \$1,093.9 million based on the closing price on June 30, 2021, included in "Other (loss) income, net" for the year ended December 31, 2021 on the accompanying consolidated statement of operations.

On June 25, 2021, the SPV notified RBC of its decision to settle the third and fourth Nasdaq Forwards using the Nasdaq shares the SPV received on June 25, 2021. On July 2, 2021, Newmark settled the third and the fourth Nasdaq Forwards with 944,329 Nasdaq shares, with a fair value of \$166.0 million based on the closing price of June 30, 2021.

2021 Equity Event and Share Count Reduction

In connection with the acceleration of the Nasdaq Earn-out, on June 28, 2021, the Compensation Committee of Newmark's Board of Directors (the "Compensation Committee") approved a plan to expedite the tax deductible exchange and redemption of a substantial number of limited partnership units held by partners of the Company (the "2021 Equity Event"). The 2021 Equity Event also accelerated certain compensation expenses resulting in \$428.6 million of compensation charges in the second quarter of 2021. These partnership units were settled using a \$12.50 share price. In July 2021, the Compensation Committee approved increasing to \$13.01 the price to settle certain units at an incremental cost of \$15.9 million, which was recorded as compensation charges in the third quarter of 2021.

Some of the key components of the approved plan were as follows:

- 8.3 million and 8.0 million compensatory limited partnership units, respectively, of Newmark Holdings, L.P. ("Newmark Holdings") and BGC Holdings, L.P. ("BGC Holdings") held by our partners who are employees were redeemed or exchanged.
- 23.2 million and 17.4 million compensatory limited partnership units, respectively, of Newmark Holdings and BGC Holdings held by our partners who are independent contractors were redeemed or exchanged. We also accelerated the payment of related withholding taxes to them with respect to their Newmark units. Independent contractors received one BGC Class A common share for each redeemed non-preferred BGC unit or cash and are responsible for paying any related withholding taxes.
- Partners with nonexchangeable non-preferred compensatory units exchanged or redeemed in connection with the 2021 Equity Event generally received restricted Class A common shares of Newmark and/or BGC to the extent tax deductible. A portion of the BGC Class A common shares received by independent contractors were unrestricted to facilitate their payment of withholding taxes.
- The issuance of Newmark Class A common stock related to the 2021 Equity Event reflected the June 30, 2021 exchange ratio of 0.9403.

- Newmark Holdings and BGC Holdings limited partnership interests with rights to convert into HDUs for cash were also redeemed in connection with the 2021 Equity Event.

Refer to the section ‘Certain Other Related Party Transactions’ for the specific transactions with respect to our executive officers which are included in the above summary.

Certain Other Related Party Transactions

Transactions with Executive Officers and Directors

On December 21, 2021, the Compensation Committee approved: (i) the redemption of all of Mr. Gosin’s remaining 838,996 non-exchangeable Newmark PPSUs for \$8,339,980 in cash and (ii) compensation of approximately \$7,357,329 by way of the Company causing 478,328 of Mr. Gosin’s non-exchangeable Newmark PSUs to be redeemed for zero and issuing 446,711 shares of Newmark Class A Common Stock, based upon the closing price on the date the Committee approved the transaction (which was \$16.47) and an exchange ratio of .9339. The estimated pre-tax value of this transaction is \$15,697,309, less applicable taxes and withholdings, using a 53.13% tax rate for Mr. Gosin.

On December 21, 2021, Mr. Lutnick elected to redeem all of his 193,530 currently exchangeable Newmark PPSUs for a cash payment of \$1,465,873. In addition, upon the Compensation Committee’s approval of the monetization of Mr. Gosin’s remaining non-exchangeable Newmark PPSUs and a number of Mr. Gosin’s non-exchangeable PSUs on December 21, 2021, Mr. Lutnick (i) elected to redeem 188,883 non-exchangeable Newmark PPSUs for a cash payment of \$1,954,728, and 127,799 non-exchangeable Newmark NPPSUs for a cash payment of \$1,284,376, both for which he previously waived, but now accepted under the Company’s standing policy for Mr. Lutnick; and (ii) received the right to monetize, and accepted the monetization of, his remaining 122,201 non-exchangeable Newmark NPPSUs for a cash payment of \$1,228,124, under such standing policy.

In connection with the foregoing, Mr. Lutnick accepted the right to monetize approximately \$4,406,915 by way of the Company causing 286,511 of Mr. Lutnick’s non-exchangeable Newmark PSUs to be redeemed for zero and issuing 267,572 shares of Newmark Class A Common Stock based upon the closing price on the date the Committee approved the transaction (which was \$16.47) and a .9339 exchange ratio, under the Company’s standing policy applying to Mr. Lutnick, with such acceptance of rights granted in reference to Mr. Gosin’s December 2021 transactions to the extent necessary to effectuate the foregoing (and otherwise Mr. Lutnick waived all remaining rights, which shall be cumulative). The aggregate estimated pre-tax value of these transactions is \$10,340,015, less applicable taxes and withholdings, using a 57.38% tax rate for Mr. Lutnick.

On March 16, 2021, pursuant to the Newmark standing policy for Mr. Lutnick, the Compensation Committee granted exchange rights and/or monetization rights with respect to rights available to Mr. Lutnick. Mr. Lutnick elected to waive such rights one-time with such future opportunities to be cumulative. The aggregate number of Mr. Lutnick’s units for which he waived exchange rights or other monetization rights is 4,423,457 non-exchangeable Newmark Holdings PSUs/NPSUs, inclusive of the PSUs receiving an HDU conversion right and 1,770,016 non-exchangeable Newmark Holdings PPSUs with an aggregate determination amount of \$21.6 million at that time, inclusive of the PPSUs receiving an HDU conversion right.

On March 16, 2021, the Company redeemed 30,926 non-exchangeable Newmark Holdings PSUs held by Mr. Merkel for zero and in connection therewith issued 28,962 shares of our Class A common stock. On the same day, the Company repurchased these shares from Mr. Merkel at the closing price of our Class A common stock of \$11.09 per share under our stock buyback program. The total payment delivered to Mr. Merkel was \$0.3 million, less applicable taxes and withholdings. The Compensation Committee approved these transactions.

On March 16, 2021, the Compensation Committee granted Mr. Gosin exchange rights into shares of Class A common stock with respect to 526,828 previously awarded non-exchangeable Newmark Holdings PSUs and 30,871 non-exchangeable Newmark Holdings APSUs held by Mr. Gosin (which, based on the closing price of the Class A common stock of \$11.09 per share on such date and using the exchange ratio of 0.9365, had a value of \$5.8 million in the aggregate). In addition, on March 16, 2021, the Compensation Committee approved removing the sale restrictions on Mr. Gosin’s remaining 178,232 restricted shares of Class A common stock in BGC (which were originally issued in 2013) and associated 82,680 remaining restricted shares of Newmark Class A common stock (issued as a result of the Company spin-off in November 2018).

On March 16, 2021, the Compensation Committee granted Mr. Rispoli (i) exchange rights into shares of Class A common stock with respect to 6,043 previously awarded non-exchangeable Newmark Holdings PSUs held by Mr. Rispoli

(which, based on the closing price of the Class A common stock of \$11.09 per share on such date and using the exchange ratio of 0.9365, had a value of \$0.1 million); and (ii) exchange rights into cash with respect to 4,907 previously awarded non-exchangeable Newmark Holdings PPSUs held by Mr. Rispoli (which had an average determination price of \$15.57 per unit, for a total of \$76,407 in the aggregate to be paid for taxes when (i) is exchanged).

On April 27, 2021, the Compensation Committee approved an additional monetization opportunity for Mr. Merkel: (i) 73,387 of Mr. Merkel's 145,384 non-exchangeable Newmark Holdings PSUs were redeemed for zero, (ii) 19,426 of Mr. Merkel's 86,649 non-exchangeable Newmark Holdings PPSUs were redeemed for a cash payment of \$173,863, and (iii) 68,727 shares of our Class A common stock were issued to Mr. Merkel. On the same day, the 68,727 shares of our Class A common stock were repurchased from Mr. Merkel at \$10.67 per share, the closing price of our Class A common stock on that date, under our stock buyback program. The total payment delivered to Mr. Merkel was \$0.8 million, less applicable taxes and withholdings.

The specific transactions approved by the Compensation Committee, in connection with the 2021 Equity Event, with respect to our executive officers are set forth below. All of the transactions included in the 2021 Equity Event with respect to Messrs. Lutnick, Gosin and Rispoli, are based on (i) the price for Newmark Class A common stock of \$12.50 per share, as approved by the Compensation Committee; (ii) the price of BGC Partners Class A common stock of \$5.86; and (iii) the price of Nasdaq common stock of \$177.11.

Howard W. Lutnick, Chairman

On December 28, 2021, Newmark awarded to Howard W. Lutnick, the Company's Chairman and principal executive officer, a one-time \$50 million bonus award in consideration of his efforts in delivering superior financial results. A cash payment of \$20 million of this award occurred in 2021. Mr. Lutnick has advised that he intends to use the after-tax amount received in 2021 with respect to this bonus to purchase shares of our Class A common stock in the open market, and to date he has purchased approximately \$8.5 million of our shares in the open market in connection therewith. The remaining amount of Mr. Lutnick's bonus will be paid in equal payments over the next three years. These efforts included his management of the Company and success in creating value for the Company's stockholders in connection with structuring, hedging, and monetizing the Nasdaq, Inc. common stock held by the Company and the significant amount of income earned by the Company related to these activities and the significant increase in value of such Nasdaq Shares over time. The Lutnick bonus award was approved by the Compensation Committee of Newmark's board of directors.

On June 28, 2021, the Compensation Committee approved the following for Howard W. Lutnick, the Company's Chairman: (i) the exchange of 279,725 exchangeable Newmark Holdings PSUs (currently in the share count) into 263,025 shares of Newmark Class A common stock based on the current exchange ratio of 0.9403; (ii) the redemption of 193,530 exchangeable Newmark Holdings PPSUs for a cash payment of \$2.5 million, to be remitted to the applicable tax authorities to the extent necessary for payment in connection with the delivery of the Newmark Class A common stock in (i) above; (iii) the redemption of 2,909,819 non-exchangeable Newmark Holdings PSUs, pursuant to Mr. Lutnick's rights under his existing standing policy and issuance of 2,736,103 shares of Newmark Class A common stock to him based upon the current exchange ratio of 0.9403; (iv) the redemption of 793,398 non-exchangeable Newmark Holdings PPSUs pursuant to Mr. Lutnick's rights under his existing standing policy for a cash payment of \$22.9 million, to be remitted to the applicable tax authorities to the extent necessary for payment in connection with the delivery of the above Newmark Class A common stock in (iii) above; (v) the conversion of 552,482.62 non-exchangeable Newmark Holdings PSUs with the right to exchange PSUs into HDUs ("H-Rights") into 552,482.62 non-exchangeable HDUs and redemption of such HDUs for their capital account, paid in the form of Nasdaq shares; (vi) the redemption of 602,462.94 non-exchangeable PPSUs for a cash payment of \$8.0 million, to be remitted to the applicable tax authorities to the extent necessary for payment in connection with the delivery of above Newmark Holdings HDU cash payment; (vii) the exchange of 520,380 exchangeable BGC Holdings PSUs into 520,380 shares of BGC Class A common stock; (viii) the redemption of 425,766 exchangeable BGC Holdings PPSUs for a cash payment of \$2.4 million, to be remitted to the applicable tax authorities to the extent necessary for payment in connection with the delivery of the above BGC shares in (viii); (ix) the redemption of 88,636 non-exchangeable BGC Holdings PSUs pursuant to Mr. Lutnick's rights under his existing standing policy, and the issuance of 88,636 shares of BGC Class A common stock; (x) the conversion of 1,131,774 non-exchangeable BGC Holdings PSUs with H-Rights into 1,131,774 non-exchangeable BGC Holdings HDUs; (xi) the redemption of 1,018,390 non-exchangeable BGC Holdings PPSUs with rights to redeem for cash in connection with the exercise of above BGC Holdings HDUs for a cash payment of \$0.3 million, to be remitted to the applicable tax authorities to the extent necessary for payment in connection with the delivery of above BGC Holdings HDU cash payment; and (xii) the issuance of 29,059 shares of Newmark Class A common stock.

Barry M. Gosin, Chief Executive Officer

On September 20, 2021, the Compensation Committee approved a monetization opportunity for Mr. Gosin: all of Mr. Gosin's 2,114,546 non-exchangeable BGC Holdings PSUs were redeemed for zero and 2,114,456 shares of BGC Class A common stock were issued to Mr. Gosin.

On June 28, 2021, the Compensation Committee approved the following for Barry M. Gosin, the Company's Chief Executive Officer: (i) the exchange of 1,531,061.84 exchangeable Newmark Holdings units (comprised of 1,438,597.37 exchangeable Newmark Holdings PSUs and 92,464.47 exchangeable Newmark Holdings APSUs) into 1,439,658 shares of Newmark Class A common stock based upon the current exchange ratio of 0.9403; (ii) the redemption of 60,753.97 exchangeable Newmark Holdings PPSUs for a cash payment of \$9.2 million, to be remitted to the applicable tax authorities to the extent necessary for payment in connection with the delivery of the Newmark shares in (i) above; (iii) the conversion of 443,871.60 non-exchangeable Newmark Holdings PSUs with H-Rights into 443,871.60 non-exchangeable Newmark Holdings HDUs, less any taxes and withholdings in excess of \$5.4 million, and redemption of such HDUs for their Capital Account, paid in the form of Nasdaq shares; (iv) the redemption of 539,080.23 non-exchangeable Newmark Holdings PPSUs for cash in connection with the delivery of the Newmark Holdings HDU cash payment in (iii) above; (v) the exchange of 3,348,706 exchangeable BGC Holdings units (comprised of 3,147,085 exchangeable BGC Holdings PSUs and 201,621 Exchangeable BGC Holdings APSUs) into 3,348,706 shares of BGC Class A common stock; (vi) the redemption of 80,891 exchangeable BGC Holdings PPSUs for a cash payment of \$9.8 million, to be remitted to the applicable tax authorities to the extent necessary for payment in connection with the delivery of the BGC shares in (v) above; (vii) the conversion of 1,592,016 non-exchangeable BGC Holdings PSUs with H-Rights to into 1,592,016 non-exchangeable BGC Holdings HDUs, less applicable taxes and withholdings in excess of the BGC Holdings PPSU value in (viii) below; (viii) the redemption of 264,985 non-exchangeable BGC Holdings PPSUs with rights to redeem for cash in connection with exercise of above BGC Holdings HDUs for a cash payment of \$0.0 million, to be remitted to the applicable tax authorities in connection with the delivery of the BGC Holdings HDU cash payment in (vii) above; and (ix) the issuance of 12,500 Newmark Class A common stock.

Michael J. Rispoli, Chief Financial Officer

On June 28, 2021, the Compensation Committee approved the following for Mr. Michael Rispoli, the Company's Chief Financial Officer: (i) the exchange of 23,124 exchangeable Newmark Holdings PSUs into 21,744 shares of Newmark Class A common stock based upon the current exchange ratio of 0.9403; (ii) the redemption of 18,668.77 exchangeable Newmark Holdings PPSUs for a cash payment of \$0.2 million, to be remitted to the applicable tax authorities to the extent necessary for payment in connection with the delivery of the Newmark shares in (i) above; (iii) the redemption of 6,000 non-exchangeable Newmark Holdings PSUs and the issuance of 5,642 restricted shares of Newmark Class A common stock based upon the current exchange ratio of 0.9403; (iv) the conversion of 5,846 non-exchangeable Newmark Holdings PSUs with H-Rights into 5,846 non-exchangeable Newmark Holdings HDUs and the redemption of such HDUs for their capital account, paid in the form of Nasdaq shares; (v) the redemption of 4,917 non-exchangeable Newmark Holdings PPSUs with rights to redeem for cash in connection with the exercise of above Newmark Holdings HDUs for a cash payment of \$0.1 million, to be remitted to the applicable tax authorities to the extent necessary for payment in connection with the delivery of the HDU cash payment in (iv) above; (vi) the exchange of 36,985 exchangeable BGC Holdings PSUs into 36,985 shares of BGC Class A common stock; (vii) the redemption of 29,791 exchangeable BGC Holdings PPSUs for a cash payment of \$0.1 million to the applicable tax authorities to the extent necessary for payment in connection with the delivery of the BGC shares in (vi) above; and (viii) the issuance of 383 shares of Newmark Class A common stock.

Stephen M. Merkel, Chief Legal Officer

On June 28, 2021 the Compensation Committee also approved the following for Stephen M. Merkel, the Company's Chief Legal Officer: (i) the redemption of 51,124.28 non-exchangeable Newmark Holdings PSUs and issuance of 48,072 shares of Newmark Class A common stock based upon the current exchange ratio of 0.9403; and (ii) the redemption of 46,349.87 non-exchangeable Newmark Holdings PPSUs for a cash payment of \$0.5 million, to be remitted to the applicable tax authorities to the extent necessary in connection with the issuance of the shares above.

Retirement Fund Purchase

On April 27, 2021, a Keogh retirement account held by Mr. Lutnick purchased 5,154 shares of our Class A common stock from us at the closing price of our Class A common stock on that date of \$10.67 per share. The transaction was approved by our Audit Committee.

Pre-IPO intercompany agreements

In December 2017, prior to our Separation and IPO, all intercompany arrangements and agreements that were previously approved by the Audit Committee of BGC Partners with respect to BGC Partners and its subsidiaries and Cantor and its subsidiaries were also approved by our Board of Directors with respect to the relationships between us and our subsidiaries

and Cantor and its subsidiaries following our IPO on the terms and conditions approved by the BGC Audit Committee during such time that our business was owned by BGC Partners. These arrangements include, but are not limited to, the following: (i) an authorization to provide Cantor real estate and related services, including real estate advice, brokerage, property or facilities management, valuation and advisory and other services; (ii) an authorization to enter into brokerage and similar agreements with respect to the provision of ordinary course brokerage services in circumstances in which such entities customarily provide brokerage services to third-party customers; (iii) an authorization to enter into agreements with Cantor and/or its affiliates, to provide services, including finding and reviewing suitable acquisition or partner candidates, structuring transactions and negotiating and due diligence services in connection with acquisitions and other business strategies in commercial real estate and other businesses from time to time; and (iv) an arrangement to jointly manage exposure to changes in foreign exchange rates. Please see the section entitled “Certain Relationships and Related Transactions, and Director Independence” in the Company’s Amendment No.1 to the Annual Report on Form 10-K/A for the fiscal year ended December 31, 2019 filed on April 28, 2020 for a description of these and other approved arrangements.

Transfer of Employees to Newmark

In connection with the expansion of our mortgage brokerage and lending activities, Newmark entered into an agreement with Cantor pursuant to which five former employees of its affiliate, CCRE, transferred to Newmark, effective as of May 1, 2018. In connection with this transfer of employees, Cantor paid \$6.9 million to Newmark in October 2018 and Newmark Holdings issued \$6.7 million of limited partnership units and \$0.2 million of cash in the form of a cash distribution agreement to the employees. In addition, Newmark Holdings issued \$2.2 million of Newmark Holdings partnership units with a capital account and \$0.5 million of limited partnership units in exchange for the cash payment from Cantor to Newmark of \$2.2 million. In consideration for the Cantor payment, Newmark has agreed to return up to a maximum of \$3.3 million to Cantor based on the employees’ production during their first two years of employment with Newmark. In July 2020, Newmark paid Cantor \$3.3 million based on the employees’ production. Newmark has agreed to allow certain of these employees to continue to provide consulting services to Cantor in exchange for a forgivable loan which was directly paid by Cantor to these employees.

Services Agreement with CFE Dubai

As the Company does not yet have a presence in Dubai, in May 2020, the Audit Committee of the Company authorized Newmark & Company Real Estate, Inc. (“Newmark & Co.”), a subsidiary of Newmark, to enter into an agreement with Cantor Fitzgerald Europe (DIFC Branch) (“CFE Dubai”) pursuant to which CFE Dubai will employ and support an individual who is a resident of Dubai in order to enhance Newmark’s capital markets platform, in exchange for a fee. CFE Dubai and Newmark & Co. negotiated a Services Agreement memorializing the arrangement between the parties (the “Services Agreement”). The Services Agreement provides that Newmark & Co. will reimburse CFE Dubai for the individual’s fully allocated costs, plus a mark-up of seven percent (7%). In addition, the Audit Committee of the Company authorized the Company and its subsidiaries to enter into similar arrangements in respect of any jurisdiction, in the future, with Cantor and its subsidiaries, provided that the applicable agreements contain customary terms for arrangements of this type and that the mark-up charged by the party employing one or more individuals for the benefit of the other is between 3% and 7.5%, depending on the level of support required for the employed individual(s).

Sublease to BGC

On May 15 2020, BGC U.S. OpCo (“BGC”) entered into an arrangement to sublease excess space from RKF Retail Holdings LLC, a subsidiary of Newmark, which was approved by the Newmark Audit Committee. The deal was a one-year sublease of approximately 21,000 rentable square feet in New York City. Under the terms of the sublease, BGC U.S. OpCo paid a fixed rent amount of \$1.1 million in addition to all operating and tax expenses attributable to the lease. In May 2021, the sublease was amended to provide for a rate of \$15 thousand per month based on the size of utilized space, in addition to terms extending on a month-to-month basis. In connection with the sublease, in connection with the sublease, Newmark received \$0.5 million and \$0.8 million for both years ended December 31, 2021 and 2020, respectively.

GSE loans and related party limits

In February 2019, the Audit Committee of the Company authorized Newmark and its subsidiaries to originate and service GSE loans to Cantor and its affiliates (other than BGC) and service loans originated by Cantor and its affiliates (other than BGC) on prices, rates and terms no less favorable to Newmark and its subsidiaries than those charged by third parties. The authorization is subject to certain terms and conditions, including but not limited to: (i) a maximum amount up to \$100.0 million per loan, (ii) a \$250.0 million limit on loans that have not yet been acquired or sold to a GSE at any given time, and (iii) a separate \$250.0 million limit on originated Fannie Mae loans outstanding to Cantor at any given time.

Transaction with CCRE Lending

On July 22, 2019, Cantor Commercial Real Estate Lending, L.P. (“CCRE Lending”), a wholly-owned subsidiary of Real Estate LP, made a \$146.6 million commercial real estate loan (the “Loan”) to a single-purpose company (the “Borrower”)

in which Barry Gosin, Newmark's Chief Executive Officer, owns a 19% interest. The Loan is secured by the Borrower's interest in property in Pennsylvania that is subject to a ground lease. While CCRE Lending initially provided the full loan amount, on August 16, 2019, a third-party bank purchased approximately 80% of the Loan value from CCRE Lending, with CCRE Lending retaining approximately 20%. The Loan matures on August 6, 2029, and is payable monthly at a fixed interest rate of 4.38% per annum. Newmark provided certain commercial loan brokerage services to the Borrower in the ordinary course of its business, and the Borrower paid Newmark a fee, as the broker of the Loan, of \$0.7 million. The Newmark Audit Committee approved the commercial loan brokerage services and the related fee amount received.

Transactions related to ordinary course real estate services

On November 4, 2020, the Audit Committee of the Board of Directors authorized entities in which executive officers have a non-controlling interest to engage Newmark to provide ordinary course real estate services to them as long as Newmark's fees are consistent with the fees that Newmark ordinarily charges for these services.

Arrangement with View, Inc.

On November 30, 2020, we entered into an arrangement to assist View, Inc. ("View") in the sale of its products and services to real estate clients in exchange for commissions. View, Inc. is a Silicon Valley-based producer of high-efficiency dynamic glass that controls light, heat, and glare, providing unobstructed views and privacy using a low voltage control system. In connection with the arrangement, View also agreed to engage us as its exclusive provider of real estate services for a period of at least five years. While View is not under common control with us, it was, at the time that the agreement was executed, the target of a merger with CF Finance Acquisition Corp. II, a special purpose acquisition company sponsored by Cantor.

Cantor Rights to Purchase Cantor Units from Newmark Holdings

Cantor has a right to purchase from Newmark Holdings exchangeable limited partnership interests in the event that any Newmark Holdings founding partner interests that have not become exchangeable are redeemed by Newmark Holdings upon termination or bankruptcy of a founding partner or upon mutual consent of the general partner of Newmark Holdings and Cantor. Cantor has the right to purchase such Newmark Holdings exchangeable limited partnership interests at a price equal to the lesser of (1) the amount that Newmark Holdings would be required to pay to redeem and purchase such Newmark Holdings founding partner interests and (2) the amount equal to (a) the number of units underlying such founding partner interests, multiplied by (b) the exchange ratio as of the date of such purchase, multiplied by (c) the then-current market price of our Class A common stock. Cantor may pay such price using cash, publicly traded shares or other property, or a combination of the foregoing. If Cantor (or the other member of the Cantor group acquiring such limited partnership interests, as the case may be) so purchases such limited partnership interests at a price equal to clause (2) above, neither Cantor nor any member of the Cantor group nor Newmark Holdings nor any other person is obligated to pay Newmark Holdings or the holder of such founding partner interests any amount in excess of the amount set forth in clause (2) above.

In addition, the Newmark Holdings limited partnership agreement provides that (1) where either current, terminating or terminated partners are permitted by us to exchange any portion of their founding partner units and Cantor consents to such exchangeability, we will offer to Cantor the opportunity for Cantor to purchase the same number of new exchangeable limited partnership interests in Newmark Holdings at the price that Cantor would have paid for exchangeable limited partnership interests in the event we had redeemed the founding partner units; and (2) the exchangeable limited partnership interests to be offered to Cantor pursuant to clause (1) above would be subject to, and granted in accordance with, applicable laws, rules and regulations then in effect.

If Cantor acquires any units as a result of the purchase or redemption by Newmark Holdings of any founding partner interests, Cantor will be entitled to the benefits (including distributions) of the units it acquires from the date of termination or bankruptcy of the applicable founding partner. In addition, any such units will be exchangeable by Cantor for a number of shares of our Class B common stock or, at Cantor's election, shares of our Class A common stock, in each case, equal to the then-current exchange ratio, on the same basis as the limited partnership interests held by Cantor, and will be designated as Newmark Holdings exchangeable limited partnership interests when acquired by Cantor. The exchange ratio was initially one, but is subject to adjustment as set forth in the Separation and Distribution Agreement and was 0.9444 as of December 31, 2021. This may permit Cantor to receive a larger share of income generated by our business at a less expensive price than through purchasing shares of our Class A common stock, which is a result of the price payable by Cantor to Newmark.

On March 31, 2021, Cantor purchased from Newmark Holdings an aggregate of (i) 273,088 exchangeable limited partnership interests for aggregate consideration of \$1,105,598 as a result of the redemption of 273,088 founding partner interests, and (ii) 735,625 exchangeable limited partnership interests for aggregate consideration of \$2,918,919 as a result of the exchange of 735,625 founding partner interests.

On October 28, 2021, Cantor purchased from Newmark Holdings an aggregate of (i) 299,910 exchangeable limited partnership interests for aggregate consideration of \$975,064 as a result of the redemption of 299,910 founding partner interests, and (ii) 523,284 exchangeable limited partnership interests for aggregate consideration of \$1,898,363 as a result of the exchange of 523,284 founding partner interests. As of December 31, 2021 there were no founding partner interests in Newmark Holdings remaining in which the partnership had the right to redeem or exchange and with respect to which Cantor will have the right to purchase an equivalent number of Cantor units following such redemption or exchange.

Special Purpose Acquisition Company

As previously reported, in April 2021, Newmark OpCo and Cantor entered into various arrangements pursuant to which they agreed to co-sponsor a special purpose acquisition company, named Newmark Acquisition Corp. (the “SPAC”), in which certain of our executive officers are executive officers and are expected to be directors. Pursuant to a purchase agreement, Newmark OpCo purchased from Cantor a 75% equity interest in an entity now known as Newmark Acquisition Holdings, LLC, the sponsor of the SPAC (the “Sponsor”), for \$18.8 thousand, with Cantor retaining the remaining 25% equity interest in the Sponsor. Pursuant to an amended and restated limited liability company agreement of the Sponsor, Newmark OpCo is the managing member of the Sponsor, and Newmark OpCo and Cantor have agreed to make additional equity contributions to the Sponsor in order to fund the obligations of the Sponsor with respect to the SPAC in proportion to their equity ownership in the Sponsor. Also, in April 2021, the Sponsor agreed to lend to the SPAC up to \$0.3 million without interest in order to cover expenses related to any initial public offering of the SPAC; the maturity date of the loans is the earlier of the consummation of the initial public offering of the SPAC and December 31, 2022. As of December 31, 2021 there was no outstanding balance on this Pre-IPO loan.

Other Related Party Transactions

As part of the Knotel acquisition, Newmark assigned the rights to acquire certain Knotel assets to a subsidiary of Cantor, on the terms that if the subsidiary monetized the sale of these assets, Newmark would receive 10% of the proceeds of the sale after the subsidiary recoups its investment in the assets.

On June 28, 2021, the Audit Committee authorized Newmark to hire a son of its Chairman as a full-time employee of its Knotel business with an annual base salary of \$125,000 and an annual discretionary bonus of up to 30%. The arrangement includes a potential profit participation consistent with other entrepreneurial arrangements in the event of certain liquidity events related to businesses developed by him.

Referral Fees to Cantor

In September 2021, the Audit Committee approved the payment of a referral fee from Newmark to Cantor Realty Capital Advisors, L.P. (“CRCA”), a subsidiary of Cantor, in relation to CRCA’s referral to Newmark of a sale and lease back transaction for a portfolio of medical office properties. Newmark paid CRCA approximately \$0.3 million for the referral of the portfolio sale. Newmark management negotiated the referral arrangement with CRCA in the ordinary course of business and the arrangement is reasonable and consistent with referral arrangements of its type between unrelated parties.

Additionally, in September 2021, the Audit Committee authorized Newmark and its subsidiaries to pay referral fees to Cantor and its subsidiaries (other than Newmark and its subsidiaries) in respect of referred business, pursuant to ordinary course arrangements in circumstances where Newmark would customarily pay referral fees to unrelated third parties and where Newmark is paying a referral fee to Cantor in an amount that is no more than the applicable percentage rate set forth in Newmark’s intra-company referral policies, as then in effect, with such fees to be at referral rates no less favorable to Newmark than would be paid to unrelated third parties.

Key Business Drivers

Key drivers for U.S. commercial real estate services companies include the overall health of the U.S. economy, institutional ownership of commercial real estate as an investible asset class, and the ability to attract and retain talent. In our capital markets business, the availability of credit and certainty of valuations to investors are key drivers. In our multifamily business, demographic and economic factors are driving increased demand for new apartments, with an estimated 4.6 million needed by 2030, according to a 2017 study commissioned by the National Multifamily Housing Council and National Apartment Association. In 2021, the National Association of Realtors said the U.S. has not constructed enough housing to keep up with population growth for many years, and that the country has a deficit of 1.1 million units in buildings with two to four units and of 2.4 million units in buildings of at least five units according to “U.S. Housing Market Needs 5.5 Million More Units, Says New Report” from the Wall Street Journal. This strong demand for new housing should continue to drive growth across our investment sales, GSE/FHA multifamily lending, mortgage brokerage, and servicing business over time.

Our GSE origination business is impacted by the lending caps imposed by the Federal Housing Finance Agency (the “FHFA”). On November 17, 2020, the FHFA announced that the 2021 multifamily loan purchase caps for Fannie Mae and Freddie Mac were \$70 billion for each GSE. The cap structure allows the GSEs to offer a combined total of no more than \$140 billion in lending support to the multifamily market in 2021, as compared to the \$159 billion delivered in 2020. On October 13,

2021, the FHFA announced that the 2022 multifamily loan purchase caps will be \$78 billion for each GSE, for a combined total of \$156 billion. The 2022 caps are based on FHFA's projections of the overall growth of the multifamily originations market. The 2021 and 2022 caps require at least 50% of the Enterprises' multifamily business to be mission-driven, affordable housing. FHFA will also require at least 25% of the GSE's 2022 multifamily business be affordable to residents at or below 60% of area median income (AMI), up from 20% in 2021. Newmark's multi-family debt origination and mortgage brokerage volumes increased 129.8% to \$30.1 billion for the year ended December 31, 2021.

Economic Outlook in the United States

COVID-19 adversely affected the economic outlook beginning in March of 2020. Following a 3.5% contraction in 2020, the U.S. economy expanded by 5.7% in 2021, in contrast to a decrease of 3.4 percent in 2020, according to a preliminary estimate from the U.S. Department of Commerce. The consensus is for U.S. gross domestic product to expand by 3.7% in 2022 and 2.5% in 2023, according to a recent Bloomberg survey of economists.

According to a preliminary report from the Bureau of Labor Statistics, the monthly average of nonfarm payroll employment increased by approximately 550,000 on a net basis during 2021, which was the highest such annual figure since record keeping began. The unemployment rate declined to 3.9% in December 2021 from a high of 14.8 % in April of 2020, but still 40 basis points higher than in February 2020.

The ten-year Treasury yield increased by approximately 60 basis points to 1.51% as of December 31, 2021 versus the year-earlier date. Ten-year Treasury yields have remained well below their 50-year average of approximately 6.07%. On January 25 and 26, 2022, the Federal Open Market Committee ("FOMC") decided to maintain the target range for the federal funds rate at 0.0% to 0.25% through the end of 2022. As the U.S. has recorded its fastest pace of price increases since the early 1980s, the committee indicated that it was time to raise interest rates, but also that any decisions would depend on a meeting-by-meeting analysis of inflation and other data. Fed officials said that the strength of the economy and the high current pace of inflation would warrant raising rates quicker than the once-per-quarter pace seen during the tightening cycle that began in 2015. The FOMC also stated that it plans to reduce the nearly \$9 trillion portfolio of securities it holds, including agency mortgage-backed securities and U.S. Treasuries. These securities were purchased as part of the Fed's quantitative easing program designed hold down long-term interest rates. Economists therefore generally expect U.S. interest rates to increase versus where they were in 2020 and 2021, but to remain relatively low by historical standards for the foreseeable future. For example, as February 16, 2021, the Bloomberg consensus was for the ten-year Treasury yield to be 2.21% and 2.47% by the end of 2022 and 2023, respectively.

Market Statistics

According to preliminary estimates from CoStar, value-weighted prices for U.S. commercial real estate were up by 16.1% in the year ended December 31, 2021 and were now 25.8% higher than in February 2020, before the onset of the global pandemic. These price increases were across all major property types, particularly multifamily and industrial. Real Capital Analytics ("RCA") currently estimates that 2021 U.S. investment sales grew by over 88% year-on-year and by 35% versus 2019. In comparison, our annual investment sales volumes were up by 83% year-on-year and by 74% versus 2019.

According to preliminary estimates made on February 14, 2022 by the Mortgage Bankers Association ("MBA"), originations of commercial/multifamily loans of all types increased by 67% in 2021 and by 17% versus 2019. In comparison, Newmark generated its largest-ever annual volumes from mortgage brokerage and originations (together, "total debt"), which were up by 113% year-on-year and by 64% versus 2019.

Newmark's loan origination volumes are driven more by the GSE multifamily financing volumes than the activity level of the overall commercial mortgage market. Overall industry GSE multifamily origination volumes decreased by 17% in 2021 compared with 2020, per the MBA. In comparison, Newmark's origination volumes declined by 20.2%. However, its total debt volumes in multifamily were up by 129.8%, as the Company continued its market leading growth while helping clients navigate reduced GSE lending caps. Certain GSE multifamily volume statistics for the industry are based on when loans are sold and/or securitized, and typically lag those reported by Newmark and its competitors by 30 to 45 days.

Regulatory Environment

See "Business—Regulation" in Part I, Item 1 of this Annual Report on Form 10-K for information related to our regulatory environment.

Liquidity

See "—Financial Position, Liquidity and Capital Resources" herein for information related to our liquidity and capital resources.

Financial Overview

Revenues

We derive revenues from the following general four sources:

- *Leasing and Other Commissions.* We offer a diverse range of commercial real estate brokerage and advisory services, including tenant and agency representation, which includes comprehensive lease negotiations, strategic planning, site selection, lease auditing, and other financial and market analysis.
- *Capital Markets.* Our real estate capital markets business specializes in the arrangement of acquisitions and dispositions of commercial properties, as well as providing other financial services, including the arrangement of debt and equity financing, and loan sale advisory.
- *Gains from Mortgage Banking Activities/Originations, Net.* Gains from mortgage banking activities/originations are derived from the origination of loans with borrowers and the sale of those loans to investors.
- *Management Services, Servicing Fees and Other.* We provide commercial services to tenants and landlords. In this business, we provide property and facilities management services along with project management, valuation and advisory services and other consulting services, as well as technology, to customers who may also utilize our commercial real estate brokerage services, and flexible workspace solutions. Servicing fees are derived from the servicing of loans originated by us as well as loans originated by third parties.

Fees are generally earned when a lease is signed. In many cases, landlords are responsible for paying the fees. In capital markets, fees are earned and recognized when the sale of a property closes, and title passes from seller to buyer for investment sales and when debt or equity is funded to a vehicle for debt and equity transactions. Gains from mortgage banking activities/originations, net are recognized when a derivative asset is recorded upon the commitment to originate a loan with a borrower and sell the loan to an investor. The derivative is recorded at fair value and includes loan origination fees, sales premiums and the estimated fair value of the expected net servicing cash flows. Gains from mortgage banking activities/originations, net are recognized net of related fees and commissions to affiliates or third-party brokers. For loans we broker, revenues are recognized when the loan is closed. Servicing fees are recognized on an accrual basis over the lives of the related mortgage loans. We typically receive monthly management fees based upon a percentage of monthly rental income generated from the property under management, or in some cases, the greater of such percentage or a minimum agreed upon fee. We are often reimbursed for our administrative and payroll costs, as well as certain out-of-pocket expenses, directly attributable to properties under management. We follow accounting principles generally accepted in the U.S., or “U.S. GAAP”, which provides guidance when accounting for reimbursements from clients and when accounting for certain contingent events for Leasing and Capital Markets transactions. See Note 3 — “Summary of Significant Accounting Policies” to our Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K for a more detailed discussion.

Expenses

Compensation and Employee Benefits

The majority of our operating costs consist of cash and non-cash compensation expenses, which include base salaries, producer commissions based on production, forgivable loans for term contracts, discretionary and other bonuses and all related employee benefits and taxes. Our employees consist of commissioned producers, executives and other administrative support. Our producers are largely compensated based on the revenue they generate for the firm, keeping these costs variable in nature.

As part of our compensation plans, certain employees have been granted limited partnership units in Newmark Holdings and BGC Holdings, which generally receive quarterly allocations of net income and are generally contingent upon services being provided by the unit holders. Certain Newmark employees also hold non-distribution earnings units (e.g. NPSUs and NREUs, collectively “N Units”) that do not participate in quarterly partnership distributions and are not allocated any items of profit or loss. These N Units vest into distribution earnings units over a 4-year period. As prescribed in U.S. GAAP guidance, the quarterly allocations of net income on such limited partnership units are reflected as a component of compensation expense under “Equity-based compensation and allocations of net income to limited partnership units and FPU” in our accompanying Consolidated statements of operations. During 2019, Newmark simplified its compensation structure when hiring new personnel by issuing restricted stock units in lieu of limited partnership units. Newmark continues to monitor its compensation policy and make changes where necessary to attract industry leading producers to Newmark.

Newmark granted conversion rights on outstanding limited partnership units in Newmark Holdings and BGC Holdings to Newmark employees to convert the limited partnership units to a capital balance within Newmark Holdings or BGC Holdings. Generally, such units are not considered share-equivalent limited partnership units and are not in the fully diluted share count.

Certain of these limited partnership units entitle the holders to receive post-termination payments. These limited partnership units are accounted for as post-termination liability awards under U.S. GAAP guidance, which requires that we

record an expense for such awards based on the change in value at each reporting period and include the expense in our accompanying consolidated statements of operations as part of “Equity-based compensation and allocations of net income to limited partnership units and FPU’s”. The liability for limited partnership units with a post-termination payout amount is included in “Other long-term liabilities” on our accompanying consolidated balance sheets.

Certain limited partnership units are granted exchangeability into Class A common stock or may be redeemed in connection with the grant of shares of Class A common stock. At the time exchangeability is granted, or the shares are issued, Newmark recognizes an expense based on the fair value of the award on that date, which is included in “Equity-based compensation and allocations of net income to limited partnership units and FPU’s” in our accompanying consolidated statements of operations.

Our employees have been awarded preferred partnership units (“Preferred Units”) in Newmark Holdings and BGC Holdings. Each quarter, the net profits of Newmark Holdings and BGC Holdings are allocated to such units at a rate of either 0.6875% (which is 2.75% per calendar year) or such other amount as set forth in the award documentation (the “Preferred Distribution”), which is deducted before the calculation and distribution of the quarterly partnership distribution for the remaining partnership units in Newmark Holdings and BGC Holdings, respectively. The Preferred Units are not entitled to participate in partnership distributions other than with respect to the Preferred Distribution. Preferred Units may not be made exchangeable into our Class A common stock and are only entitled to the Preferred Distribution, and accordingly they are not included in our fully diluted share count. The quarterly allocations of net income on Preferred Units are also reflected in compensation expense under “Equity-based compensation and allocations of net income to limited partnership units and FPU’s” in our accompanying consolidated statements of operations. After deduction of the Preferred Distribution, the remaining partnership units generally receive quarterly allocation of net income based on their weighted-average pro rata share of economic ownership of the operating subsidiaries. In addition, Preferred Units are granted in connection with the grant of certain limited partnership units, such as PSUs, that may be granted exchangeability to cover the withholding taxes owed by the unit holder upon such exchange. This is an acceptable alternative to the common practice among public companies of issuing the gross amount of shares to employees, subject to cashless withholding of shares to pay applicable withholding taxes.

We have entered into various agreements with certain of our employees and partners whereby these individuals receive loans, which may be either wholly or in part repaid from the distribution earnings that the individual receives on their limited partnership interests in BGC Holdings and Newmark Holdings. The forgivable portion of these loans is recognized as compensation expense over the life of the loan.

From time to time, we may also enter into agreements with employees and partners to grant bonus and salary advances or other types of loans. These advances and loans are repayable in the timeframes outlined in the underlying agreements. In addition, we also enter into deferred compensation agreements with employees providing services to us. The costs associated with such plans are generally amortized over the period in which they vest. (See Note 30 — “Compensation” and Note 31 — “Commitment and Contingencies”, to our accompanying Consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K).

Other Operating Expenses

We have various other operating expenses. We incur leasing, equipment and maintenance expenses. We also incur selling and promotion expenses, which include entertainment, marketing and travel-related expenses. We incur communication expenses, professional and consulting fees for legal, audit and other special projects, and interest expense related to short-term operational funding needs, and notes payable and collateralized borrowings.

We pay fees to Cantor for performing certain administrative and other support, including charges for occupancy of office space, utilization of fixed assets and accounting, operations, human resources, legal services and technology infrastructure support. Management believes that these charges are a reasonable reflection of the utilization of services rendered. However, the expenses for these services are not necessarily indicative of the expenses that would have been incurred if we had not obtained these services from Cantor. In addition, these charges may not reflect the costs of services we may receive from Cantor in the future.

Other Income, Net

Other income, net is comprised of the gains associated with the Earn-out shares related to the Nasdaq Transaction and the movements related to the impact of any realized and unrealized cash and non-cash mark-to-market gains or losses related to the Nasdaq common shares held, and the Nasdaq Forwards. Additionally, other income includes gains (losses) on cost and equity method investments which represent our pro rata share of the net gains (losses) on investments over which we have significant influence but which we do not control, and the mark-to-market gains or losses on the non-marketable investments.

Provision for Income Taxes

We incur income tax expenses based on the location, legal structure, and jurisdictional taxing authorities of each of our subsidiaries. Certain of the Company's entities are taxed as U.S. partnerships and are subject to the Unincorporated Business Tax (which we refer to as "UBT") in New York City. U.S. federal and state income tax liability or benefit related to the partnership income or loss, with the exception of UBT, rests with the partners (see Note 2 — "Limited Partnership Interests in Newmark Holdings and BGC Holdings", to our accompanying consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K) rather than the partnership entity. Our accompanying Consolidated financial statements include U.S. federal, state and local income taxes on Newmark's allocable share of the U.S. results of operations. Outside of the U.S., we operate principally through subsidiary corporations subject to local income taxes.

Impact of Adopting Lease Guidance

On January 1, 2019, Newmark adopted Accounting Standards Codification 842, *Leases* ("ASC 842"), which provides guidance on the accounting and disclosure for accounting for leases. Newmark has elected the optional transition method, and pursuant to this transition method, financial information will not be updated and the disclosures required under the new standard will not be provided for dates and periods prior to January 1, 2019. Newmark has elected the package of "practical expedients," which permits Newmark not to reassess under the new standard its prior conclusions about lease identification, lease classification and initial direct costs. Newmark has elected the short-term lease recognition exemption for all leases that qualify, and has elected the practical expedient to not separate lease and non-lease components for all leases other than real estate leases.

The adoption of ASC 842 on January 1, 2019 resulted in the recognition of Right-of-use ("ROU") assets of approximately \$178.8 million and Right-of-use liabilities of approximately \$226.7 million, with no effect on beginning retained earnings.

The adoption of the new guidance did not have a significant impact on our accompanying consolidated statements of operations, consolidated statements of changes in equity, and consolidated statements of cash flows.

See Note 3 — "Summary of Significant Accounting Policies" and Note 18 — "Leases" to our accompanying consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K, for further information.

Impact of Adopting Credit Loss Guidance

On January 1, 2020, Newmark adopted Accounting Standards Codification 326, *Financial Instrument-Credit Losses: Measurement of Credit Losses on Financial Instruments* ("ASC 326"), which provides guidance on the accounting and disclosure for accounting for expected credit losses on financial instruments.

The adoption of ASC 326 on January 1, 2020, on a pre-tax basis, resulted in a decrease in assets of \$8.0 million, an increase in liabilities of \$17.9 million and a decrease in beginning retained earnings of \$25.9 million.

See Note 3 — "Summary of Significant Accounting Policies" and Note 23 — "Financial Guarantee Liability" to our accompanying consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K, for further information.

Results of Operations

The following table sets forth our consolidated statements of operations data expressed as a percentage of total revenues for the periods indicated (in thousands):

	Year Ended December 31,					
	2021		2020		2019	
	Actual Results	Percentage of Total Revenues	Actual Results	Percentage of Total Revenues	Actual Results	Percentage of Total Revenues
Revenues:						
Leasing and other commissions	\$ 826,942	28.5 %	\$ 513,842	27.0 %	\$ 854,780	38.5 %
Capital markets	938,305	32.3	454,106	23.8	541,255	24.4
Gains from mortgage banking activities/originations, net	225,481	7.8	310,914	16.3	198,085	8.9
Management services, servicing fees and other	915,715	31.5	626,136	32.9	624,012	28.1
Total revenues	2,906,443	100.0	1,904,998	100.0	2,218,132	100.0
Expenses:						
Compensation and employee benefits	1,828,887	62.9	1,147,360	60.2	1,275,988	57.5

Equity-based compensation and allocations of net income to limited partnership units and FPU's ⁽¹⁾	356,345	12.3	130,759	6.9	258,836	11.7
Total compensation and employee benefits	2,185,232	75.2	1,278,119	67.1	1,534,824	69.2
Operating, administrative and other	553,623	19.0	294,405	15.5	361,857	16.3
Fees to related parties	23,789	0.8	22,573	1.2	25,025	1.1
Depreciation and amortization	121,729	4.2	141,193	7.4	131,144	5.9
Total operating expenses	2,884,373	99.2	1,736,290	91.1	2,052,850	92.5
Other income/(loss), net	1,232,495	42.4	15,290	0.8	80,954	3.6
Income from operations	1,254,565	43.2	183,998	9.7	246,236	11.1
Interest (expense) income, net	(33,473)	(1.2)	(37,728)	(2.0)	(32,088)	(1.4)
Income before income taxes and noncontrolling interests	1,221,092	42.0	146,270	7.7	214,148	9.7
Provision for income taxes	242,958	8.4	36,993	1.9	52,436	2.4
Consolidated net income	978,134	33.7	109,277	5.7	161,712	7.3
Less: Net income attributable to noncontrolling interests	227,406	7.8	29,217	1.5	44,407	2.0
Net income available to common stockholders	\$ 750,728	25.8 %	\$ 80,060	4.2 %	\$ 117,305	5.3 %

⁽¹⁾ The components of Equity-based compensation and allocations of net income to limited partnership units and FPU's are as follows (in thousands):

	Year Ended December 31,					
	2021		2020		2019	
	Actual Results	Percentage of Total Revenues	Actual Results	Percentage of Total Revenues	Actual Results	Percentage of Total Revenues
Issuance of common stock and exchangeability expenses	\$ 312,718	10.8 %	\$ 69,041	3.6 %	\$ 181,714	8.2 %
Allocations of net income to limited partnership units and FPU's	55,183	1.9	30,461	1.6	50,410	2.3
Limited partnership units amortization	(28,351)	(1.0)	18,692	1.0	21,508	1.0
RSU amortization	16,795	0.6	12,565	0.7	5,204	0.2
Equity-based compensation and allocations of net income to limited partnership units and FPU's	\$ 356,345	12.3 %	\$ 130,759	6.9 %	\$ 258,836	11.7 %

Year ended December 31, 2021 compared to the year ended December 31, 2020

Revenues

Leasing and Other Commissions

Leasing and other commission revenues increased by \$313.1 million, or 60.9%, to \$826.9 million for the year ended December 31, 2021 as compared to the year ended December 31, 2020, due to greatly increased demand across all major property types, in particular, strength in office led by life science, and industrial.

Capital Markets

Capital markets revenue increased by \$484.2 million, or 106.6%, to \$938.3 million for the year ended December 31, 2021 as compared to the year ended December 31, 2020. Newmark's overall notional volumes from investment sales, mortgage brokerage, and multifamily originations increased by 92.8% to \$138.4 billion.

Gains from Mortgage Banking Activities/Originations, Net

Gains from mortgage banking activities, net decreased by \$85.4 million, or 27.5%, to \$225.5 million for the year ended December 31, 2021 as compared to the year ended December 31, 2020. The decrease was primarily due to a \$58.4 million decline in non-cash OMSR revenues. The Company helped its clients navigate lower GSE multifamily loan activity by placing a record amount of their multifamily debt with non-agency lenders.

Management Services, Servicing Fees and Other

Management services, servicing fees and other revenue increased \$289.6 million, or 46.2%, to \$915.7 million for the year ended December 31, 2021 as compared to the year ended December 31, 2020. The growth was led by strong improvements from Global Corporate Services, Valuation & Advisory, and Servicing Fees, as well as the addition of Knotel, as the Company continued to invest in these recurring and predictable businesses. Valuation and Advisory was up 46.5% to \$157.0 million, by productivity gains from our Ngage technology platform.

Expenses

Compensation and Employee Benefits

Compensation and employee benefits expense increased by \$681.5 million, or 59.4%, to \$1,828.9 million for the year ended December 31, 2021 as compared to the year ended December 31, 2020. The increase for the year primarily resulted from variable compensation related to the increase in commission-based revenue and \$203.8 million of expense related to the 2021 Equity Event.

Equity-based compensation and allocations of net income to limited partnership units and FPU's

Equity-based compensation and allocations of net income to limited partnership units and FPU's increased by \$225.6 million, or 172.5%, to \$356.3 million for the year ended December 31, 2021 as compared to the year ended December 31, 2020 largely as a result of the 2021 Equity Event.

Operating, Administrative and Other

Operating, administrative and other expenses increased \$259.2 million, or 88.0%, to \$553.6 million for the year ended December 31, 2021 as compared to the year ended December 31, 2020, primarily due to increased pass-through expenses tied to non-fee revenues, higher expenses related to the resumption of normalized business activity, and the impact of acquisitions.

Fees to Related Parties

Fees to related parties increased by \$1.2 million, or 5.4%, to \$23.8 million, for the year ended December 31, 2021 as compared to the year ended December 31, 2020.

Depreciation and Amortization

Depreciation and amortization for the year ended December 31, 2021 decreased by \$19.5 million, or 13.8%, to \$121.7 million as compared to the year ended December 31, 2020 due to a decrease in MSR valuation allowance.

Because Newmark recognizes OMSR gains equal to the fair value of servicing rights retained on mortgage loans originated and sold, it also amortizes MSRs in proportion to the net servicing revenue expected to be earned. Subsequent to the initial recording, MSRs are amortized and carried at the lower of amortized cost or fair value. The MSR valuation allowance decreased by \$21.1 million for the year ended December 31, 2021 as compared to a \$15.2 million increase for the year ended December 31, 2020. For the year ended December 31, 2021 and 2020 our expenses included \$110.9 million and \$96.0 million, respectively, of MSR scheduled amortization.

Other Income (loss), Net

Other income (loss), net in the year ended December 31, 2021 was primarily related to \$1,203.1 million of gains from the acceleration of the Nasdaq Earn-out and realized and unrealized gains on marketable securities. Additionally, the Company recorded \$27.8 million of non-cash gain related to acquisitions during the year ended December 31, 2021, partially offset by a realized loss on the Nasdaq Forward of \$12.4 million.

Other income (loss), net of \$15.3 million in the year ended December 31, 2020 was primarily related to \$121.9 million of income related to the Nasdaq Earn-out, partially offset by losses of \$84.2 million relating to non-marketable investments carried under the measurement alternative, \$11.6 million of equity losses from Real Estate LP and \$13.7 million of mark-to market losses on the Nasdaq Forwards.

Interest (Expense) Income, Net

Interest expense, net decreased by \$4.3 million, or 11.3%, to \$33.5 million during the year ended December 31, 2021 as compared to the year ended December 31, 2020 due to lower outstanding debt balances.

Provision for Income Taxes

Provision for income taxes increased by \$206.0 million, to \$243.0 million for the year ended December 31, 2021 as compared to the year ended December 31, 2020. This increase was primarily driven by higher pre-tax earnings. In general, our consolidated effective tax rate can vary from period to period depending on, among other factors, the geographic and business mix of our earnings.

Net income attributable to noncontrolling interests

Net income attributable to noncontrolling interests increased by \$198.2 million, to \$227.4 million for the year ended December 31, 2021 as compared to the year ended December 31, 2020 due to higher earnings.

Year ended December 31, 2020 compared to the year ended December 31, 2019

Revenues

Leasing and Other Commissions

Leasing and other commission revenues decreased by \$340.9 million, or 39.9% to \$513.8 million for the year ended December 31, 2020 as compared to the year ended December 31, 2019. Leasing and other commissions volumes fell significantly beginning in March of 2020 due to lower industry-wide leasing resulting from the impact of the COVID-19 pandemic, and in particular, our presence in large, urban markets, such as New York city and the San Francisco Bay Area.

Capital Markets

Capital markets revenue decreased by \$87.1 million or 16.1% to \$454.1 million for the year ended December 31, 2020 as compared to the year ended December 31, 2019. Capital market volumes fell significantly beginning in March of 2020 due to lower industry-wide leasing resulting from the impact of the COVID-19 pandemic. However, a low interest rate environment coupled with significant capital available to invest in real estate has led to sequential improvement in capital markets activity since the second quarter of 2020, with investments concentrated in certain asset types, such as multi-family, life sciences and industrial. Our capital markets business was up 15.3% in the fourth quarter of 2020 as compared to the fourth quarter of 2019.

Gains from Mortgage Banking Activities/Originations, Net

Gains from mortgage banking activities, net increased by \$112.8 million or 57.0%, to \$310.9 million for the year ended December 31, 2020 as compared to the year ended December 31, 2019. The increase was primarily due to strong GSE originations and a more balanced product mix.

A portion of our gains from mortgage banking activities, net, relate to non-cash gains attributable to OMSRs. We recognize OMSR gains equal to the fair value of servicing rights retained on mortgage loans originated and sold. For the years ended December 31, 2020 and 2019, we recognized \$194.8 million and \$109.2 million of non-cash gains, respectively, related to OMSRs.

Management Services, Servicing Fees and Other

Management services, servicing fees and other revenue increased \$2.1 million, or 0.3%, to \$626.1 million for the year ended December 31, 2020 as compared to the year ended December 31, 2019. The increase was primarily due to an increase in non-fee pass-through revenue and valuation and appraisal, offset by lower interest income on escrow balances, lower interest on loans held for sale, and lower yield maintenance fees.

Expenses***Compensation and Employee Benefits***

Compensation and employee benefits expense decreased by \$128.6 million, or 10.1%, to \$1,147.4 million for the year ended December 31, 2020 as compared to the year ended December 31, 2019. The decrease in the year ended December 31, 2020 was directly related to lower commission based revenues and our cost savings initiatives, partially offset by non-fee expenses and amortization of hiring costs.

Equity-based compensation and allocations of net income to limited partnership units and FPU's

Equity-based compensation and allocations of net income to limited partnership units and FPU's decreased by \$128.1 million, or 49.5%, to \$130.8 million for the year ended December 31, 2020 as compared to the year ended December 31, 2019 as a result of lower stock compensation charges of \$112.7 million and lower income allocation charges of \$20.0 million due to lower earnings.

Operating, Administrative and Other

Operating, administrative and other expenses decreased by \$67.5 million, or 18.6%, to \$294.4 million for the year ended December 31, 2020 as compared to the year ended December 31, 2019 due to our cost savings initiatives.

Fees to Related Parties

Fees to related parties decreased by \$2.5 million, or 9.8%, to \$22.6 million for the year ended December 31, 2020 as compared to the year ended December 31, 2019.

Depreciation and Amortization

Depreciation and amortization for the year ended December 31, 2020 increased by \$10.0 million, or 7.7%, to \$141.2 million as compared to the year ended December 31, 2019. This increase was due to a \$9.7 million increase in mortgage servicing rights amortization.

Because Newmark recognizes OMSR gains equal to the fair value of servicing rights retained on mortgage loans originated and sold, it also amortizes MSRs in proportion to the net servicing revenue expected to be earned. Subsequent to the

initial recording, MSRs are amortized and carried at the lower of amortized cost or fair value. For the years ended December 31, 2020 and 2019, our revenue included \$194.8 million and \$109.2 million, respectively, our expenses included \$111.3 million and \$101.5 million of MSR amortization, respectively. The MSR amortization increased due to higher scheduled amortization as a result of growth in the book value of the MSRs.

Other Income (loss), Net

Other income (loss), net of \$15.3 million in the year ended December 31, 2020 was primarily related to \$121.9 million of income related to the 2020 annual Nasdaq Earn-out, partially offset by \$84.2 million of mark-to-market losses on non-marketable investments, a mark-to-market loss related to the Nasdaq Forwards of \$13.7 million and \$11.6 million of equity losses from Real Estate LP.

Other income, net of \$81.0 million in the year ended December 31, 2019 was primarily related to the recognition of income from the receipt of Nasdaq shares of \$113.9 million, including appreciation of Nasdaq shares held by Newmark, and unrealized gains of \$12.2 million relating to non-marketable investments carried under the measurement alternative, partially offset by mark-to-market losses related to the Nasdaq Forwards of \$51.1 million.

Interest (Expense) Income, Net

Interest expense, net increased by \$5.6 million, or 17.6%, to \$37.7 million during the year ended December 31, 2020 as compared to the year ended December 31, 2019 due to borrowings on our Credit Facility.

Provision for Income Taxes

Provision for income taxes decreased by \$15.4 million, or 29.5%, to \$37.0 million for the year ended December 31, 2020 as compared to the year ended December 31, 2019. This decrease was primarily driven by lower pretax earnings. In general, our consolidated effective tax rate can vary from period to period depending on, among other factors, the geographic and business mix of our earnings.

Net income attributable to noncontrolling interests

Net income attributable to noncontrolling interests decreased by \$15.2 million, or 34.2%, to \$29.2 million for the year ended December 31, 2020.

Financial Position, Liquidity and Capital Resources

Overview

The primary source of liquidity for our business is the cash flow provided by our operations and the Nasdaq shares.

Our future capital requirements will depend on many factors, including our growth, the expansion of our sales and marketing activities, our expansion into other markets and our results of operations. To the extent that existing cash, cash from operations and credit facilities, and Nasdaq shares are insufficient to fund our future activities, we may need to raise additional funds through public equity or debt financing. As of December 31, 2021, our long-term debt consists of our 6.125% Senior Notes with a carrying amount of \$545.2 million.

Financial Position

Total assets were \$5.2 billion at December 31, 2021 and \$4.0 billion at December 31, 2020.

Total liabilities were \$3.5 billion at December 31, 2021 and \$3.0 billion at December 31, 2020.

Liquidity

At December 31, 2021, we had total liquidity of \$575.9 million, which consisted of \$191.3 million of Cash and Cash Equivalents, and 2.5 million shares of Nasdaq common stock valued at \$524.6 million, net of \$140.0 million of borrowings against the Nasdaq shares. We have a \$465.0 million undrawn revolving credit facility and no net debt as of December 31, 2021. We expect to generate cash flows from operations to fund our business and to meet our short-term liquidity requirements, which we define as the next twelve months. As of February 25, 2022, we held approximately 1.1 million shares of Nasdaq common stock valued at \$187.2 million.

Long-term debt

Long-term debt consisted of the following (in thousands):

	December 31,	
	2021	2020
6.125% Senior Notes	\$ 545,239	\$ 542,772
Credit Facility	—	137,613
Total	\$ 545,239	\$ 680,385

6.125% Senior Notes

On November 2, 2018, Newmark announced the pricing of an offering of \$550.0 million aggregate principal amount of 6.125% Senior Notes due 2023, which closed on November 6, 2018. The 6.125% Senior Notes were offered and sold in a private offering exempt from the registration requirements under the Securities Act. The 6.125% Senior Notes are general senior unsecured obligations of Newmark. These 6.125% Senior Notes were priced at 98.94% to yield 6.375%. The 6.125% Senior Notes bear an interest rate of 6.125% per annum, payable on each May 15 and November 15, beginning on May 15, 2019 and will mature on November 15, 2023. The 6.125% Senior Notes were subsequently exchanged for notes with substantially similar terms that were registered under the Securities Act.

Credit Facility

On November 28, 2018, Newmark entered into the Credit Agreement by and among Newmark, the several financial institutions from time to time party thereto, as Lenders, and Bank of America N.A., as administrative agent. The Credit Agreement was amended on February 26, 2020 to increase the size of the facility and extend the maturity date to February 26, 2023. The Amended Credit Agreement provided for a \$425.0 million three-year unsecured senior revolving credit facility. The Credit Agreement was again amended on March 16, 2020 to increase the size of the facility. The Amended Credit Agreement provides for a \$465.0 million three-year unsecured senior revolving credit facility. As of December 31, 2021, there were no outstanding borrowings under this credit agreement. Borrowings under the Amended Credit Facility will bear an annual interest equal to, at Newmark's option, either (a) London Interbank Offered Rate ("LIBOR") for specified periods, or upon the consent of all Lenders, such other period that is 12 months or less, plus an applicable margin, or (b) a base rate equal to the greatest of (i) the federal funds rate plus 0.5%, (ii) the prime rate as established by the administrative agent, and (iii) one-month LIBOR plus 1.0%. The applicable margin is 1.75% with respect to LIBOR borrowings and 0.75% with respect to base rate borrowings, both of which can be up to 0.50% higher depending upon Newmark's credit rating. The Amended Credit Facility also provides for an unused facility fee. In July of 2021, Newmark paid down the balance of the Credit Facility in the amount of \$140.0 million.

Cantor Credit Agreement

On November 30, 2018, Newmark entered into an unsecured credit agreement with Cantor. The Cantor Credit Agreement provides for each party to issue loans to the other party in the lender's discretion. Pursuant to the Cantor Credit Agreement, the parties and their respective subsidiaries (with respect to CFLP, other than BGC and its subsidiaries) may borrow up to an aggregate principal amount of \$250.0 million from each other from time to time at an interest rate which is the higher of CFLP's or Newmark's short-term borrowing rate then in effect, plus 1.0%. As of December 31, 2021, and December 31, 2020 there were no borrowings outstanding under the Cantor Credit Agreement.

Warehouse Facilities Collateralized by U.S. Government Sponsored Enterprises

As of December 31, 2021, Newmark had \$1.5 billion of committed loan funding available through three commercial banks and an uncommitted \$700.0 million Fannie Mae loan repurchase facility. Consistent with industry practice, these warehouse facilities are short-term, requiring annual renewal. These warehouse facilities are collateralized by an assignment of the underlying mortgage loans originated under its various lending programs and third-party purchase commitments and are recourse only to our wholly-owned subsidiary, Berkeley Point Capital, LLC. As of December 31, 2021 and December 31, 2020, respectively, we had \$1.1 billion and \$1.1 billion outstanding under "Warehouse facilities collateralized by U.S. Government Sponsored Enterprises" on our accompanying consolidated balance sheets.

Cash Flows

Cash flows from operations excluding activity from loan originations and sales, net were as follows (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Net cash provided by (used in) operating activities	\$ (48,709)	\$ (777,694)	\$ 986,761
Add back:			
Loan originations - loans held for sale	9,142,148	12,374,231	8,783,225
Loan sales - loans held for sale	(9,177,733)	(11,527,010)	(9,563,973)
Unrealized gains on loans held for sale	21,259	24,295	5,174
Net cash provided by (used in) operating activities excluding activity from loan originations and sales ⁽¹⁾⁽²⁾⁽³⁾	\$ (63,035)	\$ 93,822	\$ 211,187

⁽¹⁾ Includes payments for corporate taxes in the amount of \$99.4 million, \$80.3 million, and \$95.1 million for the years ended December 31, 2021, 2020 and 2019 respectively.

⁽²⁾ Includes payments for new hires and producers of \$17.4 million, \$72.7 million, and \$157.0 million for the years ended December 31, 2021, 2020 and 2019, respectively.

⁽³⁾ Reflects \$484.4 million of cash used with respect to the 2021 Equity Event. Of this amount, \$203.4 million related to the 16.3 million reduction in fully diluted shares, and \$280.9 million related to amounts paid on behalf of, or to partners for withholding taxes related to unit exchanges and/or redemptions, cash paid for redemption of HDUs, and other items. Not including these uses of cash, net cash provided by operating activities excluding loan originations and sales would have been \$421.4 million for the year ended December 31, 2021.

Cash Flows for the Year Ended December 31, 2021

For the year ended December 31, 2021, we used \$48.7 million of cash from operations. However, excluding activity from loan originations and sales cash used from operating activities for the year ended December 31, 2021 was \$63.0 million. The \$63.0 million reflects \$484.4 million of cash used with respect to the 2021 Equity Event to reduce our fully diluted share count and for amounts paid on behalf of or to partners for withholding taxes related to unit exchanges and/or redemptions, cash paid for redemption of HDUs, and other items. But for these uses of cash, net cash provided by operating activities for the year ended December 31, 2021 would have been \$421.4 million. Cash provided by investing activities was \$453.1 million, primarily related to \$551.1 million of proceeds from the sale of marketable securities, partially offset by \$69.8 million of payments for acquisitions, net of cash acquired. Cash used in financing activities of \$396.3 million primarily related to \$290.5 million of treasury stock repurchases.

Cash Flows for the Year Ended December 31, 2020

For the year ended December 31, 2020, we used \$777.7 million of cash for operations. However, excluding activity from loan originations and sales, net cash used by operating activities for the year ended December 31, 2020 was \$93.8 million. We had consolidated net income of \$109.3 million, \$146.6 million of positive adjustments to reconcile net income to net cash used by operating activities (excluding activity from loan originations and sales) and \$162.0 million of negative changes in operating assets and liabilities. The negative change in operating assets and liabilities included \$127.9 million of increases in loans, forgivable loans and other receivables from employees, a \$123.7 million decrease in receivables, net, a \$82.4 million decrease in accounts payable, accrued expenses and other liabilities, and a \$75.4 million decrease in accrued compensation. Cash used in investing activities was \$3.6 million, primarily related to \$34.7 million of proceeds from the sale of marketable securities, partially offset by \$19.6 million in purchases of fixed assets, \$12.8 million for the purchase of a debt security, and \$5.9 million of payments for acquisitions, net of cash acquired. Cash provided by financing activities of \$817.8 million primarily related to \$851.6 million of net borrowings on the warehouse facilities collateralized by U.S. Government Sponsored Enterprises, and \$365.0 million borrowing under the Credit Facility, partially offset by \$275.0 million repayment on the Credit Facility, \$81.9 million in earning distributions to limited partnership interests and other noncontrolling interests, and \$23.2 million in dividends to stockholders.

Cash Flows for the Year Ended December 31, 2019

For the year ended December 31, 2019, we generated \$986.8 million of cash from operations. Excluding activity from loan originations and sales, net cash provided by operating activities for the year ended December 31, 2019 was \$211.2 million. We had consolidated net income of \$161.7 million, \$222.6 million of positive adjustments to reconcile net income to net cash provided by operating activities (excluding activity from loan originations and sales) and \$173.1 million of negative changes in operating assets and liabilities. The negative change in operating assets and liabilities included \$161.9 million of increases in loans, forgivable loans and other receivables from employees and partners primarily related to continued hiring and expansion of our business, \$113.2 million of increases in other assets, and \$52.0 million of increase in receivables, net, offset by an increase of \$130.7 million in accounts payable, accrued expenses and other liabilities and an increase of \$23.4 million in payables to related parties. Cash used in investing activities was \$56.8 million, primarily related to \$34.5 million in purchases of fixed assets, \$33.9 million of payments for acquisitions, net of cash acquired, \$28.0 million in purchases of non-marketable investments, net, partially offset by \$32.6 million of proceeds from the sale of marketable securities, and \$8.6 million of distributions from Real Estate L.P. We used \$895.5 million of cash from financing activities primarily due to net repayments on the warehouse facilities collateralized by U.S. Government Sponsored Enterprises of \$762.7 million, distributions to limited

partnership interests and other noncontrolling interests of \$140.6 million, dividends to stockholders of \$69.2 million and treasury stock repurchases of \$37.4 million, partially offset by net borrowings under the Credit Facility of \$50.0 million, the settlement of pre-Spin-Off related party receivables of \$33.9 million, and proceeds from securities loaned of \$36.7 million.

Credit Ratings

As of December 31, 2021, our public long-term credit ratings and associated outlooks are as follows:

	Rating	Outlook
Fitch Ratings Inc.	BBB-	Stable
JCRA	BBB+	Stable
Kroll Bond Rating Agency	BBB-	Stable
Standard & Poor's	BB+	Stable

Credit ratings and associated outlooks are influenced by several factors, including but not limited to: operating environment, earnings and profitability trends, the prudence of funding and liquidity management practices, balance sheet size/composition and resulting leverage, cash flow coverage of interest, composition and size of the capital base, available liquidity, outstanding borrowing levels and the firm's competitive position in the industry. A credit rating and/or the associated outlook can be revised upward or downward at any time by a rating agency if such rating agency decides that circumstances warrant such a change. Any reduction in our credit ratings and/or the associated outlook could adversely affect the availability of debt financing on terms acceptable to us, as well as the cost and other terms upon which we are able to obtain any such financing. In addition, credit ratings and associated outlooks may be important to customers or counterparties when we compete in certain markets and when we seek to engage in certain transactions. In connection with certain agreements, interest rates on our notes may incur increases of up to 2% in the event of a credit ratings downgrade.

Regulatory Requirements

Newmark is subject to various capital requirements in connection with seller/servicer agreements that Newmark has entered into with the various GSEs. Failure to maintain minimum capital requirements could result in Newmark's inability to originate and service loans for the respective GSEs and could have a direct material adverse effect on our accompanying consolidated financial statements. As of December 31, 2021, Newmark has met all capital requirements. As of December 31, 2021, the most restrictive capital requirement was Fannie Mae's net worth requirement. Newmark exceeded the minimum requirement by \$400.5 million.

Certain of Newmark's agreements with Fannie Mae allow Newmark to originate and service loans under Fannie Mae's Delegated Underwriting and Servicing ("DUS") Program. These agreements require Newmark to maintain sufficient collateral to meet Fannie Mae's restricted and operational liquidity requirements based on a pre-established formula. Certain of Newmark's agreements with Freddie Mac allow Newmark to service loans under Freddie Mac's Targeted Affordable Housing ("TAH") Program. These agreements require Newmark to pledge sufficient collateral to meet Freddie Mac's liquidity requirement of 8% of the outstanding principal of TAH loans serviced by Newmark. As of December 31, 2021 and December 31, 2020, Newmark has met all liquidity requirements.

In addition, as a servicer for Fannie Mae, the Government National Mortgage Association ("Ginnie Mae") and FHA, Newmark is required to advance to investors any uncollected principal and interest due from borrowers. As of December 31, 2021 and December 31, 2020, outstanding borrower advances were \$0.9 million and \$0.8 million, respectively, and are included in "Other assets" in our accompanying consolidated balance sheets.

On September 9, 2019, the U.S. Department of the Treasury issued a Housing Reform Plan (the "Plan") in response to a March 27, 2019 Presidential Memorandum soliciting reforms in the housing financing system designed to minimize taxpayer exposure to future bailouts. The primary recommendations of the Plan are: (i) that existing government support for the secondary markets should be explicitly defined, tailored and paid for; (ii) that the GSEs' conservatorship should come to an end; (iii) the implementation of reforms necessary to ensure that the GSEs, and any successors, are appropriately capitalized to withstand a severe economic downturn and that shareholders and unsecured creditors, rather than U.S. taxpayers, bear the losses; (iv) that the GSEs should continue to support affordable housing at a reasonable economic return that may be less than the return earned on other activities; (v) that the FHFA and the U.S. Department of Housing and Urban Development should clearly define the appropriate roles and overlap between the GSEs and the Federal Housing Administration so as to avoid duplication and (vi) that measures should be implemented to "level the playing field" between the GSEs and private sector competitors. Additionally, in September 2019, FHFA announced a cap of \$200 billion as the maximum volume for combined Fannie Mae and Freddie Mac multifamily volume through the end of 2020, of which 37.5% must meet certain affordability requirements. The foregoing proposals may have the effect of impacting the volume of business that we may do with Fannie

Mae and Freddie Mac. Additionally, the potential increase in our proportion of affordable business and the potential implementation of a fee to be charged in connection with the government's offer of a guarantee may alter the economics of the business and, accordingly, may impact our financial results.

See "Business—Regulation" in Part I, Item 1 of this Annual Report on Form 10-K for information related to our regulatory environment.

Equity

Repurchase Program

On February 17, 2021, our Board increased its authorized share repurchases of Newmark Class A Common stock and purchases of limited partnership interests in Newmark's subsidiaries to \$400.0 million. This authorization includes repurchases of shares or purchase of units from executive officers, other employees and partners, including of BGC and Cantor, as well as other affiliated persons or entities. From time to time, Newmark may actively continue to repurchase shares and/or purchase units. During the year ended December 31, 2021, Newmark repurchased 20,237,430 shares of Class A common stock, at an average price of \$14.37. As of December 31, 2021, Newmark had \$165.0 million remaining from its share repurchase and unit purchase authorization.

The following table details Newmark's unit redemptions and share repurchases for cash, under the new program, and does not include unit redemptions and/or cancellations in connection with the grant of shares Newmark's Class A common stock. The gross unit redemptions and share repurchases of Newmark's Class A common stock during the year ended December 31, 2021 were as follows (in thousands except units, shares and per share amounts):

	Total Number of Shares Repurchased/Purchased	Average Price Paid per Unit or Share	Approximate Dollar Value of Units, Shares or May Yet Repurchase Under the Program
Redemptions			
January 1, 2021 - March 31, 2021	—	\$ —	
April 1, 2021 - June 30, 2021	167,894	\$ 11.91	
July 1, 2021 - September 30, 2021	—	—	
October 1, 2021 - December 31, 2021	—	\$ —	
Total Redemptions	167,894	\$ 11.91	
Repurchases			
January 1, 2021 - March 31, 2021	879,243	\$ 10.58	
April 1, 2021 - June 30, 2021	3,613,098	\$ 12.81	
July 1, 2021 - September 30, 2021	6,307,802	\$ 13.34	
October 1, 2021 - October 31, 2021	3,064,959	\$ 14.71	
November 1, 2021 - November 30, 2021	2,085,492	\$ 16.20	
December 1, 2021 - December 31, 2021	4,286,836	\$ 16.77	
Total Repurchases	20,237,430	\$ 14.37	
Total Redemptions and Repurchases	20,405,324	\$ 14.35	\$

On February 10, 2022, the Board and Audit Committee authorized the \$400.0 million Newmark share repurchase and unit redemption Authorization, which may include purchases from Cantor, its partners or employees or other affiliated persons or entities.

Fully Diluted Share Count

Our fully diluted weighted-average share count follows (in thousands):

	December 31,	
	2021	2020
Common stock outstanding ⁽¹⁾	190,179	179,106
Partnership units ⁽²⁾	68,142	85,160
RSUs (Treasury stock method)	4,309	355
Newmark exchange shares	1,324	230
Total ⁽³⁾	263,954	264,851

⁽¹⁾ Common stock consisted of Class A shares and Class B shares. For the year ended December 31, 2021, the weighted-average number of Class A shares was 190.2 million shares and Class B shares was 21.3 million that were included in our fully diluted EPS computation because the conditions for issuance had been met by the end of the period.

⁽²⁾ Partnership units collectively include FPU's, limited partnership units, and Cantor units, (see Note 2 — "Limited Partnership Interests in Newmark Holdings and BGC Holdings", to our Consolidated Financial Statements in Part II, Item 8 of this Annual Report on Form 10-K for more information). In general, these partnership units are potentially exchangeable into shares of Newmark Class A common stock. In addition, partnership units held by Cantor are generally exchangeable into shares of Newmark Class A common stock and/or for up to 24.6 million shares of Newmark Class B common stock. These partnership units also generally receive quarterly allocations of net income, after the deduction of the Preferred Distribution, based on their weighted-average pro rata share of economic ownership of the operating subsidiaries. As a result, these partnership units are included in the fully diluted share count calculation shown above.

⁽³⁾ For the year ended December 31, 2021, the weighted-average share count includes 68.1 million potentially anti-dilutive securities, which were excluded in the computation of fully diluted earnings per share.

Our fully diluted period-end (spot) share count were as follows (in thousands):

	December 31,	
	2021	2020
Common stock outstanding	189,558	182,461
Partnership units	52,825	79,666
Newmark RSUs	5,966	—
Newmark exchange shares	1,957	226
Other	378	363
Total	250,684	262,716

Contingent Payments Related to Acquisitions

Newmark completed acquisitions for which there is contingent cash consideration of \$12.0 million. The contingent cash liability is recorded at fair value as deferred consideration on our accompanying consolidated balance sheets.

Equity Method Investments

Newmark has an investment in Real Estate LP, a joint venture with Cantor in which Newmark has a less than majority ownership and has the ability to exert significant influence over the operating and financial policies. As of December 31, 2021, Newmark had \$88.3 million in this equity method investment, which represents a 27% ownership in Real Estate LP.

Registration Statements

On March 28, 2019, we filed a registration statement on Form S-3 pursuant to which CF&Co may make offers and sales of our 6.125% Senior Notes in connection with ongoing market-making transactions which may occur from time to time. Such market-making transactions in these securities may occur in the open market or may be privately negotiated at prevailing market prices at a time of resale or at related or negotiated prices. Neither CF&Co, nor any of our affiliates, has any obligation to make a market in our securities, and CF&Co or any such other affiliate may discontinue market-making activities at any time without notice. Newmark does not receive any proceeds from market-making activities in these securities by CF&Co (or any of its affiliates).

We have an effective registration statement on Form S-4, with respect to the offer and sale of up to 20.0 million shares of our Class A common stock from time to time in connection with business combination transactions, including acquisitions of other businesses, assets, properties or securities. As of December 31, 2021, we have issued 1.4 million shares of our Class A common stock under this registration statement.

As of December 31, 2021 and December 31, 2020, Newmark was committed to fund approximately \$0.3 billion and \$0.4 billion, respectively, which is the total remaining draws on construction loans originated by Newmark under the Housing and Urban Development ("HUD") 221(d)4, 220 and 232 programs, rate locked loans that have not been funded, and forward commitments, as well as the funding for Fannie Mae structured transactions. Newmark also has corresponding commitments to sell these loans to various purchasers as they are funded.

Commitments and Contingencies

(a) Contractual Obligations and Commitments

The following table summarizes certain of Newmark's contractual obligations at December 31, 2021 (in thousands):

	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
Operating leases ⁽¹⁾	\$ 805,168	\$ 113,822	\$ 218,878	\$ 197,704	\$ 274,764
Warehouse facilities ⁽²⁾	1,050,693	1,050,693	—	—	—
Long-term debt ⁽³⁾	550,000	—	550,000	—	—
Interest on long-term debt ⁽⁴⁾	65,428	34,949	30,479	—	—
Interest on warehouse facilities ⁽⁵⁾	1,051	1,051	—	—	—
Total	\$ 2,472,340	\$ 1,200,515	\$ 799,357	\$ 197,704	\$ 274,764

⁽¹⁾ Operating lease are related to rental payments under various non-cancelable leases principally for office space.

⁽²⁾ Warehouse facilities are collateralized by \$1,050.7 million of loans held for sale, at fair value (See Note 21 - "Warehouse Facilities Collateralized by U.S. Government Sponsored Enterprises" to our accompanying Consolidated Financial Statements in Part II, Item 8 of this Annual Report on Form 10-K) which loans were either under commitment to be purchased by Freddie Mac or had confirmed forward trade commitments for the issuance of and purchase of Fannie Mae or Ginnie Mae mortgage-backed securities.

⁽³⁾ Long-term debt reflects long-term borrowings of \$550.0 million 6.125% Senior Notes. The carrying amount of these notes was approximately \$545.2 million. Long-term debt also includes borrowings under the Credit Facility, which is assumed to be outstanding until the maturity date of the Credit Facility. The carrying amount of the borrowing under the Credit Facility is \$0.0 million. (See Note 22 - "Long-Term Debt" to our accompanying Consolidated Financial Statements in Part II, Item 8 of this Annual Report on Form 10-K.)

⁽⁴⁾ Reflects interest on the \$550.0 million 6.125% Senior Notes until their maturity date of November 15, 2023.

⁽⁵⁾ Interest on the warehouse facilities collateralized by U.S. Government Sponsored Enterprises was projected by using the 1-month LIBOR rate plus their respective additional basis points, primarily 130 basis points above LIBOR, or SOFR and 115 basis points above SOFR, applied to their respective outstanding balances as of December 31, 2021, through their respective maturity dates. Their respective maturity dates range from June 2022 to October 2022, while one line has an open maturity date. The notional amount of these committed and uncommitted warehouse facilities was \$2.2 billion at December 31, 2021. One of the warehouse lines established a \$125.0 million sublimit line of credit to fund potential principal and interest servicing advances on the Company's Fannie Mae portfolio during the forbearance period related to the CARES Act. Advances will have an interest rate of 1-month LIBOR plus 180 bps. There were no outstanding draws on this sublimit at December 31, 2021. Another warehouse line was temporarily increased by \$300.0 million to \$900.0 million for the period December 1, 2020 to February 1 2021.

Critical Accounting Policies and Estimates

The preparation of our accompanying consolidated financial statements in conformity with U.S. GAAP guidance requires management to make estimates and assumptions that affect the reported amounts of the assets and liabilities, revenues and expenses, and the disclosure of contingent assets and liabilities in our accompanying consolidated financial statements. These accounting estimates require the use of assumptions about matters, some which are highly uncertain at the time of estimation. To the extent actual experience differs from the assumptions used, our accompanying consolidated balance sheets, consolidated statements of operations and consolidated statements of cash flows could be materially affected. We believe that of our significant accounting policies, the following policies involve a higher degree of judgment and complexity.

Revenue Recognition

We derive our revenues primarily through commissions from brokerage services, gains from mortgage banking activities/originations, net, revenues from real estate management services, servicing fees and other revenues. Revenue from contracts with customers is recognized when, or as, we satisfy our performance obligations by transferring the promised goods or services to the customers as determined by when, or as, the customer obtains control of that good or service. A performance obligation may be satisfied over time or at a point in time. Revenue from a performance obligation satisfied over time is recognized by measuring our progress in satisfying the performance obligation as evidenced by the transfer of the goods or services to the customer. Revenue from a performance obligation satisfied at a point in time is recognized at the point in time when the customer obtains control over the promised good or service. The amount of revenue recognized reflects the consideration we expect to be entitled to in exchange for those promised goods or services (i.e., the "transaction price"). In determining the transaction price, we consider consideration promised in a contract that includes a variable amount, referred to as variable consideration, and estimate the amount of consideration due to us. Additionally, variable consideration is included in the transaction price only to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur. In determining when to include variable consideration in the transaction price, we consider all information (historical, current and forecast) that is available, including the range of possible outcomes, the predictive value of past experiences, the time period of when uncertainties expect to be resolved and the amount of consideration that is susceptible to factors outside of our influence.

We also use third-party service providers in the provision of its services to customers. In instances where a third-party service provider is used, we perform an analysis to determine whether we are acting as a principal or an agent with respect to the services provided. To the extent that we are acting as a principal, the revenue and the expenses incurred are recorded on a gross basis. In instances where we are acting as an agent, the revenue and expenses are presented on a net basis within the revenue line item.

In some instances, we perform services for customers and incur out-of-pocket expenses as part of delivering those services. Our customers agree to reimburse us for those expenses, and those reimbursements are part of the contract's transaction price. Consequently, these expenses and the reimbursements of such expenses from the customer are presented on a gross basis because the services giving rise to the out-of-pocket expenses do not transfer a good or service. The reimbursements are included in the transaction price when the costs are incurred, and the reimbursements are due from the customer.

MSRs, Net

We initially recognize and measure the rights to service mortgage loans at fair value and subsequently measure them using the amortization method. We recognize rights to service mortgage loans as separate assets at the time the underlying originated mortgage loan is sold, and the value of those rights is included in the determination of the gains on loans held for sale. Purchased MSRs, including MSRs purchased from CCRE, are initially recorded at fair value, and subsequently measured using the amortization method.

We receive up to a 3-basis point servicing fee and/or up to a 1-basis point surveillance fee on certain Freddie Mac loans after the loan is securitized in a Freddie Mac pool ("Freddie Mac Strip"). The Freddie Mac Strip is also recognized at fair value and subsequently measured using the amortization method, but is recognized as a MSR at the securitization date.

MSRs are assessed for impairment, at least on an annual basis, based upon the fair value of those rights as compared to the amortized cost. Fair values are estimated using a valuation model that calculates the present value of the future net servicing cash flows. In using this valuation method, we incorporate assumptions that management believes market participants would use in estimating future net servicing income. The fair value estimates are sensitive to significant assumptions used in the valuation model such as prepayment rates, cost of servicing, escrow earnings rates, discount rates and servicing multiples, which are affected by expectations about future market or economic conditions derived, in part, from historical data. It is reasonably possible that such estimates may change. We amortize the MSRs in proportion to, and over the period of, the projected net servicing income. For purposes of impairment evaluation and measurement, we stratify MSRs based on predominant risk characteristics of the underlying loans, primarily by investor type (Fannie Mae/Freddie Mac, FHA/GNMA, CMBS and other). To the extent that the carrying value exceeds the fair value of a specific MSR strata, a valuation allowance is established, which is adjusted in the future as the fair value of MSRs increases or decreases. Reversals of valuation allowances cannot exceed the previously recognized impairment up to the amortized cost.

Equity-Based and Other Compensation

Discretionary Bonus: A portion of our compensation and employee benefits expense comprises discretionary bonuses, which may be paid in cash, equity, partnership awards or a combination thereof. We accrue expense in a period based on revenues in that period and on the expected combination of cash, equity and partnership units. Given the assumptions used in estimating discretionary bonuses, actual results may differ.

Restricted Stock Units: We account for equity-based compensation under the fair value recognition provisions of U.S. GAAP guidance. Restricted stock units (which we refer to as "RSUs") provided to certain employees are accounted for as equity awards, and in accordance with U.S. GAAP guidance, we are required to record an expense for the portion of the RSUs that is ultimately expected to vest. Further, U.S. GAAP guidance requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. Because significant assumptions are used in estimating employee turnover and associated forfeiture rates, actual results may differ from our estimates under different assumptions or conditions.

The fair value of RSU awards to employees is determined on the date of grant, based on the fair value of our Class A common stock. Generally, RSUs granted by us as employee compensation do not receive dividend equivalents; as such, we adjust the fair value of the RSUs for the present value of expected forgone dividends, which requires us to include an estimate of expected dividends as a valuation input. This grant-date fair value is amortized to expense ratably over the awards' vesting periods. For RSUs with graded vesting features, we have made an accounting policy election to recognize compensation cost on a straight-line basis. The amortization is reflected as non-cash equity-based compensation expense in our accompanying consolidated statements of operations.

Restricted Stock: Restricted stock provided to certain employees is accounted for as an equity award, and as per U.S. GAAP guidance, we are required to record an expense for the portion of the restricted stock that is ultimately expected to vest. We have granted restricted stock that is not subject to continued employment or service; however, transferability is subject to compliance with our and our affiliates' customary non-compete obligations. Such shares of restricted stock are generally saleable by partners in 5 to 10 years. Because the restricted stock is not subject to continued employment or service, the grant-date fair value of the restricted stock is expensed on the date of grant. The expense is reflected as non-cash equity-based compensation expense in our accompanying consolidated statements of operations.

Limited Partnership Units: Limited partnership units in Newmark Holdings and BGC Holdings are held by Newmark employees and receive quarterly allocations of net income and are generally contingent upon services being provided by the unit holders. As discussed above, preferred units in Newmark Holdings and BGC Holdings are not entitled to participate in partnership distributions other than with respect to a distribution at a rate of either 0.6875% (which is 2.75% per calendar year) or such other amount as set forth in the award documentation. The quarterly allocations of net income to such limited partnership units are reflected as a component of compensation expense under "Equity-based compensation and allocations of net income to limited partnership units and FPU's" in our accompanying consolidated statements of operations.

Certain of these limited partnership units entitle the holders to receive post-termination payments equal to the notional amount in four equal yearly installments after the holder's termination. These limited partnership units are accounted for as post-termination liability awards under U.S. GAAP guidance, which requires that Newmark record an expense for such awards based on the change in value at each reporting period and include the expense in our accompanying consolidated statements of operations as part of "Equity-based compensation and allocations of net income to limited partnership units and FPU's." The liability for limited partnership units with a post-termination payout is included in "Other long-term liabilities" on our accompanying consolidated balance sheets.

Certain limited partnership units held by Newmark employees are granted exchangeability into Class A common stock or may be redeemed in connection with the grant of shares of Class A common stock. At the time exchangeability is granted, or the shares are issued, Newmark recognizes an expense based on the fair value of the award on that date, which is included in "Equity-based compensation and allocations of net income to limited partnership units and FPU's" in our accompanying consolidated statements of operations.

Employee Loans: We have entered into various agreements with certain of our employees and partners whereby these individuals receive loans that may be either wholly or in part repaid from distributions that the individuals receive on some or all of their limited partnership interests or may be forgiven over a period of time. Cash advance distribution loans are documented in formal agreements and are repayable in timeframes outlined in the underlying agreements. We intend for these advances to be repaid in full from the future distributions on existing and future awards granted. The allocations of net income to the awards are treated as compensation expense and the proceeds from distributions are used to repay the loan. The forgivable portion of any loans is recognized as compensation expense in our accompanying consolidated statements of operations over the life of the loan. We review the loan balances each reporting period for collectability. If we determine that the collectability of a portion of the loan balances is not expected, we recognize a reserve against the loan balances. Actual collectability of loan balances may differ from our estimates. As of December 31, 2021 and December 31, 2020, the aggregate balance of employee loans, net of reserve, was \$453.3 million and \$454.3 million, respectively, and is included as "Loans, forgivable loans and other receivables from employees and partners, net" in our accompanying consolidated balance sheets. Compensation expense for the above-mentioned employee loans for the years ended December 31, 2021, 2020 and 2019 were \$79.4 million, \$73.6 million and \$39.0 million, respectively. The compensation expense related to these loans was included as part of "Compensation and employee benefits" in our accompanying consolidated statements of operations.

Goodwill

Goodwill is the excess of the purchase price over the fair value of identifiable net assets acquired in a business combination. As prescribed in U.S. GAAP guidance, *Intangibles – Goodwill and Other Intangible Assets*, goodwill is not amortized, but instead is periodically tested for impairment. We review goodwill for impairment on an annual basis during the fourth quarter of each fiscal year or whenever an event occurs, or circumstances change that could reduce the fair value of a reporting unit below its carrying amount.

When reviewing goodwill for impairment, we first assess qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount, including goodwill. If the results of the qualitative assessment indicate that it is more likely than not that the fair value of a reporting unit is less than its carrying amount, or if we choose to bypass the qualitative assessment, we perform a quantitative goodwill impairment analysis as follows.

The quantitative goodwill impairment test, used to identify both the existence of impairment and the amount of impairment loss, compares the fair value of a reporting unit with its carrying amount, including goodwill. If the carrying amount of a reporting unit exceeds its fair value, an impairment loss should be recognized in an amount equal to that excess, limited to the total amount of goodwill allocated to that reporting unit. If the estimated fair value of a reporting unit exceeds its carrying value, goodwill is deemed not to be impaired. To estimate the fair value of the reporting unit, we use a discounted cash flow model and data regarding market comparables. The valuation process requires significant judgment and involves the use of significant estimates and assumptions. These assumptions include cash flow projections, estimated cost of capital and the selection of peer companies and relevant multiples. Because significant assumptions and estimates are used in projecting future cash flows, choosing peer companies and selecting relevant multiples, actual results may differ from our estimates under different assumptions or conditions.

Credit Losses

The CECL methodology, which became effective on January 1, 2020, requires us to estimate lifetime expected credit losses by incorporating historical loss experience, as well as current and future economic conditions over a reasonable and supportable period beyond the balance sheet date. The adoption of CECL resulted in the recognition of reserves relating to our loss sharing guarantee provided to Fannie Mae under the DUS Program which was previously accounted for under the incurred loss model, which generally required that a loss be incurred before it was recognized. Additional reserves were recognized for our receivables from customers including certain employee receivables carried at amortized cost.

The expected credit loss is modeled based on our historical loss experience adjusted to reflect current conditions. A significant amount of judgment is required in the determination of the appropriate reasonable and supportable period, the methodology used to incorporate current and future macroeconomic conditions, determination of the probability of and exposure at default, all of which are ultimately used in measuring the quantitative components of our reserves. Beyond the reasonable and supportable period, we estimate expected credit losses using our historical loss rates. We also consider whether to adjust the quantitative reserves for certain external and internal qualitative factors, which consequentially may increase or decrease the reserves for credit losses and receivables. In order to estimate credit losses, assumptions about current and future economic conditions are incorporated into the model using multiple economic scenarios that are weighted to reflect the conditions at each measurement date.

During the year ended December 31, 2021, there was a decrease of \$0.2 million in our reserves. These reserves were based on macroeconomic forecasts are critical inputs into our model and material movements in variables such as, the U.S. unemployment rate and U.S. GDP growth rate could significantly affect our estimated expected credit losses. These macroeconomic forecasts, under different conditions or using different assumptions or estimates, could result in significantly different changes in reserves for credit losses. It is difficult to estimate how potential changes in specific factors might affect the overall reserves for credit losses and current results may not reflect the potential future impact of macroeconomic forecast changes.

Income Taxes

Newmark accounts for income taxes using the asset and liability method as prescribed in U.S. GAAP guidance, Income Taxes. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to basis differences between our accompanying consolidated financial statement carrying amounts of existing assets and liabilities and their respective tax basis. Certain of Newmark's entities are taxed as U.S. partnerships and are subject to UBT in New York City. Therefore, the tax liability or benefit related to the partnership income or loss except for UBT rests with the partners, rather than the partnership entity. As such, the partners' tax liability or benefit is not reflected in our accompanying consolidated financial statements. The tax-related assets, liabilities, provisions or benefits included in our accompanying consolidated financial statements also reflect the results of the entities that are taxed as corporations, either in the U.S. or in foreign jurisdictions.

Newmark provides for uncertain tax positions based upon management's assessment of whether a tax benefit is more likely than not to be sustained upon examination by tax authorities. Management is required to determine whether a tax position is more likely than not to be sustained upon examination by tax authorities, including resolution of any related appeals or litigation processes, based on the technical merits of the position. Because significant assumptions are used in determining whether a tax benefit is more likely than not to be sustained upon examination by tax authorities, actual results may differ from Newmark's estimates under different assumptions or conditions. Newmark recognizes interest and penalties related to uncertain tax positions in "Provision for income taxes" in our accompanying consolidated statements of operations.

A valuation allowance is recorded against deferred tax assets if it is deemed more likely than not that those assets will not be realized. In assessing the need for a valuation allowance, Newmark considers all available evidence, including past operating results, the existence of cumulative losses in the most recent fiscal years, estimates of future taxable income and the feasibility of tax planning strategies.

The measurement of current and deferred income tax assets and liabilities is based on provisions of enacted tax laws and involves uncertainties in the application of tax regulations in the U.S. and other tax jurisdictions. Because Newmark's interpretation of complex tax law may impact the measurement of current and deferred income taxes, actual results may differ from these estimates under different assumptions regarding the application of tax law.

Derivative Financial Instruments

We have loan commitments to extend credit to third parties. The commitments to extend credit are for mortgage loans at a specific rate (rate lock commitments). These commitments generally have fixed expiration dates or other termination clauses and may require a fee. We are committed to extend credit to the counterparty as long as there is no violation of any condition established in the commitment contracts.

We simultaneously enter into an agreement to deliver such mortgages to third-party investors at a fixed price ("forward sale contracts").

Both the commitment to extend credit and the forward sale commitment qualify as derivative financial instruments. We recognize all derivatives on our accompanying consolidated balance sheets as assets or liabilities measured at fair value. The change in the derivatives fair value is recognized in current period earnings.

Newmark entered into variable postpaid forward contracts as a result of the Nasdaq Forwards. These contracts qualify as derivative financial instruments. The Nasdaq Forwards provide Newmark with the ability to redeem the EPU's for Nasdaq stock, and as these instruments are not legally detachable, they represent single financial instruments. The financial instruments' EPU redemption feature for Nasdaq shares is not clearly and closely related to the economic characteristics and risks of Newmark's EPU equity host instruments, and, therefore, it represents an embedded derivative that is required to be bifurcated and recorded at fair value on our accompanying consolidated balance sheets, with all changes in fair value recorded as a component of "Other income (loss), net" on our accompanying consolidated statements of operations. See Note 11 — "Derivatives", to our accompanying consolidated financial statements in Part I, Item 8 of this Annual Report on Form 10-K for additional information.

Recent Accounting Pronouncements

See Note 1 — "Organization and Basis of Presentation", to our accompanying consolidated financial statements in Part II, Item 8 of this Annual Report on Form 10-K, for information regarding recent accounting pronouncements.

Capital Deployment Priorities, Dividend Policy and Repurchase and Redemption Program

Our near-term capital allocation priorities are to return capital to stockholders through share and unit repurchases and to invest in growth and margin expansion at attractive returns.

Traditionally, our dividend policy provided that we expect to pay a quarterly cash dividend to our common stockholders based on our post-tax Adjusted Earnings per fully diluted share. Please see below for a detailed definition of post-tax Adjusted Earnings per fully diluted share. Beginning in the first quarter of 2020, and for all of the quarterly periods in 2020 and thus far in 2021, the Board reduced the quarterly dividend to \$0.01 per share out of an abundance of caution in order to strengthen the Company's balance sheet as the real estate markets faced difficult and unprecedented macroeconomic conditions due to the COVID-19 pandemic. Additionally, beginning with the first quarter 2020, Newmark Holdings reduced its distributions to or on behalf of its partners. As Newmark's financial condition has improved substantially year-over-year, and as the economy has rebounded, the Company has repurchased and/or redeemed a meaningful number of shares and/or units thus far in 2021 as part of its overall capital return policy. See Note 6 "Stock Transactions and Unit Redemptions" to our accompanying consolidated financial statements in Part II, Item 8 of this Annual Report on Form 10-K for more information.

Any dividends, if and when declared by our Board, will be paid on a quarterly basis. The dividend to our common stockholders is expected to be calculated based on post-tax Adjusted Earnings allocated to us and generated over the fiscal quarter ending prior to the record date for the dividend. No assurance can be made, however, that a dividend will be paid each quarter. The declaration, payment, timing, and amount of any future dividends payable by us will be at the sole discretion of our Board. With respect to any distributions which are declared, amounts paid to or on behalf of partners will at least cover their related tax payments. Whether any given post-tax amount is equivalent to the amount received by a stockholder also on an after-tax basis depends upon stockholders' and partners' domiciles and tax status.

We received 6,222,340 Nasdaq shares worth \$1,093.9 million as of June 30, 2021. On July 2, 2021, we settled the third and fourth Nasdaq Forwards with 944,329 Nasdaq shares worth \$166.0 million. In connection with the 2021 Equity Event, we used \$484.4 million, of which \$203.5 million was to reduce our fully diluted share count by 16.3 million.

We are a holding company, with no direct operations, and therefore we are able to pay dividends only from our available cash on hand and funds received from distributions from Newmark OpCo. Our ability to pay dividends may also be limited by regulatory considerations as well as by covenants contained in financing or other agreements. In addition, under Delaware law, dividends may be payable only out of surplus, which is our net assets minus our capital (as defined under Delaware law), or, if we have no surplus, out of our net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year. Accordingly, any unanticipated accounting, tax, regulatory or other charges against net income may adversely affect our ability to declare and pay dividends. While we intend to declare and pay dividends quarterly, there can be no assurance that our Board will declare dividends at all or on a regular basis or that the amount of our dividends will not change.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Credit Risk

Our multifamily origination business, under the Fannie Mae DUS program, originates and services multifamily loans for Fannie Mae without having to obtain Fannie Mae's prior approval for certain loans, as long as the loans meet the underwriting guidelines set forth by Fannie Mae. In return for the delegated authority to make loans and the commitment to purchase loans by Fannie Mae, we must maintain minimum collateral and generally are required to share risk of loss on loans sold through Fannie Mae. With respect to most loans, we are generally required to absorb approximately one-third of any losses on the unpaid principal balance of a loan at the time of loss settlement. Some of the loans that we originate under the Fannie Mae DUS program are subject to reduced levels or no risk-sharing. However, we generally receive lower servicing fees with respect to such loans. Although our Berkeley Point business's average annual losses from such risk-sharing programs have been a minimal percentage of the aggregate principal amount of such loans, if loan defaults increase, actual risk-sharing obligation payments under the Fannie Mae DUS program could increase, and such defaults could have a material adverse effect on our business, financial condition, results of operations and prospects. In addition, a material failure to pay its share of losses under the Fannie Mae DUS program could result in the revocation of Berkeley Point's license from Fannie Mae and the exercise of various remedies available to Fannie Mae under the Fannie Mae DUS program.

Interest Rate Risk

Newmark had \$545.2 million of fixed rate 6.125% Senior Notes outstanding as of December 31, 2021. These debt obligations are not currently subject to fluctuations in interest rates, although in the event of refinancing or issuance of new debt, such debt could be subject to changes in interest rates. Newmark had no amounts outstanding under its Credit Facility as of December 31, 2021. The interest rate on the Credit Facility is based upon LIBOR.

Berkeley Point is an intermediary that originates loans which are generally pre-sold prior to loan closing. Therefore, for loans held for sale to the GSEs and HUD, we are not currently exposed to unhedged interest rate risk. Prior to closing on loans with borrowers, we enter into agreements to sell the loans to investors, and originated loans are typically sold within 45 days of funding. The coupon rate for each loan is set concurrently with the establishment of the interest rate with the investor.

Some of our assets and liabilities are subject to changes in interest rates. Earnings from escrows are generally based on LIBOR or SOFR. 30-day LIBOR as of December 31, 2021 and 2020 was 10 basis points and 14 basis points, respectively. A 100-basis point increase in the 30-day LIBOR would increase our annual earnings by \$22.9 million based on our escrow balance as of December 31, 2021 compared to \$13.3 million based on our escrow balance as of December 31, 2020. A decrease in 30-day LIBOR to zero would decrease our annual earnings by \$2.3 million based on the escrow balances as of December 31, 2021 and by \$1.9 million based on our escrow balances as of December 31, 2020.

We use warehouse facilities and a repurchase agreement to fund loans we originate under our various lending programs. The borrowing costs of our warehouse facilities and the repurchase agreement is based on LIBOR. A 100-basis point increase in 30-day LIBOR would decrease our annual earnings by \$10.6 million based on our outstanding balances as of December 31, 2021 compared to \$10.6 million based on our outstanding balances as of December 31, 2020. A decrease in 30-day LIBOR to zero would increase our annual earnings by approximately \$1.1 million based on our outstanding warehouse balance as of December 31, 2021 and by \$1.5 million as of December 31, 2020.

Market Risk

We have investments in marketable equity securities, which are publicly-traded, and which had a fair value of \$524.6 million and \$33.3 million as of December 31, 2021 and December 31, 2020, respectively. These include shares of common stock of Nasdaq. As of February 25, 2022, Newmark held approximately 1.1 million shares of Nasdaq worth approximately \$187.2 million.

Investments in marketable securities carry a degree of risk, as there can be no assurance that the marketable securities will not lose value and, in general, securities markets can be volatile and unpredictable. As a result of these different market risks, our holdings of marketable securities could be materially and adversely affected. We may seek to minimize the effect of price changes on a portion of our investments in marketable securities through the use of derivative contracts. However, there can be no assurance that our hedging activities will be adequate to protect us against price risks associated with our investments in marketable securities. See Note 7 — “Marketable Securities” and Note 11 — “Derivatives” to our accompanying consolidated financial statements in Part II, Item 8 of this Annual Report on Form 10-K for further information regarding these investments and related hedging activities. Each \$1 change in the price of Nasdaq, will impact the value of shares held by \$2.5 million based on the number of shares held as of December 31, 2021. Additionally the 2.5 million shares of Nasdaq equity we held as of December 31, 2021 are more than an average trading days volume and therefore there is additional market risk that we will not be able to liquidate this position in an orderly manner if the market for Nasdaq equity shares is under pressure.

Foreign Currency Risk

We are exposed to risks associated with changes in foreign exchange rates. Changes in foreign exchange rates create volatility in the U.S. Dollar equivalent of our revenues and expenses. While our international results of operations, as measured in U.S. Dollars, are subject to foreign exchange fluctuations, we do not consider the related risk to be material to our results of operations. While our exposure to foreign exchange risk is not currently material to us, we expect to grow our international revenues in the future, and any future potential exposure to foreign exchange fluctuations may present a material risk to our business.

Disaster Recovery

Our processes address disaster recovery concerns. We operate most of our technology from dual-primary data centers at our two different London locations. Either site alone is capable of running all of our essential systems. In addition, we maintain technology operations from data centers in New Jersey and Connecticut. Replicated instances of this technology are maintained in our London data centers. All data centers are built and equipped to best-practice standards of physical security with appropriate environmental monitoring and safeguards. Failover for the majority of our systems is automated.

ITEM 8. FINANCIAL STATEMENTS

CONSOLIDATED FINANCIAL STATEMENTS FOR THE YEARS ENDED DECEMBER 31, 2021, 2020 AND 2019

Audited Financial Statements of Newmark Group Inc.:

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Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of Newmark Group, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Newmark Group, Inc (the Company) as of December 31, 2021 and 2020, the related consolidated statements of operations, comprehensive income, cash flows and changes in equity for each of the three years in the period ended December 31, 2021, and the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2021, 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 December 31, 2021, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework), as applicable and our report dated February 28, 2022 expressed an unqualified opinion thereon.

Adoption of New Accounting Standard

As discussed in Note 3 to the consolidated financial statements, the Company changed its method of accounting for credit losses in 2020.

Basis for Opinion

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

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current period audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective or complex judgments. The communication of the critical audit matter 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 matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Mortgage Servicing Rights, net

Description of the Matter

At December 31, 2021, the Company's Mortgage Servicing Rights, net ("MSRs") were \$550.3 million. As discussed in Note 3 and Note 15 to the consolidated financial statements, the Company initially recognizes and measures the rights to service mortgage loans at fair value and subsequently measures them using the amortization method. MSRs are assessed for impairment, at least on an annual basis, based upon the fair value of those rights as compared to the amortized cost. Fair values are estimated using a valuation model that calculates the present value of the future net servicing cash flows.

Auditing management's valuation of MSRs was complex and required significant judgment due to the estimation used by the Company in determining the fair value of the MSRs. In particular, the fair value estimates were sensitive to significant assumptions such as prepayment rates, cost of servicing, escrow earnings rates, discount rates and servicing multiples, which are affected by expectations about future market or economic conditions derived, in part, from historical data.

How We Addressed the Matter in Our Audit

We obtained an understanding, evaluated the design and tested the operating effectiveness of controls related to the Company's MSRs valuation process, including management's assessment of the significant assumptions included in the fair value estimates.

To test the estimated fair value of the Company's MSRs, our audit procedures included, among others, testing the significant assumptions used by the Company to develop the fair value estimates. For example, we compared the significant assumptions to the Company's historical results and current industry, market and economic trends. We evaluated the Company's use of the valuation model that calculates the present value of the future net servicing cash flows and validated the completeness and accuracy of selected inputs to the model. We also performed a sensitivity analysis of the significant assumptions to evaluate the changes in fair value resulting from changes in selected assumptions. We utilized an internal valuation specialist to test management's assumptions and to identify potential sources of contrary information for selected assumptions.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 2016.

New York, New York
February 28, 2022

Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of Newmark Group, Inc.

Opinion on Internal Control over Financial Reporting

We have audited Newmark Group, Inc.'s internal control over financial reporting as of December 31, 2021, 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, Newmark Group, Inc. (the Company) maintained, in all material respects, effective internal control over financial reporting as of December 31, 2021, based on the COSO criteria.

As indicated in the accompanying Management's Report on Internal Control over Financial Reporting, management's assessment of and conclusion on the effectiveness of internal control over financial reporting did not include the internal controls of Knotel, Inc. and Space Management which is included in the 2021 consolidated financial statements of the Company and constituted 5.87% and 5.17% of total assets, 2.36% and 2.38% of net assets, respectively as of December 31, 2021 and 1.91% and 1.62% of revenues and (3.49%) and (0.04%) of net income, respectively for the year then ended. Our audit of internal control over financial reporting of the Company also did not include an evaluation of the internal control over financial reporting of Knotel, Inc. and Space Management.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of December 31, 2021 and 2020, the related consolidated statements of operations, comprehensive income (loss), cash flows and changes in equity for each of the three years in the period ended December 31, 2021, and the related notes and our report dated February 28, 2022 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 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 the 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

New York, New York
February 28, 2022

NEWMARK GROUP, INC.
CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share amounts)

	December 31,	
	2021	2020
Assets:		
Current assets:		
Cash and cash equivalents	\$ 191,332	\$ 191,448
Restricted cash	75,168	66,951
Marketable securities	524,569	33,283
Loans held for sale, at fair value	1,072,479	1,086,805
Receivables, net	569,206	376,795
Receivables from related parties	8,262	—
Other current assets (see Note 19)	83,337	63,790
Total current assets	2,524,353	1,819,072
Goodwill	657,131	560,332
Mortgage servicing rights, net	550,302	494,729
Loans, forgivable loans and other receivables from employees and partners, net	453,345	454,270
Right-of-use assets	606,634	190,469
Fixed assets, net	135,756	96,367
Other intangible assets, net	76,199	44,289
Other assets (see Note 19)	212,481	322,922
Total assets	\$ 5,216,201	\$ 3,982,450
Liabilities, Redeemable Partnership Interests, and Equity:		
Current liabilities:		
Warehouse facilities collateralized by U.S. Government Sponsored Enterprises	\$ 1,050,693	\$ 1,061,202
Accrued compensation	462,533	279,872
Accounts payable, accrued expenses and other liabilities (see Note 29)	528,746	326,548
Repurchase agreements and securities loaned	140,007	33,278
Payables to related parties	10,762	4,392
Total current liabilities	2,192,741	1,705,292
Long-term debt	545,239	680,385
Right-of-use liabilities	586,069	218,629
Other long-term liabilities (see Note 29)	207,012	436,952
Total liabilities	3,531,061	3,041,258
Commitments and contingencies (see Note 31)		
Redeemable partnership interests	20,947	20,045
Equity:		
Class A common stock, par value of \$0.01 per share: 1,000,000,000 shares authorized; 194,046,885 and 167,604,348 shares issued at December 31, 2021 and December 31, 2020, respectively, and 168,272,371 and 161,175,894 shares outstanding at December 31, 2021 and December 31, 2020, respectively	1,940	1,676
Class B common stock, par value of \$0.01 per share: 500,000,000 shares authorized; 21,285,533 shares issued and outstanding at December 31, 2021 and December 31, 2020, convertible into Class A common stock	212	212
Additional paid-in capital	487,447	351,450
Retained earnings	1,079,661	342,764
Contingent Class A common stock	1,572	1,572
Treasury stock at cost: 25,774,514 and 5,498,228 shares of Class A common stock at December 31, 2021 and December 31, 2020, respectively	(290,174)	(40,531)
Accumulated other comprehensive loss	(2,731)	(2,094)
Total stockholders' equity	1,277,927	655,049
Noncontrolling interests	386,266	266,098
Total equity	1,664,193	921,147
Total liabilities, redeemable partnership interests, and equity	\$ 5,216,201	\$ 3,982,450

The accompanying Notes to the Consolidated Financial Statements are an integral part of these financial statements.

NEWMARK GROUP, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except per share data)

	Year Ended December 31,		
	2021	2020	2019
Revenues:			
Commissions	\$ 1,765,247	\$ 967,948	\$ 1,396,035
Gains from mortgage banking activities/originations, net	225,481	310,914	198,085
Management services, servicing fees and other	915,715	626,136	624,012
Total revenues	2,906,443	1,904,998	2,218,132
Expenses:			
Compensation and employee benefits	1,828,887	1,147,360	1,275,988
Equity-based compensation and allocations of net income to limited partnership units and FPU's	356,345	130,759	258,836
Total compensation and employee benefits	2,185,232	1,278,119	1,534,824
Operating, administrative and other	553,623	294,405	361,857
Fees to related parties	23,789	22,573	25,025
Depreciation and amortization	121,729	141,193	131,144
Total operating expenses	2,884,373	1,736,290	2,052,850
Other (loss) income, net	1,232,495	15,290	80,954
Income from operations	1,254,565	183,998	246,236
Interest expense, net	(33,473)	(37,728)	(32,088)
Income before income taxes and noncontrolling interests	1,221,092	146,270	214,148
Provision for income taxes	242,958	36,993	52,436
Consolidated net income	978,134	109,277	161,712
Less: Net income attributable to noncontrolling interests	227,406	29,217	44,407
Net income available to common stockholders	\$ 750,728	\$ 80,060	\$ 117,305
Per share data:			
Basic earnings per share			
Net income available to common stockholders ⁽¹⁾	\$ 744,528	\$ 70,281	\$ 104,406
Basic earnings per share	\$ 3.91	\$ 0.39	\$ 0.59
Basic weighted-average shares of common stock outstanding	190,179	179,106	177,774
Fully diluted earnings per share			
Net income for fully diluted shares	\$ 744,528	\$ 70,281	\$ 108,160
Fully diluted earnings per share	\$ 3.80	\$ 0.39	\$ 0.58
Fully diluted weighted-average shares of common stock outstanding	195,813	179,690	185,016

⁽¹⁾ Includes a reduction for dividends on preferred stock or EPU's in the amount of \$6.2 million, \$9.8 million and \$12.9 million for the years ended December 31, 2021, 2020 and 2019, respectively. (see Note 1 — "Organization and Basis of Presentation").

The accompanying Notes to the Consolidated Financial Statements are an integral part of these financial statements.

NEWMARK GROUP, INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(In thousands)

	Year Ended December 31,		
	2021	2020	2019
Consolidated net income	\$ 978,134	\$ 109,277	\$ 161,712
Foreign currency translation adjustments	(832)	(2,178)	—
Comprehensive income, net of tax	977,302	107,099	161,712
Less: Comprehensive income attributable to noncontrolling interests, net of tax	227,406	29,217	44,407
Comprehensive income available to common stockholders	<u>\$ 749,896</u>	<u>\$ 77,882</u>	<u>\$ 117,305</u>

The accompanying Notes to the Consolidated Financial Statements are an integral part of these financial statements.

NEWMARK GROUP, INC.
CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY
(In thousands, except share and per share amounts)

	Class A Common Stock	Class B Common Stock	Additional Paid-in Capital	Contingent Class A Common Stock	Treasury Stock	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Noncontrolling Interests	Total
January 1, 2019	<u>\$ 1,570</u>	<u>\$ 212</u>	<u>\$ 285,071</u>	<u>\$ 3,250</u>	<u>\$ (486)</u>	<u>\$ 277,952</u>	<u>\$ —</u>	<u>\$ 489,230</u>	<u>\$ 1,056,799</u>
Consolidated net income	—	—	—	—	—	117,305	—	44,407	161,712
Dividends to common stockholders	—	—	—	—	—	(69,245)	—	—	(69,245)
Preferred dividend on exchangeable preferred partnership units	—	—	—	—	—	(12,900)	—	12,900	—
Earnings distributions to limited partnership interests and other noncontrolling interests	—	—	—	—	—	—	—	(73,646)	(73,646)
Grant of exchangeability, redemption and issuance of Class A common stock, 3,867,127 shares	38	—	30,607	(1,789)	—	—	—	(30,758)	(1,902)
Repurchase of 4,518,002 shares of Class A Common Stock	—	—	—	—	(34,408)	—	—	(7,692)	(42,100)
Redemption of EPU's	—	—	—	—	—	—	—	(93,480)	(93,480)
Other	—	—	2,487	—	—	—	—	—	2,487
December 31, 2019	<u>\$ 1,608</u>	<u>\$ 212</u>	<u>\$ 318,165</u>	<u>\$ 1,461</u>	<u>\$ (34,894)</u>	<u>\$ 313,112</u>	<u>\$ —</u>	<u>\$ 340,961</u>	<u>\$ 940,625</u>
Consolidated net income	—	—	—	—	—	80,060	—	29,217	109,277
Foreign currency transaction adjustments	—	—	—	—	—	—	(1,776)	(402)	(2,178)
Cumulative effect of credit loss standard adoption	—	—	—	—	—	(17,458)	—	(3,655)	(21,113)
Dividends to common stockholders	—	—	—	—	—	(23,171)	—	—	(23,171)
Preferred dividend on exchangeable preferred partnership units	—	—	—	—	—	(9,779)	—	9,779	—
Earnings distributions to limited partnership interests and other noncontrolling interests	—	—	—	—	—	—	—	(22,365)	(22,365)
Grant of exchangeability, redemption and issuance of Class A common stock, 5,840,659 shares	68	—	24,747	—	—	—	—	3,958	28,773
Repurchase of 930,226 shares of Class A Common Stock	—	—	—	—	(5,637)	—	—	(1,180)	(6,817)
Issuance and redemption of limited partnership units including contingent units	—	—	266	111	—	—	—	(377)	—
Restricted stock units compensation	—	—	7,648	—	—	—	—	3,642	11,290
Redemption of EPU's	—	—	—	—	—	—	—	(93,480)	(93,480)
Other	—	—	624	—	—	—	(318)	—	306
December 31, 2020	<u>\$ 1,676</u>	<u>\$ 212</u>	<u>\$ 351,450</u>	<u>\$ 1,572</u>	<u>\$ (40,531)</u>	<u>\$ 342,764</u>	<u>\$ (2,094)</u>	<u>\$ 266,098</u>	<u>\$ 921,147</u>
Consolidated net income	—	—	—	—	—	750,728	—	227,406	978,134
Foreign currency translation adjustments	—	—	—	—	—	—	(637)	(195)	(832)
Cantor purchase of Cantor units from Newmark Holdings upon redemption/ exchange of FPU's, 1,831,924 units	—	—	—	—	—	—	—	6,898	6,898
Dividends to common stockholders	—	—	—	—	—	(7,631)	—	—	(7,631)
Non-Controlling interest in Deskeo	—	—	—	—	—	—	—	13,464	13,464
Issuance of Class A common stock for acquisition	—	—	2,577	—	—	—	—	423	3,000
Preferred dividend on EPU's	—	—	—	—	—	(6,200)	—	6,200	—
Earnings distributions to limited partnership interests and other noncontrolling interests	—	—	—	—	—	—	—	1,805	1,805
Grant of exchangeability, redemption and issuance of Class A common stock, 27,333,907 shares	264	—	104,121	—	—	—	—	61,259	165,644
Contributions of capital to and from Cantor for equity-based compensation	—	—	19,348	—	—	—	—	8,664	28,012
Repurchase of 20,237,430 shares of Class A Common Stock	—	—	—	—	(249,643)	—	—	(40,541)	(290,184)
Restricted stock units compensation	—	—	9,951	—	—	—	—	2,181	12,132
Redemption of EPU's	—	—	—	—	—	—	—	(167,396)	(167,396)
Balance, December 31, 2021	<u>\$ 1,940</u>	<u>\$ 212</u>	<u>\$ 487,447</u>	<u>\$ 1,572</u>	<u>\$ (290,174)</u>	<u>\$ 1,079,661</u>	<u>\$ (2,731)</u>	<u>\$ 386,266</u>	<u>\$ 1,664,193</u>

NEWMARK GROUP, INC.
CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY - (Continued)

	Year Ended December 31,		
	2021	2020	2019
Dividends declared per share of common stock	\$ 0.04	\$ 0.13	\$ 0.40
Dividends declared and paid per share of common stock	\$ 0.04	\$ 0.13	\$ 0.39

The accompanying Notes to the Consolidated Financial Statements are an integral part of these financial statements.

NEWMARK GROUP INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Year Ended December 31,		
	2021	2020	2019
CASH FLOWS FROM OPERATING ACTIVITIES:			
Consolidated net income	\$ 978,134	\$ 109,277	\$ 161,712
Adjustments to reconcile net income to net cash (used in) provided by operating activities:			
Gain on originated mortgage servicing rights	(147,789)	(193,913)	(103,160)
Depreciation and amortization	121,729	141,193	131,144
Nasdaq earn-out recognition	(1,108,012)	(121,906)	(98,580)
Provision/(reversals) for/of credit losses on the financial guarantee liability	(3,592)	11,632	—
Provision for doubtful accounts	6,338	4,668	1,817
Equity-based compensation and allocation of net income to limited partnership units and FPU's	356,345	130,759	258,836
Employee loan amortization	79,418	73,596	38,987
Deferred tax (benefit) provision	118,649	419	(27,852)
Non-cash changes in acquisition related earn-outs	415	(9,916)	728
Unrealized (gains) on loans held for sale	(21,259)	(24,295)	(5,174)
Unrealized gain on investment	(27,825)	—	—
(Gains) Loss from an equity method investment	—	11,562	(7,250)
Realized (gain) loss on marketable securities	(24,468)	2,204	(4,056)
Unrealized gain on marketable securities	(77,266)	(5,004)	(11,303)
Realized loss (gains) on non-marketable investments	(1,590)	84,186	(12,159)
Change in valuation of derivative asset	12,475	13,680	51,117
Loan originations—loans held for sale	(9,142,148)	(12,374,231)	(8,783,225)
Loan sales—loans held for sale	9,177,733	11,527,010	9,563,973
Other	3,610	3,405	4,260
Consolidated net income, adjusted for non-cash and non-operating items	300,897	(615,674)	1,159,815
Changes in operating assets and liabilities:			
Receivables, net	(191,271)	123,743	(52,021)
Loans, forgivable loans and other receivables from employees and partners	(78,493)	(127,917)	(161,897)
Right of use asset	41,508	11,192	(19,481)
Receivable from related parties	(8,262)	—	—
Other assets	8,858	21,764	(93,823)
Accrued compensation	(83,237)	(75,369)	39,959
Right of use liability	(34,676)	(7,029)	72,947
Accounts payable, accrued expenses and other liabilities	(4,399)	(82,415)	17,829
Payables to related parties	366	(25,989)	23,433
Net cash (used in) provided by operating activities	(48,709)	(777,694)	986,761
CASH FLOWS FROM INVESTING ACTIVITIES:			
Payments for acquisitions, net of cash acquired	(69,755)	(5,850)	(33,939)
Distributions from equity method investment	—	90	8,560
Proceeds from the sale of marketable securities	551,064	34,738	32,606
Purchase of non-marketable investments	(8,500)	—	(28,000)
Purchase of debt securities	—	(12,754)	—
Purchases of fixed assets	(19,721)	(19,626)	(34,526)
Purchase of MSRs	—	(200)	(1,489)
Net cash (used in) provided by investing activities	453,088	(3,602)	(56,788)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Proceeds from warehouse facilities	9,142,148	12,374,231	8,783,225
Principal payments on warehouse facilities	(9,152,656)	(11,522,677)	(9,545,964)
Proceeds from the sale of limited partnership interests	6,898	—	—
Settlement of pre-Spin-Off related party receivables	—	—	33,892
Borrowing of debt	55,000	365,000	155,000
Repayment of debt	(195,000)	(275,000)	(105,000)
Repurchase agreements and securities loaned	106,729	(3,457)	36,735
Redemption and repurchase of limited partnership interests	(2,000)	—	—
Treasury stock repurchases	(290,538)	(6,364)	(37,368)
Earnings distributions to limited partnership interests and other noncontrolling interests	(14,907)	(81,879)	(140,576)
Dividends to stockholders	(7,631)	(23,171)	(69,245)
Payments on acquisition earn-outs	(42,842)	(4,793)	(4,837)
Deferred financing costs	(1,479)	(4,067)	(1,368)
Net cash (used in) provided by financing activities	(396,278)	817,823	(895,506)

Net increase in cash and cash equivalents and restricted cash	8,101	36,527	34,466
Cash and cash equivalents and restricted cash at beginning of period	258,399	221,872	187,406
Cash and cash equivalents and restricted cash at end of period	<u>\$ 266,500</u>	<u>\$ 258,399</u>	<u>\$ 221,872</u>
	Year Ended December 31,		
	2021	2020	2019
Supplemental disclosures of cash flow information:			
Supplemental disclosures of cash flow information:			
Cash paid during the period for:			
Interest	\$ 36,271	\$ 40,640	\$ 36,959
Taxes	\$ 99,381	\$ 80,288	\$ 95,089
Supplemental disclosure of non-cash operating, investing and financing activities:			
Right-of-use assets and liabilities	\$ 497,865	\$ 37,808	\$ 182,180
Treasury stock repurchase	\$ —	\$ 453	\$ 4,732

The accompanying Notes to the Consolidated Financial Statements are an integral part of these financial statements.

NEWMARK GROUP, INC.
Notes to the Consolidated Financial Statements

(1) Organization and Basis of Presentation

Newmark Group, Inc., formerly known as Newmark Knight Frank (together with its subsidiaries, “Newmark” or the “Company”), a Delaware corporation, was formed as NRE Delaware, Inc. on November 18, 2016. Newmark changed its name to Newmark Group, Inc. on October 18, 2017. Newmark Holdings, L.P. (“Newmark Holdings”) is a consolidated subsidiary of Newmark for which Newmark is the general partner. Newmark and Newmark Holdings jointly own Newmark Partners, L.P. (“Newmark OpCo”), the operating partnership. Newmark is a leading commercial real estate services firm. Newmark offers a diverse array of integrated services and products designed to meet the full needs of both real estate investors/owners and occupiers. Newmark’s investor/owner services and products include capital markets, which consists of investment sales, debt and structured finance and loan sales, agency leasing, property management, valuation and advisory, commercial real estate due diligence consulting and advisory services and Government Sponsored Enterprise (“GSE”) lending and loan servicing, mortgage brokerage and equity-raising. Newmark’s occupier services and products include tenant representation, real estate management technology systems, workplace and occupancy strategy, global corporate consulting services, project management, lease administration and facilities management. Newmark enhances these services and products through innovative real estate technology solutions and data analytics that enable clients to increase their efficiency and profits by optimizing their real estate portfolio. Newmark has relationships with many of the world’s largest commercial property owners, real estate developers and investors, as well as Fortune 500 and Forbes Global 2000 companies.

Nasdaq Monetization Transactions

On June 28, 2013, BGC Partners, Inc. (“BGC”) had sold certain assets of its on-the-run, electronic benchmark U.S. Treasury platform (“eSpeed”) to Nasdaq, Inc. (“Nasdaq”). The total consideration received in the transaction included \$750.0 million in cash paid upon closing and an earn-out of up to 14,883,705 shares of Nasdaq shares to be paid ratably over 15 years, provided that Nasdaq, as a whole, produces at least \$25.0 million in consolidated gross revenues each year (the “Nasdaq Earn-out”). The remaining rights under the Nasdaq Earn-out were transferred to Newmark on September 28, 2017 as part of the transaction (see below for further discussion and Note 7 — “Marketable Securities” for additional information).

Exchangeable Preferred Partnership Units and Nasdaq Forward Contracts

On June 18, 2018 and September 26, 2018, Newmark OpCo issued approximately 175.0 million and 150.0 million of exchangeable preferred partnership units (“EPUs”), respectively, in private transactions to the Royal Bank of Canada (“RBC”) (the “Newmark OpCo Preferred Investment”). Newmark received \$266.1 million of cash in 2018 with respect to these transactions. The EPUs were issued in four tranches and are separately convertible by either RBC or Newmark into a fixed number of shares of Newmark Class A common stock, subject to a revenue hurdle in each of the fourth quarters of 2019 through 2022 for each of the respective four tranches. The ability to convert the EPUs into Newmark Class A common stock is subject to the special purpose vehicle’s (the “SPVs”) option to settle the postpaid forward contracts as described below. As the EPUs represent equity ownership of a consolidated subsidiary of Newmark, they have been included in “Noncontrolling interests” on the accompanying consolidated balance sheets and consolidated statements of changes in equity. The EPUs are entitled to a preferred payable-in-kind dividend, which is recorded as accretion to the carrying amount of the EPUs through Retained earnings on the accompanying consolidated statements of changes in equity and are reductions to “Net income (loss) available to common stockholders” for the purpose of calculating earnings per share.

Contemporaneously with the issuance of the EPUs, an SPV that is a consolidated subsidiary of Newmark entered into variable postpaid forward contracts with RBC (together, the “Nasdaq Forwards”). The SPV is an indirect subsidiary of Newmark whose sole assets are the Nasdaq Earn-outs for 2019 through 2022. The Nasdaq Forwards provide the SPV the option to settle using up to 992,247 Nasdaq shares, to be received by the SPV pursuant to the Nasdaq Earn-out shares to be received (see Note 7 — “Marketable Securities”), or Newmark Class A common stock, in exchange for either cash or redemption of the EPUs, notice of which must be provided to RBC prior to November 1 of each year from 2019 through 2022.

In September 2020, the SPV notified RBC of its decision to settle the second Nasdaq Forward using the Nasdaq shares the SPV received in November 2020 in exchange for the second tranche of the EPUs, which resulted in a payable to RBC that was settled upon receipt of Nasdaq Earn-out shares. The fair value of the Nasdaq common shares that Newmark received was \$121.9 million. On November 30, 2020, Newmark settled the second Nasdaq Forward 741,505 Nasdaq shares, with a fair value of \$93.5 million and Newmark retained 250,742 Nasdaq shares.

In September 2019, the SPV notified RBC of its decision to settle the first Nasdaq Forward using the Nasdaq shares the SPV received in November 2019 in exchange for the first tranche of the EPUs, which resulted in a payable to RBC that was settled upon receipt of Nasdaq Earn-out shares. The fair value of the Nasdaq shares that Newmark received was \$98.6 million.

On December 2, 2019, Newmark settled the first Nasdaq forward contract with 898,685 Nasdaq shares, with a fair value of \$93.5 million and Newmark retained 93,562 Nasdaq shares.

Acceleration of Nasdaq Earn-out

On February 2, 2021, Nasdaq announced that it entered into a definitive agreement to sell its U.S. fixed income business to Tradeweb. On June 25, 2021, Nasdaq announced the close of the sale of its U.S. fixed income business, which accelerated Newmark's receipt of Nasdaq shares. Newmark received 6,222,340 Nasdaq shares, with a fair value of \$1,093.9 million based on the closing price on June 30, 2021 included in "Other (loss) income, net" for the year ended December 31, 2021 on the accompanying consolidated statement of operations. As of December 31, 2021, Newmark has 2,497,831 Nasdaq shares, with a fair value of \$524.6 million.

On June 25, 2021, the SPV notified RBC of its decision to settle the third and fourth Nasdaq Forwards using the Nasdaq shares the SPV received on June 25, 2021. On July 2, 2021, Newmark settled the third and the fourth Nasdaq Forwards with 944,329 Nasdaq shares, with a fair value of \$166.0 million based on the closing price of June 30, 2021.

2021 Equity Event and Share Count Reduction

In connection with the acceleration of the Nasdaq Earn-out, on June 28, 2021, the Compensation Committee of Newmark's Board of Directors (the "Compensation Committee") approved a plan to expedite the tax deductible exchange and redemption of a substantial number of limited partnership units held by partners of the Company (the "2021 Equity Event"). The 2021 Equity Event also accelerated certain compensation expenses resulting in \$428.6 million of compensation charges. These charges, along with the use of \$101.0 million of net deferred tax assets, are expected to offset a significant percentage of the Company's taxes related to the 2021 Equity Event. These partnership units were settled using a \$12.50 share price. In July 2021, the Compensation Committee approved increasing to \$13.01 the price to settle certain units.

Some of the key components of the 2021 Equity Event are as follows:

- 8.3 million and 8.0 million compensatory limited partnership units, respectively, of Newmark Holdings and BGC Holdings, L.P. ("BGC Holdings") held by the Company's partners who are employees were redeemed or exchanged.
- 23.2 million and 17.4 million compensatory limited partnership units, respectively, of Newmark Holdings and BGC Holdings held by the Company's partners who are independent contractors were redeemed or exchanged. The Company also accelerated the payment of related withholding taxes to them with respect to their Newmark units. Independent contractors received one BGC Class A common share for each redeemed non-preferred BGC unit or cash and are responsible for paying any related withholding taxes.
- Partners with nonexchangeable non-preferred compensatory units exchanged or redeemed in connection with the 2021 Equity Event generally received restricted Class A common shares of Newmark and/or BGC to the extent tax deductible. A portion of the BGC Class A common shares received by independent contractors were unrestricted to facilitate their payment of withholding taxes.
- The issuance of Newmark Class A common stock related to the 2021 Equity Event reflected the June 30, 2021 exchange ratio of 0.9403.
- Newmark Holdings and BGC Holdings limited partnership interests with rights to convert into HDUs for cash were also redeemed in connection with the 2021 Equity Event.

See Note 27 — "Related Party Transactions" for the transactions with the Company's executive officers in connection with the 2021 Equity Event.

(a) Basis of Presentation

The accompanying consolidated financial statements have been prepared pursuant to the rules and regulations of the U.S. Securities and Exchange Commission and in conformity with accounting principles generally accepted in the U.S. ("U.S. GAAP"). For the year ended December 31, 2019, Newmark changed the line item formerly known as "Allocations of net income and grant of exchangeability to limited partnership units and FPU's and issuance of common stock" to "Equity-based compensation and allocations of net income to limited partnership units and FPU's" on the accompanying consolidated statements of operations and statements of cash flow. The change resulted in the reclassification of amortization charges related to equity-based awards, such as REUs and Restricted Stock Units ("RSUs"), from "Compensation and employee benefits" to

“Equity-based compensation and allocations of net income to limited partnership units and FPU.”

“Equity-based compensation and allocations of net income to limited partnership units and FPU.” reflect the following items related to cash and equity-based compensation:

- Charges with respect to the grant of shares of common stock or limited partnership units, such as HDUs, including in connection with the redemption of non-exchangeable limited partnership units, including PSUs;
- Charges with respect to grants of exchangeability, such as the right of holders of limited partnership units with no capital accounts, such as PSUs, to exchange the units into shares of common stock, or HDUs, as well as the cash paid in the settlement of the related exchangeable preferred units to pay withholding taxes owed by the unit holder upon such exchange;
- Preferred units are granted in connection with the grant of certain limited partnership units, such as PSUs, that may be granted exchangeability to cover the withholding taxes owed by the unit holder, rather than issuing the gross amount of shares to employees, subject to cashless withholding of shares to pay applicable withholding taxes;
- Charges related to the amortization of RSUs and REUs; and
- Allocations of net income to limited partnership units and founding/working partner units (“FPU”), including the Preferred Distribution (as hereinafter defined).

Intercompany balances and transactions within Newmark have been eliminated. Transactions between Cantor Fitzgerald, L.P. (“Cantor”) and Newmark pursuant to service agreements with Cantor (see Note 27 — “Related Party Transactions”), representing valid receivables and liabilities of Newmark which are periodically cash settled, have been included on the accompanying consolidated financial statements as either receivables from or payables to related parties.

Newmark receives administrative services to support its operations, and in return, Cantor allocates certain of its expenses to Newmark. Such expenses represent costs related, but not limited to, treasury, legal, accounting, information technology, payroll administration, human resources, incentive compensation plans and other services. These costs, together with an allocation of Cantor’s overhead costs, are included as expenses on the accompanying consolidated statements of operations. Where it is possible to specifically attribute such expenses to activities of Newmark, these amounts have been expensed directly to Newmark. Allocation of all other such expenses is based on a services agreement between Cantor which reflects the utilization of service provided or benefits received by Newmark during the periods presented on a consistent basis, such as headcount, square footage, revenue, etc. Management believes the assumptions underlying the stand-alone financial statements, including the assumptions regarding allocated expenses, reasonably reflect the utilization of services provided to or the benefit received by Newmark during the periods presented. However, these shared expenses may not represent the amounts that would have been incurred had Newmark operated independently from Cantor. Actual costs that would have been incurred if Newmark had performed the services itself would depend on multiple factors, including organizational structure and strategic decisions in various areas, including information technology and infrastructure (see Note 27 — “Related Party Transactions” for an additional discussion of expense allocations).

Transfers of cash, both to and from Cantor, as well as amounts due to Newmark from BGC are included in “Receivables from related parties or Payables to related parties” on the accompanying consolidated balance sheets and as part of the change in payments to and borrowings from related parties in the financing section prior to the Spin-Off and in the operating section after the Spin-Off on the accompanying consolidated statements of cash flows.

The income tax provision on the accompanying consolidated statements of operations and consolidated statements of comprehensive income has been calculated as if Newmark had been operating on a stand-alone basis and filed separate tax returns in the jurisdictions in which it operates. Prior to the Spin-Off, Newmark’s operations had been included in the BGC U.S. federal and state tax returns or separate non-U.S. jurisdictions tax returns. As Newmark operations in many jurisdictions were unincorporated commercial units of BGC and its subsidiaries, stand-alone tax returns have not been filed for the operations in these jurisdictions.

The accompanying consolidated financial statements contain all normal and recurring adjustments that, in the opinion of management, are necessary for a fair presentation of the accompanying consolidated balance sheets, consolidated statements of operations, consolidated statements of comprehensive income, consolidated statements of cash flows and consolidated statements of changes in equity of Newmark for the periods presented.

(b) Recently Adopted Accounting Pronouncements

In February 2016, the Financial Accounting Standards Board (“FASB”) issued ASU No. 2016-02, *Leases (Topic 842)*. This standard requires lessees to recognize a Right-of-use (“ROU”) asset and lease liability for all leases with terms of more

than 12 months. Recognition, measurement and presentation of expenses will depend on classification as a finance or operating lease. The amendments also require certain quantitative and qualitative disclosures. Accounting guidance for lessors is mostly unchanged. In July 2018, the FASB issued ASU No. 2018-10, *Codification Improvements to Topic 842, Leases*, to clarify how to apply certain aspects of the new leases standard. The amendments address the rate implicit in the lease, impairment of the net investment in the lease, lessee reassessment of lease classification, lessor reassessment of lease term and purchase options, variable payments that depend on an index or rate and certain transition adjustments, among other issues. In addition, in July 2018, the FASB issued ASU No. 2018-11, *Leases (Topic 842), Targeted Improvements*, which provided an additional (and optional) transition method to adopt the new leases standard. Under the new transition method, a reporting entity would initially apply the new lease requirements at the effective date and recognize a cumulative-effect adjustment to the opening balance of retained earnings in the period of adoption; continue to report comparative periods presented in the financial statements in the period of adoption in accordance with legacy U.S. GAAP (i.e., ASC 840, *Leases*); and provide the required disclosures under ASC 840 for all periods presented under legacy U.S. GAAP. Further, ASU No. 2018-11 contains a practical expedient that allows lessors to avoid separating lease and associated non-lease components within a contract if certain criteria are met. In December 2018, the FASB issued ASU No. 2018-20, *Leases (Topic 842), Narrow-Scope Improvements for Lessors*, to clarify guidance for lessors on sales taxes and other similar taxes collected from lessees, certain lessor costs and recognition of variable payments for contracts with lease and non-lease components. In March 2019, the FASB issued ASU No. 2019-01, *Leases (Topic 842), Codification Improvements*, to clarify certain application and transitional disclosure aspects of the new leases standard. The amendments address determination of the fair value of the underlying asset by lessors that are not manufacturers or dealers and clarify interim period transition disclosure requirements, among other issues. The guidance in ASUs No. 2016-02, 2018-10, 2018-11 and 2018-20 was effective beginning January 1, 2019, with early adoption permitted; whereas the guidance in ASU No. 2019-01 is effective beginning January 1, 2020, with early adoption permitted. Newmark adopted the above mentioned standards on January 1, 2019 using the effective date as the date of initial application. Therefore, pursuant to this transition method, financial information was not updated, and the disclosures required under the new leases standards were not provided for dates and periods before January 1, 2019. The guidance provides a number of optional practical expedients to be utilized by lessees upon transition. Accordingly, Newmark elected the “package of practical expedients,” which permitted Newmark not to reassess under the new standard its prior conclusions about lease identification, lease classification and initial direct costs. Newmark did not elect the use-of-hindsight or the practical expedient pertaining to land easements, with the latter not being applicable to Newmark. The new standard also provides practical expedients for an entity’s ongoing accounting as a lessee. Newmark elected the short-term lease recognition exemption for all leases that qualify. This means, for those leases that qualify, Newmark will not recognize ROU assets and lease liabilities, and this includes not recognizing ROU assets and lease liabilities for existing short-term leases of those assets upon transition. Newmark also elected the practical expedient to not separate lease and non-lease components for all leases other than leases of real estate. The primary non-lease component that is combined with a lease component represents operating expenses such as utilities, maintenance or management fees. As a result, upon adoption, acting primarily as a lessee, Newmark recognized a \$178.8 million ROU asset, net of tenant improvements, and a \$226.7 million lease liability on the accompanying consolidated balance sheets for its real estate operating leases. The adoption of the guidance did not have a material impact on the accompanying consolidated statements of operations, consolidated statements of changes in equity and consolidated statements of cash flows. See Note 18 — “Leases” for additional information on Newmark’s leasing arrangements.

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments-Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, which requires financial assets that are measured at amortized cost to be presented, net of an allowance for credit losses, at the amount expected to be collected over their estimated life. Expected credit losses for newly recognized financial assets, as well as changes to credit losses during the period, are recognized in earnings. For certain purchased financial assets with deterioration in credit quality since origination (“PCD assets”), the initial allowance for expected credit losses will be recorded as an increase to the purchase price. Expected credit losses, including losses on off-balance-sheet exposures, such as lending commitments, will be measured based on historical experience, current conditions, and reasonable and supportable forecasts that affect the collectability of the reported amount. In November 2018, the FASB issued ASU No. 2018-19, *Codification Improvements to Topic 326, Financial Instruments-Credit Losses*, to clarify that operating lease receivables accounted for under ASC 842, *Leases*, are not in the scope of the new credit losses guidance, and, instead, impairment of receivables arising from operating leases should be accounted for in accordance with ASC 842, *Leases*. In April 2019, the FASB issued ASU No. 2019-04, *Codification Improvements to Topic 326, Financial Instruments-Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments*. The ASU makes changes to the guidance introduced or amended by ASU No. 2016-13, *Financial Instruments-Credit Losses (Topic 326)-Measurement of Credit Losses on Financial Instruments*. See below for the description of the amendments stipulated in ASU No. 2019-04. In addition, in May 2019, the FASB issued ASU No. 2019-05, *Financial Instruments-Credit Losses (Topic 326): Targeted Transition Relief*. The amendments in this ASU allow entities, upon adoption of ASU No. 2016-13, to irrevocably elect the fair value option for financial instruments that were previously carried at amortized cost and are eligible for the fair value option under ASC 825-10, *Financial Instruments: Overall*. In November 2019, the FASB issued ASU No. 2019-11, *Codification Improvements to Topic 326, Financial Instruments-Credit Losses*. The amendments in this ASU require entities to include certain expected recoveries of the amortized cost basis previously written off, or expected to be written off, in the allowance for credit losses for PCD assets; provide transition relief related to troubled debt restructurings; allow entities to exclude accrued interest amounts from

certain required disclosures; and clarify the requirements for applying the collateral maintenance practical expedient. The amendments in ASUs No. 2018-19, 2019-04, 2019-05 and 2019-11 are required to be adopted concurrently with the guidance in ASU No. 2016-13. Newmark adopted the standards on their required effective date beginning January 1, 2020. The primary effect of adoption, on a pre-tax basis, resulted in a decrease in assets of \$8.0 million, an increase in liabilities of \$17.9 million and a decrease in retained earnings of \$25.9 million, respectively.

In January 2017, the FASB issued ASU No. 2017-04, *Intangibles-Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment*, which eliminates the requirement to determine the fair value of individual assets and liabilities of a reporting unit to measure goodwill impairment. Under the amendments in the new ASU, goodwill impairment testing will be performed by comparing the fair value of the reporting unit with its carrying amount and recognizing an impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value. Newmark adopted the standard on its required effective date beginning January 1, 2020, and the guidance was applied on a prospective basis starting with the goodwill impairment test during the year ended December 31, 2020. The adoption of the new guidance did not have a material impact on the accompanying consolidated financial statements.

In August 2017, the FASB issued ASU No. 2017-12, *Derivatives and Hedging (Topic 815): Targeted Improvements to Accounting for Hedging Activities*. The guidance intends to better align an entity's risk management activities and financial reporting for hedging relationships through changes to both the designation and measurement guidance for qualifying hedging relationships and the presentation of hedge results. To meet that objective, the amendments expand and refine hedge accounting for both nonfinancial and financial risk components and align the recognition and presentation of the effects of the hedging instrument and the hedged item in the financial statements. In October 2018, the FASB issued ASU No. 2018-16, *Derivatives and Hedging (Topic 815): Inclusion of the Secured Overnight Financing Rate (SOFR) Overnight Index Swap (OIS) Rate as a Benchmark Interest Rate for Hedge Accounting Purposes*. Based on concerns about the sustainability of LIBOR, in 2017, a committee convened by the Federal Reserve Board and the Federal Reserve Bank of New York identified a broad Treasury repurchase agreement (repo) financing rate referred to as the SOFR as its preferred alternative reference rate. The guidance in ASU No. 2018-16 adds the OIS rate based on SOFR as a U.S. benchmark interest rate to facilitate the LIBOR to SOFR transition and provide sufficient lead time for entities to prepare for changes to interest rate risk hedging strategies for both risk management and hedge accounting purposes. The amendments in this ASU were required to be adopted concurrently with the guidance in ASU No. 2017-12. The guidance became effective beginning January 1, 2019 and was required to be applied on a prospective and modified retrospective basis. As Newmark currently does not designate any derivative contracts as hedges for accounting purposes, the adoption of this new guidance did not have a material impact on the accompanying consolidated financial statements.

In February 2018, the FASB issued ASU No. 2018-02, *Income Statement—Reporting Comprehensive Income (Topic 220): Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income*. The guidance helps organizations address certain stranded income tax effects in accumulated other comprehensive income resulting from the Tax Cuts and Jobs Act by providing an option to reclassify these stranded tax effects to retained earnings in each period in which the effect of the change in the U.S. federal corporate income tax rate in the Tax Cuts and Jobs Act (or portion thereof) is recorded. The standard became effective for Newmark on January 1, 2019. The guidance was required to be applied either in the period of adoption or retrospectively to each period (or periods) in which the effect of the change in the U.S. federal corporate income tax rate in the Tax Cuts and Jobs Act is recognized. The adoption of the new guidance did not have a material impact on the accompanying consolidated financial statements.

In June 2018, the FASB issued ASU No. 2018-07, *Compensation—Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting*. The guidance largely aligns the accounting for share-based payment awards issued to employees and nonemployees, whereby the existing employee guidance will apply to nonemployee share-based transactions (as long as the transaction is not effectively a form of financing), with the exception of specific guidance related to the attribution of compensation cost. The cost of nonemployee awards will continue to be recorded as if the grantor had paid cash for the goods or services. In addition, the contractual term will be able to be used in lieu of an expected term in the option-pricing model for nonemployee awards. The standard became effective for Newmark on January 1, 2019. The ASU was required to be applied on a prospective basis to all new awards granted after the date of adoption. In addition, any liability-classified awards that were not settled and equity-classified awards for which a measurement date had not been established by the adoption date were remeasured at fair value as of the adoption date with a cumulative effect adjustment to opening retained earnings in the year of adoption. Newmark adopted this standard on its effective date. The adoption of the new guidance did not have a material impact on the accompanying consolidated financial statements.

In August 2018, the FASB issued ASU No. 2018-13, *Fair Value Measurement (Topic 820): Disclosure Framework—Changes to the Disclosure Requirements for Fair Value Measurement*. The guidance is part of the FASB's disclosure framework project, whose objective and primary focus are to improve the effectiveness of disclosures in the notes to financial statements. The ASU eliminates, amends and adds certain disclosure requirements for fair value measurements. The FASB

concluded that these changes improve the overall usefulness of the footnote disclosures for financial statement users and reduce costs for preparers. Certain disclosures are required to be applied prospectively and other disclosures need to be adopted retrospectively in the period of adoption. As permitted by the transition guidance in the ASU, Newmark early adopted eliminated and modified disclosure requirements as of September 30, 2018. The early adoption of this standard did not have an impact on the accompanying consolidated financial statements. The additional disclosure requirements were adopted by Newmark beginning January 1, 2020, and the adoption of these fair value measurement disclosures did not have an impact on Newmark's accompanying consolidated financial statements. See Note 26 — "Fair Value of Financial Assets and Liabilities" for additional information.

In August 2018, the FASB issued ASU No. 2018-15, *Intangibles-Goodwill and Other-Internal-Use Software (Subtopic 350-40): Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract (a consensus of the FASB Emerging Issues Task Force)*. The guidance on the accounting for implementation, setup, and other upfront costs (collectively referred to as implementation costs) applies to entities that are a customer in a hosting arrangement that is a service contract. The amendments align the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software (and hosting arrangements that include an internal-use software license). The accounting for the service element of a hosting arrangement that is a service contract is not affected by the guidance in this ASU. The new standard became effective beginning January 1, 2020. The adoption of this guidance did not have a material impact on the accompanying consolidated financial statements.

In October 2018, the FASB issued ASU No. 2018-17, *Consolidation (Topic 810): Targeted Improvements to Related Party Guidance for Variable Interest Entities*. The guidance was issued in response to stakeholders' observations that Topic 810, *Consolidation*, could be improved in the areas of applying the variable interest entity guidance to private companies under common control and in considering indirect interests held through related parties under common control for determining whether fees paid to decision makers and service providers are variable interests. The new standard became effective beginning January 1, 2020, with early adoption permitted, and must be applied retrospectively with a cumulative-effect adjustment to retained earnings at the beginning of the earliest period presented. Newmark adopted the standard on its effective date beginning January 1, 2020. The adoption of this guidance did not have a material impact on the accompanying consolidated financial statements.

In April 2019, the FASB issued ASU No. 2019-04, *Codification Improvements to Topic 326, Financial Instruments-Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments*. The ASU amends guidance introduced or amended by ASU No. 2016-13, *Financial Instruments-Credit Losses (Topic 326)-Measurement of Credit Losses on Financial Instruments*, ASU No. 2017-12, *Derivatives and Hedging (Topic 815): Targeted Improvements to Accounting for Hedging Activities*, and ASU No. 2016-01, *Financial Instruments-Overall (Subtopic 825-10): Recognition and Measurement of Financial Assets and Financial Liabilities*. The amendments to ASU No. 2016-13 clarify the scope of the credit losses standard and address guidance related to accrued interest receivable balances, recoveries, variable interest rates and prepayments, among other issues. With respect to amendments to ASU No. 2017-12, the guidance addresses partial-term fair value hedges, fair value hedge basis adjustments, and certain transition requirements, along with other issues. The clarifying guidance pertaining to ASU No. 2016-01 requires an entity to remeasure an equity security without a readily determinable fair value accounted for under the measurement alternative at fair value in accordance with guidance in ASC 820, *Fair Value Measurement*; specifies that equity securities without a readily determinable fair value denominated in nonfunctional currency must be remeasured at historical exchange rates; and provides fair value measurement disclosure guidance. Newmark adopted this standard on the required effective date beginning January 1, 2020. The adoption of the hedge accounting and the recognition and measurement guidance amendments did not have a material impact on the accompanying consolidated financial statements. See above for the impact of adoption of the amendments related to the credit losses standard.

In July 2019, the FASB issued ASU No. 2019-07, *Codification Updates to SEC Sections-Amendments to SEC Paragraphs Pursuant to SEC Final Rule Releases No. 33-10532, Disclosure Update and Simplification, and Nos. 33-10231 and 33-10442, Investment Company Reporting Modernization, and Miscellaneous Updates*. The guidance clarifies or improves the disclosure and presentation requirements of a variety of codification topics by aligning them with already effective SEC final rules, thereby eliminating redundancies and making the codification easier to apply. This ASU was effective upon issuance and did not have a material impact on the accompanying consolidated financial statements and related disclosures.

In November 2019, the FASB issued ASU No. 2019-08, *Compensation-Stock Compensation (Topic 718) and Revenue from Contracts with Customers (Topic 606): Codification Improvements-Share-Based Consideration Payable to a Customer*. The ASU simplifies and increases comparability of accounting for nonemployee share-based payments, specifically those made to customers. Under the new guidance, such awards will be accounted for as a reduction of the transaction price in revenue, but should be measured and classified following the stock compensation guidance in ASC 718, *Compensation-Stock Compensation*.

Newmark adopted standard on the required effective date beginning January 1, 2020. The adoption of this guidance did not have a material impact on the accompanying consolidated financial statements.

In March 2020, the FASB issued ASU No. 2020-03, *Codification Improvements to Financial Instruments*. This ASU makes narrow-scope amendments related to various aspects pertaining to financial instruments and related disclosures by clarifying or improving the Codification. For the most part, the guidance was effective upon issuance, and the adoption of the standard did not have a material impact on the accompanying consolidated financial statements.

In December 2019, the FASB issued ASU No. 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*. The ASU is part of the FASB's simplification initiative, and it is expected to reduce cost and complexity related to accounting for income taxes by eliminating certain exceptions to the guidance in ASC 740, *Income Taxes* related to the approach for intraperiod tax allocation, the methodology for calculating income taxes in an interim period and the recognition of deferred tax liabilities for outside basis differences. The new guidance also simplifies aspects of the accounting for franchise taxes and enacted changes in tax laws or rates, and clarifies the accounting for transactions that result in a step-up in the tax basis of goodwill. Newmark adopted the standard on the required effective date beginning January 1, 2021 and, with certain exceptions, it was applied prospectively. The adoption of this guidance did not have a material impact on the accompanying consolidated financial statements.

In January 2020, the FASB issued ASU No. 2020-01, *Investments—Equity Securities (Topic 321), Investments—Equity Method and Joint Ventures (Topic 323), and Derivatives and Hedging (Topic 815)—Clarifying the Interactions between Topic 321, Topic 323, and Topic 815 (a consensus of the FASB Emerging Issues Task Force)*. These amendments improve previous guidance by reducing diversity in practice and increasing comparability of the accounting for the interactions between these codification topics as they pertain to certain equity securities, investments under the equity method of accounting and forward contracts or purchased options to purchase securities that, upon settlement of the forward contract or exercise of the purchased option, would be accounted for under the equity method of accounting or the fair value option. Newmark adopted the standard on the required effective date beginning January 1, 2021 on a prospective basis. The adoption of this guidance did not have a material impact on the accompanying consolidated financial statements.

In October 2020, the FASB issued ASU No. 2020-10, *Codification Improvements*. The standard amends the Codification by moving existing disclosure requirements to (or adding appropriate references in) the relevant disclosure sections. The ASU also clarifies various provisions of the Codification by amending and adding new headings, cross-referencing, and refining or correcting terminology. Newmark adopted the standard on the required effective date beginning January 1, 2021 and was applied using a modified retrospective method of transition. The adoption of this guidance did not have a material impact on the accompanying consolidated financial statements.

(c) New Accounting Pronouncements

In March 2020, the FASB issued ASU No. 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting*. The guidance is designed to provide relief from the accounting analysis and impacts that may otherwise be required for modifications to agreements (e.g., loans, debt securities, derivatives, and borrowings) necessitated by reference rate reform as entities transition away from the London Interbank Offered Rate ("LIBOR") and other interbank offered rates to alternative reference rates. This ASU also provides optional expedients to enable companies to continue to apply hedge accounting to certain hedging relationships impacted by reference rate reform. Application of the guidance is optional and only available in certain situations. The ASU is effective upon issuance and generally can be applied through December 31, 2022. In January 2021, the FASB issued ASU No. 2021-01, *Reference Rate Reform (Topic 848): Scope*. The amendments in this standard are elective and principally apply to entities that have derivative instruments that use an interest rate for margining, discounting, or contract price alignment that is modified as a result of reference rate reform (referred to as the "discounting transition"). The standard expands the scope of ASC 848, *Reference Rate Reform* and allows entities to elect optional expedients to derivative contracts impacted by the discounting transition. Similar to ASU No. 2020-04, provisions of this ASU are effective upon issuance and generally can be applied through December 31, 2022. Management is evaluating and planning for adoption of the new guidance, including forming a cross-functional LIBOR transition team to determine Newmark's transition plan and facilitate an orderly transition to alternative reference rates, and continuing its assessment on the accompanying consolidated financial statements.

In August 2020, the FASB issued ASU No. 2020-06, *Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*. The standard is expected to reduce complexity and improve comparability of financial reporting associated with accounting for convertible instruments and contracts in an entity's own equity. The ASU also enhances information transparency by making targeted improvements to the related disclosures guidance. Additionally, the amendments affect the diluted EPS calculation for instruments that may be settled in cash or shares and for

convertible instruments. The new standard became effective for Newmark beginning January 1, 2022 and can be applied using either a modified retrospective or a fully retrospective method of transition. The adoption of this guidance is not expected to have a material impact on the accompanying consolidated financial statements.

In October 2021, the FASB issued ASU No. 2021-08, *Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers*. The standard improves the accounting for acquired revenue contracts with customers in a business combination by addressing diversity in practice and inconsistency related to the recognition of an acquired contract liability, as well as payment terms and their effect on subsequent revenue recognized by the acquirer. The ASU requires companies to apply guidance in ASC 606, *Revenue from Contracts with Customers*, to recognize and measure contract assets and contract liabilities from contracts with customers acquired in a business combination, and, thus, creates an exception to the general recognition and measurement principle in ASC 805, *Business Combinations*. The new standard will become effective for Newmark beginning January 1, 2023, can be applied prospectively for business combinations occurring on or after the effective date, and early adoption is permitted. Management is currently evaluating the impact of the new standard on the accompanying consolidated financial statements.

In November 2021, the FASB issued ASU No. 2021-10, *Government Assistance (Topic 832): Disclosures by Business Entities about Government Assistance*. The standard requires business entities to make annual disclosures about transactions with a government they account for by analogizing to a grant or contribution accounting model. The guidance is aimed at increasing transparency about government assistance transactions that are not in the scope of other U.S. GAAP guidance. The ASU requires disclosure of the nature and significant terms and considerations of the transactions, the accounting policies used and the effects of those transactions on an entity's financial statements. The new standard will become effective for Newmark's financial statements issued for annual reporting periods beginning on January 1, 2022, can be applied prospectively or retrospectively, and early adoption is permitted. Management is currently evaluating the impact of the new standard on the accompanying consolidated financial statements.

(2) Limited Partnership Interests in Newmark Holdings and BGC Holdings

Newmark is a holding company with no direct operations and conducts substantially all of its operations through its operating subsidiaries. Virtually all of Newmark's consolidated net assets and net income are those of consolidated variable interest entities. Newmark Holdings is a consolidated subsidiary of Newmark for which Newmark is the general partner. Newmark and Newmark Holdings jointly own Newmark OpCo, the operating partnership. In connection with the Separation and BGC Holdings Distribution, holders of BGC Holdings partnership interests received partnership interests in Newmark Holdings, described below (see Note 27 — "Related Party Transactions"). These collectively represent all of the "limited partnership interests" in BGC Holdings and Newmark Holdings.

As a result of the Separation, the limited partnership interests in Newmark Holdings were distributed to the holders of limited partnership interests in BGC Holdings, whereby each holder of BGC Holdings limited partnership interests at that time received a corresponding Newmark Holdings limited partnership interest, determined by the contribution ratio (as hereafter defined), which was equal to a BGC Holdings limited partnership interest multiplied by one divided by 2.2 (the "contribution ratio"), divided by the exchange ratio (which is the ratio by which a Newmark Holdings limited partnership interest can be exchanged for a number of shares of Newmark Class A common stock (the "exchange ratio")). Initially, the exchange ratio equaled one, so that each Newmark Holdings limited partnership interest was exchangeable for one share of Newmark Class A common stock; however, such exchange ratio is subject to adjustment. For reinvestment, acquisition or other purposes, Newmark may determine on a quarterly basis to distribute to its stockholders a smaller percentage of its income than Newmark Holdings distributes to its equity holders (excluding tax distributions from Newmark Holdings) of the cash that it received from Newmark OpCo. In such circumstances, the Separation and Distribution Agreement provides that the exchange ratio will be reduced to reflect the amount of additional cash retained by Newmark as a result of the distribution of such smaller percentage, after the payment of taxes. As of December 31, 2021, the exchange ratio equaled 0.9444.

Redeemable Partnership Interests

Founding/working partners have limited partnership interests ("FPU's") in BGC Holdings and Newmark Holdings. Newmark accounts for FPU's outside of permanent capital as "Redeemable partnership interests," on the accompanying consolidated balance sheets. This classification is applicable to FPU's because these units are redeemable upon termination of a partner, including a termination of employment, which can be at the option of the partner and not within the control of the issuer.

FPU's are held by limited partners who are primarily employees of BGC and generally receive quarterly allocations of net income. Upon termination of employment or otherwise ceasing to provide substantive services, the FPU's are generally

redeemed, and the unit holders are no longer entitled to participate in the quarterly allocations of net income. These quarterly allocations of net income are contingent upon services being provided by the unit holder and are reflected as a component of compensation expense under “Equity-based compensation and allocations of net income to limited partnership units and FPU” on the accompanying consolidated statements of operations to the extent they relate to FPU held by Newmark employees.

Limited Partnership Units

Certain employees of Newmark hold limited partnership interests in Newmark Holdings and BGC Holdings (e.g., REUs, RPU, PSU, PSI, HDU, and LPU, collectively the “limited partnership units”).

Prior to the Separation, certain employees of both BGC and Newmark generally received limited partnership units in BGC Holdings. As a result of the Separation, these employees were distributed limited partnership units in Newmark Holdings equal to a BGC Holdings limited partnership unit multiplied by the contribution ratio. In addition, in the BGC Holdings Distribution, these employees also received additional limited partnership units in Newmark Holdings. Subsequent to the Separation, Newmark employees generally have been granted limited partnership units in Newmark Holdings.

Generally, such limited partnership units receive quarterly allocations of net income and generally are contingent upon services being provided by the unit holders. As prescribed in U.S. GAAP guidance, prior to the Spin-Off, the quarterly allocations of net income on such limited partnership units were reflected as a component of compensation expense under “Equity-based compensation and allocations of net income to limited partnership units and FPU” on the accompanying consolidated statements of operations. Following the Spin-Off, the quarterly allocations of net income on BGC Holdings and Newmark Holdings limited partnership units held by Newmark employees are reflected as a component of compensation expense under “Equity-based compensation and allocations of net income to limited partnership units and FPU” on the accompanying consolidated statements of operations, and the quarterly allocations of net income on Newmark Holdings limited partnership units held by BGC employees are reflected as a component of “Net income (loss) attributable to noncontrolling interests” on the accompanying consolidated statements of operations. From time to time, Newmark issues limited partnership units as part of the consideration for acquisitions.

Certain of these limited partnership units held by Newmark and BGC employees entitle the holders to receive post-termination payments equal to the notional amount of the units in four equal yearly installments after the holder’s termination. These limited partnership units are accounted for as post-termination liability awards and are included on the accompanying consolidated balance sheets as part of “Accrued compensation”, and in accordance with U.S. GAAP guidance, Newmark records compensation expense for the awards based on the change in value at each reporting date on the accompanying consolidated statements of operations as part of “Equity-based compensation and allocations of net income to limited partnership units and FPU.”

Certain Newmark employees hold preferred partnership units (“Preferred Units”). Each quarter, the net profits of Newmark Holdings are allocated to such units at a rate of either 0.6875% (which is 2.75% per calendar year) or such other amount as set forth in the award documentation (the “Preferred Distribution”). These allocations are deducted before the calculation and distribution of the quarterly partnership distribution for the remaining partnership units and are generally contingent upon services being provided by the unit holder. The Preferred Units are not entitled to participate in partnership distributions other than with respect to the Preferred Distribution. Preferred Units may not be made exchangeable into Newmark’s Class A common stock and are only entitled to the Preferred Distribution, and accordingly are not included in Newmark’s fully diluted share count. The quarterly allocations of net income on Preferred Units are reflected in compensation expense under “Equity-based compensation and allocations of net income to limited partnership units and FPU” on the accompanying consolidated statements of operations. After deduction of the Preferred Distribution, the remaining partnership units generally receive quarterly allocation of net income based on their weighted-average pro rata share of economic ownership of the operating subsidiaries. In addition, Preferred Units are granted in connection with the grant of certain limited partnership units, such as PSU, that may be granted exchangeability to cover the withholding taxes owed by the unit holder, rather than issuing the gross amount of shares to employees, subject to cashless withholding of shares to pay applicable withholding taxes.

Certain Newmark employees hold non-distribution earning units (e.g. NPSU and NREU, collectively “N Units”) that do not participate in quarterly partnership distributions and are not allocated any items of profit or loss. N Units become distribution earning limited partnership units, ratably over a four-year vesting term, if certain revenue thresholds are met at the end of each vesting term.

Cantor Units

Cantor holds limited partnership interests in Newmark Holdings (“Cantor units”). Cantor units are reflected as a component of “Noncontrolling interests” on the accompanying consolidated balance sheets. Cantor receives quarterly allocations of net income (loss) and are reflected as a component of “Net income (loss) attributable to noncontrolling interests” on the accompanying consolidated statements of operations.

Exchangeable Preferred Limited Partnership Units

The EPU were issued in four tranches and are separately convertible by either RBC or Newmark into a fixed number of Newmark’s Class A common stock, subject to a revenue hurdle for Newmark in each of the fourth quarters of 2019 through 2022 for each of the four tranches, respectively. As the EPU represent equity ownership of a consolidated subsidiary of Newmark, they have been included in “Noncontrolling interests” on the consolidated statements of changes in equity. The EPU are entitled to a preferred payable-in-kind dividend, which is recorded as accretion to the carrying amount of the EPU through retained earnings on the accompanying consolidated statements of changes in equity and are reductions to “Net income available to common stockholders” for the purpose of calculating earnings per share. (See Note 1 — “Organization and Basis of Presentation” for additional information). As of December 31, 2021, there were no EPU outstanding.

General

Certain of the limited partnership interests, described above, have been granted exchangeability into BGC and/or Newmark Class A common stock, and additional limited partnership interests may become exchangeable for BGC and/or Newmark Class A common stock. At the time exchangeability is granted, Newmark recognizes an expense based on the fair value of the award on that date, which is included in “Equity-based compensation and allocations of net income to limited partnership units and FPU” on the accompanying consolidated statements of operations. In addition, certain limited partnership interests have been granted the right to exchange into a Newmark partnership unit with a capital account, such as HDU. HDU have a stated capital account which is initially based on the closing trading price of Newmark Class A common stock at the time the HDU is granted and are included in “Accrued Compensation” on the accompanying consolidated balance sheets. HDU participate in quarterly partnership distributions and are not exchangeable into shares of Class A common stock. Limited partnership interests held by Cantor in Newmark Holdings as of December 31, 2021 are exchangeable for 24.6 million shares of Newmark Class B common stock. Subsequent to the Spin-Off, limited partnership interests in BGC Holdings held by a partner or Cantor may become exchangeable for BGC Class A or Class B common stock on a one-for-one basis, and limited partnership interests in Newmark Holdings held by a partner or Cantor may become exchangeable for a number of shares of Newmark Class A or Class B common stock equal to the number of limited partnership interests multiplied by the exchange ratio at that time. As of December 31, 2021, the exchange ratio equaled 0.9444.

Each quarter, net income (loss) is allocated between the limited partnership interests and the common stockholders. In quarterly periods in which Newmark has a net loss, the loss is allocated to Cantor and reflected as a component of “Net income (loss) attributable to noncontrolling interests” on the accompanying consolidated statements of operations. In subsequent quarters in which Newmark has net income, the initial allocation of income to the limited partnership interests is allocated to Cantor, and reflected in, “Net income (loss) attributable to noncontrolling interests,” to recover any losses taken in earlier quarters, with the remaining income allocated to the limited partnership interests. This loss allocation process between limited partners and Cantor has no material impact on the net income (loss) allocated to common stockholders.

(3) Summary of Significant Accounting Policies

Use of Estimates:

The preparation of Newmark’s consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of the assets and liabilities, revenues and expenses, and the disclosure of contingent assets and liabilities on the accompanying consolidated financial statements. Management believes that the estimates utilized in preparing these consolidated financial statements are reasonable. Estimates, by their nature, are based on judgment and available information. Actual results could differ materially from the estimates included on the accompanying consolidated financial statements.

Equity Investments and Marketable Securities:

In accordance with the guidance on recognition and measurement of equity investments, Newmark carries its marketable equity securities at fair value and recognizes any changes in fair value in consolidated net income (loss). Further, Newmark has elected to use a measurement alternative for its equity investments without a readily determinable fair value, pursuant to which these investments are initially recognized at cost and remeasured through earnings when there is an observable transaction involving the same or similar investment of the same issuer, or due to an impairment. Newmark’s

investments, in which it has significant influence but not a controlling financial interest and of which it is not the primary beneficiary, are accounted for under the equity method. (See Note 8 — “Investments” for additional information).

Revenue Recognition:

The accounting policies described below were updated pursuant to the adoption of the U.S. GAAP standard on *Revenue from Contracts with Customers* and related amendments on January 1, 2018. These revenue recognition policy updates have been applied prospectively in the accompanying consolidated financial statements from January 1, 2018 onward.

Commissions:

Commissions from real estate lease brokerage transactions are typically recognized at a point in time on the date the lease is signed, if deemed not subject to significant reversal. The date the lease is signed represents the transfer of control and satisfaction of the performance obligation as the tenant has been secured. Commission payments may be due entirely upon lease execution or may be paid in installments upon the resolution of a future contingency (e.g. tenant move-in or payment of first month's rent).

Commission revenues from real estate sales brokerage transactions are recognized at the time the service has been provided and the commission becomes legally due, except when future contingencies exist. In most cases, close of escrow or transfer of title is a future contingency, and revenue recognition is deferred until all contingencies are satisfied.

Gains from Mortgage Banking Activities/Originations, net:

Gains from mortgage banking activities/originations, net are recognized when a derivative asset or liability is recorded upon the commitment to originate a loan with a borrower and sell the loan to an investor. The derivative is recorded at fair value and includes loan origination fees, sales premiums and the estimated fair value of the expected net servicing cash flows. Gains from mortgage banking activities/originations, net are recognized net of related fees and commissions to third-party brokers.

Management Services, Servicing Fees and Other:

Management services revenues include property management, facilities management, project management and valuation and appraisal. Management fees are recognized at the time the related services have been performed, unless future contingencies exist. In addition, in regard to management and facility service contracts, the owner of the property will typically reimburse Newmark for certain expenses that are incurred on behalf of the owner, which comprise primarily on-site employee salaries and related benefit costs. The amounts which are to be reimbursed per the terms of the services contract are recognized as revenue in the same period as the related expenses are incurred. In certain instances, Newmark subcontracts property management services to independent property managers, in which case Newmark passes a portion of its property management fee on to the subcontractor, and Newmark retains the balance. Accordingly, Newmark records these fees gross of the amounts paid to subcontractors, and the amounts paid to subcontractors are recognized as expenses in the same period.

Newmark also uses third party service providers in the provision of its services to customers. In instances where a third-party service provider is used, Newmark performs an analysis to determine whether it is acting as a principal or an agent with respect to the services provided. To the extent that Newmark determines that it is acting as a principal, the revenue and the expenses incurred are recorded on a gross basis. In instances where Newmark has determined that it is acting as an agent, the revenue and expenses are presented on a net basis within the revenue line item.

In some instances, Newmark performs services for customers and incurs out-of-pocket expenses as part of delivering those services. Newmark's customers agree to reimburse Newmark for those expenses, and those reimbursements are part of the contract's transaction price. Consequently, these expenses and the reimbursements of such expenses from the customer are presented on a gross basis because the services giving rise to the out-of-pocket expenses do not transfer a good or service. The reimbursements are included in the transaction price when the costs are incurred, and the reimbursements are due from the customer.

Servicing fees are earned for servicing mortgage loans and are recognized on an accrual basis over the lives of the related mortgage loans. Also included in servicing fees are the fees earned on prepayments, interest and placement fees on borrowers' escrow accounts and other ancillary fees.

Other revenues include interest income on warehouse notes receivable.

Fees to Related Parties:

Newmark is allocated costs from Cantor for back-office services provided by Cantor and their affiliates, including occupancy of office space, utilization of fixed assets, accounting, operations, human resources and legal services and information technology. Fees are expensed as they are incurred.

Other Income, net:

Other income, net comprises of gains or losses recorded in connection with changes in fair value of contingent consideration (See Note 26 — “Fair Value of Financial Assets and Liabilities”) in connection with entities acquired, gains and losses associated with the Nasdaq monetization transactions and the movement of mark-to-market and/or hedge on marketable securities that are classified as trading securities (See Note 7 — “Marketable Securities”), Newmark’s pro rata share for equity method investments and unrealized gains or losses relating to investments carried under the measurement alternative (See Note 8 — “Investments” and Note 19 — “Other assets”) and movements related to the impact of any unrealized mark-to-market gains or losses related to the Nasdaq Forwards.

Restricted Cash:

Represents cash set aside for amounts pledged for the benefit of Fannie Mae in excess of the required cash to secure Newmark’s financial guarantee liability (See Note 12 — “Credit Enhancement Receivable, Contingent Liability and Credit Enhancement Deposit”).

Leases:

Newmark enters into leasing arrangements in the ordinary course of business, as a lessee and has leases primarily relating to office space.

The accounting policies described below were updated pursuant to the adoption of ASC 842, *Leases* and related amendments on January 1, 2019. These policy updates have been applied using the modified retrospective approach in the accompanying consolidated financial statements from January 1, 2019, onward. Financial information for the year ended December 31, 2018 was not revised and continues to be reported under the previous accounting guidance on leases in effect during that historical period.

Newmark determines whether an arrangement is a lease or includes a lease at the contract inception. ROU lease assets represent the Newmark’s right to use an underlying asset for the lease term, and lease liabilities represent the Company’s obligation to make lease payments arising from the lease. Other than for leases with an initial term of twelve months or less, operating lease ROU assets and liabilities are recognized at commencement date based on the present value of lease payments over the lease term. As most leases do not provide an implicit rate, the Company uses an incremental borrowing rate based on the information available at commencement date in determining the present value of lease payments. The operating lease ROU asset also includes any lease payments made and excludes lease incentives. Lease payments may include options to extend or terminate the lease when it is reasonably certain that the Company will exercise those options. Lease expense pertaining to operating leases is recognized on a straight-line basis over the lease term (See Note 18 — “Leases” for additional information).

Current Expected Credit Losses ("CECL"):

The accounting policy changes described below were updated pursuant to the adoption of ASU No. 2016-13, *Financial Instruments—Credit Losses (Topic 326)—Measurement of Credit Losses on Financial Instruments* and related amendments on January 1, 2020. These policy updates have been applied using the modified retrospective approach in the accompanying consolidated financial statements from January 1, 2020 onward. Financial information for the historical comparable periods was not revised and continues to be reported under the accounting standards in effect during those historical periods. In accordance with the guidance in ASC Topic 326, Newmark presents its financial assets that are measured at amortized cost, net of an allowance for credit losses, which represents the amount expected to be collected over their estimated life. Expected credit losses for newly recognized financial assets carried at amortized cost and credit exposures on off-balance sheet financial guarantees, as well as changes to expected lifetime credit losses during the period, are recognized in earnings. The CECL methodology represents a significant change from prior U.S. GAAP and replaced the prior multiple impairment methods, which generally required that a loss be incurred before it was recognized. Within the life cycle of a loan or other financial asset in scope, the CECL methodology generally results in the earlier recognition of the provision for credit losses and the related allowance for credit losses than under prior U.S. GAAP. The CECL methodology’s impact on expected credit losses, among other things, reflects Newmark’s view of the current state of the economy, forecasted macroeconomic conditions and Newmark’s portfolios.

Financial guarantee liability:

Newmark’s adoption of ASC 326 impacted the expected credit loss reserving methodology for the financial guarantee liability provided to Fannie Mae under the Delegated Underwriting and Servicing (“DUS”) Program and Freddie Mac’s Targeted Affordable Housing Program (“TAH”). The expected credit loss is modeled based on Newmark’s historical loss

experience adjusted to reflect current economic conditions. A significant amount of judgment is required in the determination of the appropriate reasonable and supportable period, the methodology used to incorporate current and future macroeconomic conditions, determination of the probability of and exposure at default or non-payment, current delinquency status, loan size, terms, amortization types, and the forward-looking view of the primary risk drivers (debt-service coverage ratio and loan-to-value), all of which are ultimately used in measuring the quantitative components of the reserve. Beyond the reasonable and supportable period, Newmark estimates expected credit losses using its historical loss rates. In addition, Newmark reviews the reserves periodically and makes adjustments for certain external and internal qualitative factors, which may increase or decrease the reserves for credit losses. In order to estimate credit losses, assumptions about current and future economic conditions are incorporated into the model using multiple economic scenarios that are weighted to reflect the conditions at each measurement date. As a result of the adoption of ASC 326, Newmark recorded a pre-tax increase to the financial guarantee liability of \$17.9 million through beginning stockholders' equity on January 1, 2020. During the years ended December 31, 2021 and 2020, there was reduction in the CECL provision of \$3.6 million and an increase in the CECL provision of \$11.6 million, respectively. The balance of the financial guarantee liabilities was \$26.0 million and \$29.6 million as of December 31, 2021 and December 31, 2020, respectively, and is included in "Other long-term liabilities" on the accompanying consolidated balance sheets.

Receivables, net:

Newmark has accrued commissions receivable from real estate brokerage transactions, management services and other receivables from contractual management assignments. Receivables are presented net of the CECL allowance as discussed above and are included in "Receivables, net" on the accompanying consolidated balance sheets. For its CECL reserve, Newmark segregated its receivables into certain pools based on similar risk characteristics and further defined a range of potential loss rates for each pool based on aging. Newmark designed its methodology to allow for a range of loss rates in each pool such that changes in forward-looking conditions can be incorporated into the estimate. Each pool is assigned a loss rate that incorporates management's view of current conditions and forward-looking conditions that inform the level of expected credit losses in each pool. The credit loss estimate includes specifically identified amounts for which payment has become unlikely. As a result of the adoption of ASC 326. As a result of the adoption of ASC 326, Newmark recorded a pre-tax increase to the reserves of \$4.2 million through beginning stockholder's equity on January 1, 2020. The balance of the reserve was \$16.7 million and \$13.4 million as of December 31, 2021 and 2020, respectively, and is included in "Receivables, net" on the accompanying consolidated balance sheets.

Loans, Forgivable Loans and Other Receivables from Employees and Partners, net:

Newmark has entered into various agreements with certain of its employees and partners, whereby these individuals receive loans which may be either wholly or in part repaid from the distribution earnings that the individual receives on some or all of their limited partnership units or may be forgiven over a period of time. The forgivable portion of these loans is not included in Newmark's estimate of expected credit losses when employees meet the conditions for forgiveness through their continued employment over the specified time period and is recognized as compensation expense over the life of the loan. The amounts due from terminated employees that Newmark does not expect to collect are included in the allowance for credit losses. As a result of the adoption of ASC 326, Newmark recorded a pre-tax reserve of \$3.7 million through beginning stockholders' equity on January 1, 2020. As of December 31, 2021 and 2020, the balance of this reserve was \$3.8 million and \$3.7 million, respectively, and is included in "Loans, forgivable loans and other receivables from employees and partners, net" on the accompanying consolidated balance sheets.

From time to time, Newmark may also enter into agreements with employees and partners to grant bonus and salary advances or other types of loans. These advances and loans are repayable in the time frame outlined in the underlying agreements. Newmark reviews loan balances each reporting period for collectability. If Newmark determines that the collectability of a portion of the loan balances is not expected, Newmark recognizes a reserve against the loan balances as compensation expense.

Segment:

Newmark has a single operating segment. Newmark is a real estate services firm offering services to commercial real estate tenants, investors, owners, occupiers, developers, leasing and corporate advisory, investment sales and real estate finance, consulting, origination and servicing of commercial mortgage loans, valuation, project and development management and property and facility management. The chief operating decision-maker regardless of geographic location evaluates the operating results of Newmark as total real estate services and allocates resources accordingly. Newmark recognized revenues as follows (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Leasing and other commissions	\$ 826,942	\$ 513,842	\$ 854,780
Capital markets commissions	938,305	454,106	541,255
Gains from mortgage banking activities/origination, net	225,481	310,914	198,085
Management services, servicing fees and other	915,715	626,136	624,012
Revenues	<u>\$ 2,906,443</u>	<u>\$ 1,904,998</u>	<u>\$ 2,218,132</u>

Fair Value:

U.S. GAAP guidance defines fair value as the price received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date and further expands disclosures about such fair value measurements.

The guidance establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). The three levels of the fair value hierarchy are as follows:

- Level 1 measurements—Unadjusted quoted prices in active markets that are accessible at the measurement date for identical assets or liabilities.
- Level 2 measurements—Quoted prices in markets that are not active or financial instruments for which all significant inputs are observable, either directly or indirectly.
- Level 3 measurements—Prices or valuations that require inputs that are both significant to the fair value measurement and unobservable.

A financial instrument's level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement.

Cash and Cash Equivalents:

Newmark considers all highly liquid investments with original maturities of 90 days or less to be cash equivalents. Cash and cash equivalents are held with banks as deposits.

Principles of Consolidation:

Newmark's consolidated financial statements include the accounts of Newmark and its wholly owned and majority owned subsidiaries. Newmark's policy is to consolidate all entities of which it owns more than 50% unless it does not have control over the entity. In accordance with U.S. GAAP guidance, *Consolidation of Variable Interest Entities*, Newmark also consolidates any variable interest entities of which it is the primary beneficiary. All significant intercompany accounts and transactions have been eliminated in consolidation.

Loans Held for Sale, at Fair Value ("LHFS"):

Newmark maintains multifamily and commercial mortgage loans for the purpose of sale to GSEs. Prior to funding, Newmark enters into an agreement to sell the loans to third-party investors at a fixed price. During the period prior to sale, interest income is calculated and recognized in accordance with the terms of the individual loan. LHFS are carried at fair value, as Newmark has elected the fair value option. The primary reasons Newmark has elected to account for loans backed by commercial real estate under the fair value option are to better offset the change in fair value of the loan and the change in fair value of the derivative instruments used as economic hedges.

Derivative Financial Instruments:

Newmark has loan commitments to extend credit to third parties. The commitments to extend credit are for mortgage loans at a specific rate (rate lock commitments). These commitments generally have fixed expiration dates or other termination clauses and may require a fee. Newmark is committed to extend credit to the counterparty as long as there is no violation of any condition established in the commitment contracts.

Newmark simultaneously enters into a commitment to deliver such mortgages to third-party investors at a fixed price (forward sale contracts).

Newmark entered into variable postpaid forward contracts as a result of the Nasdaq Forwards. These contracts qualify as derivative financial instruments.

The commitment to extend credit, the forward sale commitment and Nasdaq Forwards qualify as derivative financial instruments. Newmark recognizes all derivatives on the accompanying consolidated balance sheets as assets or liabilities measured at fair value. The change in the derivatives fair value is recognized in included in “Other income” on the accompanying consolidated statements of operations.

Mortgage Servicing Rights, Net (“MSRs”):

Newmark initially recognizes and measures the rights to service mortgage loans at fair value and subsequently measures them using the amortization method. Newmark recognizes rights to service mortgage loans as separate assets at the time the underlying originated mortgage loan is sold, and the value of those rights is included in the determination of the gains on loans held for sale.

Purchased MSRs, including MSRs purchased from Cantor Commercial Real Estate ("CCRE"), are initially recorded at fair value, and subsequently measured using the amortization method.

Newmark receives up to a 3-basis point servicing fee and/or up to a 1-basis point surveillance fee on certain Freddie Mac loans after the loan is securitized in a Freddie Mac pool (Freddie Mac Strip). The Freddie Mac Strip is also recognized at fair value and subsequently measured using the amortization method, but is recognized as a MSR at the securitization date.

MSRs are assessed for impairment, at least on an annual basis, based upon the fair value of those rights as compared to the amortized cost. Fair values are estimated using a valuation model that calculates the present value of the future net servicing cash flows. In using this valuation method, Newmark incorporates assumptions that management believes market participants would use in estimating future net servicing income. It is reasonably possible that such estimates may change. Newmark amortizes the mortgage servicing rights in proportion to, and over the period of, the projected net servicing income. For purposes of impairment evaluation and measurement, Newmark stratifies MSRs based on predominant risk characteristics of the underlying loans, primarily by investor type (Fannie Mae/Freddie Mac, FHA/GNMA, CMBS and other). To the extent that the carrying value exceeds the fair value of a specific MSR strata, a valuation allowance is established, which is adjusted in the future as the fair value of MSRs increases or decreases. Reversals of valuation allowances cannot exceed the previously recognized impairment up to the amortized cost.

Fixed Assets, net:

Fixed assets are carried at cost net of accumulated depreciation and amortization. Depreciation is calculated on a straight-line basis over the estimated useful lives of the assets. The costs of additions and improvements are capitalized, while maintenance and repairs are expensed as incurred. Fixed assets are depreciated over their estimated useful lives as follows:

Leasehold improvements and other fixed assets	shorter of the remaining term of lease or useful life
Software, including software development costs	3-5 years straight-line
Computer and communications equipment	3-5 years straight-line

Long-Lived Assets:

Newmark periodically evaluates potential impairment of long-lived assets and amortizable intangible assets, when a change in circumstances occurs, by applying the U.S. GAAP guidance, Accounting for the Impairment or Disposal of Long-Lived Assets, and assessing whether the unamortized carrying amount can be recovered over the remaining life through undiscounted future expected cash flows generated by the underlying assets. If the undiscounted future cash flows were less than the carrying value of the asset, an impairment charge would be recorded. The impairment charge would be measured as the excess of the carrying value of the asset over the present value of estimated expected future cash flows using a discount rate commensurate with the risks involved.

Goodwill and Other Intangible Assets, net:

Goodwill is the excess of the purchase price over the fair value of identifiable net assets acquired in a business combination. As prescribed in U.S. GAAP guidance, *Intangibles—Goodwill and Other*, goodwill and other indefinite-lived intangible assets are not amortized, but instead are periodically tested for impairment. Newmark reviews goodwill and other indefinite-lived intangible assets for impairment on an annual basis during the fourth quarter of each fiscal year or whenever an event occurs or circumstances change that could reduce the fair value of a reporting unit below its carrying amount. When reviewing goodwill for impairment, Newmark first assesses qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount. Newmark did not recognize any impairment for the years ended December 31, 2021, 2020 and 2019.

Intangible assets with definite lives are amortized on a straight-line basis over their estimated useful lives. Definite-lived intangible assets arising from business combinations include trademarks and trade names, contractual and non-contractual customers, non-compete agreements and brokerage backlog.

Transfer of Financial Assets:

Newmark originates its commercial mortgage loans primarily for the GSEs' distribution channels, which generally involve (a) Freddie Mac purchasing Newmark's loans for cash, (b) Fannie Mae securitizing Newmark's loans into a mortgage-backed security ("MBS") guaranteed by Fannie Mae, (c) FHA guaranteeing the credit risk of Newmark's loans or (d) Ginnie Mae securitizing Newmark's loans into an MBS. MBS are collateralized by the loan and Ginnie Mae selling the MBS for cash. As part of its origination activities, Newmark accounts for the transfer of financial assets in accordance with U.S. GAAP guidance on *Transfers and Servicing*. In accordance with this guidance, the transfer of financial assets between two entities must meet the following criteria for derecognition and sale accounting:

- The transfer must involve a financial asset, group of financial assets or a participating interest;
- The financial assets must be isolated from the transferor and its consolidated affiliates as well as its creditors;
- The transferee or beneficial interest holders must have the right to pledge or exchange the transferred financial assets; and;
- The transferor may not maintain effective control of the transferred assets.

Newmark determined that all loans sold during the periods presented met these specific conditions and accounted for all transfers of loans held for sale as completed sales.

Warehouse Facilities Collateralized by U.S. Government Sponsored Enterprises:

Warehouse facilities collateralized by U.S. Government Sponsored Enterprises are borrowings under warehouse line agreements. The carrying amounts approximate fair value due to the short-term maturity of these instruments. Outstanding borrowings against these lines are collateralized by an assignment of the underlying mortgages, reflected as loans held for sale, at fair value on Newmark's consolidated balance sheets and third-party purchase commitments. The borrowing rates on the warehouse lines are based on short-term LIBOR plus applicable margins. Accordingly, the warehouse facilities collateralized by U.S. Government Sponsored Enterprises are typically classified within Level 2 of the fair value hierarchy. The facilities are generally repaid within a 45-day period when Freddie Mac buys the loans or upon settlement of the Fannie Mae or Ginnie Mae mortgage-backed securities, while Newmark retains servicing rights.

Income Taxes:

Newmark accounts for income taxes using the asset and liability method as prescribed in U.S. GAAP guidance on *Income Taxes*. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to basis differences between the consolidated financial statement carrying amounts of existing assets and liabilities and their respective tax basis. Certain of Newmark's entities are taxed as U.S. partnerships and are subject to the Unincorporated Business Tax ("UBT") in New York City. Therefore, the tax liability or benefit related to the partnership income or loss except for UBT rests with the partners, rather than the partnership entity. As such, the partners' tax liability or benefit is not reflected on the accompanying consolidated financial statements. The tax-related assets, liabilities, provisions or benefits included on the accompanying consolidated financial statements also reflect the results of the entities that are taxed as corporations, either in the U.S. or in foreign jurisdictions.

Newmark's income taxes as presented are calculated on a separate return basis for the periods prior to the Spin-Off and have historically been included in BGC's U.S. federal and state tax returns or separate non-U.S. jurisdictions tax returns. Subsequent to the Spin-Off, Newmark files its own stand-alone tax returns for its operations within these jurisdictions. The 2018 tax results reflect both the pre and post spin periods and, as such, Newmark's tax results as presented are not necessarily reflective of the results that Newmark would have generated on a stand-alone basis.

Newmark provides for uncertain tax positions based upon management's assessment of whether a tax benefit is more likely than not to be sustained upon examination by tax authorities. Management is required to determine whether a tax position is more likely than not to be sustained upon examination by tax authorities, including resolution of any related appeals or litigation processes, based on the technical merits of the position. Because significant assumptions are used in determining whether a tax benefit is more likely than not to be sustained upon examination by tax authorities, actual results may differ from Newmark's estimates under different assumptions or conditions. Newmark recognizes interest and penalties related to uncertain tax positions in "Provision for income taxes" on the accompanying consolidated statements of operations.

A valuation allowance is recorded against deferred tax assets if it is deemed more likely than not that those assets will not be realized. In assessing the need for a valuation allowance, Newmark considers all available evidence, including past

operating results, the existence of cumulative losses in the most recent fiscal years, estimates of future taxable income and the feasibility of tax planning strategies.

The measurement of current and deferred income tax assets and liabilities is based on provisions of enacted tax laws and involves uncertainties in the application of tax regulations in the U.S. and other tax jurisdictions. Because Newmark's interpretation of complex tax law may impact the measurement of current and deferred income taxes, actual results may differ from these estimates under different assumptions regarding the application of tax law.

Equity-Based and Other Compensation:

Equity-based compensation expense recognized during the period is based on the fair value of the portion of equity-based payment awards that is ultimately expected to vest. The grant-date fair value of equity-based awards is amortized to expense ratably over the awards' vesting periods. As equity-based compensation expense recognized in the Newmark's consolidated statements of operations is based on awards ultimately expected to vest, it has been reviewed for estimated forfeitures. Further, forfeitures are estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

Restricted Stock Units:

RSUs are accounted for as equity awards and in accordance with U.S. GAAP, Newmark is required to record an expense for the portion of the RSUs that is ultimately expected to vest. The grant-date fair value of RSUs is amortized to expense ratably over the awards' expected vesting periods. The amortization is reflected as a component of compensation expense under "Equity-based compensation and allocations of net income to limited partnership units and FPU's" in the accompanying consolidated statements of operations.

Limited Partnership Units:

Limited partnership units in BGC Holdings and Newmark Holdings are held by Newmark employees and receive quarterly allocations of net income and are generally contingent upon services being provided by the unit holders. The quarterly allocations of net income on such limited partnership units are reflected as a component of compensation expense under "Equity-based compensation and allocations of net income to limited partnership units and FPU's" in the accompanying consolidated statements of operations.

Certain of these limited partnership units in Newmark Holdings and BGC Holdings, such as REUs, entitle the holders to receive post-termination payments equal to the notional amount in four equal yearly installments after the holder's termination. These limited partnership units are accounted for as post-termination liability awards under U.S. GAAP guidance, which requires that Newmark record an expense for such awards based on the change in value at each reporting period and include the expense in the Newmark's consolidated statements of operations as part of "Equity-based compensation and allocations of net income to limited partnership units and FPU's." The liability for limited partnership units held by Newmark employees with a post-termination payout amount is included in "Other long-term liabilities" on the Newmark's consolidated balance sheets.

Certain limited partnership units held by Newmark employees are granted exchangeability into Class A common stock or may be redeemed in connection with the grant of shares of Class A common stock. At the time exchangeability is granted, or the shares are issued, Newmark recognizes an expense based on the fair value of the award on that date, which is included in "Equity-based compensation and allocations of net income to limited partnership units and FPU's" in the accompanying consolidated statements of operations.

In addition, Preferred Units are granted in connection with the grant of certain limited partnership units, such as PSUs, that may be granted exchangeability to cover the withholding taxes owed by the unit holder upon such exchange. Each quarter, the net profits of BGC Holdings and Newmark Holdings are allocated to such units at a rate of either 0.6875% (which is 2.75% per calendar year) or such other amount as set forth in the Preferred Distribution, which is deducted before the calculation and distribution of the quarterly partnership distribution for the remaining limited partnership interests. The Preferred Units are not entitled to participate in partnership distributions other than with respect to the Preferred Distribution. Preferred Units may not be made exchangeable into BGC or Newmark Class A common stock and are only entitled to the Preferred Distribution, and accordingly they are not included in Newmark's fully diluted share count. The quarterly allocations of net income on Preferred Units are reflected in compensation expense under "Equity-based compensation and allocations of net income to limited partnership units and FPU's" in the accompanying consolidated statements of operations.

Redeemable Partnership Interests:

Redeemable partnership interest represents limited partnership interests in Newmark Holdings held by founding/working partners. (See Note 2 — "Limited Partnership Interests in Newmark Holdings and BGC Holdings" for additional information related to redeemable partnership interest).

Noncontrolling Interests:

Noncontrolling interests represent third-party, Cantor's and BGC's (prior to the Spin-Off) ownership interests on the accompanying consolidated subsidiaries and EPU's (See Note 1 — "Organization and Basis of Presentation") and are included on Newmark's consolidated balance sheets. Prior to the Spin-Off, Cantor and BGC units received allocations of net income (loss). Subsequent to the Spin-Off, Cantor units received allocations of net income (loss). Allocations of net income (loss) are reflected as a component of "Net income (loss) attributable to noncontrolling interests" in the accompanying consolidated statements of operations.

(4) Acquisitions

Newmark acquired the first lien debt of Knotel, Inc. ("Knotel"), a global flexible workspace provider, in December of 2020. Newmark subsequently acquired Knotel's second lien debt in January of 2021. On January 31, 2021, Newmark agreed to provide approximately \$19.8 million of debtor-in-possession financing to Knotel and to acquire the business, as part of Knotel's Chapter 11 sales process. On March 18, 2021, Newmark received approval from the U.S. Bankruptcy Court for the District of Delaware to acquire the business of Knotel. On March 24, 2021, Newmark acquired the business of Knotel. The Knotel acquisition has been determined to be a business combination with an acquisition date of March 31, 2021, for accounting purposes. The assets and liabilities of Knotel have been recorded in Newmark's consolidated balance sheets at fair market value.

On September 6, 2021, Newmark acquired a majority stake in the start-up Space Management (DBA "Deskeo"), France's leader in flexible and serviced office space for enterprise clients. Based in Paris, France Deskeo adds over 50 locations to Newmark's international flexible office portfolio.

In November 2021, Newmark completed the acquisition of a U.S. based real estate property management services firm.

For the year ended December 31, 2021, the following table summarizes the components of the purchase consideration transferred, and the preliminary allocation of the assets acquired, and liabilities assumed, for the acquisition. Newmark expects to finalize its analysis of the assets acquired and liabilities assumed within the first year of the acquisition, and therefore adjustments to assets and liabilities may occur (in thousands):

	As of the Acquisition Date
Purchase Price	
First and second lien debt	\$ 39,584
Debtor-in-possession financing	19,788
Assumed liability	6,574
Cash and stock issued at closing	44,492
Total	\$ 110,438
Allocations	
Cash	\$ 21,641
Goodwill	97,168
Other intangible assets, net	41,332
Receivables, net	7,478
Fixed Assets, net	40,605
Other assets	62,710
Right-of-use Assets	434,315
Right-of-use Liabilities	(434,315)
Accrued Compensation	(2,076)
Accounts payable, accrued expenses and other liabilities	(103,300)
Unrealized gain on investment	(27,825)
Initial investment (recorded at cost)	(13,832)
Non-controlling interest	(13,463)
Total	\$ 110,438

The total consideration for the acquisitions during the year ended December 31, 2021 was \$110.4 million in total fair value, comprising of the extinguishment of first and second lien debt of \$39.6 million, debtor-in-possession financing of \$19.8 million, an assumed liability of \$6.5 million, and \$41.5 million in cash and 3.0 million of restricted Class A common stock. The excess of the consideration over the fair value of the net assets acquired was recorded as goodwill of \$97.2 million, of which approximately \$78.3 million is deductible by Newmark for tax purposes.

These acquisitions were accounted for using the purchase method of accounting. The results of operations of the acquisitions have been included on the accompanying consolidated financial statements subsequent to the date of acquisition, which in aggregate contributed \$75.6 million to Newmark's revenues for the year ended December 31, 2021. Deskeo was previously recorded as an alternative method investment on Newmark's consolidated balance sheet and amounted to \$13.8 million. Pursuant to acquiring a majority interest in Deskeo and valuing its previously held non-controlling interest, Newmark recorded an unrealized gain of \$27.8 million on the investment during the year ended December 31, 2021.

In January 2020, Newmark completed the acquisition of certain assets of Hopkins Appraisal Services, a national leader in the valuation of restaurants and retail petroleum facilities.

For the year ended December 31, 2020, the following table summarizes the components of the purchase consideration transferred, and the preliminary allocation of the assets acquired, and liabilities assumed, for the acquisition. Newmark expects to finalize its analysis of the assets acquired and liabilities assumed within the first year of the acquisition, and therefore adjustments to assets and liabilities may occur (in thousands):

	As of the Acquisition Date
Purchase Price	
Cash, stock and units issued at closing	\$
Contingent consideration	
Total	\$
Allocations	
Goodwill	\$
Other intangible assets, net	
Receivables, net	
Fixed Assets, net	
Other assets	
Accounts payable, accrued expenses and other liabilities	
Total	\$

The total consideration for the acquisition during the year ended December 31, 2020 was \$9.8 million in total fair value, comprising cash of \$5.9 million and \$0.4 million of RSUs. The total consideration included contingent consideration of 104,653 RSUs (with an acquisition date fair value of \$1.3 million), and \$2.2 million in cash that may be issued contingent on certain targets being met through 2022. The excess of the consideration over the fair value of the net assets acquired was recorded as goodwill of \$6.3 million, of which \$2.4 million is deductible by Newmark for tax purposes.

This acquisition was accounted for using the purchase method of accounting. The results of operations of the acquisition have been included on the accompanying consolidated financial statements subsequent to the date of acquisition, which in aggregate contributed \$7.5 million to Newmark's revenues for the year ended December 31, 2020.

(5) Earnings Per Share and Weighted-Average Shares Outstanding

U.S. GAAP guidance — *Earnings (Loss) Per Share* provides guidance on the computation and presentation of earnings (loss) per share ("EPS"). Basic EPS excludes dilution and is computed by dividing Net income available to common stockholders by the weighted-average number of shares of common stock outstanding and contingent shares for which all necessary conditions have been satisfied except for the passage of time. Net income (loss) is allocated to Newmark's outstanding common stock, FPU's, limited partnership units and Cantor units (see Note 2 — "Limited Partnership Interests in Newmark Holdings and BGC Holdings"). In addition, in relation to the Newmark OpCo Preferred Investment, the EPU's issued in June 2018 and September 2018 are entitled to a preferred payable-in-kind dividend which is recorded as accretion to the

carrying amount of the EPU's and is a reduction to net income available to common stockholders for the calculation of Newmark's basic earnings per share and fully diluted earnings per share.

The following is the calculation of Newmark's basic EPS (in thousands, except per share data):

	Year Ended December 31,		
	2021	2020	2019
Basic earnings per share:			
Net income available to common stockholders ⁽¹⁾	\$ 744,528	\$ 70,281	\$ 104,406
Basic weighted-average shares of common stock outstanding	190,179	179,106	177,774
Basic earnings per share	\$ 3.91	\$ 0.39	\$ 0.59

⁽¹⁾ Includes a reduction for dividends on preferred stock or EPU's in the amount of \$6.2 million, \$9.8 million and \$12.9 million for the years ended December 31, 2021, 2020 and 2019, respectively. (see Note 1 — "Organization and Basis of Presentation").

Fully diluted EPS is calculated utilizing net income available to common stockholders plus net income allocations to the limited partnership interests in Newmark Holdings as the numerator. The denominator comprises Newmark's weighted-average number of outstanding shares of Newmark common stock to the extent the related units are dilutive and, if dilutive, the weighted-average number of limited partnership interests and other contracts to issue shares of common stock, stock options and RSUs. The limited partnership interests generally are potentially exchangeable into shares of Newmark Class A common stock and are entitled to remaining earnings after the deduction for the Preferred Distribution; as a result, they are included in the fully diluted EPS computation to the extent that the effect would be dilutive.

The following is the calculation of Newmark's fully diluted EPS (in thousands, except per share data):

	Year Ended December 31,		
	2021	2020	2019
Fully diluted earnings per share:			
Net income available to common stockholders	\$ 744,528	\$ 70,281	\$ 104,406
Allocations of net income to limited partnership interests in Newmark Holdings, net of tax	—	—	3,754
Net income for fully diluted shares	\$ 744,528	\$ 70,281	\$ 108,160
Weighted-average shares:			
Common stock outstanding	190,179	179,106	177,774
Cantor units	—	—	—
Partnership units ⁽¹⁾	—	—	5,583
RSUs (Treasury stock method)	4,310	355	1,290
Newmark exchange shares	1,324	229	369
Fully diluted weighted-average shares of common stock outstanding	195,813	179,690	185,016
Fully diluted earnings per share	\$ 3.80	\$ 0.39	\$ 0.58

⁽¹⁾ Partnership units collectively include FPU's, limited partnership units, and Cantor and BGC units (see Note 2 — "Limited Partnership Interests in Newmark Holdings and BGC Holdings" for more information).

For the years ended December 31, 2021, 2020 and 2019, 68.1 million, 85.2 million and 84.5 million potentially dilutive securities, respectively, were excluded from the computation of fully diluted EPS because their effect would have been anti-dilutive.

(6) Stock Transactions and Unit Redemptions

As of December 31, 2021, Newmark has two classes of authorized common stock: Class A common stock and Class B common stock.

Class A Common Stock

Each share of Class A common stock is entitled to one vote. Newmark has 1.0 billion authorized shares of Class A common stock at \$0.01 par value per share.

Changes in shares of Newmark's Class A common stock outstanding were as follows:

	Year Ended December 31,		
	2021	2020	2019
Shares outstanding at beginning of period	161,175,894	156,265,461	156,916,336
Share issuances:			
LPU redemption/exchange ⁽¹⁾	6,591,462	4,868,169	2,052,416
Issuance of Class A common stock for Newmark RSUs	1,851,786	972,490	1,536,530
Other ⁽²⁾	18,890,659	—	278,181
Treasury stock repurchases	(20,237,430)	(930,226)	(4,518,002)
Shares outstanding at end of period	168,272,371	161,175,894	156,265,461

⁽¹⁾ Because they were included in the Newmark's fully diluted share count, if dilutive, any exchange of LPUs into Class A common stock would not impact the fully diluted number of shares and units outstanding.

⁽²⁾ For information, refer to the section titled "2021 Equity Event and Share Count Reduction" in Note 1 "Organization and Basis of Presentation"

Class B Common Stock

Each share of Class B common stock is entitled to 10 votes and is convertible at any time into one share of Class A common stock.

As of December 31, 2021 and 2020, there were 21.3 million shares of Newmark Class B common stock outstanding.

Share Repurchases

On February 17, 2021, our Board increased its authorized share repurchases of Newmark Class A Common stock and purchases of limited partnership interests in Newmark's subsidiaries to \$400.0 million. This authorization includes repurchases of shares or purchase of units from executive officers, other employees and partners, including of BGC and Cantor, as well as other affiliated persons or entities. From time to time, Newmark may actively continue to repurchase shares and/or purchase units. During the year ended December 31, 2021, Newmark repurchased 20,237,430 shares of Class A common stock, respectively, at an average price of \$14.37. As of December 31, 2021, Newmark had \$165.0 million remaining from its share repurchase and unit purchase authorization.

On August 5, 2021, the Board and Audit Committee reauthorized the \$400.0 million Newmark share repurchase and unit redemption authorization, which may include purchases from Cantor, its partners or employees or other affiliated persons or entities.

The following table details Newmark's unit redemptions and share repurchases for cash, under the new program, and does not include unit redemptions and/or cancellations in connection with the grant of shares of Newmark's Class A common stock. The gross unit redemptions and share repurchases of Newmark's Class A common stock during the year ended December 31, 2021 were as follows (in thousands except units, shares and per share amounts):

	Total Number of Shares Repurchased/Purchased	Average Price Paid per Unit or Share	Approximate Dollar Value of Units and Shares That May Yet Be Repurchased/ Purchased Under the Program
Redemptions			
January 1, 2021 - March 31, 2021	—	\$ —	
April 1, 2021 - June 30, 2021	167,894	\$ 11.91	
July 1, 2021 - September 30, 2021	—	\$ —	
October 1, 2021 - December 31, 2021	—	\$ —	
Total Redemptions	167,894	\$ 11.91	
Repurchases			
January 1, 2021 - March 31, 2021	879,243	\$ 10.58	
April 1, 2021 - June 30, 2021	3,613,098	\$ 12.81	
July 1, 2021 - September 30, 2021	6,307,802	\$ 13.34	
October 1, 2021 - October 31, 2021	3,064,959	\$ 14.71	
November 1, 2021 - November 30, 2021	2,085,492	\$ 16.20	
December 1, 2021 - December 31, 2021	4,286,836	\$ 16.77	
Total Repurchases	20,237,430	\$ 14.37	
Total Redemptions and Repurchases	20,405,324	\$ 14.35	\$ 165,017

Redeemable Partnership Interests

The changes in the carrying amount of FPU's follow (in thousands):

	December 31, 2021	December 31, 2020
Balance at beginning of period:	\$ 20,045	\$ 21,517
Income allocation	4,532	1,740
Distributions of income	(1,215)	(1,740)
Redemptions	(2,169)	(1,472)
Issuance and other	(246)	—
Balance at end of period	\$ 20,947	\$ 20,045

(7) Marketable Securities

On June 28, 2013, BGC sold certain assets of eSpeed, its on-the-run business, to Nasdaq. The total consideration received by BGC in the transaction included the Nasdaq Earn-out of up to 14,883,705 shares of Nasdaq shares to be paid ratably over 15 years, provided that Nasdaq, as a whole, produces at least \$25.0 million in consolidated gross revenues each year. The Nasdaq Earn-out was excluded from the initial gain on the divestiture and is recognized in income as it is realized and earned when these contingent events have occurred, consistent with the accounting guidance for gain contingencies. BGC transferred the remaining rights under the Nasdaq Earn-out to Newmark on September 28, 2017. Any Nasdaq shares that were received by BGC prior to September 28, 2017 were not transferred to Newmark.

In connection with the Nasdaq Earn-out, Newmark received 992,247 shares during each of the years ended December 31, 2020 and 2019. In accordance with the terms of the agreement, Newmark would recognize the remaining Nasdaq Earn-out of up to 6,945,729 shares of Nasdaq shares ratably over approximately the next 7 years, provided that Nasdaq, as a whole, produces at least \$25.0 million in gross revenues each year. On February 2, 2021, Nasdaq announced that it entered into a definitive agreement to sell its U.S. fixed income business to Tradeweb. On June 25, 2021, Nasdaq announced the close of the sale of its U.S. fixed income business, which accelerated Newmark's receipt of Nasdaq shares. Newmark received 6,222,340 Nasdaq shares, with a fair value of \$1,093.9 million based on the closing price on June 30, 2021 included in "Other (loss) income, net" for the year ended December 31, 2021 on the accompanying consolidated statement of operations. As of December 31, 2021, Newmark has 2,497,831 Nasdaq shares, with a fair value of \$524.6 million.

On June 25, 2021, the SPV notified RBC of its decision to settle the third and fourth Nasdaq Forwards using the Nasdaq shares the SPV received on June 25, 2021. On July 2, 2021, Newmark settled the Nasdaq Forwards with 944,329 Nasdaq shares, with a fair value of \$166.0 million based on the closing price of June 30, 2021, and retained 5,278,011 Nasdaq shares.

Newmark sold 3,030,922, 343,562 and 350,000 of the Nasdaq shares for the years ended December 31, 2021, 2020 and 2019, respectively. As of the years ended December 31, 2021, 2020 and 2019 Newmark had 2,497,831, 250,742 and 343,562 shares remaining in connection with Nasdaq Earn-out. The gross proceeds of the Nasdaq shares sold were \$551.1 million, \$34.7 million, and \$32.6 million for the years ended December 31, 2021, 2020 and 2019, respectively. Newmark recorded realized gains (loss) on the mark-to-market of these securities of \$24.5 million, \$2.2 million and \$4.1 million for the years ended December 31, 2021, 2020 and 2019, respectively. Newmark recorded unrealized gains (loss) on the mark-to-market of these securities of \$77.3 million, \$5.0 million and \$11.3 million for the years ended December 31, 2021, 2020 and 2019, respectively. Realized and unrealized gains on the mark-to-market of these shares are included in "Other income, net" on the accompanying consolidated statements of operations. As of December 31, 2021 and 2020, Newmark had \$524.6 million and \$33.3 million, respectively, included in "Marketable securities" on the accompanying consolidated balance sheets (see Note 20 — "Collateralized Transactions").

On August 2, 2021, a subsidiary of Newmark, Newmark OpCo, entered into a Master Repurchase Agreement (the "Repurchase Agreement") with CF Secured, LLC ("CF Secured"), an affiliate of Cantor, pursuant to which Newmark may seek, from time-to-time, to execute short-term secured financing transactions. The Company, under the Repurchase Agreement, may seek to sell securities, in this case common shares of Nasdaq, owned by the Company, to CF Secured, under the Repurchase Agreement, and agrees to repurchase those securities on a date certain at a repurchase price generally equal to the original purchase price plus interest. Pursuant to the Repurchase Agreement, as of December 31, 2021 the Company had 866,791 Nasdaq shares pledged in the amount of \$182.0 million, against which Newmark received \$140.0 million. The \$140.0 million amount received from CF Secured is included in "Repurchase agreements and securities loaned" on the accompanying consolidated balance sheets (see Note 20 — "Collateralized Transactions" and Note 27 — "Related Party Transactions").

(8) Investments

Newmark has a 27% ownership in Real Estate LP, a joint venture with Cantor in which Newmark has the ability to exert significant influence over the operating and financial policies. Accordingly, Newmark accounts for this investment under the equity method of accounting. Newmark recognized equity (loss) income of \$(11.6) million and \$7.3 million for the years ended December 31, 2020 and 2019, respectively. Newmark did not recognize any equity (loss) or income for the year ended December 31, 2021. Equity (loss) income are included in "Other income, net" on the accompanying consolidated statements of operations. Newmark did not receive any distributions for the year ended December 31, 2021. Newmark received distribution of \$0.1 million for the year ended December 31, 2020. The carrying value of these investments were \$88.3 million and \$88.3 million as of December 31, 2021 and 2020, respectively, included in "Other assets" on the accompanying consolidated balance sheets.

Investments Carried Under Measurement Alternatives

Newmark has acquired investments in entities for which it does not have the ability to exert significant influence over operating and financial policies (see Note 4 — "Acquisitions").

For the years ended December 31, 2021, 2020 and 2019, Newmark recorded realized gains (losses) related to these investments of \$1.6 million, \$(84.2) million and \$12.6 million, respectively. The changes in value are included as a part of "Other income (loss), net" on the accompanying consolidated statements of operations. The carrying value of these investments were \$20.0 million and \$9.9 million as of December 31, 2021 and 2020, respectively, and are included in "Other assets" on the accompanying consolidated balance sheets.

(9) Capital and Liquidity Requirements

Newmark is subject to various capital requirements in connection with seller/servicer agreements that Newmark has entered into with the various GSEs. Failure to maintain minimum capital requirements could result in Newmark's inability to originate and service loans for the respective GSEs and could have a direct material adverse effect on the accompanying consolidated financial statements. Management believes that, as of December 31, 2021 and 2020, Newmark had met all capital requirements. As of December 31, 2021, the most restrictive capital requirement was the net worth requirement of the Federal National Mortgage Association ("Fannie Mae"). Newmark exceeded the minimum requirement by \$400.5 million.

Certain of Newmark's agreements with Fannie Mae allow Newmark to originate and service loans under Fannie Mae's DUS Program. These agreements require Newmark to maintain sufficient collateral to meet Fannie Mae's restricted and operational liquidity requirements based on a pre-established formula. Certain of Newmark's agreements with the Federal Home Loan Mortgage Corporation ("Freddie Mac") allow Newmark to service loans under TAH. These agreements require Newmark to pledge sufficient collateral to meet Freddie Mac's liquidity requirement of 8% of the outstanding principal of TAH loans serviced by Newmark. Management believes that, as of December 31, 2021 and 2020, Newmark had met all liquidity requirements.

In addition, as a servicer for Fannie Mae, the Government National Mortgage Association ("Ginnie Mae") and Federal Housing Administration, Newmark is required to advance to investors any uncollected principal and interest due from borrowers. Outstanding borrower advances were \$0.9 million and \$0.8 million as of December 31, 2021 and 2020, respectively, and are included in "Other assets" on the accompanying consolidated balance sheets.

(10) Loans Held for Sale, at Fair Value

Loans held for sale, at fair value represent originated loans that are typically financed by short-term warehouse facilities (see Note 21 — "Warehouse Facilities Collateralized by U.S. Government Sponsored Enterprises") and sold within 45 days from the date the mortgage loan is funded. Newmark initially and subsequently measures all loans held for sale at fair value on the accompanying consolidated balance sheets. The fair value measurement falls within the definition of a Level 2 measurement (significant other observable inputs) within the fair value hierarchy. Electing to use fair value allows a better offset of the change in the fair value of the loans and the change in fair value of the derivative instruments used as economic hedges. Loans held for sale had a cost basis and fair value as follows (in thousands):

	December 31,	
	2021	2020
Cost Basis	\$ 1,051,220	\$ 1,062,511
Fair Value	1,072,479	1,086,805

As of December 31, 2021 and 2020, all of the loans held for sale were either under commitment to be purchased by Freddie Mac or had confirmed forward trade commitments for the issuance and purchase of Fannie Mae or Ginnie Mae mortgage-backed securities that will be secured by the underlying loans. As of December 31, 2021 and 2020, there were no loans held for sale that were 90 days or more past due or in nonaccrual status.

Newmark records interest income on loans held for sale, in accordance with the terms of the individual loans, during the period prior to sale. Interest income on loans held for sale is included in "Management services, servicing fees and other" on the accompanying consolidated statements of operations. Gains (losses) for fair value adjustments on loans held for sale is included in "Gains from mortgage banking activities/originations, net" on the accompanying consolidated statements of operations. Interest income and gains (losses) for fair value adjustments on loans held for sale were as follows (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Interest income on loans held for sale	\$ 20,287	\$ 27,560	\$ 34,239
Gains (loss) recognized on change in fair value on loans held for sale	21,259	24,294	5,174

(11) Derivatives

Newmark accounts for its derivatives at fair value and recognizes all derivatives as either assets or liabilities on the accompanying consolidated balance sheets. In its normal course of business, Newmark enters into commitments to extend credit for mortgage loans at a specific rate (rate lock commitments) and commitments to deliver these loans to third-party investors at a fixed price (forward sale contracts). In addition, Newmark has entered into the Nasdaq Forwards (see Note 1 — "Organization and Basis of Presentation") that are accounted for as derivatives.

The fair value of derivative contracts, computed in accordance with Newmark's netting policy, is set forth below (in thousands):

Derivative contract	December 31, 2021			December 31, 2020		
	Assets	Liabilities	Notional Amounts ⁽¹⁾	Assets	Liabilities	Notional Amounts ⁽¹⁾
Rate lock commitments	\$ 3,957	\$ 2,836	\$ 174,787	\$ 21,034	\$ 2,977	\$ 296,972
Nasdaq Forwards	—	—	—	12,822	—	174,000
Forward sale contracts	4,544	2,180	1,226,007	7,632	14,971	1,359,482
Total	<u>\$ 8,501</u>	<u>\$ 5,016</u>	<u>\$ 1,400,794</u>	<u>\$ 41,488</u>	<u>\$ 17,948</u>	<u>\$ 1,830,454</u>

⁽¹⁾ Notional amounts represent the sum of gross long and short derivative contracts, an indication of the volume of Newmark's derivative activity, and do not represent anticipated losses.

The change in fair value of rate lock commitments and forward sale contracts related to mortgage loans are reported as part of "Gains from mortgage banking activities/originations, net" on the accompanying consolidated statements of operations. The change in fair value of rate lock commitments are disclosed net of \$1.0 million, \$2.1 million and \$2.0 million of expenses for the years ended December 31, 2021, 2020 and 2019, respectively. The changes in fair value of rate lock commitments are reported as part of "Compensation and employee benefits" on the accompanying consolidated statements of operations.

Gains and losses on derivative contracts, which are included on the accompanying consolidated statements of operations were as follows (in thousands):

	Location of gain (loss) recognized in income for derivatives	Year Ended December 31,		
		2021	2020	2019
Derivatives not designed as hedging instruments:				
Nasdaq Forwards	Other income (loss), net	\$ (12,475)	\$ (13,680)	\$ (51,117)
Rate lock commitments	Gains (loss) from mortgage banking activities/originations, net	2,162	20,125	21,916
Rate lock commitments	Compensation and employee benefits	(1,043)	(2,068)	(2,004)
Forward sale contracts	Gains (loss) from mortgage banking activities/originations, net	2,365	(7,339)	851
Total		\$ (8,991)	\$ (2,962)	\$ (30,354)

Derivative assets and derivative liabilities are included in "Other current assets", "Other assets" and the "Accounts payable, accrued expenses and other liabilities", on the accompanying consolidated balance sheets.

(12) Credit Enhancement Receivable, Credit Enhancement Deposit and Contingent Liability

Newmark was a party to a Credit Enhancement Agreement ("CEA"), dated March 9, 2012, with German American Capital Corporation and Deutsche Bank Americas Holding Corporation (together, the "DB Entities"). On October 20, 2016, the DB Entities assigned the CEA to Deutsche Bank AG Cayman Island Branch, a Cayman Island Branch of Deutsche Bank AG ("DB Cayman"). Under the terms of these agreements, DB Cayman provided Newmark with varying levels of ongoing credit protection, subject to certain limits, for Fannie Mae and Freddie Mac loans subject to loss-sharing (see Note 23 — "Financial Guarantee Liability") in Newmark's servicing portfolio as of March 9, 2012. DB Cayman also reimbursed Newmark for any losses incurred due to violation of underwriting and servicing agreements that occurred prior to March 9, 2012. In accordance within the terms of the CEA, Newmark paid all amounts due to the DB Entities on March 23, 2021 fulfilling the Company's obligations under the agreement. For the years ended December 31, 2021 and 2020, there were no reimbursements under the CEA.

Newmark's servicing portfolio consisted of the following loss-sharing components (in thousands):

	December 31,	
	2021	2020
Total credit risk loan portfolio	\$ 25,764,721	\$ 24,048,754
Maximum DB Cayman credit protection	—	18,689
Maximum pre-credit enhancement loss exposure	\$ 7,785,850	\$ 7,172,509
Maximum DB Cayman credit protection	—	6,230
Maximum loss exposure without any form of credit protection	<u>\$ 7,785,850</u>	<u>\$ 7,166,279</u>

Credit enhancement receivable

As of December 31, 2021 and 2020, there were no credit enhancement receivables.

Credit enhancement deposit

The CEA required the DB Entities to deposit \$25.0 million into Newmark's Fannie Mae restricted liquidity account (see Note 9 — "Capital and Liquidity Requirements"). On of March 23, 2021, Newmark returned the credit enhancement deposit of \$25.0 million to the DB Entities.

The \$25.0 million deposit was included in "Accounts payable, accrued expenses and other liabilities" and "Other long-term liabilities", respectively, on the accompanying consolidated balance sheets as of December 31, 2020.

Contingent liability

Under the CEA, Newmark was required to pay DB Cayman, on March 9, 2021, an amount equal to 50% of the positive difference, if any, between (a) \$25.0 million, and (b) Newmark's unreimbursed loss-sharing payments from March 9, 2012 through March 9, 2021 on Newmark's servicing portfolio as of March 9, 2012. On March 23, 2021, Newmark paid DB Cayman the entire outstanding amount. As of December 31, 2020, contingent liabilities were \$12.3 million, and was included in "Accounts payable, accrued expenses and other liabilities" on the accompanying consolidated balance sheets. There was no liability as of December 31, 2021.

(13) Revenues from Contracts with Customers

The following table presents Newmark's total revenues separately for its revenues from contracts with customers and other sources of revenues (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Revenues from contracts with customers:			
Leasing and other commissions	\$ 826,942	\$ 513,842	\$ 854,780
Capital markets commissions	938,305	454,106	541,255
Management services	733,761	467,453	446,367
Total	2,499,008	1,435,401	1,842,402
Other sources of revenue⁽¹⁾:			
Gains from mortgage banking activities/originations, net	225,481	310,914	198,085
Servicing fees and other	181,954	158,683	177,645
Total	\$ 2,906,443	\$ 1,904,998	\$ 2,218,132

⁽¹⁾ Although these items have customers under contract, they were recorded as other sources of revenue as they were excluded from the scope of ASU No. 2014-9.

Disaggregation of revenues

Newmark's chief operating decision-maker, regardless of geographic location, evaluates the operating results, including revenues, of Newmark as total real estate (see Note 3 — "Summary of Significant Accounting Policies" for further discussion).

Contract balances

The timing of Newmark's revenue recognition may differ from the timing of payment by its customers. Newmark records a receivable when revenue is recognized prior to payment and Newmark has an unconditional right to payment. Alternatively, when payment precedes the provision of the related services, Newmark records deferred revenue until the performance obligations are satisfied.

Newmark's deferred revenue primarily relates to customers paying in advance or billed in advance where the performance obligation has not yet been satisfied. Deferred revenue at December 31, 2021 and 2020 was \$3.7 million and \$2.9 million, respectively. During the years ended December 31, 2021 and 2020, Newmark recognized revenue of \$2.1 million and \$2.8 million, respectively, that was recorded as deferred revenue at the beginning of the period.

For Knotel and Deskeo, the aggregate amount of the transaction price allocated to the Company's remaining performance obligations that represent contracted customer revenues that have not yet been recognized as revenue as of December 31, 2021, that will be recognized as revenue in future periods over the life of the customer contracts, in accordance with ASC 606, is approximately \$180.4 million. Over half of the remaining performance obligation as of December 31, 2021 is scheduled to be recognized as revenue within the next twelve months, with the remaining to be recognized over the remaining life of the customer contracts, which extends through 2028.

Approximate future cash flows to be received over the next five years at December 31, 2021 are as follows (in thousands):

2022	\$	93,352
2023		53,580
2024		21,927
2025		7,305
2026		3,072
Thereafter		1,125
Total	\$	<u>180,361</u>

(14) Gains from Mortgage Banking Activities/Originations, Net

Gains from mortgage banking activities/originations, net consists of the following activity (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Fair value of expected net future cash flows from servicing recognized at commitment, net	\$ 136,406	\$ 194,814	\$ 109,249
Loan originations related fees and sales premiums, net	89,075	116,100	88,836
Total	<u>\$ 225,481</u>	<u>\$ 310,914</u>	<u>\$ 198,085</u>

(15) Mortgage Servicing Rights, Net

The changes in the carrying amount of MSRs were as follows (in thousands):

Mortgage Servicing Rights	Year Ended December 31,		
	2021	2020	2019
Beginning Balance	\$ 528,983	\$ 432,666	\$ 416,131
Additions	147,789	193,913	103,160
Purchases from an affiliate	—	200	1,489
Amortization	(113,284)	(97,796)	(88,114)
Ending Balance	<u>\$ 563,488</u>	<u>\$ 528,983</u>	<u>\$ 432,666</u>
Valuation Allowance			
Beginning Balance	\$ (34,254)	\$ (19,022)	\$ (4,322)
Decrease (increase)	21,068	(15,232)	(14,700)
Ending Balance	<u>\$ (13,186)</u>	<u>\$ (34,254)</u>	<u>\$ (19,022)</u>
Net Balance	<u>\$ 550,302</u>	<u>\$ 494,729</u>	<u>\$ 413,644</u>

Servicing fees are included in “Management services, servicing fees and other” on the accompanying consolidated statements of operations and were as follows (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Servicing fees	\$ 138,495	\$ 116,005	\$ 104,305
Escrow interest and placement fees	4,415	6,140	22,417
Ancillary fees	16,932	7,353	13,671
Total	<u>\$ 159,842</u>	<u>\$ 129,498</u>	<u>\$ 140,393</u>

Newmark’s primary servicing portfolio at December 31, 2021 and 2020 was \$68.4 billion and \$66.3 billion, respectively. Also, Newmark is the named special servicer for a number of commercial mortgage-backed securitizations. Upon certain specified events (such as, but not limited to, loan defaults and loans assumptions), the administration of the loan is transferred to Newmark. Newmark’s special servicing portfolio was \$2.0 billion and \$2.3 billion at December 31, 2021 and 2020, respectively.

The estimated fair value of the MSRs at December 31, 2021 and 2020 was \$608.0 million and \$527.1 million, respectively.

Fair values are estimated using a valuation model that calculates the present value of the future net servicing cash flows. The cash flows assumptions used are based on assumptions Newmark believes market participants would use to value the portfolio. Significant assumptions include estimates of the cost of servicing per loan, discount rate, earnings rate on escrow deposits and prepayment speeds.

The discount rates used in measuring fair value for the years ended December 31, 2021 and 2020 were between 6.1% and 13.5% and varied based on investor type. An increase in discount rate of 100 basis points or 200 basis points would result in a decrease in fair value by \$18.0 million and \$35.1 million, respectively, at December 31, 2021 and by \$14.8 million and \$28.9 million, respectively, at December 31, 2020.

(16) Goodwill and Other Intangible Assets, Net

The changes in the carrying amount of goodwill were as follows (in thousands):

Balance, January 1, 2020	\$	557,914
Acquisitions		6,294
Measurement period adjustments		(3,876)
Balance, December 31, 2020		560,332
Acquisitions		97,168
Measurement period adjustments		(369)
Balance, December 31, 2021	\$	657,131

Goodwill is not amortized and is reviewed annually for impairment or more frequently if impairment indicators arise, in accordance with U.S. GAAP guidance on *Goodwill and Other Intangible Assets*. Newmark completed its annual goodwill impairment testing for the years ended December 31, 2021 and 2020, which did not result in a goodwill impairment (see Note 4 — “Acquisitions” for more information).

Other intangible assets consisted of the following (in thousands, except weighted-average life):

	December 31, 2021			
	Gross Amount	Accumulated Amortization	Net Carrying Amount	Weighted-Average Remaining Life (Years)
Indefinite life:				
Trademark and trade names	\$ 11,350	\$ —	\$ 11,350	N/A
License agreements (GSE)	5,390	—	5,390	N/A
Definite life:				
Trademark and trade names	12,765	(6,021)	6,744	3.7
Non-contractual customers	30,131	(12,815)	17,316	9.4
License agreements	4,981	(4,981)	—	0.0
Non-compete agreements	6,558	(3,898)	2,660	3.5
Contractual customers	33,731	(3,822)	29,909	7.0
Other	4,552	(1,722)	2,830	5.3
Total	\$ 109,458	\$ (33,259)	\$ 76,199	7.1

December 31, 2020				
	Gross Amount	Accumulated Amortization	Net Carrying Amount	Weighted-Average Remaining Life (Years)
Indefinite life:				
Trademark and trade names	\$ 11,350	\$ —	\$ 11,350	N/A
License agreements (GSE)	5,390	—	5,390	N/A
Definite life:				
Trademark and trade names	5,704	(4,519)	1,185	0.1
Non-contractual customers	30,131	(9,729)	20,402	7.2
License agreements	4,981	(4,266)	715	0.0
Non-compete agreements	6,557	(2,920)	3,637	0.6
Contractual customers	3,052	(1,584)	1,468	0.4
Other	350	(208)	142	0.0
Total	<u>\$ 67,515</u>	<u>\$ (23,226)</u>	<u>\$ 44,289</u>	<u>5.5</u>

Intangible amortization expense for the years ended December 31, 2021, 2020 and 2019 was \$8.9 million, \$6.7 million and \$6.9 million, respectively. Intangible amortization is included as a part of “Depreciation and amortization” on the accompanying consolidated statements of operations. Impairment charges are included in intangible amortization expense.

The estimated future amortization of definite life intangible assets as of December 31, 2021 was as follows (in thousands):

2022	\$ 10,196
2023	9,836
2024	9,282
2025	7,929
2026	6,820
Thereafter	15,396
Total	<u>\$ 59,459</u>

(17) Fixed Assets, Net

Fixed assets, net consisted of the following (in thousands):

	December 31,	
	2021	2020
Leasehold improvements, furniture and fixtures, and other fixed assets	\$ 184,704	\$ 126,428
Software, including software development costs	32,851	30,928
Computer and communications equipment	27,382	26,168
Total, cost	244,937	183,524
Accumulated depreciation and amortization	(109,181)	(87,157)
Total, net	<u>\$ 135,756</u>	<u>\$ 96,367</u>

Depreciation expense for the years ended December 31, 2021, 2020 and 2019 was \$22.0 million, \$22.9 million and \$22.7 million, respectively. Newmark recorded an impairment charge of \$6.0 million and \$5.0 million for internally developed software for the years ended December 31, 2020 and 2019, respectively. The impairment charge was included as a part of "Depreciation and amortization" on the accompanying consolidated statements of operations. There is no impairment recorded for the year ended December 31, 2021.

Capitalized software development costs for the years ended December 31, 2021, 2020 and 2019 were \$0.7 million, \$2.0 million and \$5.9 million, respectively. Amortization of software development costs totaled \$1.3 million, \$1.3 million and \$2.0 million for the years ended December 31, 2021, 2020 and 2019, respectively. Amortization of software development costs is included as part of “Depreciation and amortization” on the accompanying consolidated statements of operations.

(18) Leases

Newmark has operating leases for real estate and equipment. These leases have remaining lease terms ranging from 1 to 16 years, some of which include options to extend the leases in 5 to 10 years increments for up to 10 years. Renewal periods are included in the lease term only when renewal is reasonably certain, which is a high threshold and requires management to apply the judgment to determine the appropriate lease term. Certain leases also include periods covered by an option to terminate the lease if Newmark is reasonably certain not to exercise the termination option. The Company measures its lease payments by including fixed rental payments and, where relevant, variable rental payments tied to an index, such as the Consumer Price Index. Payments for leases in place before the date of adoption of ASC 842, Leases were determined based on previous leases guidance. The Company recognizes lease expense for its operating leases on a straight-line basis over the lease term and variable lease expense not included in the lease payment measurement is recognized as incurred. All leases were classified as operating leases as of December 31, 2021.

Pursuant to the accounting policy election, leases with an initial term of twelve months or less are not recognized on the balance sheet. The short-term lease expense over the period reasonably reflects the Company's short-term lease commitments.

ASC 842, Leases requires the Company to make certain assumptions and judgments in applying the guidance, including determining whether an arrangement includes a lease, determining the term of a lease when the contract has renewal or cancellation provisions, and determining the discount rate.

The Company determines whether an arrangement is a lease or includes a lease at the contract inception by evaluating whether the contract conveys the right to control the use of an identified asset for a period of time in exchange for consideration. If the Company has the right to obtain substantially all of the economic benefits from, and can direct the use of, the identified asset for a period of time, the Company accounts for the identified asset as a lease. The Company has elected the practical expedient to not separate lease and non-lease components for all leases other than real estate leases. The primary non-lease component that is combined with a lease component represents operating expenses such as utilities, maintenance or management fees.

As the rate implicit in the lease is not usually available, the Company used an incremental borrowing rate based on the information available at the adoption date of the new Leases standard in determining the present value of lease payments for existing leases. The Company has elected to use a portfolio approach for the incremental borrowing rate, applying corporate bond rates to the leases. The Company calculated the appropriate rates with reference to the lease term and lease currency. The Company uses information available at the lease commencement date to determine the discount rate for any new leases.

Operating lease costs were \$75.5 million, \$50.4 million and \$47.1 million for the years ended December 31, 2021, 2020 and 2019, respectively, and are included in "Operating, administrative and other" on the accompanying consolidated statements of operations. Operating cash flows for the years ended December 31, 2021, 2020 and 2019, included payments of \$81.7 million, \$49.0 million and \$44.4 million for operating lease liabilities, respectively. As of December 31, 2021 and 2020, Newmark did not have any leases that have not yet commenced but that create significant rights and obligations. For the years ended December 31, 2021, 2020 and 2019, respectively, Newmark had short-term lease expense of \$1.1 million, \$0.8 million and \$2.3 million. For the years ended December 31, 2021, 2020 and 2019, respectively, Newmark had sublease income of \$0.6 million, \$1.3 million and \$0.7 million. During 2020 Newmark recorded a lease impairment charge of \$5.1 million to "Operating administrative and other" on the accompanying consolidated statements of operations.

The weighted-average discount rate as of December 31, 2021 and 2020 was 3.95% and 7.11% and the remaining weighted-average lease term was 7.4 years and 8.2 years, respectively.

As of December 31, 2021 and 2020, Newmark had operating lease Right-of-use assets of \$606.6 million and \$190.5 million, respectively, and operating lease Right-of-use liabilities of \$82.0 million and \$29.5 million, respectively, recorded in "Accounts payable, and accrued expenses and other liabilities" and \$586.1 million and \$218.6 million, respectively, recorded in "Right-of-use liabilities", on the accompanying consolidated balance sheets.

Rent expense, including the operating lease costs above, for the years ended December 31, 2021, 2020 and 2019 was \$105.2 million, \$49.9 million and \$49.4 million, respectively. Rent expense is included in "Operating, administrative and other" on the accompanying consolidated statements of operations.

Newmark is obligated for minimum rental payments under various non-cancelable operating leases, principally for office space, expiring at various dates through 2032. Certain of these leases contain escalation clauses that require payment of additional rent to the extent of increases in certain operating or other costs.

Minimum lease payments under these arrangements were as follows (in thousands):

	December 31,	
	2021	2020
2022	\$ 113,822	\$ 45,701
2023	112,840	42,072
2024	106,038	40,507
2025	101,211	37,866
2026	96,493	36,520
Thereafter	274,764	126,668
Total lease payments	805,168	329,334
Less: Interest	137,141	81,237
Present value of lease liability	<u>\$ 668,027</u>	<u>\$ 248,097</u>

(19) Other Current Assets and Other Assets

Other current assets consisted of the following (in thousands):

	December 31,	
	2021	2020
Derivative assets	\$ 8,501	\$ 32,259
Prepaid expenses	36,422	18,900
Other taxes	17,383	9,204
Rent and other deposits	20,471	1,539
Other	560	1,888
Total	<u>\$ 83,337</u>	<u>\$ 63,790</u>

Other assets consisted of the following (in thousands):

	December 31,	
	2021	2020
Deferred tax assets	\$ 70,191	\$ 187,526
Equity method investment	88,308	88,315
Debt securities	—	12,754
Non-marketable investments	20,017	9,927
Derivative assets	—	9,229
Other	33,965	15,171
Total	<u>\$ 212,481</u>	<u>\$ 322,922</u>

(20) Repurchase Agreements and Securities Loaned

Securities sold under Repurchase Agreements are accounted for as collateralized financing transactions and are recorded at the contractual amount for which the securities will be repurchase, including accrued interest. As of December 31, 2021, Cantor facilitated Repurchase Agreements between the Company and Cantor in the amount of \$140.0 million. The market value of the securities pledged as of December 31, 2021, were \$182.0 million (see Note 7 — "Marketable Securities" and Note 27 — "Related Party Transactions"). The cash collateral received from Cantor bore an interest rate of 0.95%. As of December 31, 2020, Newmark had securities loaned with Cantor of \$33.3 million. The market value of the securities loaned was \$32.6 million as of December 31, 2020. The cash collateral received from Cantor bore an interest rate of 0.85% as of December 31, 2020.

(21) Warehouse Facilities Collateralized by U.S. Government Sponsored Enterprises

Newmark uses its warehouse facilities and repurchase agreements to fund mortgage loans originated under its various lending programs. Outstanding borrowings against these lines are collateralized by an assignment of the underlying mortgages and third-party purchase commitments and are recourse only to Berkeley Point Capital, LLC.

Newmark had the following lines available and borrowings outstanding (in thousands):

	Committed Lines	Uncommitted Lines	Balance at December 31, 2021	Balance at December 31, 2020	Stated Spread to One-Month LIBOR/SOFR ⁽³⁾	Rate Type
Warehouse facility due October 7, 2022 ⁽¹⁾⁽²⁾	\$ 600,000	\$ —	\$ 384,571	\$ 358,247	130 bps - 140 bps	Variable
Warehouse facility due June 15, 2022	450,000	—	243,659	292,040	130 bps - 140 bps	Variable
Warehouse facility due June 15, 2022	—	300,000	135,601	—	130 bps	Variable
Warehouse facility due September 25, 2022	400,000	—	193,091	146,380	130 bps - 140 bps	Variable
Fannie Mae repurchase agreement, open maturity ⁽³⁾	—	400,000	93,771	264,535	115 bps	Variable
Total	<u>\$ 1,450,000</u>	<u>\$ 700,000</u>	<u>\$ 1,050,693</u>	<u>\$ 1,061,202</u>		

⁽¹⁾ The warehouse line established a \$125.0 million sublimit line of credit to fund potential principal and interest servicing advances on the Company's Fannie Mae portfolio during the forbearance period related to the CARES Act. Advances will have an interest rate of 1-month LIBOR plus 180 bps. There were no outstanding under this sublimit as of December 31, 2021.

⁽²⁾ The warehouse line was temporarily increased by \$300 million to \$900 million for the period December 1, 2020 to February 1, 2021.

⁽³⁾ The spread for the Fannie Mae repurchase agreement is to SOFR. The warehouse facilities are to LIBOR.

Pursuant to the terms of the warehouse facilities, Newmark is required to meet several financial covenants. Newmark was in compliance with all covenants as of December 31, 2021 and 2020, respectively.

The borrowing rates on the warehouse facilities are based on short-term LIBOR or SOFR plus applicable margins. Due to the short-term maturity of these instruments, the carrying amounts approximate fair value.

(22) Long-Term Debt

Long-term debt consisted of the following (in thousands):

	December 31,	
	2021	2020
6.125% Senior Notes	\$ 545,239	\$ 542,772
Credit Facility	—	137,613
Total	<u>\$ 545,239</u>	<u>\$ 680,385</u>

6.125% Senior Notes

On November 6, 2018, Newmark closed its offering of \$550.0 million aggregate principal amount of 6.125% Senior Notes due 2023 (the "6.125% Senior Notes"). The 6.125% Senior Notes were priced on November 1, 2018 at 98.94% to yield 6.375%. The 6.125% Senior Notes were offered and sold by Newmark in a private offering exempt from the registration requirements under the Securities Act of 1933, as amended ("Securities Act"). The 6.125% Senior Notes were subsequently exchanged for notes with substantially similar terms that were registered under the Securities Act. The 6.125% Senior Notes bear an interest rate of 6.125% per annum, payable on each May 15 and November 15, beginning on May 15, 2019, and will mature on November 15, 2023.

The carrying amount of the 6.125% Senior Notes was determined as follows (in thousands):

	December 31,	
	2021	2020
Principal balance	\$ 550,000	\$ 550,000
Less: debt issue cost	2,404	3,688
Less: debt discount	2,357	3,540
Total	<u>\$ 545,239</u>	<u>\$ 542,772</u>

Newmark uses the effective interest rate method to amortize debt discounts and uses the straight-line method to amortize debt issue costs over the life of the notes. Interest expense, amortization of debt issue costs and amortization of the

debt discount of the 6.125% Senior Notes, included in “Interest (expense) income, net” on the accompanying consolidated statements of operations, were as follows (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Interest expense	\$ 33,687	\$ 33,687	\$ 34,730
Debt issue cost amortization	1,284	1,284	1,282
Debt discount amortization	1,183	1,183	565
Total	\$ 36,154	\$ 36,154	\$ 36,577

Debt Repurchase Program

On June 16, 2020, the Newmark Board of Directors and its Audit Committee authorized a debt repurchase program for the repurchase by Newmark of up to \$50.0 million of Newmark’s 6.125% Senior Notes and any future debt securities issued by the Company.

As of December 31, 2021, Newmark had \$50.0 million remaining under its debt repurchase authorization.

Credit Facility

On November 28, 2018, Newmark entered into a credit agreement by and among Newmark, the several financial institutions from time to time party thereto, as Lenders, and Bank of America N.A., as administrative agent (the “Credit Agreement”). The Credit Agreement provided for a \$250.0 million three-year unsecured senior revolving credit facility (the “Credit Facility”). Borrowings under the Credit Facility bore an annual interest rate equal to, at Newmark’s option, either (a) LIBOR for specified periods, or upon the consent of all Lenders, such other period that is 12 months or less, plus an applicable margin, or (b) a base rate equal to the greatest of (i) the federal funds rate plus 0.5%, (ii) the prime rate as established by the administrative agent, and (iii) one-month LIBOR plus 1.0%, plus an applicable margin. The applicable margin is 2.0% with respect to LIBOR borrowings and can range from 1.25% to 2.25% in (a) above and was 1.00% with respect to base rate borrowings and can range from 0.25% to 1.25% in (b) above, depending upon Newmark’s credit rating. The Credit Facility also provides for an unused facility fee.

On February 26, 2020, Newmark entered into an amendment to the Credit Agreement, increasing the size of the Credit Facility to \$425.0 million (the “Amended Credit Facility”) and extending the maturity date to February 26, 2023. The annual interest rate on the Amended Credit Facility was reduced to LIBOR plus 1.75%, subject to a pricing grid linked to Newmark’s credit ratings from Standard & Poor’s and Fitch.

On March 16, 2020, Newmark entered into a second amendment to the Credit Agreement, increasing the size of the Amended Credit Facility to \$465.0 million (the “Second Amended Credit Facility”). The annual interest rate on the Second Amended Credit Facility is LIBOR plus 1.75%, subject to a pricing grid linked to Newmark’s credit ratings from Standard & Poor’s and Fitch. In July 2021, Newmark paid the \$140.0 million outstanding on the Credit Facility.

Details of the Credit Facility are as follows (in thousands):

	December 31,	
	2021	2020
Principal balance	\$ —	\$ 140,000
Less: Debt issue cost	—	2,387
Total	\$ —	\$ 137,613

As of December 31, 2021 and 2020, borrowings under the Credit Facility carried an interest rate of 0.00% and 1.90%, with a weighted-average interest rate of 1.03% and 2.37%, respectively. Newmark uses the straight-line method to amortize debt issue costs over the life of the notes. Interest expense and amortization of debt issue costs of the Credit Facility, included in “Interest (expense) income, net” on the accompanying consolidated statements of operations, were as follows (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Interest expense	\$ 1,623	\$ 6,618	\$ 1,341
Debt issue cost amortization	826	1,101	1,101
Unused facility fee	972	354	—
Total	\$ 3,421	\$ 8,073	\$ 2,442

On November 30, 2018, Newmark entered into an unsecured credit agreement (the “Cantor Credit Agreement”) with Cantor (see Note 27 — “Related Party Transactions” for a more detailed discussion).

(23) Financial Guarantee Liability

Newmark shares risk of loss for loans originated under the Fannie Mae DUS and Freddie TAH programs and could incur losses in the event of defaults under or foreclosure of these loans. Under the loss-share guarantee, Newmark’s maximum liability to the extent of actual losses incurred is approximately 33% of the outstanding principal balance on Fannie Mae DUS or Freddie TAH loans. Risk-sharing percentages are established on a loan-by-loan basis when originated, with most loans at 33% and “modified” loans at lower percentages. Under certain circumstances, risk-sharing percentages can be revised subsequent to origination or Newmark could be required to repurchase the loan. In the event of a loss resulting from a catastrophic event that is not required to be covered by borrowers’ insurance policies, Newmark can recover the loss under its mortgage impairment insurance policy. Any potential recovery is subject to the policy’s deductibles and limits.

At December 31, 2021, the credit risk loans being serviced by Newmark on behalf of Fannie Mae and Freddie Mac had outstanding principal balances of \$25.8 billion with a maximum potential loss of \$7.8 billion. At December 31, 2020, the credit risk loans being serviced by Newmark on behalf of Fannie Mae and Freddie Mac had outstanding principal balances of approximately \$24.0 billion with a maximum potential loss of approximately \$7.2 billion, of which \$6.2 million was covered by the Credit Enhancement Agreement (see Note 12 — “Credit Enhancement Receivable, Credit Enhancement Deposit and Contingent Liability”). As of December 31, 2021, there were no loans covered by the Credit Enhancement Agreement.

Newmark’s current estimate of expected credit losses considers various factors, including, without being limited to, historical default and losses, current delinquency status, loan size, terms, amortization types, the forward-looking view of the primary risk drivers (debt-service coverage ratio and loan-to-value) based on forecasts in economic conditions and local market performance. During the years ended December 31, 2021 and 2020, there was a decrease to the reserve by \$3.6 million and an increase to the reserve by \$11.6 million, respectively. A loan is considered to be delinquent once it is 60 days past due. As of December 31, 2021, there were two loans in the credit risk portfolio with an outstanding principal balance of \$33.6 million, with a maximum loss exposure of \$11.2 million, that were in default. If the two loans in default resulted in a loss event, proceeds from the liquidation of the assets are estimated to be approximately \$28.4 million based on current estimates of fair value. Newmark’s share of the loss would approximate \$2.3 million. As of December 31, 2020, there were four loans in the credit risk portfolio with outstanding principal balances of \$53.5 million, with a maximum loss exposure of \$17.8 million, that were delinquent. If all four delinquent loans resulted in a loss event, proceeds from the liquidation of the assets are estimated to be approximately \$39.0 million based on estimates of fair value at December 31, 2020. Newmark’s share of the loss would approximate \$5.3 million. As of December 31, 2021, no actual losses were incurred.

The provisions for risk-sharing were included in “Operating, administrative and other” on the accompanying consolidated statements of operations as follows (in thousands):

Balance, January 1, 2020	\$	15
Impact of adopting ASC 326		17,935
Provision for expected credit losses		11,631
Balance, December 31, 2020		29,581
Provision for expected credit losses		(3,592)
Balance, December 31, 2021	\$	25,989

(24) Concentrations of Credit Risk

The lending activities of Newmark create credit risk in the event that counterparties do not fulfill their contractual payment obligations. In particular, Newmark is exposed to credit risk related to the Fannie Mae DUS and Freddie Mac TAH loans (see Note 23 — “Financial Guarantee Liability”). As of December 31, 2021, 20% and 13% of \$7.8 billion of the maximum loss was for properties located in California and Texas, respectively. As of December 31, 2020, 21% and 14% of \$7.2 billion of the maximum loss was for properties located in California and Texas, respectively.

(25) Escrow and Custodial Funds

In conjunction with the servicing of multifamily and commercial loans, Newmark holds escrow and other custodial funds. Escrow funds are held at unaffiliated financial institutions generally in the form of cash and cash equivalents. These funds amounted to \$2.3 billion and \$1.3 billion, as of December 31, 2021 and 2020, respectively. These funds are held for the

benefit of Newmark's borrowers and are segregated in custodial bank accounts. These amounts are excluded from the assets and liabilities of Newmark.

(26) Fair Value of Financial Assets and Liabilities

U.S. GAAP guidance establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets and liabilities (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). The three levels of the fair value hierarchy are as follows:

- Level 1 measurements—Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities.
- Level 2 measurements—Quoted prices in markets that are not active or financial instruments for which all significant inputs are observable, either directly or indirectly.
- Level 3 measurements—Prices or valuations that require inputs that are both significant to the fair value measurement and unobservable.

As required by U.S. GAAP guidance, assets and liabilities are classified in their entirety based on the lowest level of input that is significant to the fair value measurement. The following table sets forth by level within the fair value hierarchy financial assets and liabilities accounted for at fair value under U.S. GAAP guidance (in thousands):

As of December 31, 2021				
	Level 1	Level 2	Level 3	Total
Assets:				
Marketable securities	\$ 524,569	\$ —	\$ —	\$ 524,569
Loans held for sale, at fair value	—	1,072,479	—	1,072,479
Rate lock commitments	—	—	3,957	3,957
Nasdaq Forwards	—	—	—	—
Forward sale contracts	—	—	4,544	4,544
Total	\$ 524,569	\$ 1,072,479	\$ 8,501	\$ 1,605,549
Liabilities:				
Contingent consideration	—	—	12,338	12,338
Rate lock commitments	—	—	2,836	2,836
Forward sale contracts	—	—	2,180	2,180
Total	\$ —	\$ —	\$ 17,354	\$ 17,354
As of December 31, 2020				
	Level 1	Level 2	Level 3	Total
Assets:				
Marketable securities	\$ 33,283	\$ —	\$ —	\$ 33,283
Loans held for sale, at fair value	—	1,086,805	—	1,086,805
Debt securities	—	12,754	—	12,754
Rate lock commitments	—	—	21,034	21,034
Nasdaq Forwards	—	—	12,822	12,822
Forward sale contracts	—	—	7,632	7,632
Total	\$ 33,283	\$ 1,099,559	\$ 41,488	\$ 1,174,330
Liabilities:				
Contingent consideration	\$ —	\$ —	\$ 31,481	\$ 31,481
Rate lock commitments	—	—	2,977	2,977
Forwards sale contracts	—	—	14,971	14,971
Total	\$ —	\$ —	\$ 49,429	\$ 49,429

There were no transfers among Level 1, Level 2 and Level 3 for the years ended December 31, 2021 and 2020, respectively

Level 3 Financial Assets and Liabilities: Changes in Level 3 Nasdaq Forwards, rate lock commitments, forward sale contracts and contingent consideration measured at fair value on recurring basis were as follows (in thousands):

As of December 31, 2021						
	Opening Balance	Total realized and unrealized gains (losses) included in Net income	Issuances	Settlements	Closing Balance	Unrealized gains (losses) outstanding
Assets:						
Rate lock commitments	\$ 21,034	\$ 3,957	\$ —	\$ (21,034)	\$ 3,957	\$ 3,957
Forward sale contracts	7,632	4,544	—	(7,632)	4,544	4,544
Nasdaq Forwards	12,822	(12,822)	—	—	—	—
Total	\$ 41,488	\$ (4,321)	\$ —	\$ (28,666)	\$ 8,501	\$ 8,501
	Opening Balance	Total realized and unrealized gains (losses) included in Net income	Issuances	Settlements	Closing Balance	Unrealized gains (losses) outstanding
Liabilities:						
Contingent consideration	\$ 31,481	\$ (1,351)	\$ —	\$ (17,792)	\$ 12,338	\$ 12,338
Rate lock commitments	2,977	2,836	—	(2,977)	2,836	2,836
Forward sale contracts	14,971	2,180	—	(14,971)	2,180	2,180
Total	\$ 49,429	\$ 3,665	\$ —	\$ (35,740)	\$ 17,354	\$ 17,354
As of December 31, 2020						
	Opening Balance	Total realized and unrealized gains (losses) included in Net income	Issuances	Settlements	Closing Balance	Unrealized gains (losses) outstanding
Assets:						
Rate lock commitments	\$ 32,035	\$ 21,034	\$ —	\$ (32,035)	\$ 21,034	\$ 21,034
Forward sale contracts	14,389	7,632	—	(14,389)	7,632	7,632
Nasdaq Forwards	26,502	(13,680)	—	—	12,822	12,822
Total	\$ 72,926	\$ 14,986	\$ —	\$ (46,424)	\$ 41,488	\$ 41,488
	Opening Balance	Total realized and unrealized gains (losses) included in Net income	Issuances	Settlements	Closing Balance	Unrealized gains (losses) outstanding
Liabilities:						
Contingent consideration	\$ 45,172	\$ (11,063)	\$ 2,221	\$ (4,849)	\$ 31,481	\$ (408)
Rate lock commitments	12,124	2,977	—	(12,124)	2,977	2,977
Forward sale contracts	13,537	14,971	—	(13,537)	14,971	14,971
Total	\$ 70,833	\$ 6,885	\$ 2,221	\$ (30,510)	\$ 49,429	\$ 17,540

Quantitative Information About Level 3 Fair Value Measurements

The following tables present quantitative information about the significant unobservable inputs utilized by Newmark in the fair value measurement of Level 3 assets and liabilities measured at fair value on a recurring basis:

December 31, 2021						
Level 3 assets and liabilities	Assets	Liabilities	Significant Unobservable Inputs	Range		Weighted Average
Accounts payable, accrued expenses and other liabilities:						
Contingent consideration	\$ —	\$ 12,338	Discount rate	4.0% - 10.2%	(1)	8.1%
			Probability of meeting earnout and contingencies	0.0% - 99.0%	(1)	91.6%
			Financial forecast information			
Derivative assets and liabilities:						
Nasdaq Forwards	\$ —	\$ —	Implied volatility	N/A		N/A
Forward sale contracts	\$ 4,544	\$ 2,180	Counterparty credit risk	N/A		N/A
Rate lock commitments	\$ 3,957	\$ 2,836	Counterparty credit risk	N/A		N/A
December 31, 2020						
Level 3 assets and liabilities	Assets	Liabilities	Significant Unobservable Inputs	Range		Weighted Average
Accounts payable, accrued expenses and other liabilities:						
Contingent consideration	\$ —	\$ 31,481	Discount rate	0.3% - 10.4%		7.1%
			Probability of meeting earnout and contingencies	0% - 100%	(1)	93.9%
			Financial forecast information			
Derivative assets and liabilities:						
Nasdaq Forwards	\$ 12,822	\$ —	Implied volatility	42.4% - 42.6%	(2)	42.5%
Forward sale contracts	\$ 7,632	\$ 14,971	Counterparty credit risk	N/A		N/A
Rate lock commitments	\$ 21,034	\$ 2,977	Counterparty credit risk	N/A		N/A

(1) Newmark's estimate of contingent consideration as of December 31, 2021 and 2020 was based on the acquired business' projected future financial performance, including revenues.

(2) The volatility of Newmark's Nasdaq Forwards is primarily based on the volatility of the underlying Nasdaq stock price.

Valuation Processes - Level 3 Measurements

Both the rate lock commitments to borrowers and the forward sale contracts to investors are derivatives and, accordingly, are marked to fair value on the accompanying consolidated statements of operations. The fair value of Newmark's rate lock commitments to borrowers and loans held for sale and the related input levels includes, as applicable:

- The assumed gain loss of the expected loan sale to the investor, net of employee benefits;
- The expected net future cash flows associated with servicing the loan;
- The effects of interest rate movements between the date of the rate lock and the balance sheet date; and
- The nonperformance risk of both the counterparty and Newmark.

The fair value of Newmark's forward sales contracts to investors considers effects of interest rate movements between the trade date and the balance sheet date. The market price changes are multiplied by the notional amount of the forward sales contracts to measure the fair value.

The fair value of Newmark's rate lock commitments and forward sale contracts is adjusted to reflect the risk that the agreement will not be fulfilled. Newmark's exposure to nonperformance in rate lock and forward sale contracts is represented by the contractual amount of those instruments. Given the credit quality of Newmark's counterparties, the short duration of rate lock commitments and forward sales contracts, and Newmark's historical experience with the agreements, management does not believe the risk of nonperformance by Newmark's counterparties to be significant.

The Nasdaq Forwards are derivatives and, accordingly, are marked to fair value on the accompanying consolidated statements of operations. The fair value of the Nasdaq Forwards are determined utilizing the following inputs, as applicable:

- The underlying number of shares and the related strike price;
- The maturity date; and
- The implied volatility of Nasdaq's stock price.

The fair value of Newmark's Nasdaq Forwards considers the effects of Nasdaq's stock price volatility between the balance sheet date and the maturity date. The fair value is determined by the use of a Black-Scholes put option valuation model.

Information About Uncertainty of Level 3 Fair Value Measurements

The significant unobservable inputs used in the fair value of Newmark's contingent consideration are the discount rate and forecasted financial information. Significant increases (decreases) in the discount rate would have resulted in a significantly lower (higher) fair value measurement. Significant increases (decreases) in the forecasted financial information would have resulted in a significantly higher (lower) fair value measurement. As of December 31, 2021 and 2020, the present value of expected payments related to Newmark's contingent consideration was \$12.3 million and \$31.5 million, respectively (see Note 31 — "Commitments and Contingencies"). As of December 31, 2021 and 2020, the undiscounted value of the payments, assuming that all contingencies are met, would be \$13.2 million and \$51.3 million, respectively.

Fair Value Measurements on a Non-Recurring Basis

Equity investments carried under the measurement alternative are remeasured at fair value on a non-recurring basis to reflect observable transactions which occurred during the period. Newmark applied the measurement alternative to equity securities with the fair value of \$20.0 million and \$9.9 million, which was included in "Other assets" on the accompanying consolidated balance sheets as of December 31, 2021 and 2020, respectively. These investments are classified within Level 2 in the fair value hierarchy, because their estimated fair value is based on valuation methods using the observable transaction price at the transaction date.

(27) Related Party Transactions

(a) Service Agreements

Newmark receives administrative services, including but not limited to, treasury, legal, accounting, information technology, payroll administration, human resources, incentive compensation plans and other support, provided by Cantor. Allocated expenses were \$23.8 million, \$22.6 million and \$25.0 million for the years ended December 31, 2021, 2020 and 2019, respectively. These expenses are included as part of "Fees to related parties" on the accompanying consolidated statements of operations.

(b) Loans, Forgivable Loans and Other Receivables from Employees and Partners

Newmark has entered into various agreements with certain employees and partners whereby these individuals receive loans which may be either wholly or in part repaid from the distribution of earnings that the individuals receive on some or all of their limited partnership interests or may be forgiven over a period of time. The forgivable portion of these loans is recognized as compensation expense over the life of the loans. From time to time, Newmark may also enter into agreements with employees and partners to grant bonus and salary advances or other types of loans. These advances and loans are repayable in the timeframes outlined in the underlying agreements.

As of December 31, 2021 and 2020, the aggregate balance of employee loans was \$453.3 million and \$454.3 million, respectively, and is included as "Loans, forgivable loans and other receivables from employees and partners, net" on the accompanying consolidated balance sheets. Compensation expense for the above-mentioned employee loans for the years ended December 31, 2021, 2020 and 2019 was \$79.4 million, \$73.6 million and \$39.0 million, respectively. The compensation expense related to these employee loans is included as part of "Compensation and employee benefits" on the accompanying consolidated statements of operations.

Transfer of Employees to Newmark and Other Related Party Transactions

In connection with the expansion of the mortgage brokerage and lending activities, Newmark has entered into an agreement with Cantor pursuant to which five former employees of Cantor's affiliate, Cantor Commercial Real Estate ("CCRE"), transferred to Newmark, effective as of May 1, 2018. In connection with this transfer of employees, Cantor paid \$6.9 million to Newmark in October 2018, and Newmark Holdings issued \$6.7 million of limited partnership units and \$0.2 million of cash in the form of a cash distribution agreement to the employees. In addition, Newmark Holdings issued \$2.2 million of Newmark Holdings partnership units with a capital account and \$0.5 million of limited partnership units in exchange

for the cash payment from Cantor to Newmark of \$2.2 million. Newmark recorded \$6.9 million and \$2.2 million as “Stockholders’ equity” and “Redeemable partnership interests”, respectively, on the consolidated balance sheets.

In consideration for the Cantor payment, Newmark agreed to return up to a maximum of \$3.3 million to Cantor based on the employees’ production during their first two years of employment with Newmark. In July 2020, Newmark paid \$3.3 million to Cantor based on the employees’ production, satisfying this liability. As of December 31, 2021, Newmark did not have an outstanding balance to Cantor related to this transaction. Newmark has agreed to allow certain of these employees to continue to provide consulting services to Cantor in exchange for a forgivable loan which was directly paid by Cantor to these employees.

In February 2019, Newmark’s Audit Committee authorized Newmark and its subsidiaries to originate and service GSE loans for Cantor and its affiliates (other than BGC) and service loans originated by Cantor and its affiliates (other than BGC) on prices, rates and terms no less favorable to Newmark and its subsidiaries than those charged by third parties. The authorization is subject to certain terms and conditions, including but not limited to: (i) a maximum amount up to \$100.0 million per loan, (ii) a \$250.0 million limit on loans that have not yet been acquired or sold to a GSE at any given time, and (iii) a separate \$250.0 million limit on originated Fannie Mae Loans outstanding to Cantor at any given time.

On November 30, 2020, we entered into an arrangement to assist View, Inc. (“View”) in the sale of its products and services to real estate clients in exchange for commissions. View, Inc. is a Silicon Valley-based producer of high-efficiency dynamic glass that controls light, heat, and glare, providing unobstructed views and privacy using a low voltage control system. In connection with the arrangement, View also agreed to engage us as its exclusive provider of real estate services for a period of at least five years. While View is not under common control with us, it was, at the time that the agreement was executed, the target of a merger with CF Finance Acquisition Corp. II, a special purpose acquisition company sponsored by Cantor.

(c) Transactions with CCRE

Newmark has a revenue-share agreement with CCRE, in which Newmark pays CCRE for referrals for leasing or other services. Newmark did not make any payments under this agreement to CCRE for the years ended December 31, 2021, 2020 and 2019, respectively.

In addition, Newmark has a loan referral agreement in place with CCRE, in which either party can refer a loan to the other. Newmark did not have any revenues from these referrals for the years ended December 31, 2021 and 2020. Such revenues are recognized in “Gains from mortgage banking activities/originations, net” on the accompanying consolidated statements of operations. These referral fees are net of the broker fees and commissions paid to CCRE.

Newmark did not purchase any primary servicing rights during the year ended December 31, 2021. Newmark purchased the primary servicing rights of loans originated by CCRE for \$227.0 million of loans originated by CCRE for \$0.2 million for the year ended December 31, 2020. Newmark also services loans for CCRE on a “fee for service” basis, generally prior to a loan’s sale or securitization, and for which no MSR is recognized. Newmark recognized servicing revenues (excluding interest and placement fees) from servicing rights purchased from CCRE on a “fee for service” basis of \$3.6 million, \$3.8 million and \$3.8 million for the years ended December 31, 2021, 2020 and 2019, respectively, which was included as part of “Management services, servicing fee and other” on the accompanying consolidated statements of operations.

On July 22, 2019, Cantor Commercial Real Estate Lending, L.P. (“CCRE Lending”), a wholly owned subsidiary of Real Estate LP, made a \$146.6 million commercial real estate loan (the “Loan”) to a single-purpose company (the “Borrower”) in which Barry Gosin, Newmark’s Chief Executive Officer, owns a 19% interest. The Loan is secured by the Borrower’s interest in property in Pennsylvania that is subject to a ground lease. While CCRE Lending initially provided the full loan amount, on August 16, 2019, a third-party bank purchased approximately 80% of the Loan value from CCRE Lending, with CCRE Lending retaining approximately 20%. The Loan matures on August 6, 2029, and is payable monthly at a fixed interest rate of 4.38% per annum. Newmark provided certain commercial loan brokerage services to the Borrower in the ordinary course of its business, and the Borrower paid Newmark a fee, as the broker of the Loan, of \$0.7 million. The Newmark Audit Committee approved the commercial loan brokerage services and the related fee amount received.

Transactions with Executive Officers and Directors

Executive Compensation

On December 21, 2021, the Compensation Committee approved: (i) the redemption of all of Mr. Gosin’s remaining 838,996 non-exchangeable Newmark PPSUs for \$8,339,980 in cash and (ii) compensation of approximately \$7,357,329 by way of the Company causing 478,328 of Mr. Gosin’s non-exchangeable Newmark PSUs to be redeemed for zero and issuing 446,711 shares of Newmark Class A Common Stock, based upon the closing price on the date the Committee approved the

transaction (which was \$16.47) and an exchange ratio of 0.9339. The estimated pre-tax value of this transaction is \$15,697,309, less applicable taxes and withholdings, using a 53.13% tax rate for Mr. Gosin.

On December 21, 2021, Mr. Lutnick elected to redeem all of his 193,530 currently exchangeable Newmark PPSUs for a cash payment of \$1,465,873. In addition, upon the Compensation Committee's approval of the monetization of Mr. Gosin's remaining non-exchangeable Newmark PPSUs and a number of Mr. Gosin's non-exchangeable PSUs on December 21, 2021, Mr. Lutnick (i) elected to redeem 188,883 non-exchangeable Newmark PPSUs for a cash payment of \$1,954,728, and 127,799 non-exchangeable Newmark NPPSUs for a cash payment of \$1,284,376, both for which he previously waived, but now accepted under the Company's standing policy for Mr. Lutnick; and (ii) received the right to monetize, and accepted the monetization of, his remaining 122,201 non-exchangeable Newmark NPPSUs for a cash payment of \$1,228,124, under such standing policy.

In connection with the foregoing, Mr. Lutnick accepted the right to monetize approximately \$4,406,915 by way of the Company causing 286,511 of Mr. Lutnick's non-exchangeable Newmark PSUs to be redeemed for zero and issuing 267,572 shares of Newmark Class A Common Stock based upon the closing price on the date the Committee approved the transaction (which was \$16.47) and a .9339 exchange ratio, under the Company's standing policy applying to Mr. Lutnick, with such acceptance of rights granted in reference to Mr. Gosin's December 2021 transactions to the extent necessary to effectuate the foregoing (and otherwise Mr. Lutnick waived all remaining rights, which shall be cumulative). The aggregate estimated pre-tax value of these transactions is \$10,340,015, less applicable taxes and withholdings, using a 57.38% tax rate for Mr. Lutnick.

On March 16, 2021, the Company redeemed 30,926 non-exchangeable Newmark Holdings PSUs held by Mr. Merkel for zero and in connection therewith issued 28,962 shares of our Class A common stock. On the same day, the Company repurchased these shares from Mr. Merkel at the closing price of our Class A common stock of \$11.09 per share under our stock buyback program. The total payment delivered to Mr. Merkel was \$0.3 million, less applicable taxes and withholdings. The Compensation Committee approved these transactions.

On March 16, 2021, pursuant to the Newmark standing policy for Mr. Lutnick, the Compensation Committee granted exchange rights and/or monetization rights with respect to rights available to Mr. Lutnick. Mr. Lutnick elected to waive such rights one-time with such future opportunities to be cumulative. The aggregate number of Mr. Lutnick's units for which he waived exchange rights or other monetization rights is 4,423,457 non-exchangeable Newmark Holdings PSUs/NPSUs, inclusive of the PSUs receiving an HDU conversion right and 1,770,016 non-exchangeable Newmark Holdings PPSUs with an aggregate determination amount of \$21.6 million at that time, inclusive of the PPSUs receiving an HDU conversion right.

On March 16, 2021, the Compensation Committee granted Mr. Gosin exchange rights into shares of Class A common stock with respect to 526,828 previously awarded non-exchangeable Newmark Holdings PSUs and 30,871 non-exchangeable Newmark Holdings APSUs held by Mr. Gosin (which, based on the closing price of the Class A common stock of \$11.09 per share on such date and using the exchange ratio of 0.9365, had a value of \$5.8 million in the aggregate). In addition, on March 16, 2021, the Compensation Committee approved removing the sale restrictions on Mr. Gosin's remaining 178,232 restricted shares of Class A common stock in BGC (which were originally issued in 2013) and associated 82,680 remaining restricted shares of Newmark Class A common stock (issued as a result of the Company spin-off in November 2018).

On March 16, 2021, the Compensation Committee granted Mr. Rispoli (i) exchange rights into shares of Class A common stock with respect to 6,043 previously awarded non-exchangeable Newmark Holdings PSUs held by Mr. Rispoli (which, based on the closing price of the Class A common stock of \$11.09 per share on such date and using the exchange ratio of 0.9365, had a value of \$0.1 million); and (ii) exchange rights into cash with respect to 4,907 previously awarded non-exchangeable Newmark Holdings PPSUs held by Mr. Rispoli (which had an average determination price of \$15.57 per unit, for a total of \$0.1 million in the aggregate to be paid for taxes when (i) is exchanged).

On April 27, 2021, the Compensation Committee approved an additional monetization opportunity for Mr. Merkel: (i) 73,387 of Mr. Merkel's 145,384 non-exchangeable Newmark Holdings PSUs were redeemed for zero, (ii) 19,426 of Mr. Merkel's 86,649 non-exchangeable Newmark Holdings PPSUs were redeemed for a cash payment of \$0.2 million, and (iii) 68,727 shares of our Class A common stock were issued to Mr. Merkel. On the same day, the 68,727 shares of our Class A common stock were repurchased from Mr. Merkel at \$10.67 per share, the closing price of our Class A common stock on that date, under our stock buyback program. The total payment delivered to Mr. Merkel was \$0.8 million, less applicable taxes and withholdings.

On June 28, 2021, in connections with the 2021 Equity Event, the Compensation Committee approved the specific transactions with respect to the Company's executive officers set forth below. All of the transactions included in the 2021 Equity Event, with respect to Messrs. Lutnick, Gosin and Rispoli, were based on (i) the price for Newmark Class A common

stock of \$12.50 per share, as approved by the Compensation Committee; (ii) the price of BGC Partners Class A common stock of \$5.86; and (iii) the price of Nasdaq common stock of \$177.11.

Howard W. Lutnick, Chairman

On June 28, 2021, the Compensation Committee approved the following for Howard W. Lutnick, the Company's Chairman: (i) the exchange of 279,725 exchangeable Newmark Holdings PSUs (currently in the share count) into 263,025 shares of Newmark Class A common stock based on the current exchange ratio of 0.9403; (ii) the redemption of 193,530 exchangeable Newmark Holdings PPSUs for a cash payment of \$2.5 million, to be remitted to the applicable tax authorities to the extent necessary for payment in connection with the delivery of the Newmark Class A common stock in (i) above; (iii) the redemption of 2,909,819 non-exchangeable Newmark Holdings PSUs, pursuant to Mr. Lutnick's rights under his existing standing policy and issuance of 2,736,103 shares of Newmark Class A common stock to him based upon the current exchange ratio of 0.9403; (iv) the redemption of 793,398 non-exchangeable Newmark Holdings PPSUs pursuant to Mr. Lutnick's rights under his existing standing policy for a cash payment of \$22.9 million, to be remitted to the applicable tax authorities to the extent necessary for payment in connection with the delivery of the above Newmark Class A common stock in (iii) above; (v) the conversion of 552,482.62 non-exchangeable Newmark Holdings PSUs with the right to exchange PSUs into HDUs ("H-Rights") into 552,482.62 non-exchangeable HDUs and redemption of such HDUs for their Capital Account, paid in the form of Nasdaq Shares; (vi) the redemption of 602,462.94 non-exchangeable PPSUs for a cash payment of \$8.0 million, to be remitted to the applicable tax authorities to the extent necessary for payment in connection with the delivery of above Newmark Holdings HDU cash payment; (vii) the exchange of 520,380 exchangeable BGC Holdings PSUs into 520,380 shares of BGC Class A common stock; (viii) the redemption of 425,766 exchangeable BGC Holdings PPSUs for a cash payment of \$2.4 million, to be remitted to the applicable tax authorities to the extent necessary for payment in connection with the delivery of the above BGC shares in (viii); (ix) the redemption of 88,636 non-exchangeable BGC Holdings PSUs pursuant to Mr. Lutnick's rights under his existing standing policy, and the issuance of 88,636 shares of BGC Class A common stock; (x) the conversion of 1,131,774 non-exchangeable BGC Holdings PSUs with H-Rights into 1,131,774 non-exchangeable BGC Holdings HDUs; (xi) the redemption of 1,018,390 non-exchangeable BGC Holdings PPSUs with rights to redeem for cash in connection with the exercise of above BGC Holdings HDUs for a cash payment of \$0.3 million, to be remitted to the applicable tax authorities to the extent necessary for payment in connection with the delivery of above BGC Holdings HDU cash payment; and (xii) the issuance of 29,059 shares of Newmark Class A common stock.

On December 28, 2021 (the "Effective Date"), the Compensation Committee awarded to Howard W. Lutnick, the Company's Chairman and principal executive officer, a one-time \$50 million bonus award in consideration of his efforts in delivering superior financial results. These efforts included his management of the Company and success in creating value for the Company's stockholders in connection with structuring, hedging, and monetizing the Nasdaq, Inc. common stock (the "Nasdaq Shares") held by the Company and the significant amount of income earned by the Company related to these activities and the significant increase in value of such Nasdaq Shares over time.

Barry M. Gosin, Chief Executive Officer

On September 20, 2021, the Compensation Committee approved a monetization opportunity for Mr. Gosin: all of Mr. Gosin's 2,114,546 non-exchangeable BGC Holdings PSUs were redeemed for zero and 2,114,456 shares of BGC Class A common stock were issued to Mr. Gosin.

On June 28, 2021, the Compensation Committee approved the following for Barry M. Gosin, the Company's Chief Executive Officer: (i) the exchange of 1,531,061.84 exchangeable Newmark Holdings units (comprised of 1,438,597.37 exchangeable Newmark Holdings PSUs and 92,464.47 exchangeable Newmark Holdings APSUs) into 1,439,658 shares of Newmark Class A common stock based upon the current exchange ratio of 0.9403; (ii) the redemption of 60,753.97 exchangeable Newmark Holdings PPSUs for a cash payment of \$9.2 million, to be remitted to the applicable tax authorities to the extent necessary for payment in connection with the delivery of the Newmark shares in (i) above; (iii) the conversion of 443,871.60 non-exchangeable Newmark Holdings PSUs with H-Rights into 443,871.60 non-exchangeable Newmark Holdings HDUs, less any taxes and withholdings in excess of \$5.4 million, and redemption of such HDUs for their Capital Account, paid in the form of Nasdaq Shares; (iv) the redemption of 539,080.23 non-exchangeable Newmark Holdings PPSUs for cash in connection with the delivery of the Newmark Holdings HDU cash payment in (iii) above; (v) the exchange of 3,348,706 exchangeable BGC Holdings units (comprised of 3,147,085 exchangeable BGC Holdings PSUs and 201,621 Exchangeable BGC Holdings APSUs) into 3,348,706 shares of BGC Class A common stock; (vi) the redemption of 80,891 exchangeable BGC Holdings PPSUs for a cash payment of \$9.8 million, to be remitted to the applicable tax authorities to the extent necessary for payment in connection with the delivery of the BGC shares in (v) above; (vii) the conversion of 1,592,016 non-exchangeable BGC Holdings PSUs with H-Rights to into 1,592,016 non-exchangeable BGC Holdings HDUs, less applicable taxes and withholdings in excess of the BGC Holdings PPSU value in (viii) below; (viii) the redemption of 264,985 non-exchangeable BGC Holdings PPSUs with rights to redeem for cash in connection with exercise of above BGC Holdings HDUs

for a cash payment of \$0.0 million, to be remitted to the applicable tax authorities in connection with the delivery of the BGC Holdings HDU cash payment in (vii) above; and (ix) the issuance of 12,500 Newmark Class A common stock.

Michael J. Rispoli, Chief Financial Officer

On June 28, 2021, the Compensation Committee approved the following for Mr. Michael Rispoli, the Company's Chief Financial Officer: (i) the exchange of 23,124 exchangeable Newmark Holdings PSUs into 21,744 shares of Newmark Class A common stock based on the current exchange ratio of 0.9403; (ii) the redemption of 18,668.77 exchangeable Newmark Holdings PPSUs for a cash payment of \$0.2 million, to be remitted to the applicable tax authorities to the extent necessary for payment in connection with the delivery of the Newmark shares in (i) above; (iii) the redemption of 6,000 non-exchangeable Newmark Holdings PSUs and the issuance of 5,642 Restricted Shares of Newmark Class A common stock based upon the current exchange ratio of 0.9403; (iv) the conversion of 5,846 non-exchangeable Newmark Holdings PSUs with H-Rights into 5,846 non-exchangeable Newmark Holdings HDUs and the redemption of such HDUs for their Capital Account, paid in the form of Nasdaq Shares; (v) the redemption of 4,917 non-exchangeable Newmark Holdings PPSUs with rights to redeem for cash in connection with the exercise of above Newmark Holdings HDUs for a cash payment of \$0.1 million, to be remitted to the applicable tax authorities to the extent necessary for payment in connection with the delivery of the HDU cash payment in (iv) above; (vi) the exchange of 36,985 exchangeable BGC Holdings PSUs into 36,985 shares of BGC Class A common stock; (vii) the redemption of 29,791 exchangeable BGC Holdings PPSUs for a cash payment of \$0.1 million to the applicable tax authorities to the extent necessary for payment in connection with the delivery of the BGC shares in (vi) above; and (viii) the issuance of 383 Newmark Class A Common Stock.

Stephen M. Merkel, Chief Legal Officer

On June 28, 2021 the Compensation Committee also approved the following for Stephen M. Merkel, the Company's Chief Legal Officer: (i) the redemption of 51,124.28 non-exchangeable Newmark Holdings PSUs and issuance of 48,072 shares of Newmark Class A common stock based upon the current exchange ratio of 0.9403; and (ii) the redemption of 46,349.87 non-exchangeable Newmark Holdings PPSUs for a cash payment of \$0.5 million, to be remitted to the applicable tax authorities to the extent necessary in connection with the issuance of the shares above.

Retirement Fund Purchase

On April 27, 2021, a Keogh retirement account held by Mr. Lutnick purchased 5,154 shares of our Class A common stock from us at the closing price of our Class A common stock on that date of \$10.67 per share. The transaction was approved by our Audit Committee.

On November 4, 2020, the Audit Committee of the Board of Directors authorized entities in which executive officers have a non-controlling interest to engage Newmark to provide ordinary course real estate services to them as long as Newmark's fees are consistent with the fees that Newmark ordinarily charges for these services.

CF Real Estate Finance Holdings, LP.

Contemporaneously with the acquisition of Berkeley Point, on September 8, 2017, Newmark invested \$100.0 million in a newly formed commercial real estate-related financial and investment business, Real Estate LP, which is controlled and managed by Cantor. Real Estate LP may conduct activities in any real estate related business or asset backed securities related business or any extensions thereof and ancillary activities thereto. As of December 31, 2021 and 2020, Newmark's investment was accounted for under the equity method (see Note 8 — "Investments").

Transactions with Cantor Fitzgerald & Co., a wholly owned broker-dealer subsidiary of Cantor "CF&Co"

On June 18, 2018 and September 26, 2018, Newmark entered into transactions related to the monetization of the Nasdaq shares that Newmark expects to receive in 2019 through 2022 (see Note 1 — "Organization and Basis of Presentation"). Newmark paid \$4.0 million in fees for services provided by CF&Co related to these monetization transactions. These fees were recorded as a deduction from the carrying amount of the EPU's.

On November 6, 2018, Newmark issued an aggregate of \$550.0 million principal amount of 6.125% Senior Notes due 2023. In connection with this issuance of the 6.125% Senior Notes, Newmark paid \$0.8 million in underwriting fees to CF&Co.

(d) Other Related Party Transactions

On November 30, 2018, Newmark entered into an unsecured credit agreement with Cantor (the "Cantor Credit Agreement"). The Cantor Credit Agreement provides for each party to issue loans to the other party at the lender's discretion. Pursuant to the Cantor Credit Agreement, the parties and their respective subsidiaries (with respect to Cantor, other than BGC

and its subsidiaries) may borrow up to an aggregate principal amount of \$250 million from each other from time to time at an interest rate which is the higher of Cantor's or Newmark's short-term borrowing rate then in effect, plus 1%. No amounts were outstanding as of December 31, 2021 and 2020.

As of December 31, 2021, Newmark recognized a \$8.3 million receivable from BGC, which is included as part of "Receivables from related parties, in the Company's consolidated balance sheet. The receivable was a result of tax refunds due to Newmark on its share of taxable income which were included as part of BGC's consolidated tax return in the periods prior to the spin-off. There were no receivables from related parties at December 31, 2020.

Payables to related parties were \$10.8 million and \$4.4 million as of December 31, 2021 and 2020, respectively.

For a detailed discussion about Newmark's Payables to related parties, see Note 1 — "Organization and Basis of Presentation", Note 2 — "Limited Partnership Interests in Newmark and BGC Holdings" and Note 22 — "Long-Term Debt" in Newmark's consolidated financial statements, included in Part II, Item 8 of Newmark's Annual Report on Form 10-K for the year ended December 31, 2020.

On May 15 2020, BGC U.S. OpCo ("BGC") entered into an arrangement to sublease excess space from RKF Retail Holdings LLC, a subsidiary of Newmark, which was approved by the Newmark Audit Committee. The deal was a one-year sublease of approximately 21,000 rentable square feet in New York City. Under the terms of the sublease, BGC U.S. OpCo paid a fixed rent amount of \$1.1 million in addition to all operating and tax expenses attributable to the lease. In May 2021, the sublease was amended to provide for a rate of \$15 thousand per month based on the size of utilized space, in addition to terms extending on a month-to-month basis. In connection with the sublease, Newmark received \$0.5 million and \$0.8 million for both years ended December 31, 2021 and 2020, respectively.

As part of the Knotel acquisition, Newmark assigned the rights to acquire certain Knotel assets to a subsidiary of Cantor, on the terms that if the subsidiary monetized the sale of these assets, Newmark would receive 10% of the proceeds of the sale after the subsidiary recoups its investment in the assets.

On June 28, 2021, the Audit Committee authorized Newmark to hire a son of its Chairman as a full-time employee of its Knotel business with an annual base salary of \$125,000 and an annual discretionary bonus of up to 30%. The arrangement includes a potential profit participation consistent with other entrepreneurial arrangements in the event of certain liquidity events related to businesses developed by him.

Cantor Rights to Purchase Cantor Units from Newmark Holdings

Cantor has a right to purchase from Newmark Holdings exchangeable limited partnership interests in the event that any Newmark Holdings founding partner interests that have not become exchangeable are redeemed by Newmark Holdings upon termination or bankruptcy of a founding partner or upon mutual consent of the general partner of Newmark Holdings and Cantor. Cantor has the right to purchase such Newmark Holdings exchangeable limited partnership interests at a price equal to the lesser of (1) the amount that Newmark Holdings would be required to pay to redeem and purchase such Newmark Holdings founding partner interests and (2) the amount equal to (a) the number of units underlying such founding partner interests, multiplied by (b) the exchange ratio as of the date of such purchase, multiplied by (c) the then-current market price of our Class A common stock. Cantor may pay such price using cash, publicly traded shares or other property, or a combination of the foregoing. If Cantor (or the other member of the Cantor group acquiring such limited partnership interests, as the case may be) so purchases such limited partnership interests at a price equal to clause (2) above, neither Cantor nor any member of the Cantor group nor Newmark Holdings nor any other person is obligated to pay Newmark Holdings or the holder of such founding partner interests any amount in excess of the amount set forth in clause (2) above.

In addition, the Newmark Holdings limited partnership agreement provides that (1) where either current, terminating or terminated partners are permitted by us to exchange any portion of their founding partner units and Cantor consents to such exchangeability, we will offer to Cantor the opportunity for Cantor to purchase the same number of new exchangeable limited partnership interests in Newmark Holdings at the price that Cantor would have paid for exchangeable limited partnership interests in the event we had redeemed the founding partner units; and (2) the exchangeable limited partnership interests to be offered to Cantor pursuant to clause (1) above would be subject to, and granted in accordance with, applicable laws, rules and regulations then in effect.

If Cantor acquires any units as a result of the purchase or redemption by Newmark Holdings of any founding partner interests, Cantor will be entitled to the benefits (including distributions) of the units it acquires from the date of termination or bankruptcy of the applicable founding partner. In addition, any such units will be exchangeable by Cantor for a number of

shares of our Class B common stock or, at Cantor's election, shares of our Class A common stock, in each case, equal to the then-current exchange ratio, on the same basis as the limited partnership interests held by Cantor, and will be designated as Newmark Holdings exchangeable limited partnership interests when acquired by Cantor. The exchange ratio was initially one, but is subject to adjustment as set forth in the Separation and Distribution Agreement and was 0.9444 as of December 31, 2021. This may permit Cantor to receive a larger share of income generated by our business at a less expensive price than through purchasing shares of our Class A common stock, which is a result of the price payable by Cantor to Newmark.

On March 31, 2021, Cantor purchased from Newmark Holdings an aggregate of (i) 273,088 exchangeable limited partnership interests for aggregate consideration of \$1,105,598 as a result of the redemption of 273,088 founding partner interests, and (ii) 735,625 exchangeable limited partnership interests for aggregate consideration of \$2,918,919 as a result of the exchange of 735,625 founding partner interests. Following such purchases, as of December 31, 2021 there were zero founding partner interests in Newmark Holdings remaining in which the partnership had the right to redeem or exchange and with respect to which Cantor will have the right to purchase an equivalent number of Cantor units following such redemption or exchange.

On October 28, 2021, Cantor purchased from Newmark Holdings an aggregate of (i) 299,910 exchangeable limited partnership interests for aggregate consideration of \$975,064 as a result of the redemption of 299,910 founding partner interests, and (ii) 523,284 exchangeable limited partnership interests for aggregate consideration of \$1,898,363 as a result of the exchange of 523,284 founding partner interests. As of December 31, 2021, there were no founding partner interests in Newmark Holdings remaining in which the partnership had the right to redeem or exchange and with respect to which Cantor will have the right to purchase an equivalent number of Cantor units following such redemption or exchange.

Special Purpose Acquisition Company

As previously reported, in April 2021, Newmark OpCo and Cantor entered into various arrangements pursuant to which they agreed to co-sponsor a special purpose acquisition company, named Newmark Acquisition Corp. (the "SPAC"), in which certain of the Company's executive officers are executive officers and are expected to be directors. Pursuant to a purchase agreement, Newmark OpCo purchased from Cantor a 75% equity interest in an entity now known as Newmark Acquisition Holdings, LLC, the sponsor of the SPAC (the "Sponsor"), for \$18.8 thousand, with Cantor retaining the remaining 25% equity interest in the Sponsor. Pursuant to an amended and restated limited liability company agreement of the Sponsor, Newmark OpCo is the managing member of the Sponsor, and Newmark OpCo and Cantor have agreed to make additional equity contributions to the Sponsor in order to fund the obligations of the Sponsor with respect to the SPAC in proportion to their equity ownership in the Sponsor. Also, in April 2021, the Sponsor agreed to lend to the SPAC up to \$0.3 million without interest in order to cover expenses related to any initial public offering of the SPAC; the maturity date of the loans is the earlier of the consummation of the initial public offering of the SPAC or December 31, 2022. As of December 31, 2021, there was no outstanding balance on this Pre-IPO loan.

Newmark OpCo Borrowing facility with Cantor

On August 2, 2021, a subsidiary of Newmark, Newmark OpCo, entered into a Master Repurchase Agreement "Repurchase Agreement with CF Secured, an affiliate of Cantor, pursuant to which Newmark may seek, from time-to-time, to execute short-term secured financing transactions. Repurchase agreements effect equity financing. The Company, under the Repurchase Agreement, may seek to sell securities, in this case common shares of Nasdaq, owned by the Company, to CF Secured, under the Repurchase Agreement, and agrees to repurchase those securities on a date certain at a repurchase price generally equal to the original purchase price plus interest.

Pursuant to the Repurchase Agreement, the Company and CF Secured agreed to enter into a repurchase transaction, wherein CF Secured will deliver the cash of such repurchase transaction to the Company on an overnight basis at an initial rate of 0.95% per annum (approximately 1.00% less expensive than Newmark's revolving credit facility), and the Company will deliver to CF Secured the number of shares of Nasdaq as collateral so that the market value of such shares equals 130% of such cash proceeds. The Nasdaq shares will be marked to market daily, and the minimum maintenance margin requirement, should the share price decline, will be 120% of such cash proceeds. The Company will be required to transfer additional collateral (securities and/or cash) in the event of a margin percentage decline below 120%.

As of December 31, 2021, the amount of shares pledged was 0.8 million and the amount outstanding under this borrowing facility was \$140.0 million and is included in "Repurchase agreements and securities loaned" on the accompanying consolidated balance sheets. (see Note 7 — "Marketable Securities" and Note 20 — "Collateralized Transactions").

Referral Fees to Cantor

In September 2021, the Audit Committee approved the payment of a referral fee from Newmark to Cantor Realty Capital Advisors, L.P. (“CRCA”), a subsidiary of Cantor, in relation to CRCA’s referral to Newmark of a sale and lease back transaction for a portfolio of medical office properties. Newmark paid CRCA approximately \$0.3 million for the referral of the portfolio sale. Newmark management negotiated the referral arrangement with CRCA in the ordinary course of business and the arrangement is reasonable and consistent with referral arrangements of its type between unrelated parties.

Additionally, in September 2021, the Audit Committee authorized Newmark and its subsidiaries to pay referral fees to Cantor and its subsidiaries (other than Newmark and its subsidiaries) in respect of referred business, pursuant to ordinary course arrangements in circumstances where Newmark would customarily pay referral fees to unrelated third parties and where Newmark is paying a referral fee to Cantor in an amount that is no more than the applicable percentage rate set forth in Newmark’s intra-company referral policies, as then in effect, with such fees to be at referral rates no less favorable to Newmark than would be paid to unrelated third parties.

(28) Income Taxes

The accompanying consolidated financial statements include U.S. federal, state and local income taxes on Newmark’s allocable share of its U.S. results of operations, as well as taxes payable to jurisdictions outside the U.S. In addition, certain of Newmark’s entities are taxed as U.S. partnerships and are subject to the Unincorporated Business Tax (“UBT”) in New York City. Therefore, the tax liability or benefit related to the partnership income or loss except for UBT, rests with the partners (see Note 2 — “Limited Partnership Interests”, for discussion of partnership interests), rather than the partnership entity. Income taxes are accounted for using the asset and liability method, as prescribed in U.S. GAAP guidance for Income Taxes. The provision for income taxes consisted of the following (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Current:			
U.S. federal	\$ 93,368	\$ 24,880	\$ 63,359
U.S. state and local	28,392	6,038	15,130
Foreign	258	2,811	464
UBT	2,291	2,845	1,335
Total	124,309	36,574	80,288
Deferred:			
U.S. federal	81,645	3,249	(25,103)
U.S. state and local	34,675	(1,912)	(4,025)
Foreign	(38)	(120)	(15)
UBT	2,367	(798)	1,291
Total	118,649	419	(27,852)
Provision for income taxes	\$ 242,958	\$ 36,993	\$ 52,436

Newmark had pre-tax income of \$1,221.1 million, \$146.3 million and \$214.1 million for the years ended December 31, 2021, 2020 and 2019, respectively. Newmark had pre-tax income from foreign operations of \$4.8 million, pre-tax loss of \$4.5 million and pre-tax loss of \$6.4 million for the years ended December 31, 2021, 2020 and 2019, respectively.

Differences between Newmark’s actual income tax expense and the amount calculated utilizing the U.S. federal statutory rates were as follows (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Tax expense at federal statutory rate	\$ 256,430	\$ 30,717	\$ 44,971
Non-controlling interest	(57,269)	(10,378)	(15,097)
Incremental impact of foreign taxes compared to the federal rate	(557)	212	(145)
Other permanent differences	850	5,272	9,915
U.S. state and local taxes, net of U.S. federal benefit	58,866	5,984	12,271
New York City UBT	4,658	2,046	2,627
Section 162(m) compensation deduction limitation	9,227	—	—
Revaluation of deferred taxes related to ownership changes	(26,159)	(1,851)	(2,070)
Other rate change	5,249	(2,896)	4,527
Section 453A interest	—	1,419	1,640
Valuation allowance	5,920	2,137	2,902
Prior year true ups	(6,408)	4,628	(7,981)
Other	(7,849)	(297)	(1,124)
Provision for income tax	<u>\$ 242,958</u>	<u>\$ 36,993</u>	<u>\$ 52,436</u>

Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the consolidated financial statement carrying amounts of existing assets and liabilities and their respective tax basis. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance is recorded against deferred tax assets if it is deemed more likely than not that those assets will not be realized.

Significant components of Newmark's deferred tax asset and liability consisted of the following (in thousands):

	December 31,	
	2021	2020
Deferred tax asset		
Basis difference of investments	\$ 36,602	\$ 65,954
Deferred compensation	99,414	167,251
Other deferred and accrued expenses	11,182	4,874
Net Operating loss and credit carry-forwards	8,574	3,740
Total deferred tax asset	155,772	241,819
Valuation Allowance	(9,562)	(3,618)
Deferred tax asset, net of allowance	146,210	238,201
Deferred tax liability		
Depreciation and amortization	76,019	50,675
Other	—	—
Deferred tax liability ⁽¹⁾	76,019	50,675
Net deferred tax asset	<u>\$ 70,191</u>	<u>\$ 187,526</u>

⁽¹⁾ Before netting within tax jurisdictions.

Newmark has net operating losses in non-U.S. jurisdictions of an approximate tax effected value of \$8.6 million, which has an indefinite life. Management assesses the available positive and negative evidence to determine whether existing deferred tax assets will be realized. Accordingly, a valuation allowance of \$9.6 million has been recorded against the deferred tax asset primarily related to certain net operating losses in non-U.S. jurisdictions as it is more likely than not to not be realized. Newmark's deferred tax asset and liability are included on the accompanying consolidated balance sheets as components of "Other assets" and "Other liabilities", respectively.

The Company has finalized its accounting policy and elected to treat taxes associated with the GILTI provision using the Period Cost Method and thus has not recorded deferred taxes for basis differences under this regime as of December 31, 2021. Accordingly, the Company recorded a tax expense of \$1.8 million, net of foreign tax credits, for the impact of the GILTI provision on its foreign subsidiaries.

Pursuant to U.S. GAAP guidance on Accounting for Uncertainty in Income Taxes, Newmark provides for uncertain tax positions based upon management's assessment of whether a tax benefit is more likely than not to be sustained upon examination by tax authorities.

A reconciliation of the beginning to the ending amounts of gross unrecognized tax benefits for the years ended December 31, 2021, 2020 and 2019 is as follows (in thousands):

Balance, January 1, 2019	\$	208
Increases for prior year tax positions		—
Decreases for prior year tax positions		—
Increases for current year tax positions		—
Decreases related to settlements with taxing authorities		—
Decreases related to a lapse of applicable statute of limitations		—
Balance, December 31, 2020		208
Increases for prior year tax positions		—
Decreases for prior year tax positions		—
Increases for current year tax positions		—
Decreases related to settlements with taxing authorities		—
Decreases related to a lapse of applicable statute of limitations		(208)
Balance, December 31, 2021	\$	—

As of December 31, 2021, Newmark did not have any unrecognized tax benefits which, if recognized, would affect the effective tax rate. As of December 31, 2020, Newmark's unrecognized tax benefits, excluding related interest and penalties, were \$0.2 million, all of which, if recognized, would affect the effective tax rate. Newmark recognized interest and penalties related to income tax matters in "Provision for income taxes" on the accompanying consolidated statements of operations. As of December 31, 2021, Newmark has not accrued any tax-related interest and penalties.

(29) Accounts Payable, Accrued Expenses and Other Liabilities

The accounts payable, accrued expenses and other liabilities consisted of the following (in thousands):

	December 31,	
	2021	2020
Accounts payable and accrued expenses	\$ 223,158	\$ 97,304
Outside broker payable	73,397	53,504
Payroll taxes payable	80,249	60,696
Corporate taxes payable	56,265	25,666
Derivative liability	5,016	17,948
Right-of-use liabilities	81,958	29,468
Credit enhancement deposit	—	25,000
Contingent consideration	8,703	16,962
Total	\$ 528,746	\$ 326,548

Other long-term liabilities consisted of the following (in thousands):

	December 31,	
	2021	2020
Accrued compensation	\$ 96,839	\$ 331,288
Payroll and other taxes payable	70,677	61,564
Financial guarantee liability	25,989	29,581
Deferred rent	9,872	—
Contingent consideration	3,635	14,519
Total	\$ 207,012	\$ 436,952

(30) Compensation

Newmark's Compensation Committee may grant various equity-based awards to employees of Newmark, including RSUs, restricted stock, limited partnership units and shares of Newmark Class A common stock upon exchange or redemption of Newmark limited partnership units (see Note 2 — "Limited Partnership Interests in Newmark Holdings and BGC Holdings"). On December 13, 2017, as part of the Separation, the Newmark Group, Inc. Long Term Incentive Plan (the

“Newmark Equity Plan”) was approved by Newmark’s then sole stockholder, BGC, for Newmark to issue up to 400.0 million shares of Newmark Class A common stock, of which 65.0 million are registered, that may be delivered or cash-settled pursuant to awards granted during the life of the Newmark Equity Plan. As of December 31, 2021, awards with respect to 67.0 million shares have been granted and 333.0 million shares are available for future awards. Upon vesting of RSUs, issuance of restricted stock and exchange or redemption of limited partnership units, Newmark generally issues new shares of its Class A common stock.

Prior to the Separation, BGC’s Compensation Committee granted various equity-based awards to employees of Newmark, including RSUs, restricted stock, limited partnership units and exchange rights for shares of BGC Class A common stock upon exchange of BGC Holdings limited partnership units (see Note 2 — “Limited Partnership interests in Newmark Holdings and BGC Holdings”).

As a result of the Separation, limited partnership interests in Newmark Holdings were distributed to the holders of limited partnership interests in BGC Holdings. Each holder of BGC Holdings limited partnership interests at that time held a BGC Holdings limited partnership interest and 0.4545 of a corresponding Newmark Holdings limited partnership interest.

The exchange ratio is the number of shares of Newmark common stock that a holder will receive upon exchange of one Newmark Holdings exchangeable unit (the exchange ratio was initially one, but is subject to adjustment as set forth in the Separation and Distribution Agreement and was 0.9444 as of December 31, 2021).

Newmark incurred compensation expense related to Class A common stock, limited partnership units and RSUs held by Newmark employees as follows (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Issuance of common stock and exchangeability expenses	\$ 312,718	\$ 69,041	\$ 181,714
Allocations of net income to limited partnership units and FPU's ⁽¹⁾	55,183	30,461	50,410
Limited partnership units amortization	(28,351)	18,692	21,508
RSU amortization	16,795	12,565	5,204
Equity-based compensation and allocations of net income to limited partnership units and FPU's	<u>\$ 356,345</u>	<u>\$ 130,759</u>	<u>\$ 258,836</u>

⁽¹⁾ Certain limited partnership units receive quarterly allocations of net income and are generally contingent upon services being provided by the unit holders, including the Preferred Distribution.

(a) Limited Partnership Units

A summary of the activity associated with limited partnership units held by Newmark employees is as follows:

	Newmark Units	BGC Units
Balance, January 1, 2020	60,800,852 ⁽¹⁾	56,053,701
Issued	12,569,298	1,071,612
Redeemed/exchanged units	(6,660,984)	(2,657,901)
Forfeited units/other	(82,981)	(45,410)
Balance, December 31, 2020	66,626,185	54,422,002
Issued	10,143,799	159,057
Redeemed/exchanged units	(58,099,726)	(45,024,619)
Forfeited units/other	(250,645)	(892,510)
December 31, 2021	<u>18,419,613</u>	<u>8,663,930</u>
Total exchangeable units outstanding ⁽²⁾ :		
December 31, 2020	9,906,763	24,863,107
December 31, 2021	<u>2,468,443</u>	<u>3,456,479</u>

⁽¹⁾ Includes the pre-IPO Newmark employees share-equivalent limited partnership units in BGC Holdings.

⁽²⁾ The Limited Partnership table above also includes partnership units issued for consideration for acquisitions. As of December 31, 2021, there were 4.2 million partnership units in Newmark Holdings outstanding, of which 1.3 million units were exchangeable, and 6.8 million partnership units in BGC Holdings outstanding, of which 3.1 million were exchangeable. As of December 31, 2020, there were 5.3 million partnership units in Newmark Holdings outstanding, of which 2.0 million units were exchangeable, and 9.1 million partnership units in BGC Holdings outstanding, of which 4.5 million were exchangeable.

The Limited Partnership Units table above includes both regular and Preferred Units. The Preferred Units are not entitled to participate in partnership distributions other than with respect to the Preferred Distribution (see Note 2 — “Limited Partnership Interests in BGC Holdings and Newmark Holdings” for further information on Preferred Units). Subsequent to the Spin-Off, there are remaining partners who hold limited partnership interests in Newmark Holdings who are BGC employees, and there are remaining partners who hold limited partnership interests in BGC Holdings who are Newmark employees. These limited partnership interests represent interests that were held prior to the Newmark IPO or were distributed in connection with the Separation. Following the Newmark IPO, employees of Newmark and BGC received limited partnership interests in Newmark Holdings and BGC Holdings, respectively. As a result of the Spin-Off, as the existing limited partnership interests in Newmark Holdings held by BGC employees and the existing limited partnership interests in BGC Holdings held by Newmark employees are exchanged/redeemed, the related capital can be contributed to and from Cantor, respectively. The compensation expenses under GAAP related to the limited partnership interests are based on the company where the partner is employed. Therefore, compensation expenses related to the limited partnership interests of both Newmark and BGC but held by a Newmark employee are recognized by Newmark. However, the Newmark Holdings limited partnership interests held by BGC employees are included in the Newmark share count and the BGC Holdings limited partnership interests held by Newmark employees are included in the BGC share count.

A summary of the BGC Holdings and Newmark Holdings limited partnership units held by Newmark employees is as follows:

	Newmark Units	BGC Units
Regular units	18,039,445	8,585,061
Preferred Units	380,168	78,869
Balance, December 31, 2021	18,419,613	8,663,930

A summary of units held by Newmark employees redeemed in connection with the issuance of Newmark or BGC Class A common stock (at the current exchange ratio) or granted exchangeability for Newmark or BGC Class A common stock is as follows:

	Year Ended December 31,		
	2021	2020	2019
BGC Units	13,803,080	315,685	62
Newmark Units	36,378,049	4,661,669	2,31
Total	50,181,129	4,977,354	2,931

Compensation expense related to the issuance of Newmark or BGC Class A common stock and grants of exchangeability on Newmark Holdings and BGC Holdings limited partnership units to Newmark employees is as follows (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Issuance of common stock and exchangeability expenses	\$ 317,281	\$ 36,458	\$ 35,499

Limited partnership units with a post-termination payout held by Newmark employees are as follows (dollars in thousands):

	December 31,	
	2021	2020
Notional Value ⁽¹⁾	\$ 116,717	\$ 257,771
Estimated fair value of the post-termination payout ⁽²⁾	\$ 38,516	\$ 68,682
Outstanding limited partnership units in BGC Holdings	105,302	4,873,040
Outstanding limited partnership units in BGC Holdings - unvested	—	873,822
Outstanding limited partnership units in Newmark Holdings	11,691,406	20,184,716
Outstanding limited partnership units in Newmark Holdings - unvested	5,980,996	9,778,078

⁽¹⁾ Beginning January 1, 2018, Newmark began granting stand-alone limited partnership units in Newmark Holdings to Newmark employees.

⁽²⁾ Included in “Other long-term liabilities” on the accompanying consolidated balance sheets. Liability balance also includes \$6.8 million of post-termination units issued as consideration for acquisition.

Compensation expense related to limited partnership units held by Newmark employees with a post-termination pay-out amount is recognized over the stated service period. These units generally vest between three and seven years from the date of grant. Newmark recognized compensation expense related to these limited partnership units that were not redeemed as follows (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Limited partnership units amortization	\$ (28,351)	\$ 18,692	\$ 21,508

During the year ended December 31, 2021, Newmark did not grant any conversion rights to Newmark employees on outstanding limited partnership units in BGC Holdings or Newmark Holdings. During the year ended December 31, 2020, Newmark granted conversion rights to Newmark employees on 0.5 million outstanding limited partnership units in BGC Holdings or Newmark Holdings. Granting conversion rights gives the employee the option to convert the limited units to HDUs with a capital balance within BGC Holdings or Newmark Holdings. Generally, HDUs are not considered share-equivalent limited partnership units and are not in the fully diluted share count. The grant of conversion rights to Newmark employees are as follows (in thousands):

	December 31,	
	2021	2020
Notional Value	\$ 12,836	\$ 218,520
Estimated fair value of limited partnership units ⁽¹⁾	\$ 12,558	\$ 208,029

⁽¹⁾ Included in "Other long-term liabilities" on the accompanying consolidated balance sheets.

Compensation expense related to these limited partnership units held by Newmark employees was as follows (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Issuance of common stock and exchangeability expenses	\$ (4,563)	\$ 32,583	\$ 146,215

During the year ended December 31, 2021, Newmark employees were granted 3.7 million N Units, that are excluded from the table above, since these units are not considered share-equivalent limited partnership units and are not included in the fully diluted share count. The N Units do not receive quarterly allocations of net income and remain unvested. Upon vesting, which occurs if the certain thresholds are met, the N Units are converted to equivalent limited partnership units that receive quarterly certain income distributions and can be granted exchange rights or redeemed at a later date, at which time these N Units would be reflected as a share-equivalent grant in the tables above. During the year ended December 31, 2021, 7.6 million N Units vested and were converted into distribution earning limited partnership units and were therefore included in the fully diluted share count.

(b) Restricted Stock Units

A summary of the activity associated with Newmark and BGC RSUs held by Newmark employees is as follows (fair value amount in thousands):

	Newmark RSUs ⁽¹⁾				BGC RSUs ⁽²⁾			
	Restricted Stock Units	Weighted-Average Grant Date Fair Value Per Share	Fair Value Amount	Weighted-Average Remaining Contractual Term (Years)	Restricted Stock Units	Weighted-Average Grant Date Fair Value Per Share	Fair Value Amount	Weighted-Average Remaining Contractual Term (Years)
Balance, January 1, 2020	4,683,571	\$ 7.55	\$ 35,361	5.69	46,807	\$ 9.97	\$ 467	0.25
Granted	7,337,460	7.96	58,415		7,912	3.69	29	
Settled units (delivered shares)	(1,151,507)	8.29	(9,549)		(45,544)	9.95	(453)	
Forfeited units	(222,727)	7.78	(1,733)		(1,162)	10.64	(12)	
Balance, December 31, 2020	10,646,797	\$ 7.75	\$ 82,494	5.69	8,013	\$ 3.80	\$ 31	2.17
Granted	2,913,572	9.71	28,290		—	—	—	
Settled units (delivered shares)	(2,196,903)	7.64	(16,792)		(2,638)	3.69	(10)	
Forfeited units	(642,009)	7.74	(4,967)		—	—	—	
Balance, December 31, 2021	10,721,457	\$ 8.30	\$ 89,025	4.96	5,375	\$ 3.85	\$ 21	1.16

⁽¹⁾ Beginning January 1, 2018, Newmark began granting stand-alone Newmark RSUs to Newmark employees with the awards vesting ratably over a two- to eight-year vesting period into shares of Newmark Class A common stock.

⁽²⁾ RSUs granted to these individuals generally vest over a two to four year period.

The fair value of Newmark and BGC RSUs held by Newmark employees is determined on the date of grant based on the market value (adjusted if appropriate based upon the award's eligibility to receive dividends), and is recognized, net of the effect of estimated forfeitures, ratably over the vesting period. Newmark uses historical data, including historical forfeitures and turnover rates, to estimate expected forfeiture rates for RSUs. Each RSU is settled for one share of BGC or Newmark Class A common stock, as applicable, upon completion of the vesting period.

Compensation expense related to Newmark and BGC RSUs are as follows (in thousands):

	Year Ended December 31,		
	2021	2020	2019
RSU amortization	\$ 16,795	\$ 12,565	\$ 5,204

As of December 31, 2021, there was \$86.6 million total unrecognized compensation expense related to unvested Newmark RSUs.

See Note 27 — "Related Party Transactions" for compensation related matters for the transfer of CCRE employees to Newmark.

(31) Commitments and Contingencies

(a) Contractual Obligations and Commitments

The following table summarizes certain of Newmark's contractual obligations at December 31, 2021 (in thousands):

	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
Operating leases ⁽¹⁾	\$ 805,168	\$ 113,822	\$ 218,878	\$ 197,704	\$ 274,764
Warehouse facilities ⁽²⁾	1,050,693	1,050,693	—	—	—
Long-term debt ⁽³⁾	550,000	—	550,000	—	—
Interest on long-term debt ⁽⁴⁾	65,428	34,949	30,479	—	—
Interest on warehouse facilities ⁽⁵⁾	1,051	1,051	—	—	—
Total	\$ 2,472,340	\$ 1,200,515	\$ 799,357	\$ 197,704	\$ 274,764

⁽¹⁾ Operating lease are related to rental payments under various non-cancelable leases principally for office space.

⁽²⁾ Warehouse facilities are collateralized by \$1,050.7 million of loans held for sale, at fair value (See Note 21 - "Warehouse Facilities Collateralized by U.S. Government Sponsored Enterprises" to our accompanying Consolidated Financial Statements in Part II, Item 8 of this Annual Report on Form 10-K) which loans were either under commitment to be purchased by Freddie Mac or had confirmed forward trade commitments for the issuance of and purchase of Fannie Mae or Ginnie Mae mortgage-backed securities.

⁽³⁾ Long-term debt reflects long-term borrowings of \$550.0 million 6.125% Senior Notes. The carrying amount of these notes was approximately \$545.2 million. Long-term debt also includes borrowings under the Credit Facility, which is assumed to be outstanding until the maturity date of the Credit Facility. The carrying amount of the borrowing under the Credit Facility is \$0.0 million. (See Note 22 - "Long-Term Debt" to our accompanying Consolidated Financial Statements in Part II, Item 8 of this Annual Report on Form 10-K.)

⁽⁴⁾ Reflects interest on the \$550.0 million 6.125% Senior Notes until their maturity date of November 15, 2023.

⁽⁵⁾ Interest on the warehouse facilities collateralized by U.S. Government Sponsored Enterprises was projected by using the 1-month LIBOR or SOFR rate plus their respective additional basis points, primarily 130 basis points above LIBOR and 115 basis points above SOFR, applied to their respective outstanding balances as of December 31, 2021, through their respective maturity dates. Their respective maturity dates range from June 2022 to October 2022, while one line has an open maturity date. The notional amount of these committed and uncommitted warehouse facilities was \$2.2 billion at December 31, 2021. One of the warehouse lines established a \$125.0 million sublimit line of credit to fund potential principal and interest servicing advances on the Company's Fannie Mae portfolio during the forbearance period related to the CARES Act. Advances will have an interest rate of 1-month LIBOR plus 180 bps. There were no outstanding draws on this sublimit at December 31, 2021. Another warehouse line was temporarily increased by \$300.0 million to \$900.0 million for the period December 1, 2020 to February 1 2021.

As of December 31, 2021 and December 31, 2020, Newmark was committed to fund approximately \$0.3 billion and \$0.4 billion, respectively, which is the total remaining draws on construction loans originated by Newmark under the HUD 221(d) 4, 220 and 232 programs, rate locked loans that have not been funded, forward commitments, as well as the funding for Fannie Mae structured transactions. Newmark also has corresponding commitments to sell these loans to various investors as they are funded.

(b) Contingent Payments Related to Acquisitions

Newmark completed acquisitions from 2019 through 2021 with contingent cash consideration of \$12.0 million. The contingent equity instruments and cash liability is recorded at fair value in “Accounts payable, accrued expenses and other liabilities” on Newmark’s consolidated balance sheets.

(c) Contingencies

In the ordinary course of business, various legal actions are brought and are pending against Newmark and its subsidiaries in the U.S. and internationally. In some of these actions, substantial amounts are claimed. Newmark is also involved, from time to time, in reviews, examinations, investigations and proceedings by governmental and self-regulatory agencies (both formal and informal) regarding Newmark’s businesses, which may result in regulatory, civil and criminal judgments, settlements, fines, penalties, injunctions or other relief. The following generally does not include matters that Newmark has pending against other parties which, if successful, would result in awards in favor of Newmark or its subsidiaries.

Employment, Competitor-Related and Other Litigation

From time to time, Newmark and its subsidiaries are involved in litigation, claims and arbitration in the U.S. and internationally, relating to various employment matters, including with respect to termination of employment, hiring of employees currently or previously employed by competitors, terms and conditions of employment and other matters. In light of the competitive nature of the real estate services industry, litigation, claims and arbitration between competitors regarding employee hiring are not uncommon.

Legal reserves are established in accordance with U.S. GAAP guidance on Accounting for Contingencies, when a material legal liability is both probable and reasonably estimable. Once established, reserves are adjusted when there is more information available or when an event occurs requiring a change. The outcome of such items cannot be determined with certainty. Newmark is unable to estimate a possible loss or range of loss in connection with specific matters beyond its current accrual and any other amounts disclosed. Management believes that, based on currently available information, the final outcome of these current pending matters will not have a material adverse effect on Newmark’s consolidated financial statements and disclosures taken as a whole.

Risks and Uncertainties

Newmark generates revenues by providing financial intermediary and brokerage activities and commercial real estate services to institutional customers. Revenues for these services are transaction-based. As a result, revenues could vary based on the transaction volume of global financial and real estate markets. Additionally, financing is sensitive to interest rate fluctuations, which could have an impact on Newmark’s overall profitability.

(32) Subsequent Events

On February 10, 2022, Newmark declared a qualified quarterly dividend of \$0.01 per share payable on March 15, 2022 to Class A and Class B common stockholders of record as of March 1, 2022. The ex-dividend date will be February 28, 2022.

On February 10, 2022, Newmark's Board increased Newmark's share repurchase authorization to \$400 million.

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

None.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Newmark Group, Inc. maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed by Newmark Group, Inc. is recorded, processed, accumulated, summarized and communicated to its management, including its Chairman and its Chief Financial Officer, to allow timely decisions regarding required disclosures, and reported within the time periods specified in the SEC’s rules and forms. The Chairman and the Chief Financial Officer have performed an evaluation of the effectiveness of the design and operation of Newmark Group, Inc.’s disclosure controls and procedures as of December 31, 2021. Based on that evaluation, the Chairman and the Chief Financial Officer concluded that Newmark Group, Inc.’s disclosure controls and procedures were effective as of December 31, 2021.

Management's 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 Exchange Act Rules 13a-15(f) and 15d-15(f). Under the supervision and with the participation of our management, including our Chairman and our Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2021 based upon criteria set forth in the Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework). Our internal control over financial reporting includes policies and procedures that provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with U.S. generally accepted accounting principles. The effectiveness of our internal control over financial reporting as of December 31, 2021 has been audited by Ernst & Young LLP, an independent registered public accounting firm, as stated in their report, which is included in this Annual Report on Form 10-K.

Based on the results of our 2021 evaluation, our management concluded that our internal control over financial reporting was effective as of December 31, 2021. We reviewed the results of management's assessment with our Audit Committee.

Management has excluded the acquisition of Knotel Inc, Space Management, and a U.S. based real estate property management services firm, which did not have a material effect on our financial condition, results of operations or cash flows in 2021. However, we do anticipate that these acquisition will be included in management's assessment of internal control over financial reporting and our audit of internal controls over financial reporting for 2022. Knotel Inc and Space Management are included in our 2021 consolidated financial statements and constituted 5.87% and 5.17%, of total assets, 2.36% and 2.38% of net assets respectively, as of December 31, 2021 and less than 1.91% and 1.62% of revenues and (3.49%) and (0.04%), of net revenues for the year then ended.

Such report expresses an unqualified opinion on the effectiveness of the Company's internal control over financial reporting as of December 31, 2021.

Changes in Internal Control over Financial Reporting

During the quarter ended December 31, 2021, there were no changes in our internal control over financial reporting that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

None.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

Not Applicable.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information appearing under "Election of Directors," "Information about our Executive Officers," "Section 16(a) Beneficial Ownership Reporting Compliance," and "Code of Ethics and Whistleblower Procedures" in the definitive Proxy Statement for the Company's 2022 Annual Meeting of Stockholders (the "2022 Proxy Statement") is hereby incorporated by reference in response to this Item 10. We anticipate that we will file the 2022 Proxy Statement with the SEC on or before May 2, 2022.

ITEM 11. EXECUTIVE COMPENSATION

The information appearing under "Compensation Discussion and Analysis," "Compensation Committee Report," "Executive Compensation Information" and "Compensation Committee Interlocks and Insider Participation" in the 2022 Proxy Statement is hereby incorporated by reference in response to this Item 11.

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

The information appearing under “Security Ownership of Certain Beneficial Owners and Management” and “Equity Compensation Plan Information as of December 31, 2021” in the 2022 Proxy Statement is hereby incorporated by reference in response to this Item 12.

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

The information appearing under “Certain Relationships and Related Transactions, and Director Independence” and “Election of Directors - Independence of Directors” in the 2022 Proxy Statement is hereby incorporated by reference in response to this Item 13.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information appearing under “Independent Registered Public Accounting Firm Fees” and “Audit Committee’s Pre-Approval Policies and Procedures” in the 2022 Proxy Statement is hereby incorporated by reference in response to this Item 14.

PART IV—OTHER INFORMATION

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) (1) Financial Statements. The consolidated financial statements required to be filed in this Annual Report on Form 10-K are included in Part II, Item 8 hereof.

(a) (2) The Exhibit Index set forth below is incorporated by reference in response to this Item 15.

The following Exhibits are filed as part of this Report as required by Regulation S-K. The Exhibits designated by an asterisk (*) are management contracts and compensation plans and arrangements required to be filed as Exhibits to this Report.

EXHIBIT INDEX

Exhibit Number	Exhibit Title
2.1	<u>Amended and Restated Separation and Distribution Agreement, dated as of November 23, 2018, by and among Cantor Fitzgerald, L.P., BGC Partners, L.P., BGC Holdings, L.P., BGC Partners, L.P., BGC Global Holdings, L.P., Newmark Group, Inc., Newmark Holdings, L.P. and Newmark Partners (incorporated by reference to Exhibit 2.1 to the Registrant’s Current Report on Form 8-K filed with the SEC on November 27, 2018)</u>
3.1	<u>Amended and Restated Certificate of Incorporation of Newmark Group, Inc. (incorporated by reference to Exhibit 3.1 to the Registrant’s Current Report on Form 8-K filed with the SEC on December 19, 2017)</u>
3.2	<u>Amended and Restated Bylaws of Newmark Group, Inc. (incorporated by reference to Exhibit 3.2 to the Registrant’s Current Report on Form 8-K filed with the SEC on December 19, 2017)</u>
4.1	<u>Description of Registrant’s Securities Registered under Section 12 of the Securities Exchange Act of 1934, as amended</u>
4.2	<u>Indenture, dated as of November 6, 2018, between Newmark Group, Inc. and Regions Bank, as trustee (incorporated by reference to Exhibit 4.1 to the Registrant’s Current Report on Form 8-K filed with the SEC on November 8, 2018)</u>
4.3	<u>First Supplemental Indenture, dated as of November 6, 2018, between Newmark Group, Inc. and Regions Bank, as trustee (incorporated by reference to Exhibit 4.2 to the Registrant’s Current Report on Form 8-K filed with the SEC on November 8, 2018)</u>
4.4	<u>Form of Newmark Group, Inc. 6.125% Senior Notes due 2023 (incorporated by reference to Exhibit 4.2 to the Registrant’s Current Report on Form 8-K filed with the SEC on November 8, 2018)</u>
10.1	<u>Amended and Restated Agreement of Limited Partnership of Newmark Holdings, L.P., dated as of December 13, 2017 (incorporated by reference to Exhibit 10.1 to the Registrant’s Current Report on Form 8-K filed with the SEC on December 19, 2017)</u>

- 10.2 [Amended and Restated Agreement of Limited Partnership of Newmark Partners, L.P., dated as of December 13, 2017 \(incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the SEC on December 19, 2017\)](#)
- 10.3 [Amendment No. 1 to Amended and Restated Agreement of Limited Partnership of Newmark Partners, L.P., dated as of March 14, 2018 \(incorporated by reference to Exhibit 10.27 to the Registrant's Annual Report on Form 10-K filed with the SEC on March 20, 2018\)](#)
- 10.4 [Second Amended and Restated Limited Partnership Agreement of Newmark Partners, L.P., dated as of June 19, 2018 \(incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the SEC on June 20, 2018\)](#)
- 10.5 [Third Amended and Restated Agreement of Limited Partnership of Newmark Partners, L.P., dated as of September 26, 2018 \(incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed with the SEC on September 28, 2018\)](#)
- 10.6 [Registration Rights Agreement, dated as of December 13, 2017, by and among Cantor Fitzgerald, L.P., BGC Partners, Inc. and Newmark Group, Inc. \(incorporated by reference as Exhibit 10.4 to the Registrant's Current Report on Form 8-K filed with the SEC on December 19, 2017\)](#)
- 10.7 [Administrative Services Agreement, dated as of December 13, 2017, by and among Cantor Fitzgerald, L.P. and Newmark Group, Inc. \(incorporated by reference to Exhibit 10.5 to the Registrant's Current Report on Form 8-K filed with the SEC on December 19, 2017\)](#)
- 10.8 [Tax Matters Agreement, dated as of December 13, 2017, by and among BGC Partners, Inc., BGC Holdings, L.P., BGC Partners, L.P., Newmark Group, Inc., Newmark Holdings, L.P. and Newmark Partners, L.P. \(incorporated by reference to Exhibit 10.8 to the Registrant's Current Report on Form 8-K filed with the SEC on December 19, 2017\)](#)
- 10.9 [Tax Receivable Agreement, dated as of December 13, 2017, by and between Cantor Fitzgerald, L.P. and Newmark Group, Inc. \(incorporated by reference to Exhibit 10.8 to the Registrant's Current Report on Form 8-K filed with the SEC on December 19, 2017\)](#)
- 10.10 [Exchange Agreement, dated as of December 13, 2017, by and among Cantor Fitzgerald, L.P., BGC Partners, Inc. and Newmark Group, Inc. \(incorporated by reference to Exhibit 10.10 to the Registrant's Current Report on Form 8-K filed with the SEC on December 19, 2017\)](#)
- 10.11 [Change of Control Agreement, dated as of December 13, 2017, by and between Newmark Group, Inc. and Howard W. Lutnick \(incorporated by reference to Exhibit 10.20 to the Registrant's Current Report on Form 8-K filed with the SEC on December 19, 2017\)*](#)
- 10.12 [Retention Bonus Agreement by and between Howard W. Lutnick and Newmark Group, Inc. dated as of December 28, 2021 \(incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the SEC on December 30, 2021\)*](#)
- 10.13 [Employment Agreement, dated as of December 1, 2017, by and between Newmark Partners, L.P. and Barry M. Gosin \(incorporated by reference to Exhibit 10.13 of Amendment No. 3 to the Registration Statement on Form S-1 of Newmark Group, Inc. filed with the SEC on December 4, 2017\)*](#)
- 10.14 [Letter Agreement, effective as of December 1, 2017, by and between Barry M. Gosin and BGC Holdings, L.P. \(incorporated by reference to Exhibit 10.28 of Amendment No. 3 to the Registration Statement on Form S-1 of Newmark Group, Inc. filed with the SEC on December 4, 2017\)*](#)
- 10.15 [Letter Agreement, effective as of December 1, 2017, by and between Barry M. Gosin and Newmark Holdings, L.P. \(incorporated by reference to Exhibit 10.28 of Amendment No. 3 to the Registration Statement on Form S-1 of Newmark Group, Inc. filed with the SEC on December 4, 2017\)*](#)
- 10.16 [Newmark Group, Inc. Long-Term Incentive Plan \(incorporated by reference to Exhibit 10.24 to the Registrant's Current Report on Form 8-K filed with the SEC on December 19, 2017\)*](#)

- 10.17 [Newmark Group, Inc. Incentive Bonus Compensation Plan \(incorporated by reference to Exhibit 10.25 to the Registrant's Current Report on Form 8-K with the SEC on December 19, 2017\)*](#)
- 10.18 [Newmark Holdings, L.P. Participation Plan \(incorporated by reference to Exhibit 10.26 to the Registrant's Current Report on Form 8-K filed with the SEC on December 19, 2017\)*](#)
- 10.19 [Amended and Restated Credit Agreement, dated as of March 19, 2018, by and between BGC Partners, Inc. and Newmark Group, Inc. \(incorporated by reference to Exhibit 10.28 to the Registrant's Annual Report on Form 10-K filed with the SEC on March 20, 2018\)](#)
- 10.20 [Intercompany Credit Agreement, dated as of November 30, 2018, between Newmark Group, Inc. and Cantor Fitzgerald, L.P. \(incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the SEC on November 30, 2018\)](#)
- 10.21 [Credit Agreement, dated as of November 28, 2018, by and among Newmark Group, Inc., as the Borrower, certain subsidiaries of the Borrower, as Guarantors, the several financial institutions from time to time as parties thereto, as Lenders, and Bank of America, N.A., as Administrative Agent \(incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the SEC on November 30, 2018\)](#)
- 10.22 [First Amendment, dated February 26, 2020, to the Credit Agreement, dated as of November 28, 2018, by and among Newmark Group, Inc., as Borrower, certain subsidiaries of the Borrower, as Guarantors, the several financial institutions from time to time as parties thereto, as Lenders, and Bank of America, N.A., as Administrative Agent](#)
- 10.23 [Master Repurchase Agreement, dated August 2, 2021, by and between Newmark Partners, L.P. and CF Secured LLC \(incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on August 9, 2021\)](#)
- 21.1 [List of subsidiaries of Newmark Group, Inc.](#)
- 23.1 [Consent of Ernst & Young LLP](#)
- 31.1 [Certification by the Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002](#)
- 31.2 [Certification by the Principal Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002](#)
- 32.1 [Certification by the Principal Executive Officer and Principal Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.](#)
- 101 The following materials from Newmark Group, Inc.'s Annual Report on Form 10-K for the period ended December 31, 2021 are formatted in inline eXtensible Business Reporting Language (iXBRL): (i) the Consolidated Balance Sheets, (ii) the Consolidated Statements of Operations, (iii) the Consolidated Statements of Comprehensive Income, (iv) the Consolidated Statements of Changes in Equity, (v) the Consolidated Statements of Cash and (vi) Notes to the Consolidated Financial Statements. The XBRL Instance Document does not appear in the Interactive Data File because its XBRL are embedded within the iXBRL document.
- 104 The cover page from this Annual Report on Form 10-K, formatted in Inline XBRL (included in Exhibit 101).

ITEM 16. FORM 10-K SUMMARY

Not Applicable.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this Annual Report on Form 10-K for the fiscal year ended December 31, 2021 to be signed on its behalf by the undersigned, thereunto duly authorized, on the 28th day of February, 2022.

Newmark Group, Inc.

By: /s/ Howard W. Lutnick
 Name: **Howard W. Lutnick**
 Title: **Chairman**

Pursuant to the requirements of the Securities Exchange Act of 1934, this Annual Report on Form 10-K has been signed below by the following persons on behalf of the registrant, Newmark Group, Inc., in the capacities and on the date indicated.

<u>Signature</u>	<u>Capacity in Which Signed</u>	<u>Date</u>
<u>/s/ Howard W. Lutnick</u> Howard W. Lutnick	Chairman (Principal Executive Officer)	February 28, 2022
<u>/s/ Barry Gosin</u> Barry Gosin	Chief Executive Officer	February 28, 2022
<u>/s/ Michael J. Rispoli</u> Michael J. Rispoli	Chief Financial Officer (Principal Financial and Accounting Officer)	February 28, 2022
<u>/s/ Virginia S. Bauer</u> Virginia S. Bauer	Director	February 28, 2022
<u>/s/ Michael Snow</u> Michael Snow	Director	February 28, 2022
<u>/s/ Kenneth A. McIntyre</u> Kenneth A. McIntyre	Director	February 28, 2022

DESCRIPTION OF SECURITIES

The following summary is a description of the material terms of Newmark Group, Inc.'s, capital stock. When we use the words "Newmark," "we," "us," "our" or the "Company," we are referring to Newmark Group, Inc. and its consolidated subsidiaries. Copies of our amended and restated certificate of incorporation, which we refer to as our "certificate of incorporation," and our amended and restated bylaws, which we refer to as our "bylaws," are incorporated by reference as Exhibits 3.1 and 3.2 to our Annual Report on Form 10-K for the year ended December 31, 2021 of which this Exhibit 4.1 is a part.

Our Capital Stock

The following descriptions of our Class A common stock, par value \$0.01 per share, which we refer to as our "Class A common stock", Class B common stock, par value \$0.01 per share, which we refer to as our "Class B common stock", preferred stock and the relevant provisions of our certificate of incorporation and bylaws are summaries thereof and are qualified in their entirety by reference to our certificate of incorporation and bylaws, copies of which are incorporated by reference as exhibits to our Annual Report on Form 10-K for the year ended December 31, 2021 of which this Exhibit 4.1 is a part, and applicable law.

Our authorized capital stock consists of 1,500,000,000 shares of common stock, consisting of 1,000,000,000 shares of our Class A common stock and 500,000,000 shares of our Class B common stock, and 50,000,000 shares of preferred stock, par value \$0.01 per share.

Common Stock

As of February 23, 2022, there were 167,776,734 shares of our Class A common stock outstanding and 21,285,533 shares of our Class B common stock outstanding. The holders of our Class A common stock are generally entitled to one vote per share on all matters to be voted upon by the stockholders as a group, entitling holders of our Class A common stock to approximately 44.1% of our voting power as of such date, and do not have cumulative voting rights. The holders of our Class B common stock are generally entitled to ten votes per share on all matters to be voted upon by the stockholders as a group, entitling holders of our Class B common stock to 55.9% of our voting power as of such date, and do not have cumulative voting rights. Cantor Fitzgerald, L.P, which we refer to as "Cantor," and CF Group Management, Inc., the managing general partner of Cantor, and an entity controlled by our Chairman, Howard W. Lutnick, which we refer to as "CFGM," are the only holders of our Class B common stock. Our Class B common stock generally votes together with our Class A common stock on all matters submitted to the vote of our stockholders. Our Class B common stock shall be issued only to (1) Cantor, (2) any entity controlled by Cantor or by Mr. Lutnick, or (3) Mr. Lutnick, his spouse, his estate, any of his descendants, any of his relatives or any trust established for his benefit or for the benefit of his spouse, any of his descendants or any of his relative, which we refer to as the "Qualified Class B Holders."

Each share of our Class A common stock is equivalent to a share of our Class B common stock for purposes of economic rights. Subject to preferences that may be applicable to any outstanding preferred stock, the holders of shares of our Class A common stock and Class B common stock are entitled to receive ratably such dividends, if any, as may be declared from time to time by our board of directors out of funds legally available therefor. In the event of our liquidation, dissolution or winding up, the holders of shares of our Class A common stock and Class B common stock are entitled to share ratably in all assets remaining after payment of liabilities, subject to prior distribution rights of preferred stock, if any, then outstanding.

Our certificate of incorporation provides that each share of the Class B common stock is convertible at any time, at the option of the holder, into one share of the Class A common stock. Holders of shares of Class A common stock will not have the right to convert shares of Class A common stock into shares of Class B common stock unless such right is provided for by Newmark pursuant to an agreement. Pursuant to the Exchange Agreement by and among Newmark, BGC Partners, Inc. ("BGC Partners") and Cantor, dated as of December 13, 2017, any Qualified Class B Holder entitled to hold Class B common stock under our certificate of incorporation has the right to exchange at any time and from time to time, on a one-to-one basis, shares of our Class A common stock now owned or subsequently acquired by such persons for shares of our Class B common stock, up to the number of shares of Class B common stock that are authorized but unissued under our certificate of incorporation. Our certificate of incorporation does not provide for automatic conversion of shares of Class B common stock into shares of Class A common stock upon the occurrence of any event.

None of the shares of our Class A common stock or Class B common stock has any pre-emptive or other subscription rights. There will be no redemption or sinking fund provisions applicable to shares of our Class A common stock or Class B common stock. All outstanding shares of our Class A common stock and Class B common stock are fully paid and non-assessable.

Preferred Stock

Our board of directors has the authority to cause us to issue preferred stock in one or more classes or series and to fix the designations, powers, preferences and rights, and the qualifications, limitations or restrictions thereof, including dividend rights, dividend rates, terms of redemption, redemption prices, conversion rights and liquidation preferences of the shares constituting any class or series, without further vote or action by the stockholders. The issuance of our preferred stock pursuant to such “blank check” provisions may have the effect of delaying, deferring or preventing a change of control of us without further action by our stockholders and may adversely affect the voting and other rights of the holders of shares of our Class A common stock. At present, we have no plans to issue any preferred stock.

Anti-Takeover Effects of Delaware Law, Our Certificate of Incorporation and Bylaws and the Outstanding Notes

Some provisions of the Delaware General Corporation Law, which we refer to as the “DGCL,” and our certificate of incorporation, bylaws and outstanding notes, could make the following more difficult:

- acquisition of us by means of a tender offer;
- acquisition of us by means of a proxy contest or otherwise; or
- removal of our incumbent officers and directors.

The provisions, summarized above and below, are designed to discourage coercive takeover practices and inadequate takeover bids. These provisions are also primarily designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors. We believe that the benefits of increased protection give us the potential ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure us and outweigh the disadvantages of discouraging those proposals because negotiation of them could result in an improvement of their terms.

Delaware Anti-Takeover Law

We have elected pursuant to our certificate of incorporation not to be subject to Section 203 of the DGCL, which generally prohibits a publicly held Delaware corporation from engaging in a business combination, such as a merger, with a person or group owning 15% or more of the corporation’s voting stock, for a period of three years following the date on which the person became an interested stockholder, unless (with certain exceptions) the business combination or the transaction in which the person became an interested stockholder is approved in accordance with Section 203. Accordingly, we are not subject to the anti-takeover effects of Section 203. However, our certificate of incorporation contains certain provisions that have the same effect as Section 203, except that they provide that each of the Qualified Class B Holders and certain of their direct transferees will not be deemed to be “interested stockholders,” and accordingly will not be subject to such restrictions.

Certificate of Incorporation and Bylaws

Our bylaws provide that special meetings of stockholders may be called only by the Chairman of our board of directors, or in the event the Chairman of our board of directors is unavailable, by the Chief Executive Officer or by the holders of a majority of the voting power of our Class B common stock, which is held by Cantor and CFGM. In addition, as discussed above, our certificate of incorporation permits us to issue “blank check” preferred stock..

Our bylaws require advance written notice prior to a meeting of our stockholders of a proposal or director nomination which a stockholder desires to present at such a meeting, which generally must be received by our Secretary not later than 120 days prior to the first anniversary of the date of our proxy statement for the preceding year’s annual meeting. Our bylaws provide that all amendments to our bylaws must be approved by either the holders of a majority of the voting power of all of our outstanding capital stock entitled to vote or by a majority of our board of directors.

Corporate Opportunity

Our certificate of incorporation provides that, to the greatest extent permitted by law, no Cantor Company or BGC Partners Company, each as defined below, or any of the representatives, as defined below, of a Cantor Company or BGC Partners Company will, in its capacity as our stockholder or affiliate, owe or be liable for breach of any fiduciary duty to us or any of our stockholders. In addition, to the greatest extent permitted by law, none of any Cantor Company, BGC Partners Company or any of their respective representatives will owe any duty to refrain from engaging in the same or similar activities or lines of business as us or our representatives or doing business with any of our or our representatives’ clients or customers. If any Cantor Company, BGC Partners Company or any of their respective representatives acquires knowledge of a potential transaction or matter that may be a corporate opportunity (as defined below) for any such person, on the one hand, and us or any of our representatives, on the other hand, such person will have no duty to communicate or offer such corporate opportunity to us or any of our representatives, and will not be liable to us, any of our stockholders or any of our representatives for breach of any fiduciary duty by reason of the fact that they pursue or acquire such corporate opportunity for themselves, direct such corporate opportunity to another person or do not present such corporate opportunity to us or any of our representatives, subject to the requirement described in the following sentence. If a third party presents a corporate opportunity to a person who is both our representative and a representative of a Cantor Company and/or a BGC Partners Company, expressly and solely in such person’s capacity as our representative, and such person acts in good faith in a manner consistent with the policy that such corporate opportunity belongs to us, then such person will be deemed to have fully satisfied and fulfilled any fiduciary duty that such person has to us as our representative with respect to such corporate opportunity, provided that any Cantor Company, any BGC Partners Company or any of their respective representatives may pursue such corporate opportunity if we decide not to pursue such corporate opportunity.

No contract, agreement, arrangement or transaction between any Cantor Company, any BGC Partners Company or any of their respective representatives, on the one hand, and us or any of our representatives, on the other hand, will be void or voidable solely because any Cantor Company, any BGC Partners Company or any of their respective representatives has a direct or indirect interest in such contract, agreement, arrangement or transaction, and any Cantor Company, any BGC Partners Company or any of their respective representatives (i) shall have fully satisfied and fulfilled its duties and obligations to us and our stockholders with respect thereto; and (ii) shall not be liable to us or our stockholders for any breach of any duty or obligation by reason of the entering into, performance or consummation of any such contract, agreement, arrangement or transaction, if:

- such contract, agreement, arrangement or transaction is approved by our board of directors or any committee thereof by the affirmative vote of a majority of the disinterested directors, even if the disinterested directors constitute less than a quorum;

- such contract, agreement, arrangement or transaction is approved by our stockholders by the affirmative vote of a majority of the voting power of all of our outstanding shares of capital stock entitled to vote thereon, excluding from such calculation shares of capital stock that are beneficially owned (as such term is defined in Rule 16a-1(a)(2) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, by a Cantor Company or a BGC Partners Company, respectively; or
- such contract, agreement, arrangement or transaction, judged according to the circumstances at the time of the commitment, is fair to us.

While the satisfaction of the foregoing conditions shall be sufficient to show that any Cantor Company, any BGC Partners Company or any of their respective representatives (i) shall have fully satisfied and fulfilled its duties and obligations to us and our stockholders with respect thereto; and (ii) shall not be liable to us or our stockholders for any breach of any duty or obligation by reason of the entering into, performance or consummation of any such contract, agreement, arrangement or transaction, none of the foregoing conditions shall be required to be satisfied for such showing.

Our directors who are also directors or officers of any Cantor Company, any BGC Partners Company or any of their respective representatives may be counted in determining the presence of a quorum at a meeting of our board of directors or of a committee that authorizes such contract, agreement, arrangement or transaction. Shares of our common stock owned by any Cantor Company, any BGC Partners Company or any of their respective representatives may be counted in determining the presence of a quorum at a meeting of stockholders called to authorize such contract, agreement, arrangement or transaction. Our directors who are also directors or officers of any Cantor Company, any BGC Partners Company or any of their respective representatives shall not owe or be liable for breach of any fiduciary duty to us or any of our stockholders for any action taken by any Cantor Company, any BGC Partners Company or their respective representatives, in their capacity as our stockholder or affiliate.

For purposes of the above:

- “Cantor Company” means Cantor or any of its affiliates (other than us and our subsidiaries);
- “BGC Partners Company” means BGC Partners or any of its affiliates (other than us and our subsidiaries);
- “representatives” means, with respect to any person, the directors, officers, employees, general partners or managing member of such person.
- “corporate opportunity” means any business opportunity that we are financially able to undertake, that is, from its nature, in our lines of business, is of practical advantage to us and is one in which we have an interest or a reasonable expectancy, and in which, by embracing the opportunities, the self-interest of a Cantor Company or a BGC Partners Company or any of their respective representatives, as the case may be, will be brought into conflict with our self-interest.

Following the completed November 2018 pro-rata distribution, which we refer to as the “Spin-Off,” by BGC Partners, BGC Partners no longer owns any shares of our common stock or equity interests of our subsidiaries.

Registration Rights for Class A Common Stock

In connection with the separation on December 13, 2017, we entered into a registration rights agreement with Cantor and BGC Partners which provides Cantor and BGC Partners and their respective affiliates (prior to the Spin-Off) and Cantor and its affiliates (after the Spin-Off) registration rights with respect to shares of our Class A common stock, including shares issued or to be issued upon exchange of the Newmark Holdings, L.P. exchangeable limited partnership interests held by Cantor, shares of our Class A common stock issued or issuable in respect of or in exchange for any shares of our Class B common stock and any other shares of our Class A common stock that may be acquired by Cantor, BGC Partners or their respective affiliates.

Transfer Agent and Registrar

The transfer agent and registrar for our Class A common stock is American Stock Transfer & Trust Company, LLC.

FIRST AMENDMENT TO CREDIT AGREEMENT

This FIRST AMENDMENT TO CREDIT AGREEMENT (this “Amendment”) is entered into as of February 26, 2020, among NEWMARK GROUP, INC., a Delaware corporation (the “Borrower”), the Lenders (defined herein) signatory hereto and BANK OF AMERICA, N.A., as administrative agent (in such capacity, together with its successors in such capacity, the “Administrative Agent”). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement (defined herein).

RECITALS

WHEREAS, the Borrower, the Guarantors from time to time party thereto, each of the Persons identified as a “Lender” on the signature pages thereto and each other Person that becomes a lender in accordance with the Credit Agreement (together with their successors and assigns, the “Lenders”) and the Administrative Agent are parties to that certain Credit Agreement dated as of November 28, 2018 (as amended, restated, supplemented or otherwise modified from time to time, including as amended by this Amendment, the “Credit Agreement”);

WHEREAS, the Borrower has requested that the Lenders amend certain provisions of the Credit Agreement; and

WHEREAS, the Lenders are willing to so consent and make such amendments to the Credit Agreement, in each case, in accordance with and subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the agreements hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. **Amendments to the Credit Agreement**. Effective as of the First Amendment Effective Date, (a) the Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken-text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth on Exhibit A attached hereto and (b) Schedules 1.01, 2.01, 5.06, 5.09, 5.11, 7.01, 7.02, 7.03, 7.08 and 11.02 to the Credit Agreement are hereby amended in their entirety to read as set forth on Schedules 1.01, 2.01, 5.06, 5.09, 5.11, 7.01, 7.02, 7.03, 7.08 and 11.02, respectively, attached hereto.

2. **Representations and Warranties**. The Borrower hereby represents and warrants to the Administrative Agent and the Lenders that:

(a) It has taken all necessary corporate or other organization action to authorize the execution, delivery and performance of this Amendment.

(b) This Amendment has been duly executed and delivered by such Person and constitutes such Person’s legal, valid and binding obligation, enforceable against such Person in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(c) No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, the Borrower or any Guarantor of this Amendment or any other Loan Document other than those that have already been obtained and are in full force and effect.

(d) After giving effect to this Amendment, the representations and warranties of the Borrower contained in Article V of the Credit Agreement are true and correct in all material respects (other than those representations and warranties qualified by materiality or Material Adverse Effect, in which case they are true and correct in all respects) on and as of the First Amendment Effective Date, except to the extent that such representation and warranties specifically refer to an earlier date, in which case they were true and correct in all material respects (other than those representations and warranties qualified by materiality or Material Adverse Effect, in which case they were true and correct in all respects) as of such earlier date.

(e) After giving effect to this Amendment, no event has occurred and is continuing which constitutes a Default or an Event of Default.

(f) Except as specifically provided in this Amendment, the Obligations are not reduced or modified by this Amendment and are not subject to any offsets, defenses or counterclaims.

3. First Amendment Effective Date Conditions. This Amendment shall become effective upon satisfaction or waiver of the following conditions (such date, the “First Amendment Effective Date”):

(a) Receipt by the Administrative Agent of a copy of this Amendment duly executed by the Borrower, the Lenders and the Administrative Agent.

(b) Receipt by the Administrative Agent of Notes, executed by a Responsible Officer of the Borrower in favor of each New Lender (as defined below) requesting a Note from the Borrower.

(c) Receipt by the Administrative Agent of favorable opinions of legal counsel to the Borrower, addressed to the Administrative Agent and each Lender, dated as of the First Amendment Effective Date.

(d) Receipt by the Administrative Agent of (i) Copies of the Organization Documents of the Borrower certified to be true and complete as of a recent date by the appropriate Governmental Authority of the state or other jurisdiction of its incorporation or organization, where applicable, and certified by a secretary or assistant secretary of the Borrower to be true and correct as of the First Amendment Effective Date; (ii) such certificates of resolutions or other action by the governing body of the Borrower and incumbency certificates and/or other certificates of Responsible Officers of the Borrower, in each case, as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Amendment and the other Loan Documents to which the Borrower is a party; and (iii) such documents and certifications as the Administrative Agent may reasonably require to evidence that the Borrower is duly organized or formed, and is validly existing, in good standing and qualified to engage in business in its state of organization or formation.

(e) Receipt by the Administrative Agent of the audited consolidated financial statements of the Borrower and its Subsidiaries for the fiscal year ending December 31, 2018 and the interim consolidated financial statements of the Borrower and its Subsidiaries for the fiscal quarters ending March 31, 2019, June 30, 2019 and September 30, 2019.

(f) Receipt by the Administrative Agent of a certificate signed by a Responsible Officer of the Borrower certifying that (i) the conditions specified in Sections 2(d), 2(e), 3(g) and 3(h) hereto have been satisfied and (ii) there has been no event or circumstance since December 31, 2018 that has had or would be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect.

(g) Other than as disclosed in the audited consolidated financial statements of the Borrower and its Subsidiaries for the fiscal year ending December 31, 2018 or as set forth on Schedule 5.06, there shall not exist any action, suit, investigation or proceeding pending or, to the knowledge of the Borrower, threatened in any court or before an arbitrator or Governmental Authority that could reasonably be expected to have a Material Adverse Effect.

(h) All governmental, shareholder and third party consents and approvals necessary in connection with the transactions contemplated hereby have been obtained and all such consents and approvals are in force and effect.

(i) The Administrative Agent and each Lender shall have completed a due diligence investigation of the Borrower and its Subsidiaries in scope, and with results, reasonably satisfactory to the Administrative Agent and such Lender, including, OFAC, the United States Foreign Corrupt Practices Act of 1977 and “know your customer” due diligence. The Borrower shall have provided to the Administrative Agent and the Lenders the documentation and other customary information reasonably requested by the Administrative Agent and the Lenders in order to comply with applicable law, including the Act. If the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, the Administrative Agent and each Lender, to the extent requested by the Administrative Agent or such Lender, shall have received a Beneficial Ownership Certification in relation to the Borrower.

(j) Receipt by the Administrative Agent, the Arrangers and the Lenders of any fees required to be paid on or before the First Amendment Effective Date, including, but not limited to, the fees set forth in the Fee Letter.

(k) The Borrower shall have paid all reasonable fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to or on the First Amendment Effective Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent).

For purposes of determining compliance with the conditions specified in this Amendment, each Lender that has signed this Amendment 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 Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed First Amendment Effective Date specifying its objection thereto.

4. **Reallocation of Commitments and Outstanding Loans.** Each Lender party hereto (including any New Lenders) hereby agrees that, upon giving effect to this Amendment, its Revolving Commitment and Applicable Percentage are as set forth opposite its name on Schedule 2.01 attached to this Amendment. On the date hereof, upon giving effect to this Amendment, the Borrower and each Lender shall effect such assignments, prepayments, borrowings and reallocations as are necessary to effectuate the modifications to Schedule 2.01 contemplated in this Amendment, in each case such that, after giving effect thereto, each Lender will hold its respective Applicable Percentage of the Outstanding Amount of all Revolving Loans in accordance with Schedule 2.01 attached to this Amendment (it being understood that (i) some or all of the Revolving Loans outstanding under the Credit Agreement immediately prior to the effectiveness of this Amendment may remain outstanding under the Credit Agreement upon the effectiveness of this Amendment in accordance with the foregoing, and upon such effectiveness shall be deemed Revolving Loans and outstanding under the Credit Agreement as amended by this Amendment and (ii) one or more Lenders that were party to the Credit Agreement prior to the effectiveness to this Amendment may be prepaid some or all of its Outstanding Amount or Revolving Loans to effectuate the modification to Schedule 2.01 contemplated by this Amendment).

5. **New Lender Joinder.**

(a) Each Person that signs this Amendment as a Lender and that was not a Lender party to the Credit Agreement prior to the effectiveness of this Amendment (each a “New Lender”) (i) represents and warrants that (A) it has full power and authority, and has taken all action necessary, to execute and deliver this Amendment and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (B) it meets the requirements to be an Eligible Assignee under the Credit Agreement, (C) from and after the First Amendment Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and shall have the obligations of a Lender thereunder, (D) it is sophisticated with respect to decisions to acquire assets of the type represented by the Credit Agreement and either it, or the Person exercising discretion in making its decision to acquire such assets, is experienced in acquiring assets of such type, (E) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 6.01 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Amendment, (F) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Amendment, (G) if it is a Foreign Lender, it has delivered any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, and (H) it is not a Disqualified Institution; and (ii) agrees that (A) it will, independently and without reliance on the Administrative Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (B) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

(b) Each of the Administrative Agent and the Borrower agree that, as of the First Amendment Effective Date, each New Lender shall (i) be a party to the Credit Agreement (and, as

applicable, the other Loan Documents), (ii) be a “Lender” for all purposes of the Credit Agreement and the other Loan Documents and (iii) have the rights and obligations of a Lender under the Credit Agreement and the other Loan Documents.

(c) The address of each New Lender for purposes of all notices and other communications is as set forth on the Administrative Questionnaire delivered by such New Lender to the Administrative Agent.

6. Miscellaneous.

(a) Amended Terms. On and after the First Amendment Effective Date, all references to the Credit Agreement in each of the Loan Documents shall hereafter mean the Credit Agreement as amended by all terms of this Amendment. Except as specifically amended hereby or otherwise agreed, the Credit Agreement is hereby ratified and confirmed and shall remain in full force and effect according to its terms.

(b) Loan Document; Entirety; Further Assurances. This Amendment shall constitute a Loan Document under the terms of the Credit Agreement. This Amendment and the other Loan Documents embody the entire agreement among the parties hereto and supersede all prior agreements and understandings, oral or written, if any, relating to the subject matter hereof. The Borrower agrees to promptly take such action, upon the request of the Administrative Agent, as is necessary to carry out the intent of this Amendment.

(c) Counterparts. This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or other electronic imaging means (e.g., “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Amendment.

(d) GOVERNING LAW; Jurisdiction; Waiver of Jury Trial; Etc. THIS AMENDMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. The jurisdiction, service of process, waiver of venue and waiver of jury trial provisions of Sections 11.14 and 11.15 of the Credit Agreement are hereby incorporated by reference, mutatis mutandis.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the date first above written.

BORROWER: NEWMARK GROUP, INC.,
a Delaware corporation

By: /s/ Michael Rispoli
Name: Michael Rispoli
Title: Chief Financial Officer

NEWMARK GROUP, INC.

FIRST AMENDMENT TO CREDIT AGREEMENT

ADMINISTRATIVE

AGENT: BANK OF AMERICA, N.A.,
as Administrative Agent

By: /s/ Paley Chen
Name: Paley Chen
Title: Vice President

NEWMARK GROUP, INC.

FIRST AMENDMENT TO CREDIT AGREEMENT

LENDERS: BANK OF AMERICA, N.A.,
 as a Lender

 By: /s/ Sherman Wong
 Name: Sherman Wong
 Title: Director

NEWMARK GROUP, INC.

FIRST AMENDMENT TO CREDIT AGREEMENT

CAPITAL ONE, NATIONAL ASSOCIATION,
as a Lender

By: /s/ Wallace Lo
Name: Wallace Lo
Title: Duly Authorized Signatory

NEWMARK GROUP, INC.
FIRST AMENDMENT TO CREDIT AGREEMENT

CITIZENS BANK, N.A.,
as a Lender

By: /s/ Allison M. Gauthier
Name: Allison M. Gauthier
Title: SVP

NEWMARK GROUP, INC.

FIRST AMENDMENT TO CREDIT AGREEMENT

GOLDMAN SACHS BANK USA,
as a Lender

By: /s/ Annie Carr
Name: Annie Carr
Title: Authorized Signatory

NEWMARK GROUP, INC.

FIRST AMENDMENT TO CREDIT AGREEMENT

KEYBANK NATIONAL ASSOCIATION,
as a Lender

By: /s/ Hanna Piechocka
Name: Hanna Piechocka
Title: VP, KEYBANK NATIONAL ASSOCIATION

NEWMARK GROUP, INC.

FIRST AMENDMENT TO CREDIT AGREEMENT

PNC BANK, NATIONAL ASSOCIATION,
as a Lender

By: /s/ Alaa Shraim
Name: Alaa Shraim
Title: Senior Vice President

NEWMARK GROUP, INC.

FIRST AMENDMENT TO CREDIT AGREEMENT

BMO HARRIS BANK N.A.,
as a Lender

By: /s/ Robert R. Bunch
Name: Robert R. Bunch
Title: Vice President

NEWMARK GROUP, INC.

FIRST AMENDMENT TO CREDIT AGREEMENT

UMB BANK, N.A.,
as a Lender

By: /s/ Cory Miller
Cory Miller
Senior Vice President

NEWMARK GROUP, INC.

FIRST AMENDMENT TO CREDIT AGREEMENT

U.S. BANK NATIONAL ASSOCIATION,
as a Lender

By: /s/ Kelsey E. Hehman
Name: Kelsey E. Hehman
Title: Assistant Vice President

NEWMARK GROUP, INC.

FIRST AMENDMENT TO CREDIT AGREEMENT

REGIONS BANK,
as a Lender

By: /s/ Hichem Kerma
Name: Hichem Kerma
Title: Director

NEWMARK GROUP, INC.

FIRST AMENDMENT TO CREDIT AGREEMENT

STIFEL BANK & TRUST,
as a Lender

By: /s/ John H. Phillips
Name: John H. Phillips
Title: Executive Vice President

NEWMARK GROUP, INC.

FIRST AMENDMENT TO CREDIT AGREEMENT

ASSOCIATED BANK, NATIONAL ASSOCIATION,
as a Lender

By: /s/ Liliana Huerta Correa
Name: Liliana Huerta Correa
Title: Senior Vice President

NEWMARK GROUP, INC.

FIRST AMENDMENT TO CREDIT AGREEMENT

BANKUNITED, N.A.,
as a Lender

By: /s/ James Wohn
Name: James Wohn
Title: Senior Vice President

NEWMARK GROUP, INC.

FIRST AMENDMENT TO CREDIT AGREEMENT

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as a Lender

By: /s/ James Mastroianna
Name: James Mastroianna
Title: Director

NEWMARK GROUP, INC.

FIRST AMENDMENT TO CREDIT AGREEMENT

Exhibit A

Amendments to Credit Agreement

(Attached)

CREDIT AGREEMENT

Dated as of November 28, 2018

among

NEWMARK GROUP, INC.
as the Borrower,

CERTAIN SUBSIDIARIES OF THE BORROWER
as Guarantors,

BANK OF AMERICA, N.A.,
as Administrative Agent,

~~BMO CAPITAL MARKETS CORP.~~,
CAPITAL ONE, NATIONAL ASSOCIATION,
~~CITIBANK~~ CITIZENS BANK, N.A.,
GOLDMAN SACHS BANK USA,
KEYBANK NATIONAL ASSOCIATION,

and

PNC BANK, NATIONAL ASSOCIATION,
as Co-Syndication Agents,

~~REGIONS~~ BMO HARRIS BANK N.A.,
~~as Documentation Agent~~

UMB BANK, N.A.

and

U.S. BANK NATIONAL ASSOCIATION,
as Co-Documentation Agents

and

THE OTHER LENDERS PARTY HERETO

Arranged By:

~~MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,~~
~~BMO CAPITAL MARKETS CORP~~ BOFA SECURITIES, INC.,
CAPITAL ONE, NATIONAL ASSOCIATION,
~~CITIBANK~~ CITIZENS BANK, N.A.,
GOLDMAN SACHS BANK USA,
KEYBANK NATIONAL ASSOCIATION,

and

PNC CAPITAL MARKETS LLC,

as Joint Lead Arrangers and Joint Bookrunners

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CREDIT AGREEMENT

This CREDIT AGREEMENT is entered into as of November 28, 2018 among NEWMARK GROUP, INC., a Delaware corporation (the “Borrower”), the Guarantors from time to time party hereto, the Lenders (defined herein) and BANK OF AMERICA, N.A., as Administrative Agent and L/C Issuer.

The Borrower has requested that the Lenders provide credit facilities for the purposes set forth herein, and the Lenders are willing to do so on the terms and conditions set forth herein.

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

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms.

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

“Acquisition”, by any Person, means the acquisition by such Person, in a single transaction or in a series of related transactions, of either (a) all or substantially all of the property of, or a line of business or division of, another Person or (b) at least a majority of the Voting Stock of another Person, in each case whether or not involving a merger or consolidation with such other Person.

“Act” has the meaning specified in Section 11.18.

“Administrative Agent” means Bank of America in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 11.02 or such other address or account as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in substantially the form of Exhibit 11.06(b)(iv) or any other form approved by the Administrative Agent.

“Affected Financial Institution” means (a) any EEA Financial Institution or any UK Financial Institution.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Aggregate Revolving Commitments” means the Revolving Commitments of all the Lenders. The initial amount of the Aggregate Revolving Commitments in effect on the ~~Closing~~First Amendment Effective Date is ~~\$250,000,000~~425,000,000.

“Agreement” means this Credit Agreement.

“Applicable Percentage” means with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Revolving Commitments represented by such Lender’s Revolving Commitment at such time; provided that if the commitment of each Lender to make Revolving Loans ~~has~~and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02 or if the Aggregate Revolving Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption or other documentation pursuant to which such Lender becomes a party hereto, as applicable. The Applicable Percentages shall be subject to adjustment as provided in Section 2.15.

“Applicable Rate” means the following percentages per annum, based on the applicable rate per annum set forth in the below table (and subject to the paragraphs below):

Pricing Level	Debt Rating	Commitment Fee	Applicable Margin for Eurodollar Rate Loans <u>and Letter of Credit Fees</u>	Applicable Margin for Base Rate Loans
I	≥ BBB+/BBB+	15.0 bps	125.0 bps	25.0 bps
II	BBB/BBB	20.0 bps	150.0 bps	50.0 bps
III	BBB-/BBB-	25.0 bps	175.0 bps	75.0 bps
IV	BB+/BB+	30.0 bps	200.0 bps	100.0 bps
V	≤ BB/BB	40.0 bps	225.0 bps	125.0 bps

Each change in the Applicable Rate resulting from a change in the Debt Rating of the Borrower shall be effective for the period commencing on the effective date of such change and ending on the date immediately preceding the effective date of the next such change. Notwithstanding the above, (i) if at any time there is a split in the Debt Ratings between S&P and Fitch, and the Debt Ratings differ by one level, then the Pricing Level for the ~~lower~~higher of such Debt Ratings shall apply (with the Debt Rating for Pricing Level I being the highest and the Debt Rating for Pricing Level IV being the lowest); (ii) if there is a split in Debt Ratings between S&P and Fitch of more than one level, then the Pricing Level that is one level ~~higher~~lower than the Pricing Level of the ~~lower~~higher Debt Rating shall apply; (iii) if the Borrower has only one Debt Rating, such Debt Rating shall apply; and (iv) if the Borrower does not have any Debt Rating, Pricing Level V shall apply.

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

“Arrangers” means ~~MLPFS, BMO Capital Markets Corp. BofA Securities~~, Capital One, National Association, ~~Citibank~~Citizens Bank, N.A., Goldman Sachs Bank USA, KeyBank National Association and PNC Capital Markets LLC in their capacity as joint lead arrangers ~~and bookrunners~~.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit 11.06(b) or any other form (including electronic documentation generated by use of an electronic platform) approved by the Administrative Agent.

“Attributable Indebtedness” means, with respect to any Person on any date, (a) in respect of any capital lease, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a capital lease, (c) in respect of any Securitization Transaction, the outstanding principal amount of such financing, after taking into account reserve accounts and making appropriate adjustments, determined by the Administrative Agent in its reasonable judgment and (d) in respect of any Sale and Leaseback Transaction, the present value (discounted in accordance with GAAP at the debt rate implied in the applicable lease) of the obligations of the lessee for rental payments during the term of such lease.

“Audited Financial Statements” means the audited consolidated balance sheet of the Borrower and its Subsidiaries (and prior to December 31, 2017, the combined entities of the Newmark Knight Frank business segment of BGC) for the fiscal years ended 2015, 2016 and 2017, and the related consolidated statements of income or operations, shareholder’s equity and cash flows of the Borrower and its Subsidiaries for such fiscal year, including the notes thereto.

“Availability Period” means, with respect to the Revolving Commitments, the period from and including the Closing Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Revolving Commitments pursuant to Section 2.06, and (c) the date of termination of the commitment of each Lender to make Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions.

“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~~ Affected Financial Institution.

“Bail-In Legislation” means, (a) 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, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

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

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 0.50%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate” and (c) the Eurodollar Rate plus 1.0%; and if Base Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’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 “prime rate” announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change. [If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03 or 3.07, then the Base Rate shall be the greater of clauses \(a\) and \(b\) above and shall be determined without reference to clause \(c\) above.](#)

“[Base Rate Loan](#)” means a Loan that bears interest based on the Base Rate.

“[Beneficial Ownership Certification](#)” means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

“[Beneficial Ownership Regulation](#)” means 31 C.F.R. § 1010.230.

“[Benefit Plan](#)” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Part 4 of Subtitle B of Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Internal Revenue Code or (c) any Person whose assets constitute (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Internal Revenue Code) the assets of any such “employee benefit plan” or “plan”.

“[Berkeley Point](#)” means Berkeley Point Financial LLC and its Subsidiaries.

“[BGC](#)” means BGC Partners, Inc., a Delaware corporation, and its permitted successors and assigns.

“[BHC Act Affiliate](#)” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“[BofA Securities](#)” means [BofA Securities, Inc.](#)

“[Borrower](#)” has the meaning specified in the introductory paragraph hereto.

“[Borrower Materials](#)” has the meaning specified in [Section 6.02](#).

“[Borrowing](#)” means a borrowing consisting of simultaneous Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the Lenders pursuant to [Section 2.01](#).

“[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 where the Administrative Agent’s Office is located and, if such day relates to any Eurodollar Rate Loan, means any such day that is also a day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“[Cash AD Loan](#)” means a loan made by the Borrower or one of its Subsidiaries to an employee, independent contractor or consultant of the Borrower or one of its Subsidiaries which is to be repaid with the distributions in respect of limited partnership units allocated to such employee, independent contractor or consultant, and which is generally expected to be forgiven if such employee, independent contractor or consultant remains employed by the Borrower or one of its Subsidiaries at the conclusion of a specific period of time.

“Cash Collateralize” means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of one or more of the L/C Issuer or the Lenders, as collateral for L/C Obligations or obligations of the Lenders to fund participations in respect of L/C Obligations, cash or deposit account balances or, if the Administrative Agent and the L/C Issuer shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and the L/C Issuer. “Cash Collateral” has a meaning correlative to the foregoing and includes the proceeds of such cash collateral and other credit support.

~~“Cash Equivalents” means any of the following types of Investments, to the extent owned by the Borrower or any of its Subsidiaries free and clear of all Liens (other than Permitted Liens):~~

~~(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof having maturities of not more than three hundred sixty days (360) days from the date of acquisition thereof; provided that the full faith and credit of the United States is pledged in support thereof;~~

~~(b) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia, and is a member of the Federal Reserve System; (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least \$1,000,000,000, in each case with maturities of not more than one year from the date of acquisition thereof;~~

~~(c) commercial paper issued by any Person organized under the laws of any state of the United States and rated at least “Prime-1” (or the then equivalent grade) by Moody’s or at least “A-1” (or the then equivalent grade) by S&P, in each case with maturities of not more than one year from the date of acquisition thereof; and~~

~~(d) Investments, classified in accordance with GAAP as current assets of the Borrower or any of its Subsidiaries, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody’s or S&P, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in clauses (a), (b) and (c) of this definition.~~

“Change in Law” means the occurrence, after the Closing Date (or, with respect to any Lender that is not a Lender on the Closing Date, such later date on which such Lender becomes a party to this Agreement), of any of the following: (a) the adoption or taking effect of any Law, (b) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of Law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) 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 or foreign 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 of Control” means an event or series of events by which ~~the Permitted Holders fail to own, directly or indirectly, a sufficient amount of the Voting Stock of the Borrower in order to elect a majority of the members of the Board of Directors of the Borrower~~ a “person” or “group” (within the meaning of Section 13(d) of the Exchange Act) other than the Borrower, its Subsidiaries and their respective employee benefit plans and any Permitted Holder, becomes the direct or indirect “beneficial owner” (as defined in Rule 13d-3 under the Securities Exchange Act) of the Borrower’s capital stock representing, in the aggregate, more than 50% of the voting power of all such capital stock.

“Closing Date” means ~~the date of this Agreement~~ November 28, 2018.

“Collateral Account” has the meaning specified in Section 2.03(o).

“Commitment” means, as to each Lender, the Revolving Commitment of such Lender.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*).

“Compliance Certificate” means a certificate substantially in the form of Exhibit 6.02.

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

“Consolidated EBITDA” means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, an amount equal to (i) Consolidated Net Income (excluding extraordinary and other non-recurring gains and losses and charges) for such period ~~plus, without duplication,~~ (ii) the following to the extent deducted in calculating such Consolidated Net Income: (a) Consolidated Interest Charges with respect to the Borrower and its Subsidiaries for such period, (b) the provision for federal, state, local and foreign income taxes payable by the Borrower and its Subsidiaries for such period, (c) the amount of depreciation and amortization expense (including any amortization related to mortgage servicing rights, any amortization related to bonuses, any amortization related to any forgivable loan made in lieu of or for the same purpose as a bonus and any amortization related to restricted stock awards or similar awards) for such period, (d) reserves taken on Cash AD Loans, (e) charges relating to grants of exchangeability to limited partnership interests, redemption or repurchase of units or shares or the issuance of restricted shares, (f) distributions on grant units or other partnership units and allocations of net income limited to partnership units, ~~and~~ (g) impairment charges and (h) non-recurring costs and expenses paid in cash for such period; provided, that, the aggregate amount added back pursuant to this clause (h) shall not exceed ten percent (10%) of Consolidated EBITDA for such period (calculated without giving effect to the add back permitted pursuant to this clause (h)). ~~minus~~ (iii) non-cash gains attributable to originated mortgage servicing rights in accordance with GAAP; provided that for purposes of calculating the financial covenants, no EBITDA (either historically or prospectively) shall be counted from any Subsidiary to the extent it is contractually prohibited from making distributions to the Borrower at such time. For the avoidance of doubt, mark-to-market gains and losses related to puts or calls on any NASDAQ shares shall be excluded from Consolidated EBITDA.

“Consolidated Funded Indebtedness” means, as of any date of determination, all Funded Indebtedness of the Borrower and its Subsidiaries, on a consolidated basis, without duplication.

“Consolidated Interest Charges” means, for any period, for any Person, the sum of the following items to the extent paid in cash during such period (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest, but excluding any interest or other charges or expenses attributable to repurchase agreements, warehouse

agreements and other securities lending or borrowing transactions) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, plus (b) the portion of rent expense with respect to such period under capital leases that is treated as interest in accordance with GAAP plus (c) the implied interest component of Synthetic Lease Obligations with respect to such period.

“Consolidated Interest Coverage Ratio” means, as of any fiscal quarter-end for which it is to be determined, the ratio of (a) Consolidated EBITDA for the period of the four fiscal quarters ending on such date to (b) Consolidated Interest Charges with respect to the Borrower and its Subsidiaries for the period of the four fiscal quarters ending on such date, in each case calculated on a Pro Forma Basis in accordance with Section 1.03(c).

“Consolidated Leverage Ratio” means, as of any fiscal quarter-end for which it is to be determined, the ratio of (a) Consolidated Funded Indebtedness as of such date to (b) Consolidated EBITDA for the period of the four fiscal quarters ending on such date, in each case calculated on a Pro Forma Basis in accordance with Section 1.03(c).

“Consolidated Net Income” means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, net income (or loss) for such period; provided that Consolidated Net Income shall exclude any income (or loss) for such period of any Person if such Person is not a Subsidiary, except that the Borrower’s equity in the net income of any such Person for such period shall be included in Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such period to the Borrower or a Subsidiary as a dividend or other distribution.

“Consolidated Net Worth” means, at any date for which it is to be determined, the sum, without duplication, of the following items which would be shown on a consolidated balance sheet of the Borrower and its Subsidiaries prepared in accordance with GAAP as of such date: stockholders’ equity (including capital stock, additional paid-in capital, contingent stock, retained earnings and accumulated other comprehensive income) plus the aggregate amount of all redeemable partnership interests plus the aggregate amount of all non-controlling interests in Subsidiaries.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Covered Entity” means any of the following: (a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b), (b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b), or (c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Covered Party” has the meaning specified in Section 11.20.

“Credit Extension” means each of the following: (a) any Borrowing and (b) any L/C Credit Extension.

“Debt Rating” means, as of any date of determination, the rating as determined by either S&P or Fitch of a Person’s non-credit-enhanced, senior unsecured long-term debt. The Debt Rating in effect at any date is the Debt Rating that is in effect at the close of business on such date.

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

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

“Default Rate” means (a) with respect to any Obligation (other than Letter of Credit Fees) for which a rate is specified, a rate per annum equal to two percent (2%) in excess of the rate otherwise applicable thereto ~~and~~, (b) with respect to any Obligation (other than Letter of Credit Fees) for which a rate is not specified or available, a rate per annum equal to the Base Rate plus the Applicable Rate for Revolving Loans that are Base Rate Loans plus two percent (2%), and (c) with respect to Letter of Credit Fees, a rate per annum equal to the Applicable Rate plus two percent (2%), in each case, to the fullest extent permitted by applicable Law.

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“Defaulting Lender” means, subject to Section 2.15(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the L/C Issuer or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified the Borrower ~~or~~, the Administrative Agent or the L/C Issuer in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such

Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender ~~or (iii) become the subject of a Bail-In Action~~. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to [Section 2.15\(b\)](#)) upon delivery of a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower, [the L/C Issuer](#) and each other Lender promptly following such determination.

~~“Delaware LLC” means any limited liability company organized or formed under the laws of the State of Delaware.~~

~~“Delaware Divided LLC” means any Delaware LLC which has been formed upon consummation of a Delaware LLC Division.~~

~~“Delaware LLC Division” means the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.~~

“Designated Jurisdiction” means any country or territory to the extent that such country or territory itself is the subject of any Sanction, including, without limitation, each of Belarus, Myanmar (Burma), Crimea region of Ukraine, Cuba, Iran, North Korea, Sudan, Syria and Zimbabwe.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition of any property by any Loan Party or any Subsidiary, including any Sale and Leaseback Transaction and any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith ~~and including any disposition of property to a Delaware Divided LLC pursuant to a Delaware LLC Division.~~

“Disqualified Institution” means (a) any competitors of the Borrower and its Subsidiaries identified on [Schedule 1.01](#) as of the ~~Closing~~[First Amendment Effective](#) Date and (b) any other Person who is a competitor of the Borrower and its Subsidiaries which has been designated by the Borrower as a “Disqualified Institution” by written notice to the Administrative Agent and the Lenders (including by posting such notice to the Platform) not less than 5 Business Days prior to the effectiveness thereof; provided that, (i) it is understood and agreed that [Schedule 1.01](#) shall be updated upon the effectiveness of a new Disqualified Institution, (ii) the Administrative Agent shall have the right, and the Borrower hereby expressly authorizes the Administrative Agent, to post [Schedule 1.01](#), and any updates thereto from time to time, on the Platform and to provide [Schedule 1.01](#) to each Lender requesting the same and (iii) “Disqualified Institutions” shall exclude any Person that the Borrower has designated as no longer being a “Disqualified Institution” by written notice delivered to the Administrative Agent and the Lenders. For the avoidance of doubt, with respect to any Person who becomes a Disqualified Institution after the date on which it entered into a binding agreement to purchase all or a portion of the rights and obligations of an assigning Lender, such Person shall not retroactively be disqualified from being or becoming a Lender.

“Dollar” and “\$” mean lawful money of the United States.

“EBITDA” means, with respect to any Person, that portion of Consolidated EBITDA attributable to such Person.

“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 delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Sections 11.06(b)(iii) and (v) (subject to such consents, if any, as may be required under Section 11.06(b)(iii)).

“Eligible Line of Business” means (a) any business in which the Borrower or any of its Subsidiaries are engaged or have an Investment in as of the Closing Date, (b) real estate related services including but not limited to brokerage, investment sales, consulting, valuation and advisory, real estate related financial products and advisory, real estate related technology, real estate due diligence and underwriting services, project and development management, and property and facilities management, (c) financing transactions and products, loan origination or brokering or servicing, (d) any business in which the Borrower or any of its Subsidiaries engage or make an Investment that is not material to the business of the Borrower and its Subsidiaries taken as a whole, (e) sponsoring and management of real estate investment trusts and other real estate investment vehicles, and (f) any line of business complementary to the businesses in clause (a), (b), (c), (d) or (e). Except as otherwise permitted by clauses (a) through (e) above, it is understood and agreed that Eligible Line of Business shall not include the purchase or owning of real estate or the financing of real estate.

“Environmental Laws” means any and all federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

“Environmental Liability” means any liability (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Loan Party or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting,

and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Internal Revenue Code (and Sections 414(m) and (o) of the Internal Revenue Code for purposes of provisions relating to Section 412 of the Internal Revenue Code), and with respect to which liability to the Borrower is reasonably expected to attach.

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity 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 by the Borrower or any ERISA Affiliate from a Multiemployer Plan; (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, (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any 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; (g) the determination that any Pension Plan is considered an at-risk plan or, to the knowledge of the Borrower, that a Multiemployer Plan is in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Internal Revenue Code or Sections 303, 304 and 305 of ERISA, as applicable (h) 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 or (i) a failure by the Borrower or any ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or the failure by the Borrower or any ERISA Affiliate to make any required contribution to a Multiemployer Plan.

“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 Rate” means:

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate (“LIBOR”) ~~or (if not available) a comparable or successor rate, which rate is approved by the Administrative Agent~~ as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for U.S. Dollars for a period equal in length to such Interest Period) (“LIBOR”), as published ~~by~~ on the applicable Bloomberg screen page (or, ~~if not available~~, such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) (in such case, the “LIBOR Rate”) at approximately 11:00 a.m., London time, two 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; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the LIBOR Rate, at approximately 11:00 a.m., London time determined two Business Days prior to such date for Dollar deposits with a term of one month commencing that day;

~~provided that (i) to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied as otherwise reasonably determined by the Administrative Agent and (ii) if the Eurodollar 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 clause (a) of the definition of “Eurodollar Rate.”

“Event of Default” has the meaning specified in Section 8.01.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (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 Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a Law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 11.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii), 3.01(a)(iii) or 3.01(c), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.01(e) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

“Facility Termination Date” means the date as of which all of the following shall have occurred: (a) all Commitments have terminated ~~and~~, (b) all Obligations arising under the Loan Documents have been paid in full (other than contingent indemnification obligations), and (c) all Letters of Credit have terminated or expired (other than Letters of Credit as to which other arrangements with respect thereto satisfactory to the Administrative Agent and the L/C Issuer shall have been made).

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“FATCA” means Sections 1471 through 1474 of the Internal Revenue Code, as of the Closing Date (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, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any applicable intergovernmental agreements implementing the foregoing.

“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~~ calculated by the Federal Reserve Bank of New York ~~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~~ based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of

~~New York shall set forth on its public website from time to time) and 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 Bank of America on such day on such transactions as determined by the Administrative Agent, and (c) by the Federal Reserve Bank of New York as the federal funds effective rate; provided that~~ if the Federal Funds Rate ~~shall be as so determined would be~~ less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“Fee Letter” means that certain fee letter between the Borrower, Bank of America and ~~MLPFS~~BofA Securities entered into as of ~~November 4 January 29, 2018~~2020.

“First Amendment” means that certain First Amendment to Credit Agreement, dated as of the First Amendment Effective Date, among the Borrower, the Lenders signatory thereto and the Administrative Agent.

“First Amendment Effective Date” means February 26, 2020.

“Fitch” means Fitch, Inc., and any successor thereto.

“Foreign Lender” means (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or 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.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Fronting Exposure” means, at any time there is a Defaulting Lender, with respect to the L/C Issuer, such Defaulting Lender’s Applicable Percentage of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“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 activities.

“Funded Indebtedness” means, without duplication, (a) all obligations of such Person for all indebtedness created, assumed or incurred in any manner by such Person representing money borrowed (including by the issuance of debt securities), (b) all indebtedness for the deferred purchase price of property or services (other than trade accounts payable arising in the ordinary course of business), (c) all indebtedness secured by any lien upon property of such Person, whether or not such Person has assumed or become liable for the payment of such indebtedness, (d) all Attributable Indebtedness of such Person, (e) all obligations of such Person on or with respect to letters of credit and bankers’ acceptances, (f) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (g) all indebtedness for borrowed money of any other Person which is directly or indirectly guaranteed by the Borrower or any of its Subsidiaries or which the Borrower or any of its Subsidiaries has agreed (contingently or otherwise) to purchase or otherwise acquire or in respect of which the Borrower or any of its Subsidiaries has otherwise assured a creditor against loss and (h) all Guarantees of such Person in respect of the foregoing; provided, however, that Funded Indebtedness shall not include (i) accounts payable incurred in the ordinary course of business, (ii) short term obligations incurred in the ordinary

course of business, (iii) obligations of such Person in respect of Swap Contracts related to hedging or otherwise entered into in the ordinary course of business and (iv) to the extent such Person is Berkeley Point, obligations of such Person in respect of repurchase agreements, warehouse agreements or securities lending or borrowing agreements. Notwithstanding the foregoing, it is understood and agreed that the amount of Funded Indebtedness related to “bad boy guaranties” (including any related environmental indemnity) and the Guarantees by Berkeley Point to Fannie Mae under the Delegated Underwriting and Servicing Program and to Freddie Mac under the Targeted Affordable Housing Program shall, in each case, be equal to the amount of any such Indebtedness, if any, that is required by GAAP to be accrued for or otherwise set forth as a liability on the balance sheet of such Person.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, consistently applied.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness of the payment or performance of such Indebtedness or (iii) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness of any other Person, whether or not such Indebtedness is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guarantors” means, collectively, (a) each Subsidiary of the Borrower that becomes a Guarantor pursuant to Section 6.12 or otherwise, (b) each other Person that may become a Guarantor hereunder and (c) the successors and permitted assigns of the foregoing.

“Guaranty” means the Guaranty made by the Guarantors in favor of the Administrative Agent and the other holders of the Obligations pursuant to Article X.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“IFRS” means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements delivered under or referred to herein.

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all Funded Indebtedness;

(b) obligations under any Swap Contract;

(c) all obligations to purchase, redeem, retire, defease or otherwise make any payment prior to the Maturity Date in respect of any Equity Interests of the Borrower or any of its Subsidiaries or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends;

(d) all Guarantees of such Person in respect of any of the foregoing; and

(e) all Indebtedness of the types referred to in clauses (a) through (d) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or joint venture (but only to the extent such Person is liable therefor as a result of such interest), unless such Indebtedness is expressly made non-recourse to such Person.

“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 any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“Indemnitee” has the meaning specified in Section 11.04(b).

“Information” has the meaning specified in Section 11.07.

“Interest Payment Date” means (a) as to any Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that if any Interest Period for a Eurodollar Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date.

“Interest Period” means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one, two, three or six months thereafter, or upon the consent of all Lenders, such other period that is twelve months or less (in each case, subject to availability), as selected by the Borrower in its Loan Notice; provided that:

(a) 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 another calendar month, in which case such Interest Period shall end on the ~~next~~immediately preceding Business Day; and

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period.

“Internal Revenue Code” means the Internal Revenue Code of 1986.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person, or (c) an Acquisition. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“IRS” means the United States Internal Revenue Service.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“Joinder Agreement” means a joinder agreement substantially in the form of Exhibit 6.12 executed and delivered by a Subsidiary in accordance with the provisions of Section 6.12 or any other documents as the Administrative Agent shall deem appropriate for such purpose.

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and the Borrower (or any Subsidiary) or in favor of the L/C Issuer and relating to such Letter of Credit.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“L/C Disbursement” means any payment made by the L/C Issuer pursuant to a Letter of Credit.

“L/C Issuer” means Bank of America, in its capacity as issuer of Letters of Credit hereunder. The L/C Issuer may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the L/C Issuer, in which case the term “L/C Issuer” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

“L/C Obligations” means, at any time, the sum of (a) the aggregate amount available to be drawn under all outstanding Letters of Credit, plus (b) the aggregate amount of all Unreimbursed Amounts. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Laws” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the

enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of Law.

“Lenders” means each of the Persons identified as a “Lender” on the signature pages hereto, each other Person that becomes a “Lender” in accordance with this Agreement and their successors and assigns.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent, which office may include any Affiliate of such Lender or any domestic or foreign branch of such Lender or such affiliate. Unless the context otherwise requires each references to a Lender shall include its applicable Lending Office.

“Letter of Credit” means any standby letter of credit issued hereunder providing for the payment of cash upon the honoring of a presentation thereunder.

“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 in use by the L/C Issuer.

“Letter of Credit Fee” has the meaning specified in Section 2.03(h).

“Letter of Credit Sublimit” means, as of any date of determination, an amount equal to the lesser of (a) \$100,000,000, and (b) the amount of the Aggregate Revolving Commitments as of such date. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Revolving Commitments.

“LIBOR Rate” has the meaning specified in the definition of “Eurodollar Rate.”

“LIBOR Screen Rate” means the LIBOR quote on the applicable screen page the Administrative Agent designates to determine LIBOR (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).

“LIBOR Successor Rate” has the meaning specified in Section 3.07.

“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 technical, administrative or operational matters as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption and implementation 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 is reasonably necessary in connection with the administration of this Agreement).

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance

on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“Loan” means, without duplication, an extension of credit by a Lender to the Borrower under Article II in the form of a Revolving Loan.

“Loan Documents” means this Agreement, each Note, each Joinder Agreement ~~and~~, the Fee Letter, each Issuer Document, and any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.14.

“Loan Notice” means a notice of (a) a Borrowing of Revolving Loans, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurodollar Rate Loans, in each case pursuant to Section 2.02(a), which shall be substantially in the form of Exhibit 2.02 or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent) appropriately completed and signed by a Responsible Officer of the Borrower.

“Loan Parties” means, collectively, (a) the Borrower and (b) each Guarantor.

“Master Agreement” has the meaning specified in the definition of “Swap Contract.”

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, financial condition, assets or properties of the Loan Parties and their Subsidiaries taken as a whole; (b) a material impairment of the ability of the Borrower to perform its obligations under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the Borrower of any Loan Document to which it is a party.

“Maturity Date” means ~~November 28, 2021~~ February 26, 2023; provided, however, that if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

~~“MLPFS” Merrill Lynch, Pierce, Fenner & Smith Incorporated (or any other registered broker-dealer wholly-owned by Bank of America Corporation to which all or substantially all of Bank of America Corporation’s or any of its subsidiaries’ investment banking, commercial lending services or related businesses may be transferred following the date of this Agreement).~~

“Minimum Collateral Amount” means, at any time, (a) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 102% of the Fronting Exposure of the L/C Issuer with respect to Letters of Credit issued and outstanding at such time and (b) otherwise, an amount determined by the Administrative Agent and the L/C Issuer in their sole discretion.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a single employer, as defined in Section 4001(a)(15) of ERISA, that is subject to Title IV of ERISA and that has two or more contributing sponsors (including the

Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 11.01 and (b) has been approved by the Required Lenders.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Non-Reimbursement Notice” has the meaning specified in Section 2.03(f).

“Note” has the meaning specified in Section 2.11.

“Notice of Loan Prepayment” means a notice of prepayment with respect to a Loan, which shall be substantially in the form of Exhibit 2.05 or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer.

“Obligations” means with respect to each Loan Party all advances to, and debts, liabilities, obligations, covenants and duties of, such Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement or limited liability company agreement (or equivalent or comparable documents with respect to any non-U.S. jurisdiction); (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization (or equivalent or comparable documents with respect to any non-U.S. jurisdiction) and (d) with respect to all entities, any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization (or equivalent or comparable documents with respect to any non-U.S. jurisdiction).

“Other 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).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.06).

“Outstanding Amount” means (a) with respect to any Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of any Loans occurring on such date, and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts.

“Participant” has the meaning specified in Section 11.06(d).

“Participant Register” has the meaning specified in Section 11.06(d).

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the Internal Revenue Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Internal Revenue Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Internal Revenue Code and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any “employee pension benefit plan” (within the meaning of Section 3(2) of ERISA) (including a Multiple Employer Plan, but excluding a Multiemployer Plan) that is maintained or is contributed to by the Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Internal Revenue Code.

“Permitted Acquisition” means any Acquisition, provided that (a) no Default shall have occurred and be continuing or would result from such Acquisition, (b) if the Acquisition involves aggregate cash and non-cash consideration (including assumed Indebtedness, the good faith estimate by the Borrower of the maximum amount of any deferred purchase price obligations (including any earn out payments) and Equity Interests) in excess of the greater of \$30,000,000 and 4.5% of Consolidated Net Worth (as of the date of such Acquisition), the Person or property acquired in such Acquisition is in an Eligible Line of Business, (c) in the case of an Acquisition of the Equity Interests of another Person, the board of directors (or other comparable governing body) of such other Person shall have duly approved such Acquisition, and (d) the Borrower shall be in compliance with the financial covenants set forth in Section 7.11 recomputed as of the end of the period of the four fiscal quarters most recently ended for which the Borrower has delivered financial statements pursuant to Section 6.01(a) or (b) after giving effect to such Acquisition on a Pro Forma Basis. It is understood and agreed that, if (x) the Acquisition of a Significant Subsidiary involves aggregate cash and non-cash consideration (including assumed Indebtedness, the good faith estimate by the Borrower of the maximum amount of any deferred purchase price obligations (including any earn out payments) and Equity Interests) in excess of the greater of \$30,000,000 and 4.5% of Consolidated Net Worth (as of the date of such Acquisition) and (y) the Consolidated Leverage Ratio shall be greater than 2.50:1.00 after giving effect to such Acquisition of a Significant Subsidiary on a Pro

Forma Basis, the Borrower shall have delivered to the Administrative Agent a Pro Forma Compliance Certificate.

“Permitted Holders” means Cantor Fitzgerald, L.P., Howard W. Lutnick, any Person controlled by him or any trust established for Mr. Lutnick’s benefit or for the benefit of his spouse, any of his descendants or any of his relatives, in each case, so long as he is alive and, upon his death or incapacity, any person who shall, as a result of Mr. Lutnick’s death or incapacity, become a “beneficial owner” (as defined in Rule 13d-3 under the Securities Exchange Act) of the Borrower’s capital stock by operation of a trust, by will or the laws of descent and distribution or by operation of law.

“Permitted Liens” means, at any time, Liens in respect of property of any Loan Party or any Subsidiary permitted to exist at such time pursuant to the terms of Section 7.01.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan, but other than a Multiemployer Plan), maintained for employees of the Borrower or any such Plan to which the Borrower is required to contribute on behalf of any of its employees.

“Platform” has the meaning specified in Section 6.02.

“Pro Forma Basis” means, with respect to any Specified Transaction, that for purposes of calculating the financial covenants set forth in Section 7.11, such Specified Transaction (including the incurrence of any Indebtedness therewith) shall be deemed to have occurred as of the first day of the most recent four fiscal quarter period preceding the date of such Specified Transaction for which financial statements were required to be delivered pursuant to Section 6.01(a) or 6.01(b). In connection with the foregoing, (a) with respect to any Disposition, (i) income statement and cash flow statement items (whether positive or negative) attributable to the property disposed of shall be excluded to the extent relating to any period occurring prior to the date of such Specified Transaction and (ii) Indebtedness which is retired shall be excluded and deemed to have been retired as of the first day of the applicable period and (b) with respect to any Acquisition, (i) income statement and cash flow statement items attributable to the Person or property acquired shall be included to the extent relating to any period applicable in such calculations to the extent (A) such items are not otherwise included in such income statement and cash flow statement items for the Borrower and its Subsidiaries in accordance with GAAP or in accordance with any defined terms set forth in Section 1.01 and (B) such items are supported by financial statements (if available) and such other information deemed necessary by a Responsible Officer in order to make a good faith determination (consistent with Article 11 of Regulation S-X of the Securities Act of 1933, as amended, as interpreted by the staff of the Securities and Exchange Commission) of such pro forma calculation and (ii) any Indebtedness incurred or assumed by the Borrower or any Subsidiary (including the Person or property acquired) in connection with such Specified Transaction and any Indebtedness of the Person or property acquired which is not retired in connection with such Specified Transaction (A) shall be deemed to have been incurred as of the first day of the applicable period and (B) if such Indebtedness has a floating or formula rate, shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate which is or would be in effect with respect to such Indebtedness as at the relevant date of determination.

“Pro Forma Compliance Certificate” means a certificate of a Responsible Officer of the Borrower containing reasonably detailed calculations of the financial covenants set forth in Section 7.11

recomputed as of the end of the period of the four fiscal quarters most recently ended for which the Borrower has delivered financial statements pursuant to [Section 6.01\(a\)](#) or [\(b\)](#) after giving effect to the applicable transaction on a Pro Forma Basis.

“[PTE](#)” means 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 specified in [Section 6.02](#).

“[QFC](#)” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, [12 U.S.C. 5390\(c\)\(8\)\(D\)](#).

“[QFC Credit Support](#)” has the meaning specified in [Section 11.20](#).

“[Recipient](#)” means the Administrative Agent, any Lender, [the L/C Issuer](#) or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

“[Register](#)” has the meaning specified in [Section 11.06\(c\)](#).

“[Regulation S-X](#)” means Regulation S-X set forth in 17 C.F.R. Part 210 of the Securities Act of 1933.

“[Related Parties](#)” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“[Relevant Governmental Body](#)” means [the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York for the purpose of recommending a benchmark rate to replace LIBOR in loan agreements similar to this Agreement.](#)

“[Reportable Event](#)” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the applicable notice period has been waived.

“[Request for Credit Extension](#)” means [\(a\) with respect to a Borrowing, conversion or continuation of Loans, a Loan Notice, and \(b\) with respect to a L/C Credit Extension, a Letter of Credit Application.](#)

“[Required Lenders](#)” means, at any time, Lenders having Total Credit Exposures representing more than 50% of the Total Credit Exposures of all Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time: [provided that, the amount of any participation in any Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to and funded by another Lender shall be deemed to be held by the Lender that is the L/C Issuer in making such determination.](#)

“[Resignation Effective Date](#)” has the meaning specified in [Section 9.06](#).

“[Resolution Authority](#)” means [an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.](#)

“Responsible Officer” means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer, general partner, executive vice president, chief operating officer, chief administrative officer or controller of a Loan Party, and, solely for purposes of the delivery of incumbency certificates, the secretary or any assistant secretary of a Loan Party and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. To the extent requested by the Administrative Agent, each Responsible Officer will provide an incumbency certificate and appropriate authorization documentation, in form and substance reasonably satisfactory to the Administrative Agent.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests of any Person, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interests or on account of any return of capital to such Person’s stockholders, partners or members (or the equivalent Person thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment.

“Revolving Commitment” means, as to each Lender, its obligation to (a) make Revolving Loans to the Borrower pursuant to Section 2.01 and (b) purchase participations in L/C Obligations, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption or other documentation pursuant to which such Lender becomes a party hereto, as applicable.

“Revolving Credit Exposure” means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Loans and such Lender’s participation in L/C Obligations at such time.

“Revolving Loan” has the meaning specified in Section 2.01(a).

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of S&P Global, Inc. and any successor thereto.

“Sale and Leaseback Transaction” means, with respect to any Person, any arrangement, directly or indirectly, whereby such Person shall sell or transfer any property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

“Sanction(s)” means any sanction administered or enforced by the United States Government, including OFAC, the United Nations Security Council, the European Union, Her Majesty’s Treasury (“HMT”) or other relevant sanctions authority.

“Scheduled Unavailability Date” has the meaning specified in Section 3.07.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Securitization Transaction” means, with respect to any Person, any financing transaction or series of financing transactions (including factoring arrangements) pursuant to which such Person or any Subsidiary of such Person may sell, convey or otherwise transfer, or grant a security interest in, accounts, payments, receivables, rights to future lease payments or residuals or similar rights to payment to a special purpose subsidiary or affiliate of such Person.

“Significant Subsidiary” has the meaning given to such term in Regulation S-X.

“SOFR” with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York’s website and that has been selected or recommended by the Relevant Governmental Body.

“SOFR-Based Rate” means SOFR or Term SOFR.

“Solvent” or “Solvency” means, with respect to any Person as of a particular date, that on such date (a) such Person is able to pay its debts and other liabilities, contingent obligations and other commitments as they mature in the ordinary course of business, (b) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature in the ordinary course of business, (c) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person’s property would constitute unreasonably small capital, (d) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person and (e) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Specified Transaction” means (a) any Acquisition of property or series of related acquisitions of property that (i) constitutes assets comprising all or substantially all of an operating unit of a business or constitutes all or substantially all of the common stock of a Person and (ii) involves the payment of consideration by the Borrower and its Subsidiaries in excess of the greater of \$75,000,000 and 4.5% of Consolidated Net Worth (as of the date of such Acquisition), (b) any Disposition of property or series of related Dispositions of property that (i) constitutes assets comprising all or substantially all of an operating unit of a business or constitutes all or substantially all of the common stock of a Person and (ii) yields gross proceeds to the Borrower or any of its Subsidiaries in excess of the greater of \$75,000,000 and 4.5% of Consolidated Net Worth (as of the date of such Disposition) and (c) any other Acquisition or Disposition designated by the Borrower as a “Specified Transaction” as of any fiscal quarter-end; provided that if the Borrower designates any Acquisition or Disposition as a Specified Transaction as of such fiscal quarter-end, then it must designate all Acquisitions and Dispositions consummated during the twelve month period prior to such designation as Specified Transactions.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which (a) a majority of the shares of Voting Stock is at the time beneficially owned by such Person and (b) is required to be consolidated into the financial statements of

such Person in accordance with GAAP. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Supported QFC” has the meaning specified in Section 11.20.

“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.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term SOFR” means the forward-looking term rate for any period that is approximately (as determined by the Administrative Agent) as long as any of the Interest Period options set forth in the definition of “Interest Period” and that is based on SOFR and that has been selected or recommended by the Relevant Governmental Body, in each case as published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion.

“Threshold Amount” means \$50,000,000.

“Total Credit Exposure” means, as to any Lender at any time, the sum of the unused Commitments of such Lender at such time and the ~~outstanding Loans~~ Revolving Credit Exposure of such Lender at such time.

“Total Revolving Outstandings” means the aggregate Outstanding Amount of all Revolving Loans and all L/C Obligations.

“Type” means, with respect to any Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“United States” and “U.S.” mean the United States of America.

“Unreimbursed Amount” has the meaning specified in Section 2.03(f).

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Internal Revenue Code.

“U.S. Special Resolution Regimes” has the meaning specified in Section 11.20.

“U.S. Tax Compliance Certificate” has the meaning specified in Section 3.01(e)(ii)(B)(3).

“Voting Stock” means, with respect to any Person, Equity Interests issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right so to vote has been suspended by the happening of such a contingency.

“Write-Down and Conversion Powers” means, (a) 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, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.02 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 definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and

“including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Loan Document or Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, modified, extended, restated, replaced or supplemented from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, Preliminary Statements of and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any Law shall include all statutory and regulatory rules, regulations, orders and 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, extended, restated, replaced or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all assets and properties, tangible and intangible, real and personal, including cash, securities, accounts and contract rights.

(b) 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.”

(c) 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.

(a) Any reference herein to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

1.03 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant)

contained herein, (i) Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 on financial liabilities shall be disregarded; and (ii) all liability amounts shall be determined excluding any liability relating to any operating lease, all asset amounts shall be determined excluding any right-of-use assets relating to any operating lease, all amortization amounts shall be determined excluding any amortization of a right-of-use asset relating to any operating lease, and all interest amounts shall be determined excluding any deemed interest comprising a portion of fixed rent payable under any operating lease, in each case to the extent that such liability, asset, amortization or interest pertains to an operating lease under which the covenantor or a member of its consolidated group is the lessee and would not have been accounted for as such under GAAP as in effect on December 31, 2015.

(b) Changes in GAAP. If at any time any change in GAAP (including the adoption of IFRS) would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. ~~Without limiting the foregoing, leases shall continue to be classified and accounted for on a basis consistent with that reflected in the Audited Financial Statements for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.~~

(c) Calculations. Notwithstanding the above, the parties hereto acknowledge and agree that all calculations of the financial covenants in Section 7.11 shall be made on a Pro Forma Basis with respect to any Specified Transaction.

1.04 Rounding.

Any financial ratios required to be maintained by the 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 herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 Times of Day; Rates.

Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable). The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of “Eurodollar Rate” or with respect to any ~~comparable or successor rate thereto; rate that is an alternative or replacement for or successor to any of such rate (including any LIBOR Successor Rate) or the effect of any of the foregoing, or of any LIBOR Successor Rate Conforming Changes.~~

1.01 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; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer 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.

ARTICLE II

THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 Revolving Loans.

(a) Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans (each such loan, a “Revolving Loan”) to the Borrower in Dollars from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of such Lender’s Revolving Commitment; provided, however, that after giving effect to any Borrowing of Revolving Loans, (i) the Total Revolving Outstandings shall not exceed an amount equal to the Aggregate Revolving Commitments and (ii) the Revolving Credit Exposure of any Lender shall not exceed such Lender’s Revolving Commitment. Within the limits of each Lender’s Revolving Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01, prepay under Section 2.05, and reborrow under this Section 2.01. Revolving Loans may be Base Rate Loans or Eurodollar Rate Loans, or a combination thereof, as further provided herein.

(b) Increases of the Aggregate Revolving Commitments. The Borrower shall have the right, upon at least five Business Days’ prior written notice to the Administrative Agent, to increase the Aggregate Revolving Commitments in one or more increases, at any time prior to the date that is sixty days prior to the Maturity Date, subject, however, in any such case, to satisfaction of the following conditions precedent:

(i) the Aggregate Revolving Commitments shall not exceed ~~\$300,000,000~~500,000,000 without the consent of the Required Lenders;

(ii) no Default shall have occurred and be continuing on the date on which such increase is to become effective;

(iii) the representations and warranties set forth in Article V shall be true and correct in all material respects (or, if any such representation or warranty is qualified by materiality or Material Adverse Effect, it shall be true and correct in all respects as drafted) on and as of the date on which such increase is to become effective, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (or, if any such representation or warranty is qualified by materiality or Material Adverse Effect, it shall be true and correct in all respects as drafted) as of such earlier date;

(iv) after giving effect to such increase and any Borrowings in connection therewith, the Borrower will be in pro forma compliance with all of the covenants in Section 7.11;

(v) such increase shall be in a minimum amount of \$~~10,000,000~~5,000,000 and in integral multiples of \$5,000,000 in excess thereof;

(vi) such requested increase shall only be effective upon receipt by the Administrative Agent of (A) additional Revolving Commitments in a corresponding amount of such requested increase from either existing Lenders and/or one or more other institutions that qualify as Eligible Assignees (it being understood and agreed that no existing Lender shall be required to provide an additional Revolving Commitment) and (B) documentation from each institution providing an additional Revolving Commitment evidencing its additional Revolving Commitment and its obligations under this Agreement in form and substance reasonably acceptable to the Administrative Agent;

(vii) the Administrative Agent shall have received all documents (including resolutions of the board of directors of the Borrower) it may reasonably request relating to the corporate or other necessary authority for such increase and the validity of such increase in the Aggregate Revolving Commitments, and any other matters relevant thereto, all in form and substance reasonably satisfactory to the Administrative Agent; and

(viii) if any Revolving Loans are outstanding at the time of the increase in the Aggregate Revolving Commitments, the Borrower shall, if applicable, prepay one or more existing Revolving Loans (such prepayment to be subject to Section 3.05) in an amount necessary such that after giving effect to the increase in the Aggregate Revolving Commitments, each Lender will hold its pro rata share (based on its Applicable Percentage of the increased Aggregate Revolving Commitments) of outstanding Revolving Loans.

~~For avoidance of doubt, it is understood and agreed that, as of the Closing Date, there does not exist any availability to increase the Aggregate Revolving Commitments pursuant to this Section 2.01(b).~~

2.02 Borrowings, Conversions and Continuations of Loans.

(a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by (A) telephone, or (B) a Loan Notice; provided that any telephonic notice must be confirmed immediately by delivery to the Administrative Agent of a Loan Notice. Each such Loan Notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of, Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans. Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof. ~~Each~~Except as provided in Section 2.03(c), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof. Each Loan

Notice shall specify (i) whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Eurodollar Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of a Loan in a Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in the preceding subsection. In the case of a Borrowing, each Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; provided, however, that if, on the date the Loan Notice with respect to such Borrowing is given by the Borrower, there are Unreimbursed Amounts outstanding, then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such Unreimbursed Amounts, and second, shall be made available to the Borrower as provided above.

(c) Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of the Interest Period for such Eurodollar Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans without the consent of the Required Lenders, and unless repaid, each outstanding Eurodollar Rate Loan shall be converted to a Base Rate Loan at the end of the Interest Period applicable thereto.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify ~~each~~the Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than ten Interest Periods in effect.

(f) Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all of the portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, the Administrative Agent and such Lender.

2.03 ~~Reserved~~ Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, in addition to the Loans provided for in Section 2.01, the Borrower may request that the L/C Issuer, in reliance on the agreements of the Lenders set forth in this Section 2.03, issue, and the L/C Issuer may in its sole discretion elect to issue, at any time and from time to time during the Availability Period, Letters of Credit denominated in Dollars for its own account or the account of any of its Subsidiaries in such form as is acceptable to the Administrative Agent and the L/C Issuer in its reasonable determination. Letters of Credit issued hereunder shall constitute utilization of the Commitments.

(b) Notice of Issuance, Amendment, Extension, Reinstatement or Renewal. To request the issuance of a Letter of Credit (or the amendment of the terms and conditions, extension of the terms and conditions, extension of the expiration date, or reinstatement of amounts paid, or renewal of an outstanding Letter of Credit), the Borrower shall deliver (or transmit by electronic communication, if arrangements for doing so have been approved by the L/C Issuer) to the L/C Issuer and to the Administrative Agent not later than 11:00 a.m. at least two (2) Business Days (or such later date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be, a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, extended, reinstated or renewed, and specifying the date of issuance, amendment, extension, reinstatement or renewal (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with Section 2.03(d)), the amount of such Letter of Credit, the name and address of the beneficiary thereof, the purpose and nature of the requested Letter of Credit and such other information as shall be necessary to prepare, amend, extend, reinstate or renew such Letter of Credit. If requested by the L/C Issuer, the Borrower also shall submit a Letter of Credit Application and a reimbursement agreement on the L/C Issuer's standard form in connection with any request for a Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any Letter of Credit Application, any reimbursement agreement, any other Issuer Document or other agreement submitted by the Borrower to, or entered into by the Borrower with, the L/C Issuer relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(c) Limitations on Amounts, Issuance and Amendment.

(i) A Letter of Credit may be issued, amended, extended, reinstated or renewed only if (and upon issuance, amendment, extension, reinstatement or renewal of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, extension, reinstatement or renewal (i) the aggregate L/C Obligations shall not exceed the Letter of Credit Sublimit, (ii) the Revolving Credit Exposure of any Lender shall not exceed its Commitment and (iii) the total Revolving Credit Exposures shall not exceed the total Commitments.

(ii) The L/C Issuer shall not be under any obligation to issue any Letter of Credit, including if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing the Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon the L/C Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the First Amendment Effective Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the First Amendment Effective Date and which the L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by the Administrative Agent and the L/C Issuer, the Letter of Credit is in an initial stated amount less than \$500,000;

(D) any Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole discretion) with the Borrower or such Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.15(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion; or

(E) the Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder.

(iii) The L/C Issuer shall be under no obligation to amend any Letter of Credit, including if (A) the L/C Issuer would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of the Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(d) Expiration Date. Each Letter of Credit shall have a stated expiration date no later than the earlier of (i) the date twelve months after the date of the issuance of such Letter of Credit (or, in the case of any extension of the expiration date thereof, whether automatic or by amendment, twelve months after the then-current expiration date of such Letter of Credit) and (ii) the date that is five Business Days prior to the Maturity Date.

(e) Participations.

(i) By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount or extending the expiration date thereof), and without any

further action on the part of the L/C Issuer or the Lenders, the L/C Issuer hereby grants to each Lender, and each Lender hereby acquires from the L/C Issuer, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this Section 2.03(e)(i) in respect of Letters of Credit is absolute, unconditional and irrevocable and shall not be affected by any circumstance whatsoever, including any amendment, extension, reinstatement or renewal of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments. Each Lender further acknowledges and agrees that its participation in each Letter of Credit will be automatically adjusted to reflect such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit at each time such Lender's Commitment is amended pursuant to the operation of Section 2.14 or 2.15, as a result of an assignment in accordance with Section 10.06 or otherwise pursuant to this Agreement.

(ii) In consideration and in furtherance of the foregoing, upon receipt of any Non-Reimbursement Notice, each Lender hereby absolutely, unconditionally and irrevocably agrees to pay to the Administrative Agent, for account of the L/C Issuer, such Lender's Applicable Percentage of each L/C Disbursement made by the L/C Issuer not later than 1:00 p.m. on the Business Day specified in such Non-Reimbursement Notice, until such L/C Disbursement is reimbursed by the Borrower or at any time after any reimbursement payment is required to be refunded to the Borrower for any reason, including after the Maturity Date. Such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each such payment shall be made in the same manner as provided in Section 2.02 with respect to Loans made by such Lender (and Section 2.02 shall apply, mutatis mutandis, to the payment obligations of the Lenders pursuant to this Section 2.03(e)(ii)), and the Administrative Agent shall promptly pay to the L/C Issuer the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to Section 2.03(f), the Administrative Agent shall distribute such payment to the L/C Issuer or, to the extent that the Lenders have made payments pursuant to this Section 2.03(e)(ii) to reimburse the L/C Issuer, then to such Lenders and the L/C Issuer as their interests may appear. Any payment made by a Lender pursuant to this Section 2.03(e)(ii) to reimburse the L/C Issuer for any L/C Disbursement (other than, for the avoidance of doubt, any Loan made by a Lender pursuant to the first proviso set forth in Section 2.03(f)) shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such L/C Disbursement.

(iii) If any Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the provisions of Section 2.03(e)(ii), then, without limiting the other provisions of this Agreement, the L/C Issuer shall be entitled to recover from such Lender (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 L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. A

certificate of the L/C Issuer submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.03(e)(iii) shall be conclusive absent manifest error.

(f) Reimbursement. If the L/C Issuer shall make any L/C Disbursement in respect of a Letter of Credit, the Borrower shall reimburse the L/C Issuer in respect of such L/C Disbursement by paying to the Administrative Agent an amount equal to such L/C Disbursement not later than 12:00 noon on (i) the Business Day that the Borrower receives notice of such L/C Disbursement, if such notice is received prior to 10:00 a.m. or (ii) the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time; provided that, if such L/C Disbursement is not less than \$1,000,000, the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.02 that such payment be financed with a Borrowing of Base Rate Loans in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting Borrowing of Base Rate Loans. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Lender of the applicable L/C Disbursement, the payment then due from the Borrower in respect thereof (the "Unreimbursed Amount") and such Lender's Applicable Percentage thereof (each such notice, a "Non-Reimbursement Notice"). Promptly upon receipt of any Non-Reimbursement Notice, each Lender shall pay to the Administrative Agent its Applicable Percentage of the Unreimbursed Amount pursuant to Section 2.03(e)(ii), subject to the amount of the unutilized portion of the Aggregate Revolving Commitments. Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 2.03(f) 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.

(g) Obligations Absolute. The Borrower's obligation to reimburse L/C Disbursements as provided in Section 2.03(f) shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of:

(i) any lack of validity or enforceability of this Agreement, any other Loan Document or any Letter of Credit, or any term or provision herein or therein;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary 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 L/C Issuer 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;

(iii) any draft, demand, certificate or other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement in such draft or other document 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) waiver by the L/C Issuer of any requirement that exists for the L/C Issuer's protection and not the protection of the Borrower or any waiver by the L/C Issuer which does not in fact materially prejudice the Borrower;

(v) honor of a demand for payment presented electronically even if such Letter of Credit required that demand be in the form of a draft;

(vi) any payment made by the L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the Uniform Commercial Code or the ISP, as applicable;

(vii) payment by the L/C Issuer under a Letter of Credit against presentation of a draft or other document that does not comply strictly with the terms of such Letter of Credit; or any payment made by the L/C Issuer 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

(viii) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.03, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder.

(h) Examination. 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 immediately notify the L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(i) Liability. None of the Administrative Agent, the Lenders, the L/C Issuer, or any of their Related Parties shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit by the L/C Issuer or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in Section 2.03(g)), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, any error in translation or any consequence arising from causes beyond the control of the L/C Issuer; provided that the foregoing shall not be construed to excuse the L/C Issuer from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable Law) suffered by the Borrower that are caused by the L/C Issuer's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the L/C Issuer (as finally determined by a court of competent jurisdiction), the L/C Issuer shall be deemed to have exercised care in each such determination, and that;

- (i) the L/C Issuer may replace a purportedly lost, stolen, or destroyed original Letter of Credit or missing amendment thereto with a certified true copy marked as such or waive a requirement for its presentation;
- (ii) the L/C Issuer may accept documents that appear on their face to be in substantial compliance with the terms of a Letter of Credit without responsibility for further investigation, regardless of any notice or information to the contrary, and may make payment upon presentation of documents that appear on their face to be in substantial compliance with the terms of such Letter of Credit and without regard to any non-documentary condition in such Letter of Credit;
- (iii) the L/C Issuer shall have the right, in its sole discretion, to decline to accept such documents and to make such payment if such documents are not in strict compliance with the terms of such Letter of Credit; and
- (iv) this sentence shall establish the standard of care to be exercised by the L/C Issuer when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof (and the parties hereto hereby waive, to the extent permitted by applicable Law, any standard of care inconsistent with the foregoing).

Without limiting the foregoing, none of the Administrative Agent, the Lenders, the L/C Issuer, or any of their Related Parties shall have any liability or responsibility by reason of (i) any presentation that includes forged or fraudulent documents or that is otherwise affected by the fraudulent, bad faith, or illegal conduct of the beneficiary or other Person, (ii) the L/C Issuer declining to take-up documents and make payment (A) against documents that are fraudulent, forged, or for other reasons by which that it is entitled not to honor or (B) following a Borrower's waiver of discrepancies with respect to such documents or request for honor of such documents or (iii) the L/C Issuer retaining proceeds of a Letter of Credit based on an apparently applicable attachment order, blocking regulation, or third-party claim notified to the L/C Issuer.

(j) Applicability of ISP; Limitation of Liability. Unless otherwise expressly agreed by the L/C Issuer and the Borrower when a Letter of Credit is issued by it, the rules of the ISP shall apply to each Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to the Borrower for, and the L/C Issuer's rights and remedies against the Borrower shall not be impaired by, any action or inaction of the L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where the L/C Issuer or the beneficiary is located, the practice stated in the ISP, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(k) Benefits. The L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such

Letters of Credit as fully as if the term “Administrative Agent” as used in Article IX included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(l) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent for the account of each Lender in accordance, subject to Section 2.15, with its Applicable Percentage a Letter of Credit fee (the “Letter of Credit Fee”) for each Letter of Credit equal to the Applicable Rate times the daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. Letter of Credit Fees shall be (i) due and payable on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Maturity Date and thereafter on demand and (ii) computed on a quarterly basis in arrears. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(m) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Borrower shall pay directly to the L/C Issuer for its own account a fronting fee with respect to each Letter of Credit, at the rate per annum equal to the amount set forth in the Fee Letter, computed on the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on the first Business Day after the end of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Maturity Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. In addition, the Borrower shall pay directly to the L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer 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.

(n) Disbursement Procedures. The L/C Issuer for any Letter of Credit shall, within the time allowed by applicable Laws or the specific terms of the Letter of Credit following its receipt thereof, examine all documents purporting to represent a demand for payment under such Letter of Credit. The L/C Issuer shall promptly after such examination notify the Administrative Agent and the Borrower in writing of such demand for payment if the L/C Issuer has made or will make an L/C Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the L/C Issuer and the Lenders with respect to any such L/C Disbursement.

(o) Interim Interest. If the L/C Issuer for any Letter of Credit shall make any L/C Disbursement, then, unless the Borrower shall reimburse such L/C Disbursement in full on the date such L/C Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such L/C Disbursement is made to but excluding the date that the

Borrower reimburses such L/C Disbursement, at the rate per annum then applicable to Base Rate Loans; provided that if the Borrower fails to reimburse such L/C Disbursement when due pursuant to Section 2.03(f), then Section 2.08(b) shall apply. Interest accrued pursuant to this Section 2.03(o) shall be for account of the L/C Issuer, except that interest accrued on and after the date of payment by any Lender pursuant to Section 2.03(f) to reimburse the L/C Issuer shall be for account of such Lender to the extent of such payment.

(p) Replacement of the L/C Issuer. The L/C Issuer may be replaced at any time by written agreement between the Borrower, the Administrative Agent, the replaced L/C Issuer and the successor L/C Issuer. The Administrative Agent shall notify the Lenders of any such replacement of the L/C Issuer. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced L/C Issuer. From and after the effective date of any such replacement, (i) the successor L/C Issuer shall have all the rights and obligations of the L/C Issuer under this Agreement with respect to Letters of Credit to be issued by it thereafter and (ii) references herein to the term "L/C Issuer" shall be deemed to include such successor or any previous L/C Issuer, or such successor and all previous L/C Issuers, as the context shall require. After the replacement of the L/C Issuer hereunder, the replaced L/C Issuer shall remain a party hereto and shall continue to have all the rights and obligations of the L/C Issuer under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(q) Cash Collateralization.

(i) If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Lenders with L/C Obligations representing at least 50% of the total L/C Obligations) demanding the deposit of Cash Collateral pursuant to this Section 2.03(q), the Borrower shall promptly within three (3) Business Days deposit into an account established and maintained on the books and records of the Administrative Agent (the "Collateral Account") an amount in cash equal to 102% of the total L/C Obligations as of such date plus any accrued and unpaid interest thereon; provided that the obligation to deposit such Cash Collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default described in Section 8.01(f) or 8.01(g). Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. In addition, and without limiting the foregoing or Section 2.03(d), if any L/C Obligations remain outstanding after the expiration date specified in Section 2.03(d), the Borrower shall promptly within three (3) Business Days deposit into the Collateral Account an amount in cash equal to 102% of the total L/C Obligations as of such date plus any accrued and unpaid interest thereon.

(ii) The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over the Collateral Account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in the Collateral Account. Cash Collateral in the Collateral Account shall be applied by the Administrative Agent to reimburse the L/C

Issuer for L/C Disbursements for which it has not been reimbursed, together with related fees, costs, and customary processing charges, and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the L/C Obligations at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Lenders with L/C Obligations representing 50% of the total L/C Obligations), be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide an amount of Cash Collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three Business Days after all Events of Default have been cured or waived.

(r) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower shall be obligated to reimburse, indemnify and compensate the L/C Issuer hereunder for any and all drawings under such Letter of Credit as if such Letter of Credit had been issued solely for the account of the Borrower. The Borrower irrevocably waives any and all defenses that might otherwise be available to it as a guarantor or surety of any or all of the obligations of such Subsidiary in respect of such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

(s) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

2.04 [Reserved].

2.05 Prepayments.

(a) ~~Voluntary Prepayments~~—The Borrower may, upon delivery of a Notice of Loan Prepayment from the Borrower to the Administrative Agent, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty; provided that (A) such notice must be in a form acceptable to the Administrative Agent and be received by the Administrative Agent not later than 11:00 a.m. (1) three Business Days prior to any date of prepayment of Eurodollar Rate Loans and (2) on the date of prepayment of Base Rate Loans; (B) any such prepayment of Eurodollar Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof (or, if less, the entire principal amount thereof then outstanding); and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof (or, if less, the entire principal amount thereof then outstanding). Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Aggregate Revolving Commitments as contemplated by Section 2.06, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.06. Any prepayment of a Eurodollar Rate Loan shall be

accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Subject to Section 2.15, each such prepayment shall be applied to the Loans of the Lenders in accordance with their respective Applicable Percentages.

(b) ~~[Reserved]~~ If for any reason the Total Revolving Outstandings at any time exceed the Aggregate Revolving Commitments then in effect, the Borrower shall immediately prepay Loans and/or promptly within three (3) Business Days Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; provided, however, that the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(b) unless after the prepayment in full of the Loans the Total Revolving Outstandings exceed the Aggregate Revolving Commitments then in effect.

2.06 Termination or Reduction of Aggregate Revolving Commitments.

The Borrower may, upon notice to the Administrative Agent, terminate the Aggregate Revolving Commitments, or from time to time permanently reduce the Aggregate Revolving Commitments; provided that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. three Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$5,000,000 or any whole multiple of \$1,000,000 in excess thereof, ~~and~~ (iii) the Borrower shall not terminate or reduce the Aggregate Revolving Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Outstandings would exceed the Aggregate Revolving Commitments, and (iv) if, after giving effect to any reduction of the Aggregate Revolving Commitments, the Letter of Credit Sublimit exceeds the amount of the Aggregate Revolving Commitments, the Letter of Credit Sublimit shall be automatically reduced by the amount of such excess. The Administrative Agent will promptly notify the Lenders of any such notice of termination or reduction of the Aggregate Revolving Commitments. Any reduction of the Aggregate Revolving Commitments shall be applied to the Revolving Commitment of each Lender according to its Applicable Percentage. All fees accrued until the effective date of any termination of the Aggregate Revolving Commitments shall be paid on the effective date of such termination.

Notwithstanding the foregoing, a notice of termination of the Aggregate Revolving Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.

2.07 Repayment of Loans.

(a) The Borrower shall repay to the Lenders on the Maturity Date the aggregate principal amount of all Loans and all other Obligations outstanding on such date.

(b) In the event a Change of Control occurs, (i) the Borrower shall promptly thereafter, without duplication, (A) repay to the Lenders the aggregate principal amount of all Loans and all other Obligations outstanding on such date, and (B) the Borrower shall Cash Collateralize all L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto); and (ii) the Commitments of each Lender shall be terminated.

2.08 Interest.

(a) Subject to the provisions of subsection (b) below, (i) each Eurodollar Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the sum of the Eurodollar Rate for such Interest Period plus the Applicable Rate and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the sum of the Base Rate plus the Applicable Rate.

(b) (i) If any amount of principal of any Loan is not paid when due, whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of any Loan) payable by the Borrower under any Loan Document is not paid when due, whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Upon the request of the Required Lenders, while any Event of Default exists (other than as set forth in clauses (b)(i) and (b)(ii) above), the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.09 Fees.

[In addition to certain fees described in Section 2.03\(l\) and \(m\):](#)

(a) Commitment Fee. The Borrower shall pay to the Administrative Agent, for the account of each Lender in accordance with its Applicable Percentage, a commitment fee equal to the product of (i) the Applicable Rate times (ii) the actual daily amount by which the Aggregate Revolving Commitments exceed the sum of (A) the Outstanding Amount of Revolving Loans and (B) the Outstanding Amount of L/C Obligations, subject to adjustment as provided in Section 2.15. The commitment fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) Other Fees. The Borrower shall pay to the Lenders such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified, including, without limitation, as set forth in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.10 Computation of Interest and Fees.

All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurodollar Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.11 Evidence of Debt.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a promissory note, which shall evidence such Lender's Loans in addition to such accounts or records. Each such promissory note shall be in the form of Exhibit 2.11 (a "Note"). Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in Section 2.11(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

2.12 Payments Generally; Administrative Agent's Clawback; etc.

(a) ~~(a)~~ General. All payments to be made by the Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately

available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. 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.

(b) ~~(b)~~ (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(i) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the

Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) ~~(b)~~ Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) ~~(c)~~ Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans to fund participations in Letters of Credit and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 11.04(c).

(e) ~~(d)~~ Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

2.13 Sharing of Payments by Lenders.

If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Loans made by it or the participations in L/C Obligations held by it, resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans or participations and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and subparticipations in L/C Obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) ~~or~~, (B) the application of Cash Collateral provided for in Section 2.14, or (C) any payment obtained by a Lender as consideration for the

assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations to any assignee or participant, other than an assignment to the Borrower or any Subsidiary (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

2.14 ~~Reserved~~Cash Collateral.

(a) Obligation to Cash Collateralize. At any time that there shall exist a Defaulting Lender, within one Business Day following the written request of the Administrative Agent or the L/C Issuer (with a copy to the Administrative Agent), the Borrower shall Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.15(a)(iv) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(b) Grant of Security Interest. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.14(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or the L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (determined in the case of Cash Collateral provided pursuant to Section 2.15(a)(v), after giving effect to Section 2.15(a)(v) and any Cash Collateral provided by the Defaulting Lender). All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in one or more Collateral Accounts at Bank of America. The Borrower shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.14 or Sections 2.03, 2.05, 2.15 or 8.02 in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 11.06(b)(vi))) or (ii) the determination by the Administrative Agent and the L/C Issuer that there exists excess Cash Collateral; provided, however, (x) the Person providing Cash Collateral and the

L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

2.15 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 11.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the L/C Issuer hereunder; third, to Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.14; fourth, as the Borrower may request (so long as no Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; thirdfifth, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; fourth and (y) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.14; sixth, to the payment of any amounts owing to the Lenders or the L/C Issuer as a result of any judgment of a court of competent jurisdiction obtained by any Lender or the L/C Issuer against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; fifthseventh, so long as no Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and sixtheighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or Unreimbursed Amounts in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect

to Section 2.15(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.15(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee payable under Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.14.

(C) With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the L/C Issuer the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. Subject to Section 11.19, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral. If the reallocation described in Section 2.15(a)(iv) cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under applicable Law, Cash Collateralize the L/C Issuer's Fronting Exposure in accordance with the procedures set forth in Section 2.14.

(b) Defaulting Lender Cure. If the Borrower ~~and~~, the Administrative Agent and the L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, the Administrative

Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit to be held on a pro rata basis by the Lenders in accordance with their ~~Applicable Percentages~~ Commitments (without giving effect to Section 2.15(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; ~~and provided, further, that;~~ except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) New Letters of Credit. So long as any Lender is a Defaulting Lender, the L/C Issuer shall not be required to issue, extend, increase, reinstate or renew any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

ARTICLE III

TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of the Administrative Agent) require the deduction or withholding of any Tax from any such payment by the Administrative Agent or a Loan Party, then the Administrative Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Loan Party or the Administrative Agent shall be required by the Internal Revenue Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Internal Revenue Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(iii) If any Loan Party or the Administrative Agent shall be required by any applicable Laws other than the Internal Revenue Code to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Administrative Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Loan Party or the Administrative Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Loan Parties. Without limiting the provisions of subsection (a) above, the Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable Laws, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications. (i) Each of the Loan Parties shall, and does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within ten 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 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to 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 Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. Each of the Loan Parties shall, and does hereby, jointly and severally indemnify the Administrative Agent, and shall make payment in respect thereof within ten days after demand therefor, for any amount which a Lender for any reason fails to pay indefeasibly to the Administrative Agent as required pursuant to Section 3.01(c)(ii) below.

(ii) Each Lender shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, (x) the Administrative Agent against any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (y) the Administrative Agent and the Loan Parties, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.06(d) relating to the maintenance of a Participant Register and (z) the Administrative Agent and the Loan Parties, as applicable, against any Excluded Taxes attributable to such Lender that are payable or paid by the Administrative Agent or a Loan Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent

manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii).

(d) Evidence of Payments. As soon as practicable, after any payment of Taxes by any Loan Party to a Governmental Authority as provided in this Section 3.01, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, 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 Lender 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 3.01(e)(ii)(A), 3.01(e)(ii)(B) and 3.01(e)(ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, 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 Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN-E (or W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN-E (or W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate substantially in the form of Exhibit 3.01-A to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Internal Revenue Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN-E (or W-8BEN, as applicable); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E (or W-8BEN, as applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit 3.01-B or Exhibit 3.01-C, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit 3.01-D on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, 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 Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender

were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender 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 Internal Revenue 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 Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the Closing Date.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 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. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, as the case may be. 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 any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to the Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Loan Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to the Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Loan Party pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient 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 subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.

(g) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender or the L/C Issuer, the termination of the Aggregate Revolving Commitments and the repayment, satisfaction or discharge of all other Obligations.

3.02 Illegality.

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its Lending Office to perform any of its obligations hereunder or make, maintain or fund or charge interest with respect to any Credit Extensions or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to issue, make, maintain, fund or charge interest with respect to any such Credit Extension or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender, shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

3.03 Inability to Determine Rates.

(a) If in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof, (i) the Administrative Agent determines that (A) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, or (B) [\(1\) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan and \(2\) the circumstances described in Section 3.07\(a\) do not apply](#) (in each case with respect to clause (i), “Impacted Loans”), or (ii) the Administrative Agent or the Required Lenders determine that for any reason the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurodollar Rate Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended (to the extent of the affected Eurodollar Rate Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such

notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

(b) Notwithstanding the foregoing, if the Administrative Agent has made the determination described in clause (a)(i) of this Section, the Administrative Agent, in consultation with the Borrower and the affected Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (1) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under clause (a)(i) of this Section, (2) the Administrative Agent or the Required Lenders notify the Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (3) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof.

3.04 Increased Costs; Reserves on Eurodollar Rate Loans.

(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 Lender (except any reserve requirement contemplated by Section 3.04(d)) or the L/C Issuer;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer 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 Lender or the L/C Issuer (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or

such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's [or the L/C Issuer's](#) capital or on the capital of such Lender's [or the L/C Issuer's](#) holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by [or participations in Letters of Credit held by](#), such Lender, [or the Letters of Credit issued by or the L/C Issuer](#), to a level below that which such Lender or [the L/C Issuer or](#) such Lender's [or the L/C Issuer's](#) holding company could have achieved but for such Change in Law (taking into consideration such Lender's [or the L/C Issuer's](#) policies and the policies of such Lender's [or the L/C Issuer's](#) holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender [or the L/C Issuer](#), as the case may be, such additional amount or amounts as will compensate such Lender or [the L/C Issuer or](#) such Lender's [or the L/C Issuer's](#) holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender [or the L/C Issuer](#) setting forth the amount or amounts necessary to compensate such Lender or [the L/C Issuer or](#) its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender [or the L/C Issuer](#) the amount shown as due on any such certificate within ten days after receipt thereof.

(d) Reserves on Eurodollar Rate Loans. The Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided the Borrower shall have received at least ten (10) days' prior notice (with a copy to the Administrative Agent) of such additional interest or costs from such Lender. If a Lender fails to give notice ten (10) days prior to the relevant Interest Payment Date, such additional interest shall be due and payable ten (10) days from receipt of such notice.

(e) Delay in Requests. Failure or delay on the part of any Lender [or the L/C Issuer](#) to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's [or the L/C Issuer's](#) right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender [or the L/C Issuer](#) pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender [or the L/C Issuer](#), as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's [or the L/C Issuer'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 nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

3.05 Compensation for Losses.

Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Eurodollar 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);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Eurodollar Rate Loan on the date or in the amount notified by the Borrower; or

(c) 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 11.13](#);

including any loss 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 (but excluding any loss of anticipated profits). The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this [Section 3.05](#), each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar 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.

3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. Each Lender may make any Credit Extension to the Borrower through any Lending Office, provided that the exercise of this option shall not affect the obligation of the Borrower to repay the Credit Extension in accordance with the terms of this Agreement. If any Lender requests compensation under [Section 3.04](#), or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender, [the L/C Issuer](#), or any Governmental Authority for the account of any Lender [or the L/C Issuer](#) pursuant to [Section 3.01](#), or if any Lender gives a notice pursuant to [Section 3.02](#), then at the request of the Borrower such Lender [or the L/C Issuer, as applicable](#), shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender [or the L/C Issuer](#), such designation or assignment (i) would eliminate or reduce amounts payable pursuant to [Section 3.01](#) or [3.04](#), as the case may be, in the future, or eliminate the need for the notice pursuant to [Section 3.02](#), as applicable, and (ii) in each case, would not subject such Lender [or the L/C Issuer](#) to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender [or the L/C Issuer, as the case may be](#). The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender [or the L/C Issuer](#) in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under [Section 3.04](#), or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to [Section 3.01](#) and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with [Section 3.06\(a\)](#), the Borrower may replace such Lender in accordance with [Section 11.13](#).

3.07 LIBOR Successor Rate.

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, but without limiting Sections 3.03(a) and (b), if the Administrative Agent determines (which determination shall be conclusive and binding upon all parties thereto absent manifest error), or the Borrower or the Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to Borrower) that the Borrower or the Required Lenders (as applicable) have determined (which determination likewise shall be conclusive and binding upon all parties hereto absent manifest error), that:

(a) ~~(a)~~ adequate and reasonable means do not exist for ascertaining LIBOR for any requested Interest Period, including because the LIBOR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(b) ~~(b)~~ the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which LIBOR or the LIBOR Screen Rate shall no longer be made available, or used for determining the interest rate of loans in Dollars; provided, that, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent, that will continue to provide LIBOR after such specific date (such specific date, the “Scheduled Unavailability Date”); or

(c) ~~(c)~~ syndicated loans currently being executed, or that include language similar to that contained in this Section 3.07, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR;

then, reasonably promptly 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~~ solely for purpose of replacing LIBOR in accordance with this Section 3.07 with (x) one or more SOFR-Based Rates or (y) another alternate benchmark rate ~~(including any mathematical or other adjustments to the benchmark (if any) incorporated therein)~~, giving due consideration to any evolving or then existing convention for similar ~~Dollar-denominated~~ Dollar denominated syndicated credit facilities for such alternative benchmarks ~~and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar Dollar denominated syndicated credit facilities for such benchmarks which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated (the “Adjustment;” and any such proposed rate, a “LIBOR Successor Rate”), together with any proposed LIBOR Successor Rate Conforming Changes~~ and any such amendment shall become effective at 5:00 p.m. on the fifth (5th) Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders (A) in the case of an amendment to replace LIBOR with a rate described in clause (x), object to the Adjustment; or (B) in the case of an amendment to replace LIBOR with a rate described in clause (y), object to such amendment; provided, that, for the avoidance of doubt, in the case of clause (A), the Required Lenders do not accept such amendment; shall not be entitled to object to any SOFR-Based Rate contained in any such amendment. Such LIBOR Successor Rate shall be applied in a manner consistent with market practice; provided, that, to the extent such market practice is not administratively feasible for the Administrative Agent, such LIBOR Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

If no LIBOR Successor Rate has been determined and the circumstances under clause (a) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (i) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended (to the extent of the affected Eurodollar Rate Loans or Interest Periods), and (ii) the Eurodollar Rate component shall no longer be utilized in determining the Base Rate. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans (subject to the foregoing clause (ii)) in the amount specified therein.

Notwithstanding anything else herein, any definition of LIBOR Successor Rate shall provide that in no event shall such LIBOR Successor Rate be less than zero for purposes of this Agreement.

In connection with the implementation of a LIBOR Successor Rate, the Administrative Agent will have the right to make LIBOR Successor Rate Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such LIBOR Successor Rate Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided, that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such LIBOR Successor Conforming Changes to the Lenders reasonably promptly after such amendment becomes effective.

3.08 Survival.

All of the Loan Parties' obligations under this Article III shall survive termination of the Aggregate Revolving Commitments, repayment of all other Obligations hereunder, and resignation of the Administrative Agent.

ARTICLE IV

CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01 Conditions of Initial Credit Extension.

This Agreement shall become effective upon, and the obligation of each Lender and the L/C Issuer to make its initial Credit Extension hereunder is subject to, the satisfaction of the following conditions precedent:

(a) Documentation. Receipt by the Administrative Agent of the following, each in form and substance satisfactory to the Administrative Agent and each Lender:

(i) Loan Documents. Executed counterparts of this Agreement and the other Loan Documents, each properly executed by a Responsible Officer of the signing Loan Party and, in the case of this Agreement, by each Lender.

(ii) Opinions of Counsel. Favorable opinions of legal counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, dated as of the Closing Date.

(iii) Organization Documents, Resolutions, Etc.

(A) copies of the Organization Documents of each Loan Party certified to be true and complete as of a recent date by the appropriate Governmental Authority of the state or other jurisdiction of its incorporation or organization, where applicable, and certified by a secretary or assistant secretary of such Loan Party to be true and correct as of the Closing Date;

(B) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party; and

(C) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and is validly existing, in good standing and qualified to engage in business in its state of organization or formation.

(iv) Audited Financial Statements. The Audited Financial Statements.

(v) Interim Consolidated Financial Statements. The interim consolidated financial statements of the Borrower and its Subsidiaries for the fiscal quarters ending March 31, 2018, June 30, 2018 and, if available, September 30, 2018.

(vi) Closing Certificate. A certificate signed by a Responsible Officer of the Borrower certifying that (A) the conditions specified in Sections 4.01(b) and (c) and 4.02(a) and 4.02(b) have been satisfied and (B) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or would be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect.

(b) Litigation. Other than as disclosed in the Borrower's SEC filings filed at least five (5) Business Days prior to the Closing Date or as set forth on Schedule 5.06, there shall not exist any action, suit, investigation or proceeding pending or, to the knowledge of the Borrower, threatened in any court or before an arbitrator or Governmental Authority that could reasonably be expected to have a Material Adverse Effect.

(c) Consents. All governmental, shareholder and third party consents and approvals necessary in connection with the transactions contemplated hereby shall have been obtained and all such consents and approvals shall be in force and effect.

(d) Existing Indebtedness. All of the existing Indebtedness of the Borrower and its Subsidiaries, other than Indebtedness specifically allowed under this Agreement, shall be repaid in full and all commitments, all guarantees and all security interests related thereto shall be terminated on or prior to the Closing Date.

(e) Due Diligence; PATRIOT Act; Beneficial Ownership. The Administrative Agent and each Lender shall have completed a due diligence investigation of the Borrower and its Subsidiaries in scope, and with results, reasonably satisfactory to the Administrative Agent and such Lender, including, OFAC, the United States Foreign Corrupt Practices Act of 1977 and

“know your customer” due diligence. The Borrower shall have provided to the Administrative Agent and the Lenders the documentation and other customary information reasonably requested by the Administrative Agent and the Lenders in order to comply with applicable law, including the Act. If the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, the Administrative Agent and each Lender, to the extent requested by the Administrative Agent or such Lender, shall have received a Beneficial Ownership Certification in relation to the Borrower.

(f) Fees. Receipt by the Administrative Agent, the Arrangers and the Lenders of any fees required to be paid on or before the Closing Date, including, but not limited to, the fees set forth in the Fee Letter.

(g) Attorney Costs. The Borrower shall have paid all reasonable fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent).

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender 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 Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

4.02 Conditions to all Credit Extensions.

The obligation of each Lender to honor any Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurodollar Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of each Loan Party contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (other than those representations and warranties qualified by materiality or Material Adverse Effect, in which case they shall be true and correct in all respects) on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (other than those representations and warranties qualified by materiality or Material Adverse Effect, in which case they shall be true and correct in all respects) as of such earlier date.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the immediate application of the proceeds thereof (if applicable) and the Borrower shall be in compliance with Section 7.11 as of the end of the most recently fiscal quarter for which financial statements have been delivered pursuant to Section 6.01 after giving effect to the proviso in the definition of Consolidated EBITDA.

(c) The Administrative Agent and, if applicable, the L/C Issuer shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurodollar Rate Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent and the Lenders that:

5.01 Existence, Qualification and Power.

(a) Each Loan Party and each Significant Subsidiary (i) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (ii) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (A) own or lease its assets and carry on its business and (B) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (iii) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (ii)(A) or (iii), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) Each Subsidiary (other than a Significant Subsidiary) (i) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (ii) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to own or lease its assets and carry on its business and (iii) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license, except, in each case, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

5.02 Authorization; No Contravention.

The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party have been duly authorized by all necessary corporate or other organizational action, and do not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law.

5.03 Governmental Authorization; Other Consents.

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document other than those that have already been obtained and are in full force and effect.

5.04 Binding Effect.

Each Loan Document has been duly executed and delivered by each Loan Party that is party thereto. Each Loan Document constitutes a legal, valid and binding obligation of each Loan Party that is party thereto, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

5.05 Financial Statements; No Material Adverse Effect.

(a) The financial statements delivered pursuant to Sections 6.01(a) and 6.01(b) (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein (subject, in the case of unaudited financial statements, to the absence of footnotes and to normal year-end audit adjustments); and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby (subject, in the case of unaudited financial statements, to the absence of footnotes and to normal year-end audit adjustments); and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(c) Since December 31, ~~2017~~2018, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

5.06 Litigation.

Other than as disclosed in the ~~Borrower's SEC filings filed at least five (5) Business Days prior to the Closing Date~~audited financial statements of the Borrower for the fiscal year ending December 31, 2018 or as set forth on Schedule 5.06, ~~(a) there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of a Loan Party, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any Subsidiary that, or against any of their properties or revenues, that (a) pertain to this Agreement or any other Loan Document or (b) there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of a Loan Party, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or~~

~~against any Loan Party or any Subsidiary or against any of their properties or revenues that~~ could reasonably be expected to have a Material Adverse Effect.

5.07 No Default.

No Default has occurred and is continuing.

5.08 Ownership of Property.

Each Loan Party and each of its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.09 Taxes.

Each Loan Party and its Subsidiaries have filed all federal, state and other material tax returns and reports required to be filed, and have paid all federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except (a) those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect. There is no proposed tax assessment against any Loan Party or any Subsidiary that would, if made, have a Material Adverse Effect. Other than as set forth on Schedule 5.09, no Loan Party is party to any tax sharing agreement with anyone.

5.10 ERISA Compliance.

(a) Except as would not reasonably be expected to have a Material Adverse Effect: (i) each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Internal Revenue Code and other federal or state Laws; (ii) each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Internal Revenue Code and the trust related thereto has been determined by the IRS to be exempt from federal income tax under Section 501(a) of the Internal Revenue Code, or an application for such a letter is currently being processed by the IRS; and (iii) to the best knowledge of a Loan Party, nothing has occurred that would reasonably be expected to prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the knowledge of any Loan Party, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that would 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.

(c) Except as would not reasonably be expected to have a Material Adverse Effect: (i) No ERISA Event has occurred, and no Loan Party is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) each Loan Party and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum

funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Internal Revenue Code) is 60% or higher and neither a Loan Party nor any ERISA Affiliate knows of any facts or circumstances that would reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iv) no Loan Party has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither a Loan Party nor any ERISA Affiliate has engaged in a transaction that would reasonably be expected to be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that would reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) ~~The~~As of the First Amendment Effective Date, the Borrower is not and will not be using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to the Borrower’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement.

5.11 Subsidiaries.

Set forth on Schedule 5.11 is a complete and accurate list of (a) each Significant Subsidiary of the Borrower, (b) each Subsidiary of the Borrower that has guaranteed any Indebtedness of the Borrower (other than the Obligations) and (c) the jurisdiction of organization, exact legal name and U.S. tax payer identification number of the Borrower and each other Loan Party, in each case as of the ~~Closing~~First Amendment Effective Date and as of the date of any update to Schedule 5.11 pursuant to Section 6.02(b).

5.12 Margin Regulations; Investment Company Act.

(a) Margin stock (as defined in Regulation U of the Board of Governors of the FRB) constitutes less than 25% of the value of those assets of Loan Parties and their Subsidiaries (other than any Subsidiary which is an “exempted borrower” within the meaning of Regulation U of the FRB) which are subject to any limitation on sale, pledge, or other restriction hereunder. Neither the making of any Loan, the issuance of any Letter of Credit nor the use of the proceeds thereof will violate or be inconsistent with the provisions of Regulation T, Regulation U or Regulation X of the Board of Governors of the FRB.

(b) None of the Borrower, any Person Controlling the Borrower, or any Significant Subsidiary is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

5.13 Disclosure.

Neither any Loan Document nor any other agreement, document, instrument, certificate or statement (other than (i) any other projections, estimates, or other forward-looking information and (ii) any forward-looking pro forma financial information) furnished to the Administrative Agent and the Lenders by or on behalf of a Loan Party in connection with the transactions contemplated hereby, at the time it was furnished contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements contained herein or therein, under the circumstances under which they were made, not misleading (considered in the context of all other information provided to the Lenders). Any projections, estimates, forward-looking information or any forward-looking pro forma

financial information furnished to the Administrative Agent (whether in writing or orally) pursuant to this Agreement are based on good faith estimates and assumptions believed by management of Borrower or the applicable Loan Party to be reasonable at the time made, it being understood by the Administrative Agent and the Lenders that, without limiting the foregoing representation, (i) any information as it relates to future events is not to be viewed as fact, and (ii) actual results during the period or periods covered by such information are subject to significant uncertainties and contingencies and may differ materially from the projected results set forth therein. As of the ~~Closing~~First Amendment Effective Date, the information included in any Beneficial Ownership Certification delivered to the Administrative Agent or any Lender, if applicable, is true and correct in all respects.

5.14 Compliance with Laws.

Each Loan Party and each Subsidiary is in compliance with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

5.15 Intellectual Property; Licenses, Etc.

Each Loan Party and each Subsidiary owns, possesses or can acquire on reasonable terms the right to use, all of the trademarks, service marks, trade names, copyrights, patents and other intellectual property rights that are reasonably necessary for the operation of its businesses, without conflict with the rights of any other Person to the knowledge of such Loan Party or Subsidiary, except for any such failure to own or possess or conflict that could not reasonably be expected to have a Material Adverse Effect.

5.16 Solvency.

The Borrower is Solvent and the Borrower and its Subsidiaries are Solvent on a consolidated basis.

5.17 OFAC.

None of the Loan Parties, nor any of their Subsidiaries, nor, to the knowledge of the Loan Parties and their Subsidiaries, any director or officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

5.18 Anti-Corruption Laws.

The Loan Parties and their Subsidiaries and, to the knowledge of the Borrower and its Subsidiaries, any director or officer have each conducted their businesses in material compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

5.19 EEA Financial Institution.

Neither the Borrower, nor any of its Subsidiaries is an EEA Financial Institution.

5.20 Covered Entity.

No Loan Party is a Covered Entity.

ARTICLE VI

AFFIRMATIVE COVENANTS

Until the Facility Termination Date, the Borrower shall:

6.01 Financial Statements.

Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent:

(a) as soon as available, but in any event within one hundred and twenty days after the end of each fiscal year of the Borrower, commencing with the fiscal year ~~ending~~ended December 31, ~~2018~~2019, (i) a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, together with the related consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, and in connection with the financial statements in clause (i) above, audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit and (ii) such other financial information regarding the Borrower and its Subsidiaries as reasonably requested by the Administrative Agent in order to determine compliance with Section 7.11; and

(b) as soon as available, but in any event within sixty days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, commencing with the fiscal quarter ending March 31, ~~2019~~2020, (i) a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, together with the related consolidated statements of income or operations for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, and the related consolidated statements of changes in shareholders' equity and cash flows for the portion of the Borrower's fiscal year then ended, in each case setting forth in comparative form, as applicable, the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by the chief executive officer, chief financial officer, treasurer or controller of the Borrower as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes and (ii) such other financial information regarding the Borrower and its Subsidiaries as reasonably requested by the Administrative Agent in order to determine compliance with Section 7.11.

As to any information contained in materials furnished pursuant to Section 6.02(c), the Borrower shall not be separately required to furnish such information under Section 6.01(a) or 6.01(b), but the foregoing

shall not be in derogation of the obligation of the Borrower to furnish the information and materials described in Section 6.01(a) or 6.01(b) at the times specified therein.

6.02 Certificates; Other Information.

Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders:

(a) concurrently with the delivery of the financial statements referred to in Section 6.01(a), a certificate of its independent certified public accountants certifying such financial statements;

(b) (i) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and 6.01(b) (other than the financial statements referred to in Section 6.01(a) for the fiscal year of the Borrower ended December 31, 2019), a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of the Borrower (which delivery may, unless the Administrative Agent, or a Lender requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes) which shall, among other things, (iA) demonstrate compliance with the covenants set forth in Section 7.11 and (iB) update Schedule 5.11, as applicable, and (ii) concurrently with the delivery of the financial statements referred to in Section 6.01(a) for the fiscal year of the Borrower ended December 31, 2019, a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of the Borrower (which delivery may, unless the Administrative Agent, or a Lender requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes) which shall, among other things, (A) demonstrate calculations of the Consolidated Leverage Ratio and the Consolidated Interest Coverage Ratio (in each case, as defined immediately prior to giving effect to the First Amendment) and (B) update Schedule 5.11, as applicable;

(c) promptly after the same are available, copies of each annual report, each material proxy or material financial statement or other material report or communication sent to the public equityholders of any Loan Party or any Subsidiary, and copies of all material annual, regular, periodic and special reports and material registration statements which a Loan Party or any Subsidiary may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(d) promptly after any request by the Administrative Agent, copies of any material detailed audit reports or management letters submitted to the board of directors (or the audit committee of the board of directors) of the Borrower by independent accountants in connection with the accounts or books of the Borrower or any Subsidiary;

(e) [Reserved];

(f) promptly, and in any event within five Business Days after receipt thereof by the any Loan Party or any Subsidiary, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other material inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary; and

(g) promptly, such additional information regarding the business, financial or corporate affairs of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a) or 6.01(b) or Section 6.02(c) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which a Loan Party posts such documents, or provides a link thereto on such Loan Party's website on the Internet at the website address listed on Schedule 11.02; or (ii) on which such documents are posted on a Loan Party's behalf on an Internet or intranet website (including www.sec.gov/edgar.shtml), if any, to which each Lender and the Administrative Agent have access (whether a commercial, third party website or whether sponsored by the Administrative Agent); provided that: (i) a Loan Party shall deliver paper copies of such documents to the Administrative Agent or any Lender upon its request to such Loan Party to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) such Loan Party shall notify the Administrative Agent and each Lender (by facsimile or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by any Loan Party with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arrangers may, but shall not be obligated to, make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks, Syndtrak, ClearPar or a substantially similar electronic transmission system (the "Platform") and (b) certain of the Lenders (each a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that (w) 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; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers, the L/C Issuer and the Lenders 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 11.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Administrative Agent and the Arrangers 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 as "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC."

6.03 Notices.

Promptly notify the Administrative Agent and each Lender of:

(a) the occurrence of any Default.

(b) any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (i) breach or non-performance of, or any default under, a Contractual Obligation of a Loan Party or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between a Loan Party or any Subsidiary and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting a Loan Party or any Subsidiary, including pursuant to any applicable Environmental Laws.

(c) the occurrence of any ERISA Event that has had or that would reasonably be expected to result in a Material Adverse Effect.

(d) any material change in accounting policies or financial reporting practices by the Borrower or any Subsidiary.

(e) any announcement by S&P or Fitch of any change in a Debt Rating of the Borrower.

Each notice pursuant to this Section 6.03 (other than clause (e)) shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached (if any).

6.04 Payment of Taxes.

Cause itself, each Loan Party and each of its Subsidiaries to pay and discharge within thirty (30) days of the date the same shall become due and payable, all its tax liabilities, assessments and governmental charges or levies upon it or its properties, unless (a) the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the applicable Loan Party or the applicable Subsidiary in connection therewith or (b) the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

6.05 Preservation of Existence, Etc.

Cause itself, each Loan Party and each of its Subsidiaries to (a) except as permitted pursuant to Section 7.04, preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, in each case, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

6.06 Maintenance of Properties.

Cause itself, each Loan Party and each of its Subsidiaries to (a) maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in

good working order and condition, ordinary wear and tear and casualty and condemnation excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof, except, in the case of each of clauses (a) and (b) hereof, where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.07 Maintenance of Insurance.

Cause itself, each Loan Party and each of its Subsidiaries to maintain with financially sound and reputable insurance companies not Affiliates of the Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons, except in instances where the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.08 Compliance with Laws.

Cause itself, each Loan Party and each of its Subsidiaries to comply in all material respects with the requirements of all Laws, including, without limitation, Environmental Laws, and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.09 Books and Records.

Cause itself, each Loan Party and each of its Subsidiaries to (a) maintain proper books of record and account in conformity with GAAP; and (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over such Loan Party or such Subsidiary, as the case may be.

6.10 Inspection Rights.

Permit representatives and independent contractors of the Administrative Agent to visit and inspect any of its, any Loan Party's and its Subsidiaries' properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all, subject to the proviso below, at the sole expense of the Administrative Agent and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the applicable Loan Party; provided, however, that when an Event of Default exists the Administrative Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the applicable Loan Party at any time during normal business hours and without advance notice. It is understood and agreed that the Administrative Agent shall, at the request of any Lender, share with such Lender information resulting from any inspection under this Section 6.10.

6.11 Use of Proceeds.

Cause itself, each Loan Party and each of its Subsidiaries to use the proceeds of the Credit Extensions to finance working capital and other lawful corporate purposes; provided that in no event shall the proceeds of the Credit Extensions be used in contravention of any Law or of any Loan Document.

6.12 Guarantors.

On or before the date that any Subsidiary agrees to Guarantee any Indebtedness of the Borrower (other than the Obligations) (or such later date as the Administrative Agent may agree in its sole discretion), either (a) cause such Subsidiary to become a Guarantor hereunder by (i) executing and delivering to the Administrative Agent a Joinder Agreement and (ii) delivering to the Administrative Agent such Organization Documents, resolutions and, if requested by the Administrative Agent, favorable opinions of counsel, all in form, content and scope reasonably satisfactory to the Administrative Agent or (b) provide a written certificate to the Administrative Agent acknowledging that all Indebtedness of such Subsidiary is subject to Section 7.03, specifying the amount of Indebtedness of such Subsidiary as of the date of the certificate and certifying that the Borrower is in compliance with Section 7.03 as of the date of the certificate.

6.13 Anti-Corruption Laws.

Cause itself and each of its Subsidiaries to conduct its businesses in material compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions and maintain policies and procedures designed to promote and achieve compliance with such laws.

ARTICLE VII

NEGATIVE COVENANTS

Until the Facility Termination Date, no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

7.01 Liens.

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens existing on the ~~Closing~~First Amendment Effective Date and listed on Schedule 7.01 and any renewals, extensions or replacements thereof; provided that the property covered thereby is not increased, and with respect to any replacement Lien, the amount of any Indebtedness secured by such Lien shall not be increased;

(b) Liens (other than Liens imposed under ERISA) for taxes, assessments or governmental charges or levies not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(c) Liens of carriers, warehousemen, mechanics, materialmen, workmen and repairmen or other like Liens arising in the ordinary course of business which are not overdue for a period of more than 30 days or which are being contested in good faith and by appropriate proceedings diligently conducted;

(d) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance, old age benefits, other social security obligations, taxes, assessments, statutory obligations and other similar charges, other than any Lien imposed by ERISA;

(e) (i) deposits to secure the performance of bids, tenders, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance and return of money bonds, agreements with utilities and other obligations of a like nature incurred in the ordinary course of business (including in each case deposits and/or Liens securing letters of credit issued in lieu of any such cash deposits), and (ii) other cash deposits required to be made in the ordinary course of business, including those made to secure health, safety and environmental obligations in the ordinary course of business;

(f) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(g) Liens securing judgments for the payment of money (or appeal or other surety bonds relating to such judgments), which judgments do not constitute an Event of Default under Section 8.01(h), and the pledge of assets for the purpose of securing an appeal, stay or discharge in the course of any such legal proceeding;

(h) Liens securing Indebtedness permitted under Section 7.03(c); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) with respect to Indebtedness permitted by Section 7.03(c)(i) such Liens attach to such property concurrently with or within ninety days after the acquisition thereof;

(i) leases or subleases granted to others not interfering in any material respect with the business of any Loan Party or any Subsidiary;

(j) any interest of title of a lessor under, and Liens arising from UCC financing statements (or equivalent filings, registrations or agreements in foreign jurisdictions) relating to, leases permitted by this Agreement;

(k) normal and customary rights of setoff and other Liens upon deposits of cash and securities in favor of banks, brokers or other financial institutions;

(l) Liens of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection;

(m) any Lien existing on property (and the proceeds thereof) existing at the time of its acquisition and any modification, replacement, renewal or extension thereof; provided that such Lien was not created in contemplation of such acquisition;

(n) Liens incurred or assumed in the ordinary course on cash, marketable securities, real estate loans (including related purchase commitments) commodities or other financial products to secure stock lending transactions, repurchase agreements, and other collateralized financing transactions at Subsidiaries;

- (o) pledges of securities or commodity positions and exchange memberships in the ordinary course of business;
- (p) deposits or securities with commodity or securities exchanges or clearing organizations, or with other exchanges or markets, in each case in the ordinary course of business;
- (q) Liens securing Indebtedness permitted under Section 7.03(h);
- (r) Liens on cash and marketable securities granted by Berkeley Point in favor of Fannie Mae under the Delegated Underwriting and Servicing Program and/or Freddie Mac under the Targeted Affordable Housing Program in respect of loss sharing arrangements or similar programs, in each case in the ordinary course of business; and
- (s) other Liens securing Indebtedness or other obligations in an aggregate principal amount not to exceed at any one time, the difference of \$30,000,000 and any Indebtedness incurred pursuant to Section 7.03(j).

7.02 Investments.

Make any Investments, except:

- (a) Investments existing on the ~~Closing~~First Amendment Effective Date set forth on Schedule 7.02;
- (b) Investments ~~in Cash Equivalents~~to manage cash and liquidity in the ordinary course of business that are consistent with past practices or the internal investment policy of the Borrower;
- (c) Investments in marketable securities, loans, loan servicing rights, commodities, forwards, futures, derivatives and other assets in connection with trading, underwriting, loan origination, loan servicing, selling to customers, acting as a broker or acting as a market intermediary, all in the ordinary course of business;
- (d) loans or advances to employees, independent contractors or consultants as part of compensation programs, and which are by their nature forgivable by the Borrower or relevant Subsidiary or purchases or redemption of equity interests from employees, former employees, independent contractors or consultants;
- (e) travel advances and other similar cash advances made to employees, independent contractors or consultants in the ordinary course of business;
- (f) Investments in Persons that are engaged in an Eligible Line of Business;
- (g) Investments in (or Acquisitions of) Subsidiaries and other Persons that are not wholly-owned or are not engaged in an Eligible Line of Business in an amount not to exceed, in the aggregate, at any one time outstanding (net of the proceeds received from the sale of such Investments) the greater of ~~\$45,000,000~~65,000,000 and ~~4.5~~5% of Consolidated Net Worth;
- (h) Cash AD Loans; and

- (i) Permitted Acquisitions.

7.03 Subsidiary Indebtedness.

Create, incur, assume or suffer to exist any Indebtedness of any Subsidiary of a Loan Party (other than any Subsidiary that is a Guarantor), except:

- (a) Indebtedness outstanding on the ~~Closing~~First Amendment Effective Date set forth on Schedule 7.03 if any (and, with respect to any such Indebtedness, renewals, refinancings and extensions thereof); provided that (i) the amount of such Indebtedness is not increased above the original principal amount at the time of such refinancing, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder and (ii) the terms relating to principal amount, amortization, maturity, collateral (if any) and subordination (if any), and other material terms taken as a whole, of any such refinancing, renewal or extension are no less favorable in any material respect to the Borrower and its Subsidiaries or the Lenders than the terms of the Indebtedness being refinanced, renewed or extended;

- (b) obligations (contingent or otherwise) existing or arising under any Swap Contract, provided that such obligations are (or were) entered into by such Person for hedging purposes in the ordinary course of business, and not for purposes of speculation or taking a “market view”;

- (c) (i) purchase money Indebtedness (including obligations in respect of capital leases and Synthetic Lease Obligations) hereafter incurred to finance the purchase of assets and renewals, refinancings and extensions thereof and (ii) Indebtedness hereafter incurred (including obligations in respect of capital leases and Synthetic Lease Obligations) that is secured by fixed assets and all renewals, refinancings and extensions thereof; provided that the aggregate outstanding principal amount of all such Indebtedness incurred pursuant to this clause (ii) shall not exceed \$35,000,000 at any one time outstanding;

- (d) so long as the Borrower is in compliance with the financial covenants set forth in Section 7.11 on a pro forma basis after giving effect thereto, Indebtedness (i) of any Person that is merged or consolidated with and into any Subsidiary, (ii) of any Person that becomes a Subsidiary as a result of an Acquisition to the extent, in each case, that such Indebtedness was not incurred in connection with, or in contemplation of, such Person becoming a Subsidiary or (iii) consisting of customary performance based earn-out payments incurred in connection with an Acquisition;

- (e) endorsement of items for deposit or collection of commercial paper received in the ordinary course of business;

- (f) intercompany Indebtedness permitted under Section 7.02;

- (g) obligations to purchase or redeem Equity Interests held by current or former partners, officers, directors, employees, independent contractors, consultants, service providers and their respective estates, spouses or former spouses in the ordinary course of business;

(h) Indebtedness, including Indebtedness incurred in connection with stock lending transactions, secured solely by shares of NASDAQ held by the Borrower or its Subsidiaries at any time or incurred in connection with a contractual right to receive any such shares in the future; provided that such Indebtedness shall be at customary advance rates and shall not exceed an aggregate principal amount equal to the underlying value of the shares which are the basis for such Indebtedness (the value of such shares to be determined as of the date such Indebtedness is incurred);

(i) Indebtedness in the form of (i) any “bad boy guaranties” (including any related environmental indemnity) provided in connection with real estate financings of Affiliates and (ii) Guarantees by Berkeley Point to Fannie Mae under the Delegated Underwriting and Servicing Program and/or Freddie Mac under the Targeted Affordable Housing Program in respect of loss sharing arrangements or similar programs, in each case in the ordinary course of business; and

(j) other unsecured Indebtedness in an aggregate principal amount not to exceed the difference of \$30,000,000 and, without duplication, any Liens incurred pursuant to Section 7.01(s).

7.04 Fundamental Changes.

Merge, dissolve, liquidate or consolidate with or into another Person, except that (a) the Borrower may merge or consolidate with any of its Subsidiaries; provided that the Borrower shall be the continuing or surviving Person, (b) any Subsidiary may be merged or consolidated with or into any other Subsidiary; provided, further, that if such merger or consolidation is with respect to a Subsidiary that is a Loan Party, then either such Loan Party shall be the continuing or surviving Person or such surviving Person shall become a Loan Party promptly after such merger or consolidation, (c) the Borrower or any of its Subsidiaries may merge or consolidate with any other Person; provided that (i) if the Borrower is a party to such transaction, the Borrower is the continuing or surviving Person and (ii) if such Subsidiary is a Loan Party, then either such Loan Party shall be the continuing or surviving Person or such surviving Person shall become a Loan Party promptly after such merger or consolidation, and (d) any Subsidiary (other than a Loan Party) may dissolve, liquidate or wind up its affairs at any time provided that such dissolution, liquidation or winding up, as applicable, could not reasonably be expected to have a Material Adverse Effect.

7.05 Dispositions.

Make any Disposition except:

(a) Dispositions consisting of sales of marketable securities, loans, loan servicing rights, commodities, forwards, futures, derivatives and other assets in connection with trading, market making activities, loan origination and securitization, structured products and other financial services activities, and real estate businesses, in each case in the ordinary course of business;

(b) Dispositions by (i) any Subsidiary of the Borrower to the Borrower or any other Subsidiary and (ii) the Borrower to any, direct or indirect, wholly owned Subsidiary of the Borrower;

(c) Dispositions of shares of NASDAQ held by the Borrower or its Subsidiaries at any time; and

(d) Dispositions (in addition to the Dispositions permitted by clauses (a), (b) and (c) above) so long as the aggregate net book value of all of the assets sold or otherwise disposed of by the Loan Parties and their Subsidiaries in all such transactions shall not exceed, (i) during the period from the Closing Date until the date the 2018 annual financial statements are delivered pursuant to Section 6.01(a), 30% of Consolidated EBITDA calculated based on the annual financial statements of the Borrower as of December 31, 2017 less any Dispositions (other than Dispositions of the type permitted by clauses (a), (b) and (c) above) made from January 1, 2018 through and including the Closing Date and (ii) thereafter, during each period commencing on the day following the date of delivery of annual financial statements pursuant to Section 6.01(a) and ending on the next date of delivery of annual financial statements pursuant to Section 6.01(a) in the following year, 30% of Consolidated EBITDA calculated based on the most recent annual financial statements delivered pursuant to Section 6.01(a).

7.06 Restricted Payments.

Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

(a) each Subsidiary may declare and make Restricted Payments to a Loan Party or otherwise in accordance with its Organizational Documents;

(b) the Borrower and each of its Subsidiaries may declare and make dividend payments or other distributions payable solely in the Equity Interests of such Person; and

(c) the Borrower and each of its Subsidiaries may declare and make Restricted Payments if, immediately before and after giving effect thereto, (i) no Event of Default shall have occurred and be continuing and (ii) the Borrower is in compliance with the financial covenants set forth in Section 7.11 on a pro forma basis after giving effect thereto.

7.07 Change in Nature of Business.

Engage in any business or activity that is not an Eligible Line of Business; provided that the foregoing shall not apply to Investments permitted pursuant to Section 7.02(g).

7.08 Transactions with Affiliates.

Enter into or permit to exist any transaction or series of transactions with any Affiliate of such Person, that is less favorable than could be obtained in a similar transaction with a non-affiliate, other than (1) any transaction approved by the Borrower's audit committee, (2) any transaction with an Affiliate that is consolidated with the Borrower under GAAP, (3) management fees, employee benefit arrangements or indemnification programs pertaining to limited or general partners of the Borrower or any of its Subsidiaries entered into in the ordinary course of business or approved by the Borrower's board of directors, (4) transactions existing on the ~~Closing~~First Amendment Effective Date and set forth on Schedule 7.08 and (5) any transaction that does not, individually, exceed \$500,000.

7.09 Burdensome Agreements.

Enter into, or permit to exist, any Contractual Obligation that with respect to any Subsidiary, encumbers or restricts the ability of any such Person to (i) make Restricted Payments to any Loan Party, (ii) pay any Indebtedness or other obligation owed to any Loan Party, (iii) make loans or advances to any

Loan Party, (iv) transfer any of its property to the any Loan Party, (v) pledge its property pursuant to the Loan Documents or any renewals, refinancings, exchanges, refundings or extension thereof or (vi) act as a Loan Party pursuant to the Loan Documents or any renewals, refinancings, exchanges, refundings or extension thereof if otherwise required to be a Loan Party hereunder, except (in respect of any of the matters referred to in clauses (i) through (v) above) for (1) this Agreement and the other Loan Documents, (2) any document or instrument governing Indebtedness incurred pursuant to Section 7.03(c), provided that any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith, (3) any Permitted Lien or any document or instrument governing any Permitted Lien; provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien, (4) customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under Section 7.05 pending the consummation of such sale, (5) customary provisions in joint venture agreements and other similar agreements, (6) customary provisions restricting assignment contained in leases, subleases, licenses and other agreements, (7) any agreement or other instrument of a Person acquired by a Loan Party or any Subsidiary which was in existence at the time of such Acquisition (but not created in contemplation thereof or to provide all or any portion of the funds or credit support utilized to consummate such Acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person and its Subsidiaries, or the property or assets of the Person and its Subsidiaries, so acquired and (8) customary restrictions and conditions contained in any agreement entered into in connection with any Indebtedness permitted under Section 7.03(h) or (i) or obligations of the types contemplated by the proviso of the definition of Funded Indebtedness.

7.10 Use of Proceeds.

Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

7.11 Financial Covenants.

Permit:

(a) Consolidated Leverage Ratio. The Consolidated Leverage Ratio as of the last day of each fiscal quarter of the Borrower, commencing with the fiscal quarter ending March 31, 2020, to be greater than 3.25:1.00.

(b) Consolidated Interest Coverage Ratio. The Consolidated Interest Coverage Ratio, as of the last day of any fiscal quarter of the Borrower, commencing with the fiscal quarter ending March 31, 2020, to be less than 4.00:1.00.

7.12 Fiscal Year.

Change its fiscal year from its present ending on December 31 of each year except as necessary for a Subsidiary to align its fiscal year with the Borrower.

7.13 Sanctions.

Use any Credit Extension or the proceeds of any Credit Extension, or lend, contribute or otherwise make available such Credit Extension or the proceeds of any Credit Extension to any Person, to

fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Lender, an Arranger, Administrative Agent or otherwise) of Sanctions.

7.14 Anti-Corruption Laws.

Use the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 or other similar anti-corruption legislation in other jurisdictions.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default.

Any of the following shall constitute an [event of default \(each, an “Event of Default”\)](#):

(a) Non-Payment. Any Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan [or any L/C Obligations](#), or (ii) within three days after the same becomes due, any interest on any Loan [or on any L/C Obligation](#), or any fee due hereunder, or (iii) within five days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained in (i) [Section 6.01](#) or [6.02](#) and such failure continues for five Business Days or (ii) any of [Section 6.03\(a\)](#); solely with respect to the Loan Parties, [6.05\(a\)](#), [6.10](#) or [6.11](#) or [Article VII](#); or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty days after the earlier of (i) the date on which such failure shall first become known to a Responsible Officer of the Borrower or (ii) written notice thereof is given to a Responsible Officer of the Borrower by the Administrative Agent; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of a Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be untrue in any material respect (other than those representations and warranties that are qualified by materiality or Material Adverse Effect, in which case in any respect) when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party or any Subsidiary of a Loan Party with a net worth in excess of \$10,000,000 (A) after giving effect to any grace period applicable thereto (including any cure period, forbearance or other extension, amendment or waiver), fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee of such Indebtedness (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate

principal amount (including drawn and outstanding amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) after giving effect to any grace period applicable thereto (including any cure period, forbearance or other extension, amendment or waiver), fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee of such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or ~~cash collateral~~ Cash Collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which any Loan Party or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which any Loan Party or any Subsidiary is an Affected Party (as so defined) and, in either event, after giving effect to any grace period applicable thereto (including any cure period, forbearance or other extension, amendment or waiver), the Swap Termination Value owed by such Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Subsidiary with a net worth in excess of \$10,000,000 institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an 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 material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Subsidiary with a net worth in excess of \$10,000,000 becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within thirty days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any Subsidiary with a net worth in excess of \$10,000,000 one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments or orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer has been notified of the claim and does not dispute coverage), and, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or would reasonably be expected to result in liability of any Loan Party or any Subsidiary under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount; provided, however, that, for purposes of determining whether withdrawal liability associated with a Multiemployer Plan is in excess of the Threshold Amount, only the maximum annual withdrawal liability payment amount pursuant to Section 4219(c) of ERISA shall be taken into account, as opposed to the total aggregate withdrawal liability assessed, or (ii) any Loan Party, any Subsidiary or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any Loan Document.

8.02 Remedies Upon Event of Default.

If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto); and

(d) ~~(e)~~ exercise on behalf of itself ~~and~~, the Lenders and the L/C Issuer all rights and remedies available to it, the Lenders and the L/C Issuer under the Loan Documents or applicable Law or at equity;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligations of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case, without further act of the Administrative Agent or any Lender.

8.03 Application of Funds.

After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized, in each case, as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall, subject to the provisions of Section 2.15, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal~~and~~, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Disbursements and other Obligations, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Disbursements, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Fourth payable to them;~~and~~

Fifth, to the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrower pursuant to Sections 2.03 and 2.14; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

Subject to Sections 2.03(c) and 2.14, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to the Fifth clause above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

ARTICLE IX

ADMINISTRATIVE AGENT

9.01 Appointment and Authority.

Each of the Lenders and the L/C Issuer hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the

Administrative Agent, the Lenders, and the L/C Issuer, and no Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) 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 as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

9.02 Rights as a Lender.

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Loan Party or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders or to provide notice to or consent of the Lenders with respect thereto.

9.03 Exculpatory Provisions.

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent 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 Lender in violation of any Debtor Relief Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

Neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or not taken by the Administrative Agent under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby or thereby (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as

determined by a court of competent jurisdiction by final and nonappealable judgment. Any such action taken or failure to act pursuant to the foregoing shall be binding on all Lenders. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Borrower ~~or~~, a Lender or the L/C Issuer.

Neither the Administrative Agent nor any of its Related Parties have any duty or obligation to any Lender or participant or any other Person to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document and (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

Neither the Administrative Agent nor any of its Related Parties shall be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Agreement relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (i) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (ii) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Institution.

9.04 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall be fully protected in relying and shall not incur any liability for relying upon, any notice, request, certificate, communication, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall be fully protected in relying and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05 Delegation of Duties.

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub agents appointed by the Administrative Agent. The Administrative Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub agent and to the Related Parties of the

Administrative Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

9.06 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, [the L/C Issuer](#) and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with and (so long as there is no continuing Event of Default) with the consent of the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders (and, if applicable, the Borrower) and shall have accepted such appointment within thirty days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “Resignation Effective Date”), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders [and the L/C Issuer](#), appoint a successor Administrative Agent meeting the qualifications set forth above, provided that in no event shall any such successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable Law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty days (or such earlier day as shall be agreed by the Required Lenders) (the “Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (ii) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender [and the L/C Issuer](#) directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than as provided in [Section 3.01\(g\)](#) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its

predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 11.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

(d) Any resignation by Bank of America as Administrative Agent pursuant to this Section 9.06 shall also constitute its resignation as the L/C Issuer. If Bank of America resigns as the L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as the L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c). Upon the appointment by the Borrower of a successor L/C Issuer hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), and subject to such successor L/C Issuer's consent to act in such role, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, (ii) the retiring L/C Issuer shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents, and (iii) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

9.07 Non-Reliance on Administrative Agent and Other Lenders.

Each Lender and the L/C Issuer expressly acknowledges that none of the Administrative Agent nor the Arrangers has made any representation or warranty to it, and that no act by the Administrative Agent or the Arrangers hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any of the Borrower, any Guarantor or any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Administrative Agent or the Arrangers to any Lender or the L/C Issuer as to any matter, including whether the Administrative Agent or the Arrangers have disclosed material information in their (or their Related Parties') possession. Each Lender and the L/C Issuer represents to the Administrative Agent and the Arrangers that it has, independently and without reliance upon the Administrative Agent-or, any otherArranger, any Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis andof, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties, 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 Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent-or, any otherArranger, any Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder-, 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. Each Lender and the L/C Issuer represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender or the L/C Issuer for the purpose of making, acquiring or holding commercial loans and

providing other facilities set forth herein as may be applicable to such Lender or the L/C Issuer, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender and the L/C Issuer agrees not to assert a claim in contravention of the foregoing. Each Lender and the L/C Issuer represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or the L/C Issuer, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities.

9.08 No Other Duties; Etc.

Anything herein to the contrary notwithstanding, none of the bookrunners, arrangers, syndication agents, documentation agents or co-agents shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent ~~or as~~, a Lender, or the L/C Issuer hereunder.

9.09 Administrative Agent May File Proofs of Claim.

In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C 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, L/C Obligations 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 Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Sections 2.09 and 11.04) 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 Lender and the L/C Issuer 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 Lenders and the L/C Issuer, 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 2.09 and 11.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or the L/C Issuer in any such proceeding.

9.10 Guaranty Matters.

Each of the Lenders [and the L/C Issuer](#) irrevocably authorize the Administrative Agent to release any Guarantor from its obligations under the Guaranty if (i) the Borrower requests such release, (ii) such Guarantor is not required to Guarantee the Obligations pursuant to [Section 6.12](#), and (iii) no Default exists or would result from such release.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release any Guarantor from its obligations under the Guaranty, pursuant to this [Section 9.10](#).

9.11 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 and not, for the avoidance of doubt, to or for the benefit of the Borrower or any Guarantor, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the [Letters of Credit, the](#) Commitments or this Agreement,

(ii) the 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 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,

(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 (i) Section 9.11(a)(i) is true with respect to a Lender or (ii) a Lender has provided another representation, warranty and covenant in accordance with Section 9.11(a)(iv), such Lender further (A) represents and warrants, as of the date such Person became a Lender party hereto, to, and (B) 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 and not, for the avoidance of doubt, to or for the benefit of the Borrower or any Guarantor, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of 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 under this Agreement, any Loan Document or any documents related hereto or thereto).

ARTICLE X

GUARANTY

10.01 The Guaranty.

Each of the Guarantors hereby jointly and severally guarantees to each Lender and each other holder of Obligations as hereinafter provided, as primary obligor and not as surety, the prompt payment of the Obligations in full when due (whether at stated maturity, by acceleration or otherwise) strictly in accordance with the terms thereof. The Guarantors hereby further agree that if any of the Obligations are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise), the Guarantors will, jointly and severally, promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) in accordance with the terms of such extension or renewal.

Notwithstanding any provision to the contrary contained herein or in any other of the Loan Documents or the other documents relating to the Obligations, the obligations of each Guarantor under this Agreement and the other Loan Documents shall not exceed an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under applicable Debtor Relief Laws.

10.02 Obligations Unconditional.

The obligations of the Guarantors under Section 10.01 are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Loan Documents or other documents relating to the Obligations, or any substitution, release, impairment or exchange of any other guarantee of or security for any of the Obligations, and, to the fullest extent permitted by applicable Law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 10.02 that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each Guarantor agrees that such Guarantor shall have no right of subrogation, indemnity, reimbursement or contribution against the Borrower or any other Loan Party for amounts paid under this Article X until such time as the Obligations have been paid in full and the Commitments have expired or terminated. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by Law, the occurrence of any one or more of the following shall not alter or impair the liability of any Guarantor hereunder, which shall remain absolute and unconditional as described above:

(a) at any time or from time to time, without notice to any Guarantor, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;

(b) any of the acts mentioned in any of the provisions of any of the Loan Documents or other documents relating to the Obligations shall be done or omitted;

(c) the maturity of any of the Obligations shall be accelerated, or any of the Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Loan Documents or other documents relating to the Obligations shall be waived or any other guarantee of any of the Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with; or

(d) any of the Obligations shall be determined to be void or voidable (including for the benefit of any creditor of any Guarantor) or shall be subordinated to the claims of any Person (including any creditor of any Guarantor).

With respect to its obligations hereunder, each Guarantor hereby expressly waives diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Administrative Agent or any other holder of the Obligations exhaust any right, power or remedy or proceed against any Person under any of the Loan Documents or any other document relating to the Obligations, or against any other Person under any other guarantee of, or security for, any of the Obligations.

10.03 Reinstatement.

The obligations of each Guarantor under this Article X shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any Debtor Relief Law or otherwise, and each Guarantor agrees that it will indemnify the Administrative Agent and each other holder of the Obligations on demand for all reasonable costs and expenses (including the fees, charges and disbursements of counsel) incurred by the Administrative Agent or such holder of the Obligations in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any Debtor Relief Law.

10.04 Certain Additional Waivers.

Each Guarantor agrees that such Guarantor shall have no right of recourse to security for the Obligations, except through the exercise of rights of subrogation pursuant to Section 10.02 and through the exercise of rights of contribution pursuant to Section 10.06.

10.05 Remedies.

The Guarantors agree that, to the fullest extent permitted by Law, as between the Guarantors, on the one hand, and the Administrative Agent and the other holders of the Obligations, on the other hand, the Obligations may be declared to be forthwith due and payable as specified in Section 10.02 (and shall be deemed to have become automatically due and payable in the circumstances specified in Section 10.02) for purposes of Section 10.01 notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Obligations from becoming automatically due and payable) as against

any other Person and that, in the event of such declaration (or the Obligations being deemed to have become automatically due and payable), the Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantors for purposes of Section 10.01.

10.06 Rights of Contribution.

The Guarantors hereby agree as among themselves that, if any Guarantor shall make an Excess Payment (as defined below), such Guarantor shall have a right of contribution from each other Guarantor in an amount equal to such other Guarantor's Contribution Share (as defined below) of such Excess Payment. The payment obligations of any Guarantor under this Section 10.06 shall be subordinate and subject in right of payment to the Obligations until such time as the Obligations have been paid-in-full and the Commitments have terminated, and none of the Guarantors shall exercise any right or remedy under this Section 10.06 against any other Guarantor until such Obligations have been paid-in-full and the Commitments have terminated. For purposes of this Section 10.06, (a) "Excess Payment" shall mean the amount paid by any Guarantor in excess of its Ratable Share of any Obligations; (b) "Ratable Share" shall mean, for any Guarantor in respect of any payment of Obligations, the ratio (expressed as a percentage) as of the date of such payment of Obligations of (i) the amount by which the aggregate present fair salable value of all of its assets and properties exceeds the amount of all debts and liabilities of such Guarantor (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of such Guarantor hereunder) to (ii) the amount by which the aggregate present fair salable value of all assets and other properties of all of the Loan Parties exceeds the amount of all of the debts and liabilities (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of the Loan Parties hereunder) of the Loan Parties; provided, however, that, for purposes of calculating the Ratable Shares of the Guarantors in respect of any payment of Obligations, any Guarantor that became a Guarantor subsequent to the date of any such payment shall be deemed to have been a Guarantor on the date of such payment and the financial information for such Guarantor as of the date such Guarantor became a Guarantor shall be utilized for such Guarantor in connection with such payment; and (c) "Contribution Share" shall mean, for any Guarantor in respect of any Excess Payment made by any other Guarantor, the ratio (expressed as a percentage) as of the date of such Excess Payment of (i) the amount by which the aggregate present fair salable value of all of its assets and properties exceeds the amount of all debts and liabilities of such Guarantor (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of such Guarantor hereunder) to (ii) the amount by which the aggregate present fair salable value of all assets and other properties of the Loan Parties other than the maker of such Excess Payment exceeds the amount of all of the debts and liabilities (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of the Loan Parties) of the Loan Parties other than the maker of such Excess Payment; provided, however, that, for purposes of calculating the Contribution Shares of the Guarantors in respect of any Excess Payment, any Guarantor that became a Guarantor subsequent to the date of any such Excess Payment shall be deemed to have been a Guarantor on the date of such Excess Payment and the financial information for such Guarantor as of the date such Guarantor became a Guarantor shall be utilized for such Guarantor in connection with such Excess Payment. This Section 10.06 shall not be deemed to affect any right of subrogation, indemnity, reimbursement or contribution that any Guarantor may have under Law against the Borrower in respect of any payment of Obligations.

10.07 Guarantee of Payment; Continuing Guarantee.

The guarantee in this Article X is a guaranty of payment and not of collection, is a continuing guarantee, and shall apply to the Obligations whenever arising.

10.08 Appointment of Borrower.

Each of the Guarantors hereby appoints the Borrower to act as its agent for all purposes of this Agreement, the other Loan Documents and all other documents and electronic platforms entered into in connection herewith and agrees that (a) the Borrower may execute such documents and provide such authorizations on behalf of such Guarantor as the Borrower deems appropriate in its sole discretion and each Guarantor shall be obligated by all of the terms of any such document and/or authorization executed on its behalf, (b) any notice or communication delivered by the Administrative Agent, the L/C Issuer or a Lender to the Borrower shall be deemed delivered to each Guarantor and (c) the Administrative Agent ~~or~~, the L/C Issuer, and the Lenders may accept, and be permitted to rely on, any document, authorization, instrument or agreement executed by the Borrower on behalf of each of the Guarantors.

ARTICLE XI

MISCELLANEOUS

11.01 Amendments, Etc.

No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that

(a) no such amendment, waiver or consent shall:

(i) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender (it being understood and agreed that a waiver of any condition precedent set forth in Section 4.02 or of any Default or a mandatory reduction in Commitments is not considered an extension or increase in Commitments of any Lender);

(ii) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) or any scheduled reduction of the Commitments hereunder or under any other Loan Document without the written consent of each Lender entitled to receive such payment or whose Commitments are to be reduced;

(iii) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Disbursement, or any fees (other than pursuant to a fee letter separate from this Agreement in which all the Lenders are not a party thereto) or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to receive such amount; provided, however, that only the consent of the Required Lenders shall be necessary (A) to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest or Letter of Credit Fees at the Default Rate or (B) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or Letter of Credit or to reduce any fee payable hereunder;

(iv) change Section 8.03 or Section 2.13 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender directly affected thereby;

(v) change any provision of this Section 11.01(a) or the definition of “Required Lenders” without the written consent of each Lender directly affected thereby;

(vi) release the Borrower without the consent of each Lender, or, except in connection with a transaction permitted under Section 7.04 or Section 7.05, all or substantially all of the value of the Guaranty without the written consent of each Lender whose Obligations are guaranteed thereby, except to the extent such release is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone); or

(b) unless also signed by the Administrative Agent, no amendment, waiver or consent shall affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document;

(c) unless also signed by the L/C Issuer, no amendment, waiver or consent shall affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it;

provided, further, that notwithstanding anything to the contrary herein, (i) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code of the United States supersedes the unanimous consent provisions set forth herein and (ii) the Required Lenders shall determine whether or not to allow a Loan Party to use cash collateral in the context of a bankruptcy or insolvency proceeding and such determination shall be binding on all of the Lenders.

No Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of such Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects such Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

Any amendment entered into in order to effectuate an increase in the Aggregate Revolving Commitments, in accordance with Section 2.01(b), shall only require the consent of the Lenders providing such increase as long as the purpose of such amendment is solely to incorporate the appropriate provisions for such increase.

Notwithstanding any provision herein to the contrary, (a) the Administrative Agent and the Borrower may amend, modify or supplement this Agreement or any other Loan Document to cure or correct administrative errors or omissions, any ambiguity, omission, defect or inconsistency or to effect administrative changes, and such amendment shall become effective without any further consent of any other party to such Loan Document so long as (i) such amendment, modification or supplement does not adversely affect the rights of any Lender or other holder of Obligations in any material respect and (ii) the Lenders shall have received at least five Business Days’ prior written notice thereof and the

Administrative Agent shall not have received, within five Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment and (b) this Agreement may be amended to replace LIBOR with a LIBOR Successor Rate and to make any necessary LIBOR Successor Rate Conforming Changes in connection therewith, in each case, as contemplated by Section 3.07.

11.02 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (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 facsimile or electronic mail 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 any Loan Party or the Administrative Agent or the L/C Issuer, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 11.02; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given 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 and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e mail, FpML messaging, and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, the L/C Issuer or the Borrower may each, 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) 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; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(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 Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Loan Party’s or the Administrative Agent’s transmission of Borrower Materials or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet.

(d) Change of Address, Etc. Each of the Borrower ~~and~~, the Administrative Agent and the L/C Issuer may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the Borrower ~~and~~, the Administrative Agent and the L/C Issuer. In addition, each Lender 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, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities Laws.

(e) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic notices, Loan Notices and Letter of Credit Applications) purportedly given by or on behalf of any Loan Party 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 Loan Parties shall indemnify the Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of a Loan Party. 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.

11.03 No Waiver; Cumulative Remedies; Enforcement.

No failure by any Lender, the L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document (including the imposition of the Default Rate) preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.13), or (ed) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b)-~~and~~, (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

11.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Loan Parties shall pay (i) all reasonable and documented out of pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent) in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated)-~~and~~, (ii) all reasonable and documented out of pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, extension, reinstatement or renewal of any Letter of Credit or any demand for payment thereunder, and (iii) all out of pocket expenses incurred by the Administrative Agent, the L/C Issuer or any Lender (including the fees, charges and disbursements of any counsel for the Administrative Agent, the L/C Issuer or any Lender), in connection with the enforcement or protection of its rights (A) in connection with this Agreement

and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Administrative Agent (and any sub-agent thereof), the L/C Issuer and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnatee”) against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnatee), and shall indemnify and hold harmless each Indemnatee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnatee, incurred by any Indemnatee or asserted against any Indemnatee by any Person (including any Loan Party) arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer 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), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by a Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to a Loan Party or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Loan Party, and regardless of whether any Indemnatee is a party thereto; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee, (y) result from a claim brought by any Loan Party against an Indemnatee for a breach of such Indemnatee’s obligations hereunder or under any other Loan Document, if such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (z) arise from a dispute solely among Indemnitees (other than the Administrative Agent or any Arranger acting in its capacity as such) at a time when the Loan Parties have not breached its obligations hereunder in any material respect and does not arise out of an act or omission by any Loan Party. Without limiting the provisions of Section 3.01(c), this Section 11.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by them to the Administrative Agent (or any sub-agent thereof), the L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the L/C Issuer or such Related Party, as the case may be, such Lender’s pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender’s share of the Total Credit Exposures of all Lenders at such time) of such unpaid amount (including any such unpaid amount in respect of a claim

asserted by such Lender), such payment to be made severally among them based on such Lenders' Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought); provided, further that, the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or the L/C Issuer in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, no party hereto shall assert, and each such party hereby waives, and acknowledges that no other Person shall have, any claim on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof; provided that nothing contained in this clause (d) shall relieve the Loan Parties of any obligation it may have to indemnify an Indemnitee to against special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party claim. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section and the indemnity provisions of Section 11.02(e) shall survive the resignation of the Administrative Agent and the L/C Issuer, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations.

11.05 Payments Set Aside.

To the extent that any payment by or on behalf of any Loan Party is made to the Administrative Agent, the L/C Issuer or any Lender, or the Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff 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, the L/C Issuer or such Lender 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 setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) 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. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

11.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and thereto 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 or thereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (e) of this Section (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 subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitment and the Loans (including for purposes of this clause (b), participations in L/C Obligations) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the related Loans at the time owing to it or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in subsection (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, 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 Lender 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 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).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's Loans and Commitments, and rights and obligations with respect thereto, assigned.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i) (B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any unfunded Revolving Commitment if such assignment is to a Person that is not a Lender with a Commitment subject to such assignment, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(C) the consent of the L/C Issuer shall be required for any assignment if any Letter of Credit is issued and outstanding in accordance with Section 2.03 as of the date of such assignment.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500 from the assignee or assignor; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) the Borrower or any of the Borrower's Affiliates or Subsidiaries, (B) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), (C) a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person) or (D) any Disqualified Institution.

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall 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 Lender, 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 Lender to the Administrative Agent, the L/C Issuer or any Lender 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 its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the 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 Lender under this Agreement, and the assigning Lender 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 Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of [Sections 3.01, 3.04, 3.05 and 11.04](#) with respect to facts and circumstances occurring prior to the effective date of such assignment); provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans [and L/C Obligations](#) owing to, each Lender 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 Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender 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 a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person), a Disqualified Institution, a Defaulting Lender or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans [\(including such Lender's participations in L/C Obligations\)](#) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, [the L/C Issuer](#) and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt,

each Lender shall be responsible for the indemnity under Section 11.04(c) without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in Section 11.01(a) that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 3.06 and 11.13 as if it were an assignee under paragraph (b) of this Section and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 3.06 with respect to any Participant. To the extent permitted by Law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the 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 Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender 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 commitments, loans, letters of credit or its 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 Lender 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) Certain Pledges. Any Lender 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 Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Resignation as L/C Issuer after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Commitment and Loans pursuant to clause (b) above, Bank of America may, upon 30 days' notice to the Administrative Agent, the Borrower and the Lenders, resign as the L/C Issuer. In the event of any such resignation as the L/C Issuer, the Borrower shall be entitled to appoint from among the

Lenders a successor L/C Issuer; provided, however, that no failure by the Borrower to appoint any such successor shall affect the resignation of Bank of America as the L/C Issuer. If Bank of America resigns as the L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit issued by it and outstanding as of the effective date of its resignation as the L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). Upon the appointment of a successor L/C Issuer, and subject to such successor L/C Issuer's consent to act in such role, (x) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, and (y) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

11.07 Treatment of Certain Information; Confidentiality.

Each of the Administrative Agent, the L/C Issuer and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (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 required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (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 provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (g) on a confidential basis to (i) any rating agency in connection with rating any Loan Party or its Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of the Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, the L/C Issuer, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of this Agreement (including information about this Agreement that is customarily provided to such parties), the other Loan Documents, and the Commitments.

For purposes of this Section, “Information” means all information received from a Loan Party or any Subsidiary relating to the Loan Parties or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, the L/C Issuer or any Lender on a nonconfidential basis prior to disclosure by such Loan Party or any Subsidiary, provided that, in the case of information received from a Loan Party or any Subsidiary after the Closing Date, 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, [the L/C Issuer](#) and the Lenders acknowledges that (a) the Information may include material non-public information concerning a Loan Party or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

11.08 Rights of Setoff.

If an Event of Default shall have occurred and be continuing, each Lender, [the L/C Issuer](#) and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, [the L/C Issuer](#) or any such Affiliate to or for the credit or the account of any Loan Party against any and all of the obligations of such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, [the L/C Issuer](#) or their respective Affiliates, irrespective of whether or not such Lender, [the L/C Issuer](#) or such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Loan Party may be contingent or unmatured or are owed to a branch or office or Affiliate of such Lender [or the L/C Issuer](#) different from the branch or office or Affiliate holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of [Section 2.15](#) and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, [the L/C Issuer](#) and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, [the L/C Issuer](#) and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, [the L/C Issuer](#) or their respective Affiliates may have. Each Lender [and the L/C Issuer](#) agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

11.09 Interest Rate Limitation.

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "[Maximum Rate](#)"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

11.10 Counterparts; Integration; Effectiveness.

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent [or the L/C Issuer](#), constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in [Section 4.01](#), this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g., “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Agreement.

11.11 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 Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, 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](#).

11.12 Severability.

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this [Section 11.12](#), if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent [or the L/C Issuer, as applicable](#), then such provisions shall be deemed to be in effect only to the extent not so limited.

11.13 Replacement of Lenders.

If the Borrower is entitled to replace a Lender pursuant to the provisions of [Section 3.06](#), or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, [Section 11.06](#)), all of its interests, rights (other than its existing rights to payments pursuant to [Sections 3.01](#) and [3.04](#)) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), [provided](#) that:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 11.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) 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);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable Laws; and

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Each party hereto agrees that (a) an assignment required pursuant to this Section 11.13 may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee, and (b) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to an be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided, further that any such documents shall be without recourse to or warranty by the parties thereto.

Notwithstanding anything in this Section 11.13 to the contrary, (i) the Lender that acts as the L/C Issuer may not be replaced hereunder at any time it has any Letter of Credit outstanding hereunder unless arrangements satisfactory to such Lender (including the furnishing of a backstop standby letter of credit in form and substance, and issued by an issuer, reasonably satisfactory to such L/C Issuer or the depositing of cash collateral into a cash collateral account in amounts and pursuant to arrangements reasonably satisfactory to the L/C Issuer) have been made with respect to such outstanding Letter of Credit and (ii) the Lender that acts as the Administrative Agent may not be replaced hereunder except in accordance with the terms of Section 9.06.

11.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND

THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, THE L/C ISSUER, ANY LENDER OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK 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, LITIGATION 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. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, THE L/C ISSUER OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH 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.

11.15 Waiver of Jury Trial.

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.

11.16 No Advisory or Fiduciary Responsibility.

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Loan Parties acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Arrangers and the Lenders are arm's-length commercial transactions between the Loan Parties and their Affiliates, on the one hand, and the Administrative Agent, the Arrangers and the Lenders, on the other hand, (B) each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Loan Parties is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, the Arrangers and the Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Loan Parties or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent, any Arranger nor any Lender has any obligation to the Loan Parties or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Arrangers, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and neither the Administrative Agent, any Arranger nor any Lender has any obligation to disclose any of such interests to the Loan Parties and their respective Affiliates. To the fullest extent permitted by Law, each of the Loan Parties hereby waives and releases any claims that it may have against the Administrative Agent, any Arranger or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

11.17 Electronic Execution of Assignments and Certain Other Documents.

The words "delivery," "execute," "execution," "signed," "signature," and words of like import in any Loan Document or any other document executed in connection herewith shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary neither the Administrative Agent nor any Lender is under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to

by the Administrative Agent or such Lender pursuant to procedures approved by it and provided further without limiting the foregoing, upon the request of any party, any electronic signature shall be promptly followed by such manually executed counterpart.

11.18 USA PATRIOT Act Notice.

Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies the Loan Parties, which information includes the name and address of the Loan Parties and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Loan Parties in accordance with the Act. The Loan Parties shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act and the Beneficial Ownership Regulation.

11.19 Acknowledgment and Consent to Bail-In of ~~EEA~~Affected Financial Institutions.

Notwithstanding anything to the contrary in any ~~Credit~~Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender or the L/C Issuer that is an ~~EEA~~Affected Financial Institution arising under any ~~Credit~~Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of ~~an EEA~~the applicable 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~~the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender or the L/C Issuer that is an ~~EEA~~Affected 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~~Affected 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 ~~Credit~~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~~the applicable Resolution Authority.

11.20 Acknowledgment Regarding Any Supported OFCs.

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a OFC (such support, “OFC Credit Support”, and each such OFC, a “Supported OFC”), the parties acknowledge and agree as follows with respect to

the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under such U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under such U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

[SIGNATURE PAGES OMITTED]

LIST OF SUBSIDIARIES OF NEWMARK GROUP, INC.

ENTITY NAMES	DOMESTIC JURISDICTION
1 FLAXSEED LDN LTD	UNITED KINGDOM
1 SAWMILL LDN LTD	UNITED KINGDOM
10 FLORA LDN LTD	UNITED KINGDOM
100 WASP LDN LIMITED	UNITED KINGDOM
110 HERO HELIPAD LDN LIMITED	UNITED KINGDOM
130 JIGSAW LDN LTD	UNITED KINGDOM
15 HALFPENNY LDN LTD	UNITED KINGDOM
16 OAK BALLOT LDN LTD	UNITED KINGDOM
18 FLASHLIGHT LDN LTD	UNITED KINGDOM
189 SCHOOLHOUSE LDN LTD	UNITED KINGDOM
20 FARMHOUSE LDN LTD	UNITED KINGDOM
20 GRASSHOPPER LDN LTD	UNITED KINGDOM
21 CANDLEWICK LDN LTD	UNITED KINGDOM
28 KAYAK LDN LTD	UNITED KINGDOM
33 CAMCORDER LDN LTD	UNITED KINGDOM
33 STEM LDN LTD	UNITED KINGDOM
37 NIGHTWATCH LDN LTD	UNITED KINGDOM
375 PARK INVESTMENTS HOLDINGS LLC	DELAWARE
45 EVOKE LDN LTD	UNITED KINGDOM
49 SANDSTONE BOBCAT LDN LTD	UNITED KINGDOM
5 MEADOW LDN LTD	UNITED KINGDOM
55 BACKGAMMON LDN LTD	UNITED KINGDOM
8 SPACEFLIGHT LDN LTD	UNITED KINGDOM
80 OAK LDN LTD	UNITED KINGDOM
85 GRAPH ELEVATE LDN LTD	UNITED KINGDOM
ACRES BROKERAGE, LLC	UTAH
ACRES PROPERTY MANAGEMENT, LLC	UTAH
APARTMENT REALTY ADVISORS MIDWEST, INC.	OHIO
APARTMENT REALTY ADVISORS OF ARIZONA, LLLP	ARIZONA
APARTMENT REALTY ADVISORS OF FLORIDA, INC.	FLORIDA
APARTMENT REALTY ADVISORS OF FLORIDA, LLC	FLORIDA
APARTMENT REALTY ADVISORS OF GEORGIA, INC.	GEORGIA
APARTMENT REALTY ADVISORS OF THE CAROLINAS, INC.	NORTH CAROLINA
APARTMENT REALTY ADVISORS, LLC	DELAWARE
APARTMENT REALTY ADVISORS/CENTRAL STATES, INC.	KANSAS
ARA CAL, INC.	CALIFORNIA
ARA DC LLC	DELAWARE
ARA NATIONAL LAND SERVICES, LLC	VIRGINIA
ARA NORTHWEST, LLC	OREGON
ARA OF OKLAHOMA/ARKANSAS LLC	DELAWARE
BERKELEY POINT CAPITAL HOLDINGS LLC	DELAWARE
BERKELEY POINT CAPITAL LLC	DELAWARE
BERKELEY POINT CAPITAL PARENT LLC	DELAWARE
BERKELEY POINT FINANCIAL LLC	DELAWARE
BERKELEY POINT INTERMEDIARY INC	DELAWARE
CFI EUROPE LIMITED	UNITED KINGDOM
CINCINNATI COMMERCIAL REAL ESTATE, INC.	OHIO
COMPUTERIZED FACILITY INTEGRATION, LLC	MICHIGAN

CORNISH & CAREY COMMERCIAL	CALIFORNIA
DIGIATECH, LLC	DELAWARE
ESN INVESTOR, LLC	DELAWARE
EXCESS SPACE RETAIL SERVICES, INC.	CALIFORNIA
FULCRUM COMMERCIAL REAL ESTATE SERVICES LLC	DELAWARE
FULCRUM COMMERCIAL REAL ESTATE SERVICES PRIVATE LIMITED	INDIA (CHENNAI)
G&E ACQUISITION COMPANY, LLC	DELAWARE
G&E APPRAISAL SERVICES, LLC	DELAWARE
G&E MANAGEMENT SERVICES, LLC	DELAWARE
G&E REAL ESTATE MANAGEMENT SERVICES, INC.	DELAWARE
G&E REAL ESTATE, INC.	DELAWARE
HARPER DENNIS HOBBS HOLDINGS LIMITED	UNITED KINGDOM
HARPER DENNIS HOBBS LIMITED	UNITED KINGDOM
IDAHO COMMERCIAL REAL ESTATE SPECIALISTS GROUP, LLC	IDAHO
JACKSON & COOKSEY CALIFORNIA, INC.	CALIFORNIA
JACKSON & COOKSEY, INC.	TEXAS
K 895 BROADWAY, LLC	NEW YORK
K FLEX, CORP.	DELAWARE
K OSH LDN LIMITED	UNITED KINGDOM
KNOTEL 101 NEW CAVENDISH LTD	UNITED KINGDOM
KNOTEL 1-2 BERNERS LTD	UNITED KINGDOM
KNOTEL 247 TOTTENHAM COURT LTD	UNITED KINGDOM
KNOTEL 27 BAKER LTD	UNITED KINGDOM
KNOTEL 300 ST JOHN LTD	UNITED KINGDOM
KNOTEL 7 SOHO SQUARE LTD	UNITED KINGDOM
KNOTEL 8 KEAN LTD	UNITED KINGDOM
KNOTEL 87-91 NEWMAN LTD	UNITED KINGDOM
KNOTEL AHOY! BERLIN GMBH	GERMANY
KNOTEL AMSTERDAM I B.V.	NETHERLANDS
KNOTEL BERLIN I, GMBH	GERMANY
KNOTEL BERLIN II, GMBH	GERMANY
KNOTEL BRASIL SERVICOS DE ESCRITORIO LTDA.	BRAZIL/LATIN AMERICA
KNOTEL DUBLIN I LTD.	IRELAND
KNOTEL ENGAGEMENT, LLC	DELAWARE
KNOTEL GERMANY, GMBH	GERMANY
KNOTEL HOLDINGS, LLC	DELAWARE
KNOTEL IRELAND LIMITED	IRELAND
KNOTEL JAPAN KABUSHIKI KAISHA	JAPAN
KNOTEL JOHNSON 3 LTD	UNITED KINGDOM
KNOTEL JOHNSON 4 LTD	UNITED KINGDOM
KNOTEL MANAGEMENT UK LIMITED	UNITED KINGDOM
KNOTEL MORAY HOUSE LTD	UNITED KINGDOM
KNOTEL NETHERLANDS B.V.	NETHERLANDS
KNOTEL OFFICE INDIA SERVICES PRIVATE LIMITED	INDIA (DELHI)
KNOTEL OPERATIONS, LLC	DELAWARE
KNOTEL UK LIMITED	UNITED KINGDOM
KNOTEL WAVERLEY HOUSE LTD	UNITED KINGDOM
KNOTEL WHITFIELD LTD	UNITED KINGDOM
KNOTEL WONDER, LLC	DELAWARE
KRAMWEN REAL ESTATE SERVICES PRIVATE LIMITED	INDIA (HYDERABAD)

MAVERICK LTS, INC.	TEXAS
MAVERICK PROJECT MANAGEMENT LLC	TEXAS
MAZEL HOLDING COMPANY, LLC	DELAWARE
MLG COMMERCIAL, LLC	WISCONSIN
MLG MANAGEMENT LLC	WISCONSIN
N 240 W 40TH ST NYC, LLC	NEW YORK
N 320 LINCOLN LA, LLC	DELAWARE
N 465 CALIFORNIA ST. SF, LLC	DELAWARE
N KNOTEL 105 MADISON, LLC	NEW YORK
N KNOTEL 110 WILLIAM LLC	NEW YORK
N KNOTEL 17W 20TH LLC	NEW YORK
N KNOTEL 36 W 14TH, LLC	NEW YORK
N KNOTEL 41 USW, LLC	NEW YORK
N KNOTEL 443 PAS, LLC	NEW YORK
N KNOTEL 475 PARK, LLC	NEW YORK
N KNOTEL 551 FIFTH AVE, LLC	NEW YORK
N KNOTEL 5-9 USW LLC	NEW YORK
N KNOTEL CANADA HOLDINGS, INC.	BRITISH COLUMBIA (CANADA)
N MEX HOLDINGS, LLC	DELAWARE
NB ACQUISITION LIMITED	UNITED KINGDOM
NEWMARK & COMPANY REAL ESTATE, INC.	NEW YORK
NEWMARK ACQUISITION CORP.	DELAWARE
NEWMARK ACQUISITION HOLDINGS, LLC	DELAWARE
NEWMARK BPF HOLDINGS, LLC	DELAWARE
NEWMARK CONSTRUCTION SERVICES, L.L.C.	NEW YORK
NEWMARK GAYRIMENKUL YÖNETİMİ LTD. ŞTİ.	TURKEY
NEWMARK GP, LLC	DELAWARE
NEWMARK GROUP, INC.	DELAWARE
NEWMARK HOLDINGS, L.P.	DELAWARE
NEWMARK HOLDINGS, LLC	DELAWARE
NEWMARK INVESTOR I, LLC	DELAWARE
NEWMARK IRELAND REAL ESTATE LIMITED	IRELAND
NEWMARK KF SINGAPORE PTE. LTD.	SINGAPORE
NEWMARK KNIGHT FRANK AUSTRALIA PTY LTD	AUSTRALIA
NEWMARK KNIGHT FRANK CANADA, LTD.	CANADA (BRITISH COLUMBIA)
NEWMARK KNIGHT FRANK JAPAN CO., LTD.	JAPAN
NEWMARK LI LLC	NEW YORK
NEWMARK MIDWEST REGION, LLC	ILLINOIS
NEWMARK NOTES, LLC	NEW YORK
NEWMARK OF CONNECTICUT LLC	CONNECTICUT
NEWMARK OF LONG ISLAND LLC	NEW YORK
NEWMARK OF MASSACHUSETTS LLC	MASSACHUSETTS
NEWMARK OF SOUTHERN CALIFORNIA, INC.	CALIFORNIA
NEWMARK OF WASHINGTON D.C. LLC	DISTRICT OF COLUMBIA
NEWMARK PARTNERS BRASIL - GERENCIAMENTO DE SERVICOS E ATIVIDADES DE INFRAESTRUTURA - EIRELI	BRAZIL/LATIN AMERICA
NEWMARK PARTNERS, L.P.	DELAWARE
NEWMARK REAL ESTATE BROKERAGE (SHANGHAI) CO., LTD.	CHINA (PEOPLES REPUBLIC OF) - SHANGHAI
NEWMARK REAL ESTATE COSTA RICA S.R.L.	COSTA RICA / LATIN AMERICA
NEWMARK REAL ESTATE OF ARIZONA, LLC	DELAWARE
NEWMARK REAL ESTATE OF COLOMBIA S.A.S.	COLOMBIA / LATIN AMERICA

NEWMARK REAL ESTATE OF DALLAS, LLC	TEXAS
NEWMARK REAL ESTATE OF HOUSTON, LLC	TEXAS
NEWMARK REAL ESTATE OF MASSACHUSETTS, LLC	MASSACHUSETTS
NEWMARK REAL ESTATE OF MICHIGAN, LLC	DELAWARE
NEWMARK REAL ESTATE OF NEVADA, LLC	DELAWARE
NEWMARK REAL ESTATE OF NEW JERSEY, L.L.C.	NEW JERSEY
NEWMARK REAL ESTATE OF OHIO, LLC	DELAWARE
NEWMARK REAL ESTATE OF PRINCETON LLC	NEW JERSEY
NEWMARK REAL ESTATE OF WASHINGTON, LLC	DELAWARE
NEWMARK REAL ESTATE PANAMA, S.A.	PANAMA/LATIN AMERICA
NEWMARK RETAIL LLC	NEW YORK
NEWMARK S11 GP, LLC	DELAWARE
NEWMARK S11 HOLDINGS, LLC	DELAWARE
NEWMARK S11 LP, LLC	DELAWARE
NEWMARK SECURITIES, LLC	DELAWARE
NEWMARK SOUTHERN REGION, LLC	GEORGIA
NEWMARK SPV I, LLC	DELAWARE
NEWMARK SPV II, LLC	DELAWARE
NEWMARK TITLE SERVICES LLC	DELAWARE
NEWMARK TITLE SERVICES OF TEXAS, LLC	DELAWARE
NEWMARK VALUATION & ADVISORY, LLC	DELAWARE
NGKF GLOBAL CORPORATE SERVICES (EUROPE) LIMITED	UNITED KINGDOM
NGKF GLOBAL CORPORATE SERVICES LIMITED	UNITED KINGDOM
NGKF HONG KONG LIMITED	HONG KONG
NGKF, S.A. DE C.V.	MEXICO / LATIN AMERICA
NIGHTINGALE REALTY, LLC	NEW YORK
NKF GLOBAL CORPORATE AND REAL ESTATE SOCIEDAD LIMITADA	SPAIN (MADRID)
NRB, LLC	MASSACHUSETTS
O'BOYLE PROPERTIES, INC.	TEXAS
REXX INDEX, LLC	CONNECTICUT
RKF GROUP CALIFORNIA, INC.	CALIFORNIA
RKF GROUP CALIFORNIA, LLC	CALIFORNIA
RKF GROUP CANADA REAL ESTATE HOLDINGS ULC	CANADA (BRITISH COLUMBIA)
RKF GROUP CANADA REALTY	CANADA (ONTARIO)
RKF GROUP FLORIDA LLC	FLORIDA
RKF GROUP ILLINOIS LLC	ILLINOIS
RKF GROUP INTERNATIONAL REAL ESTATE HOLDINGS, LLC	DELAWARE
RKF GROUP MID-ATLANTIC LLC	VIRGINIA
RKF GROUP NEW JERSEY LLC	NEW JERSEY
RKF RETAIL HOLDINGS LLC	DELAWARE
ROBERT K. FUTTERMAN & ASSOCIATES LLC	NEW YORK
RRE GENERAL, LLC	COLORADO
RUDESILL-PERA MULTIFAMILY, LLC	TENNESSEE
SMITH MACK & CO., INC.	PENNSYLVANIA
SMITH MACK HOLDINGS, INC.	PENNSYLVANIA
SMITH MACK PROPERTY MANAGEMENT CO., INC.	PENNSYLVANIA
SOUTHWEST RESIDENTIAL PARTNERS, INC.	TEXAS
SPACE MANAGEMENT	FRANCE
SPRING 11 ADVISORY SERVICES LIMITED	UNITED KINGDOM
SPRING 11 LLC	DELAWARE
SPRING 11 SA LLC	DELAWARE

SPRING11 HOLDINGS, L.P.
SPRING11 RESEARCH AND CONSULTING INDIA PRIVATE LIMITED
STEFFNER COMMERCIAL REAL ESTATE, LLC
THE CRE GROUP, INC.
WALCHLE INVESTMENT GROUP, INC.
WORKFRAME, INC.

DELAWARE
INDIA (CHENNAI)
TENNESSEE
CALIFORNIA
FLORIDA
DELAWARE

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the following Registration Statements:

- (1) Registration Statement (Form S-8 No. 333-222201) of Newmark Group, Inc.,
- (2) Registration Statement (Form S-4 No. 333-229218) of Newmark Group, Inc.,
- (3) Registration Statement (Form S-3 No. 333-230586) of Newmark Group, Inc.,
- (4) Registration Statement (Form S-4 No. 333-231616) of Newmark Group, Inc.,
- (5) Registration Statement (Form S-8 No. 333-234785) of Newmark Group, Inc.,
- (6) Registration Statement (Form S-8 No. 333-258013) of Newmark Group, Inc., and
- (7) Registration Statement (Form S-8 No. 333-259262) of Newmark Group, Inc.

of our reports dated February 28, 2022, with respect to the consolidated financial statements and schedule of Newmark Group, Inc. and the effectiveness of internal control over financial reporting of Newmark Group, Inc. included in this Annual Report (Form 10-K) of Newmark Group, Inc. for the year ended December 31, 2021.

/s/ Ernst & Young LLP

New York, New York
February 28, 2022

CERTIFICATION

I, Howard W. Lutnick, certify that:

1. I have reviewed this Annual Report on Form 10-K of Newmark Group, Inc. for the year ended December 31, 2021 as filed with the Securities and Exchange Commission on the date hereof;
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 this 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.
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.

/s/ Howard W. Lutnick

Howard W. Lutnick
Chairman

Date: February 28, 2022

CERTIFICATION

I, Michael J. Rispoli, certify that:

1. I have reviewed this report on Form 10-K of Newmark Group, Inc. for the year ended December 31, 2021 as filed with the Securities and Exchange Commission on the date hereof;
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 this disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this annual 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.
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.

/s/ Michael J. Rispoli

Michael J. Rispoli
Chief Financial Officer

Date: February 28, 2022

**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 Newmark Group, Inc., a Delaware corporation (the “Company”), on Form 10-K for the period ended December 31, 2021 as filed with the Securities and Exchange Commission on the date hereof, each of Howard W. Lutnick, Chairman, and Michael J. Rispoli, Chief Financial Officer of the Company, certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

- (1) The Form 10-K 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 Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Howard W. Lutnick

Name: Howard W. Lutnick
Title: Chairman

/s/ Michael J. Rispoli

Name: Michael J. Rispoli
Title: Chief Financial Officer

Date: February 28, 2022