Risk Factors Comparison 2024-03-08 to 2023-03-16 Form: 10-K

Legend: **New Text** ~~Removed Text~~ Unchanged Text Moved Text Section

The health of the U. S. real estate industry impacts our success and the industry is significantly affected by changes in economic and political conditions of the United States as well as real estate markets, which could adversely impact our real estate business, returns on our investments, trigger defaults in project financing, cause cancellations of property sales, reduce the value of our properties or investments and could affect our results of operations and liquidity. The real estate industry is cyclical and is significantly affected by changes in general and local economic conditions which are beyond our control. Because our revenue primarily consists of sales commissions and transaction fees, any industry slowdown could result in a decline in the total number of residential real estate transactions executed by our agents and could adversely affect our business, financial condition and results of operations. These conditions include short- term and long- term interest rates, inflation, fluctuations in debt and equity capital markets, levels of unemployment, consumer confidence and the general economic condition of the United States and the global economy. The real estate market also depends upon the strength of financial institutions, which are sensitive to changes in the general macroeconomic environment. Lack of available credit or lack of confidence in the financial sector could adversely impact the real estate market. Any of the following could be associated with cyclicality in the real estate market by halting or limiting a recovery in the residential real estate market, and have an adverse effect on our business by causing periods of lower growth or a decline in the number of home sales and / or property prices which in turn could adversely affect our revenue and profitability: • periods of economic slowdown or recession; • rising interest rates and inflation; • the general availability of and cost of mortgage financing; • a negative perception of the market for residential real estate; • commission pressure from brokers who discount their commissions; • an increase in the cost of homeowners' insurance for owners of single-family homes and condominium associations; • weak credit markets; • a low level of consumer confidence in the economy and / or the real estate market; • instability of financial institutions **, which may result in, among other things, depository banks not honoring escrow and trust deposits held by certain of our subsidiaries** ; • legislative, tax or regulatory changes that would adversely impact the real estate market, including, but not limited to, potential reform relating to Fannie Mae, Freddie Mac and other government sponsored entities that provide liquidity to the U. S. housing and mortgage markets, and potential limits on, or elimination of, the deductibility of certain mortgage interest expense and property taxes; • adverse changes in economic and general business conditions in the New York metropolitan area or the other markets in which we operate; • a decline in the affordability of homes; • declining demand for real estate; • declining home ownership rates, declining demand for real estate and changing social attitudes toward home ownership; • acts of God, such as hurricanes, earthquakes and other natural disasters, or acts or threats of war or terrorism; and / or • adverse changes in global, national, regional and local economic and market conditions, particularly in the New York metropolitan area and the other markets where we operate, including those relating to pandemics and health crises, such as the COVID- 19 pandemic. We are impacted by the performance of the real estate markets in the New York metropolitan area and there may be a reduction in the attractiveness of those markets as well as the other markets in which we operate. Our business significantly depends on sales transactions for residential property in the New York metropolitan area, and we derived approximately **50 % of our revenues in 2023, 52 % of our revenues in 2022 and** 55 % of our revenues in ~~2022, 52 % of our revenues in~~ 2021 ~~and 55 % of our revenues in 2020~~ from the New York metropolitan area. There may be a reduction in the attractiveness of the real estate markets of the New York metropolitan area and the other markets in which we operate. The Tax Cuts and Jobs Act of 2017 (the " Tax Act ") limited mortgage interest deductions as well as state and local income and property tax deductions. The loss of the use of these deductions has encouraged residents of states with high income and property taxes and costs of housing to migrate to states with lower tax rates and housing costs. In ~~2022~~ **2023** , approximately **65** ~~70. 0~~ % of our closed sales occurred in New York, California, Connecticut, New Jersey and Massachusetts, and a migration of residents from these markets or a reduction in the attractiveness of these markets as a place to live could adversely impact demand for our products and services. We are also impacted by the attractiveness of New York City as a place to live and invest in and its status as an international center for business and commerce. If New York City' s economy stagnates or contracts or if there are significant concerns or uncertainty regarding the strength of New York City' s economy due to domestic, international or global macroeconomic trends, or other factors (including, in particular, any matters which adversely affect New York City' s status as an international center for business and commerce or the economic benefits of New York City' s financial services industry), the New York metropolitan area may become a less attractive place to live, work, study or to own residential property for investment purposes. The attractiveness of New York City may also be negatively affected by other factors, including high residential property sales prices or rents (or a risk or perceived risk of a fall in sales prices in the future), high costs of living, the impact of the Tax Act, the impact of changes in state tax law, such as the real estate transfer tax on luxury property, and negative perceptions surrounding quality of life, safety and security (including the risk or perceived risk of acts of terrorism or protests). Any reduction in the attractiveness of New York City as a place to live or a place to invest in residential real estate and any matters which adversely affect New York City' s status as an international center for business and commerce could result in a reduction, by volume and / or by value, in residential property sales transactions in the New York metropolitan area. There could be a lack of financing for homebuyers in the U. S. residential real estate market at favorable rates and on favorable terms. The monetary policy of the U. S. government, and particularly the Federal Reserve Board, which regulates the supply of money and credit in the United States, significantly affects the availability of financing at favorable rates and on favorable terms, which in turn significantly affects the domestic real estate market. We believe that low mortgage rates were a significant factor in the trend in increased homeowner equity and growth in home prices and sales in 2021 ~~, in particular~~ . **In March 2022,** ~~The historically low mortgage interest rates recently available to potential homebuyers have been adversely affected by the policies of~~ the Federal Reserve Board ~~, which~~ began increasing its primary policy interest rate ~~in March 2022~~ as well as reducing the size of its balance sheet ~~, and such initiatives are expected to continue~~ . Consequently, mortgage interest rates have significantly and rapidly increased ~~, and may continue to increase~~ . Changes in the Federal Reserve Board' s policies, the interest rate environment and mortgage market are beyond our control and difficult to predict. In 2022, the cost of financing for homebuyers increased significantly, which resulted in higher monthly payment costs that make homes less affordable to purchasers **and these conditions continued in 2023** . We believe these higher interest rates also reduced home inventory because many sellers considering a move faced higher monthly payment costs **because** ~~as a result~~ of moving. Consequently, both of these trends resulted in a decline of transaction volume from 2021 to 2022 **to 2023** and, if these trends continue, could eventually result in lower home prices. In addition, the imposition of more stringent mortgage underwriting standards or a reduction in the availability of alternative mortgage products could also reduce homebuyers' ability to access the credit markets on reasonable terms and adversely affect the ability and willingness of prospective buyers to finance home purchases or to sell their existing homes. This could result in a decline in the number of home sale transactions or mortgage and refinancing activity. Declining home inventory levels have resulted in insufficient supply, which has negatively impacted home sale transactions. The success of our business depends on the ability of our brokers and agents to sell homes. Home inventory levels have been declining in certain markets in recent years due to factors outside our control, including the pace of new housing construction, macroeconomic conditions, and, recently, the reluctance of sellers to move due to increases in mortgage costs of new homes and real estate industry businesses that purchase homes for long- term rental or corporate use. This decline has caused more homeowners to remain in their homes, reducing the volume of home sale transactions closed by our brokers and agents. **Historically low** ~~The continuing decline in~~ home inventory levels could have a material adverse effect on our business, financial condition and results of operations. Consumers may adopt alternatives to full **-** service agents. A significant change in consumer sales that eliminates or minimizes the role of the agent in the real estate transaction process could have an adverse effect on our business. These options may include direct- buyer companies (also called iBuyers) that purchase directly from the seller at below- market rates in exchange for speed and convenience and then resell them shortly thereafter at market prices, and discounters who reduce the role of the agent ~~in order~~ to offer sellers a low commission or a flat fee while giving rebates to buyers. Consumer preferences regarding buying or selling houses and financing their home purchase will determine if these models reduce or replace the long- standing preference for full- service agents. We depend on a strong brand, and any failure to maintain, protect and enhance the Douglas Elliman brand would have an adverse effect on our ability to grow our real estate brokerage business. We have developed a strong brand that we believe has contributed significantly to the success of our business. Maintaining, protecting and enhancing Douglas Elliman as a premium real estate brokerage brand is critical to growing our business. If we do not successfully build and maintain a strong brand, our real estate brokerage business could be negatively impacted. Preserving and increasing the quality of the Douglas Elliman brand may require us to make substantial investments in areas such as marketing, community relations, outreach technology and employee training. Douglas Elliman actively engages in print and online advertisements, social media, targeted promotional mailings and email communications and engages on a regular basis in public relations and sponsorship activities. There is no assurance that those activities will maintain or enhance Douglas Elliman' s brand awareness. Brand value can be severely damaged even by isolated incidents, particularly if the incidents receive considerable negative publicity or result in litigation. Some of these incidents may relate to the way we manage our relationship with our agents, our growth strategies or the ordinary course of our business or our brokerage business. Other incidents may arise from events that are or may be beyond our ability to control and may damage our brand, such as actions taken (or not taken) by one or more agents relating to health, safety, welfare or other matters; cybersecurity incidents; litigation and claims; failure to maintain high ethical and social standards for all of our operations and activities; failure to comply with local laws and regulations; and illegal activity targeted at Douglas Elliman or others. Douglas Elliman' s brand value could diminish significantly if any such incidents or other matters erode consumer confidence in it. The failure of third-party vendors or partners to perform as we expect or appropriately manage risks, or our failure to adequately monitor third-party performance, could result in harm to our reputation and generate revenue. We engage with third- party vendors and partners in a variety of ways, including strategic collaborations and the development and delivery of applications, employing key internal operational processes and critical client systems. In many instances, these third parties are in direct contact with our agents and customers ~~in order~~ to deliver services on our behalf or to fulfill their role in the applicable collaboration. In some instances, these third parties may be in possession of personal information of our customers, agents or employees. In other instances, these third parties may play a critical role in developing products and services central to our business strategy. Our third- party partners may encounter difficulties in the provision of required deliverables or may fail to provide us with timely services, which may delay us, and also may make decisions that may harm us or that are contrary to our best interests, including by pursuing opportunities outside of the applicable Company project or program, to the detriment of such project or program. If our third- party partners or vendors (or their respective vendors) were to fail to perform as we expect, fail to appropriately manage risks, provide diminished or delayed services to our customers or face cybersecurity breaches of their information technology systems, or if we fail to adequately monitor their performance, our operations and reputation could be materially adversely affected, in particular any such failures related to the development of key products. Depending on the function involved, vendor or third- party application failure or error may lead to increased costs, business disruption, distraction to management, processing inefficiencies, the loss of or damage to intellectual property or sensitive data through security breaches or otherwise, effects on financial reporting, loss of customers, damage to our reputation, or litigation, regulatory claims and / or remediation costs (including claims based on theories of breach of contract, vicarious liability, negligence or failure to comply with laws and regulations). Third- party vendors and partners (or their respective vendors) may also fail to maintain or keep adequate levels of insurance, which could result in a loss to us or expose us to litigation. The actions of our third **-** party vendors and unaffiliated third- party developers are beyond our control. We face the same risks with respect to subcontractors that might be engaged by our third- party vendors and partners or their subcontractors. The real estate brokerage business in our markets is extremely competitive. We compete with other multi- office independent real estate organizations and with franchise real estate organizations competing in local areas. Competition is particularly intense in the densely populated metropolitan areas of New York City, South Florida and Los Angeles in which we operate. In addition, in the real estate brokerage industry, new participants face minimal barriers to entry into the market. We also compete for the services of qualified licensed agents. The ability of our brokerage offices to retain agents is generally subject to numerous factors, including the sales commissions they receive, advertising support and perception of brand value. Our real estate brokerage business depends on the success of our agents. Our real estate brokerage offices generate revenue in the form of commissions and service fees. Accordingly, our financial results depend upon the operational and financial success of our brokerage offices and our agents. As mentioned above, there is significant competition among brokerage firms for the services of high producing agents and we may be unable to recruit and retain agents. Contractual obligations related to confidentiality and noncompetition may be ineffective or unenforceable against departing employees. Our operations are dependent on the efforts, abilities and experience of our employees, and we compete for their services. We have contracts with certain employees that include provisions preventing **them** ~~these persons~~ from competing with us both during and after the term of our employment contracts with them. Enforceability of the non- compete agreements that we have in place is not guaranteed, and contractual restrictions could be breached without discovery or adequate remedies. On July 9, 2021, President Biden signed an executive order encouraging the Federal Trade Commission (" FTC ") to curtail unfair use of non- compete agreements and other agreements that may unfairly limit worker mobility. While we cannot predict how the initiatives set forth in the executive order will be implemented or, as a result, the impact that the executive order will have on our operations, there is now increased uncertainty regarding the long-term enforceability of our non- compete agreements. In January 2023, the FTC proposed a rule that, if enacted, would prohibit employers from entering into non- compete clauses with workers and require employers to rescind existing non- ~~complete~~ - **compete** clauses **. The FTC is expected to vote on a final rule in April 2024. It is unclear if and when a final rule will become effective and whether it would be subject to legal challenges. In addition, the New York state legislature passed legislation in 2023 that would have prohibited most non- compete agreements between employers and workers in New York State, although it was not ultimately enacted. It is possible that additional similar legislation may be introduced in the future. We are monitoring developments related to these proposed laws for any potential impact on the arrangements we enter into with third parties, including our real estate agents** . Douglas Elliman is subject to risks and operational limitations associated with its strategic alliance with Knight Frank Residential. Douglas Elliman has entered into a strategic alliance with Knight Frank Residential, the world' s largest privately- owned property consultancy, to market certain luxury residential properties of at least $ 2 million to international audiences through co- branded offices, located in the various luxury markets where Douglas Elliman operates, and select top- tier agents. The agreement provides for **the** sharing of commissions and certain other payments in respect of jointly marketed properties. This strategic alliance subjects Douglas Elliman to **some** ~~a number of~~ risks, including risks associated with the sharing of proprietary information between parties, non- performance by Douglas Elliman or Knight Frank Residential of obligations under the strategic alliance agreement, disputes over strategic or operational decisions or other matters and reputational risks, as well as litigation risks associated therewith. In particular, Douglas Elliman is subject to certain exclusivity and non- compete provisions in connection with marketing and selling properties outside the United States in various markets in which Knight Frank Residential operates, subject to certain exceptions. Although Douglas Elliman believes that the strategic alliance enhances its ability to serve its luxury customers, such restrictions could limit Douglas Elliman' s growth prospects. Any decrease in our gross commission income or the percentage of commissions that we collect may harm our business, results of operations and financial condition. Our gross commission income or the percentage of commissions that we collect may decline. Our business model depends upon our agents' success in generating gross commission income, which we collect and from which we pay to them net commissions. Real estate commission rates vary somewhat by market, and although historical rates have been relatively consistent over time across markets, there can be no assurance that prevailing market practice will not change in a given market, or across the industry, in the future. Customary commission rates could change due to market forces locally or industry- wide, as well as due to regulatory or legal changes in such markets, including **because** ~~as a result~~ of litigation or enforcement actions. ~~See" Industry structure changes that disrupt the functioning of the residential real estate market could materially adversely affect our operations and financial results."~~ In addition, there can be no assurance that we will be able to maintain the percentage of commission income that we collect from our agents. If industry conditions change, we may be forced to reduce the percentage of commissions that we collect from our agents. **See — " Industry structure changes that disrupt the functioning of the residential real estate market, including as a result of litigation or regulatory action, could materially adversely affect our operations and financial results. "** Negligence or intentional actions of real estate agents engaged by us could materially and adversely affect our reputation and subject us to liability. Our operations rely on the performance of real estate agents. If our agents were to provide lower quality services to our customers or engage in negligent or intentional misconduct, our image and reputation could be materially adversely affected. In addition, we could also be subject to litigation and regulatory claims arising out of their performance of brokerage services, which if adversely determined, could result in substantial financial or legal penalties. There may be adverse financial and operational consequences to us if independent real estate agents are reclassified as employees. Although the legal relationship between residential real estate brokers and licensed real estate agents throughout most of the real estate industry historically has been that of independent contractor, newer rules and interpretations of state and federal employment laws and regulations, including those governing employee classification and wage and hour regulations in our and other industries, may impact industry practices and our company owned brokerage operations. Significant agent reclassification determinations in the absence of available exemptions from minimum wage or overtime laws, including damages and penalties for prior periods (if assessed), could be disruptive to our business or constrain our operations in certain jurisdictions. We may not be able to maintain or establish relationships with multiple listing services (" MLSs ") and third- party listing services, which could limit the information we are able to provide to our agents and clients. Our ability to attract agents and to appeal to clients depends upon providing a robust number of listings. To provide these listings, we maintain relationships with multiple listing services and other third- party listing providers and aggregators, as well as our agents themselves to include listing data in our services. Certain of our agreements with real estate listing providers are short- term agreements that may be terminated with limited notice. The loss of some of our existing relationships with listing providers, whether due to termination of agreements or otherwise, changes to our rights to use listing data, or an inability to continue to add new listing providers, may cause our listing data to omit information important to our agents or clients. Any loss or changes to our rights to use listing data or add listings, or any similar loss of rights in the markets we serve, could negatively impact agent and client confidence in the listing data we provide and reduce our ability to attract and retain agents. **.** Goodwill and indefinite- lived intangible asset impairment charges may adversely affect our operating results and financial condition.We have a substantial amount of goodwill and other intangible assets on our balance sheet ~~.As of December 31~~ , **primarily comprised** ~~2023,we had approximately $ 32.2 million~~ of goodwill and ~~$ 73.0 million of~~ trademarks ~~and other intangible assets related to Douglas Elliman~~ .Goodwill,trademarks and other identifiable intangible assets must be tested for impairment at least annually ~~,or more frequently if indicators of potential impairment exist~~ .The fair value of the goodwill assigned to a reporting unit could decline if projected revenues or cash flows were to be lower in the future due to the effects of the global economy or other causes.If the carrying value of intangible assets or of goodwill were to exceed its fair value,the asset would be written down to its fair value,with the impairment loss recognized as a non- cash charge in our **combined** consolidated statement of operations **.As of December 31,2022,we had approximately $ 32.2 million of goodwill and $ 73.7 million of trademarks and other intangible assets related to Douglas Elliman.During the first quarter of 2020,we determined that a triggering event occurred related to Douglas Elliman due to a decline in sales and profitability projections for the reporting unit driven by the COVID- 19 pandemic and related economic disruption.We utilized third- party valuation specialists to prepare a quantitative assessment of goodwill and trademark intangible assets related to Douglas Elliman.The quantitative assessments resulted in impairment charges to goodwill of $ 46.3 million and to the trademark intangible asset of $ 12.0 million** .Changes in our future outlook of the Douglas Elliman Realty,LLC reporting unit could result in an impairment loss ~~.The goodwill and indefinite- lived intangible asset impairment analyses are sensitive to changes in key assumptions used,such as discount rates,revenue growth rates,operating margin percentages of the business,and royalty rates as well as current market conditions affecting the residential real estate market industry including inventory levels and elevated mortgage rates.Disruptions in global credit and other financial markets and deteriorating economic conditions,including the impact of inflation or elevated interest rates,could,among other things,cause us to negatively~~ Through our brokerages, we participate in MLS and are a member of the NAR and state real estate associations and, accordingly, are subject to each group' s rules, policies, data licenses, and terms of service. The rules of each MLS to which we belong can vary widely and are complex. From time to time, certain industry practices, including NAR and MLS rules, have come under regulatory scrutiny **and, more recently, have been subject to private litigation** . There can be no assurances as to whether the Department of Justice (the " DOJ ") or FTC, their state counterparts, or other governmental body will determine that any industry practices or developments have an anti- competitive effect on the industry. Any such determination could result in industry investigations, legislative or regulatory action, private litigation or other actions, any of which could have the potential to disrupt our business. On July 1, 2021, the DOJ announced its withdrawal from a settlement agreement reached during the prior administration with the NAR in relation to claims of anticompetitive behavior with respect to commissions received by buyers' agents from sellers' agents. The settlement previously required **the** NAR to adopt certain rule changes, such as increased disclosure of commission offers from sellers' agents to buyers' agents. In January 2023, a federal court ruled that the DOJ must uphold the settlement agreement ~~, although~~ **. The DOJ appealed** the **district court' s January 2023** ruling ~~may be~~ **. The appellate court heard argument on the** ~~appealed~~ -- **appeal** ~~. Although we did~~ **on December 1, 2023, but has** not ~~experience~~ **yet issued** a **decision. The** ~~material erosion of our commission percentage rates from 2017 and 2021, the~~ withdrawal of the DOJ from this settlement and the executive order signed by President Biden on July 9, 2021, which, among other things, directs the **FTC** ~~Federal Trade Commission~~ to consider additional rule making pertaining to the real estate industry **,** indicates increased regulatory scrutiny of the real estate industry. In addition, private litigants have filed ~~multiple~~ **several** antitrust suits against **the** NAR **and certain real estate brokerage firms** , some of which the DOJ has intervened in, that allege certain NAR and MLS rules are anti- competitive **under federal and state antitrust laws** and result in increased costs to consumers. **Certain of these antitrust suits have resulted in settlement agreements, pursuant to which the settling real estate brokerage companies have agreed to injunctive relief that requires those companies to implement practice changes in their brokerage operations. On October 31, 2023, a federal jury in the Western District of Missouri found in favor of a class of plaintiffs of home sellers from April 2015 to June 2022 in three states, and awarded damages of approximately $ 1. 78 billion (which is subject to statutory treble damages) for anticompetitive behavior in violation of federal antitrust laws arising from the NAR' s requirement that sellers' agents for MLS- listed properties offer to pay a portion of commissions received on the sale of such properties to buyers' agents (the Sitzer / Burnett case). Certain of the defendants have indicated that they intend to appeal the judgment in the Sitzer / Burnett case and final resolution is not expected in the near term. Douglas Elliman is not a defendant in the Sitzer / Burnett case. Following the federal jury decision in the Sitzer / Burnett case on October 31, 2023, several additional putative class action lawsuits were filed against the NAR and additional real estate brokerage firms, including Douglas Elliman or its subsidiaries, alleging anticompetitive conduct similar to that in the Sitzer / Burnett case in violation of federal and state antitrust laws, consumer protection claims and allegations of unjust enrichment. Douglas Elliman is presently aware that it, Douglas Elliman Realty, LLC or**

one of its brokerage subsidiaries, is a named defendant in seven such matters in Missouri, Illinois, New York and Nevada, which are described in Note 13 to our combined consolidated financial statements included elsewhere in ~~This~~ **this Form 10- K. Douglas Elliman may become involved in additional legal proceedings concerning the same or similar claims. We are unable to reasonably estimate the financial impact of these matters. Any of the foregoing** litigation **(including any related settlement agreement)** or subsequent regulatory action, if successful, could result in significant changes or disruptions to industry practices of the residential real estate market, including changes or disruptions to ~~buyer~~ **buyers '** ~~' s~~ agent ~~'~~ **'** s commissions, and could negatively affect our financial condition and results of operations. Such **consequences** ~~increased focus~~ may reduce **our revenues** ~~the fees we receive~~ , require additional expenditure, or distract our management' s attention from pursuing our growth strategy. We could experience meaningful changes in industry operations or structure, as a result of governmental pressures, the result of litigation, changes to NAR or MLS rules, the actions of certain competitors or the introduction or growth of certain competitive models. Infringement, misappropriation or dilution of the intellectual property of Douglas Elliman could harm our business. We believe the trademark portfolio of Douglas Elliman has significant value and is an important factor in the marketing of our brand. We believe that this and other intellectual property are valuable assets that are critical to our success. We rely on a combination of protections provided by contracts, as well as copyright, trademark, and other laws, to protect our intellectual property from infringement, misappropriation or dilution. We have registered certain trademarks and service marks and have other trademark and service mark registration applications pending in the U. S. and foreign jurisdictions. Although we monitor our trademark portfolio both internally and through external search agents and impose an obligation on agents to notify us upon learning of potential infringement, there can be no assurance that we will be able to adequately maintain, enforce and protect our trademarks or other intellectual property rights. We are not aware of any challenges to our right to use any of our brand names or trademarks. We are commonly involved in numerous proceedings, generally on a small scale, to enforce our intellectual property and protect our brand. Unauthorized uses or other infringement of our trademarks or service marks, including ones that are currently unknown to us, could diminish the value of our brand and may adversely affect our business. Failure to adequately protect our intellectual property rights could damage our brand and impair our ability to compete effectively. Even where we have effectively secured statutory protection for our trademarks and other intellectual property, our competitors may misappropriate our intellectual property. Defending or enforcing our trademark rights, branding practices and other intellectual property, and seeking an injunction and / or compensation for misappropriation of confidential information, could result in the expenditure of significant resources and divert the attention of management. Moreover, unauthorized third parties may use Douglas Elliman' s intellectual property to trade on the goodwill of our brand, resulting in consumer confusion or dilution. Any reduction of our brand' s goodwill, consumer confusion, or dilution is likely to impact sales. We rely on licenses to use the intellectual property rights of third parties which are incorporated into our products and services. Failure to renew or expand existing licenses may require us to modify, limit or discontinue certain offerings. We rely on products, technologies and intellectual property that we license from third parties for use in our services. ~~We cannot~~ **There is no** ~~assure~~ **assurance** that these third- party licenses, or support for such licensed products and technologies, will continue to be available to us on commercially reasonable terms, if at all. In the event that we cannot renew and / or expand existing licenses, we may be required to discontinue or limit our use of the products and technologies that include or incorporate licensed intellectual property. We cannot be certain that our licensors are not infringing the intellectual property rights of others or that our suppliers and licensors have sufficient rights to the technology in all jurisdictions in which we may operate. Some of our license agreements may be terminated by our licensors for convenience. If we are unable to obtain or maintain rights to any of this technology because of intellectual property infringement claims brought by third parties against our suppliers and licensors or against us, or if we are unable to continue to obtain the technology or enter into new agreements on commercially reasonable terms, our ability to develop our services containing that technology could be severely limited and our business could be disrupted or otherwise harmed. Additionally, if we are unable to obtain necessary technology from third parties, we may be forced to acquire or develop alternate technology, which may require significant time and effort and may be of lower quality or performance standards. This would limit and delay our ability to provide new or competitive offerings and increase our costs. If alternate technology cannot be obtained or developed, we may not be able to offer certain functionality as part of our offerings. We rely on traffic to our websites, including our flagship website, elliman. com, directed from search engines. If these websites fail to rank prominently in unpaid search results, traffic to these websites could decline and our business would be adversely affected. Our success depends in part on our ability to attract users through unpaid internet search results on search engines. The number of users we attract to our websites, including our flagship website elliman. com, from search engines is due in large part to how and where our websites rank in unpaid search results. These rankings can be affected by **several** ~~a number of~~ factors, many of which are not under our direct control, and they may change frequently. For example, a search engine may change its ranking algorithms, methodologies or design layouts. As a result, links to our websites may not be prominent enough to drive traffic to our websites, and we may not know how or otherwise be in a position to influence the results. In some instances, search engine companies may change these rankings ~~in order~~ to promote their own competing services or the services of one or more of our competitors. Our websites have experienced fluctuations in search result rankings in the past, and we anticipate fluctuations in the future. Any reduction in the number of users directed to our websites could adversely affect our real estate brokerage business and results of operations. Further, a failure of our websites or website- based technology, either due to malfunction, outside intrusion through hacking or otherwise, could significantly disrupt our business and lead to reduced revenue and reputational damage as we may not be able to effectively scale and adapt our existing technology and network infrastructure to ensure our platforms are accessible. Cybersecurity incidents could disrupt our business operations or could result in the loss of critical and confidential information, which may adversely impact our reputation and harm our business. Global cybersecurity threats and incidents can range from uncoordinated individual attempts that gain unauthorized access to information technology systems, both internally and externally, to sophisticated and targeted measures, known as advanced persistent threats, directed at us and our affiliated agents. In the ordinary course of our business, we collect and store sensitive data, including our proprietary business information and intellectual property, and personally identifiable information of our customers. Additionally, we increasingly rely on third- party providers, including cloud storage solution providers. The secure processing, maintenance and transmission of this information are critical to our operations and with respect to information collected and stored by our third- party service providers, we are reliant upon their security procedures. Our systems and the confidential information on them may also be compromised by employee misconduct or employee error. We and our third-party service providers have experienced, and expect to continue to experience, these types of internal and external threats and incidents, which can result, and have resulted, in the misappropriation and unavailability of critical data and confidential or proprietary information (our own and that of third parties, including personally identifiable information), the disruption of business operations and the loss of funds. For example, in April 2021, we determined that an unauthorized party gained access to Douglas Elliman Property Management' s IT network, temporarily disrupted business operations and obtained certain files that contained personal information pertaining to owners and others in buildings managed by ~~and~~ employees of Douglas Elliman Property Management. Douglas Elliman Property Management took steps to secure its systems, contacted law enforcement, investigated and enhanced its security protocols to help prevent a similar incident from occurring in the future. Depending on their nature and scope, these incidents could potentially also result in the destruction or corruption of such data and information. Our business interruption insurance may be insufficient to compensate us for losses that may occur. The potential consequences of a material cybersecurity incident include reputational damage, litigation with third parties, diminution in the value of the services we provide to our customers, increased cybersecurity protection and remediation costs, business disruption and the loss of funds or revenue which in turn could adversely affect our competitiveness and results of operations. Developments in the laws and regulations governing the handling and transmission of personal identifying information in the United States may require us to devote more resources to protecting such information. Some of our ~~products~~ **application systems** and services contain open **-** source software, which may pose particular risks to our proprietary software, products, and services. We use open **-** source software in our ~~products~~ **applications systems** and services and anticipate using open **-** source software in the future. Some open **-** source software licenses require those who distribute open **-** source software as part of their own software product to publicly disclose all or part of the source code to such software product or to make available any derivative works of the open **-** source code on unfavorable terms or at no cost, and we may be subject to such terms. The terms of certain open **-** source licenses to which our business is subject have not been interpreted by U. S. or foreign courts, and there is a risk that open **-** source software licenses could be construed in a manner that imposes unanticipated conditions or restrictions on our ability to provide or distribute our products or services. Additionally, we could face claims from third parties alleging ownership of, or demanding release of, the open **-** source software or derivative works that we developed using such software, which could include our proprietary source code, or otherwise seeking to enforce the terms of the applicable open **-** source license. The use of certain open **-** source software can lead to greater risks than use of third- party commercial software, as open **-** source licensors generally do not provide warranties or controls on the origin of software. Any of these risks could be difficult to eliminate or manage. We may fail to successfully complete or integrate acquisitions and joint ventures into our existing operations, or to complete or effectively manage divestitures. We regularly review and evaluate potential acquisitions, joint ventures, divestitures, and other strategic transactions. Potential issues associated with these activities could include, among other things: our ability to complete or effectively manage such transactions on terms commercially favorable to us or at all; our ability to realize the full extent of the expected returns, benefits, cost savings or synergies as a result of a transaction, within the anticipated time frame, or at all; and diversion of management' s attention from day- to- day operations. In addition, the success of any future acquisition strategy we may pursue will depend upon our ability to fund such acquisitions given our total outstanding indebtedness, find suitable acquisition candidates on favorable terms and for target companies to find our acquisition proposals more favorable than those made by other competitors. We may not be able to complete or integrate an acquisition or joint venture into our existing operations (including our internal controls and compliance environment), or complete, manage or realize cost savings from a divestiture. Risks Associated with our PropTech Investments There are risks inherent in PropTech Investments. Our PropTech investments involve a high degree of risk. In general, financial and operating risks confronting ~~portfolio~~ **private** companies can be significant. While targeted returns should reflect the perceived level of risk in any investment, there can be no assurance that New Valley Ventures will be adequately compensated for risks taken, and the loss of its entire investment is possible. The investments may be difficult to value, and the timing of any profit realization is highly uncertain. Losses ~~are likely to~~ **have occurred and may** occur **in the future** . **Private** ~~Early- stage and development-stage~~ companies often experience unexpected problems in the areas of product development, manufacturing, marketing, financing and general management, which, in some cases, cannot be adequately solved. In addition, such companies may require substantial amounts of financing which may not be available through institutional private placements or the public markets. The percentage of companies that survive and prosper can be small. Investments in more mature companies in the expansion or profitable stage also involves substantial risks. Such companies typically have obtained capital in the form of debt and / or equity to expand rapidly, reorganize operations, acquire other businesses, or develop new products and markets. These activities ~~by definition~~ involve a significant amount of change in a company and could give rise to significant problems in sales, manufacturing, and general management of these activities. We may engage in business activities that could result in us holding investment interests in ~~a number of~~ entities which could subject us to regulation under the Investment Company Act of 1940. Although we are subject to regulation under the Securities Act and the Exchange Act, we believe we are not subject to regulation under the Investment Company Act of 1940 (the " Investment Company Act ") insofar as we are not engaged in the business of investing or trading in securities within the definitions and parameters which would make us subject to the Investment Company Act, or holding unconsolidated minority interests in multiple companies and cash that might fall within the " holding company " definitions under the Investment Company Act. We maintain controls and procedures designed to ensure that we will not be subject to regulation under the Investment Company Act. **If** ~~In the event~~ we engage in business activities that result in us holding minority interests in ~~a number of~~ nonconsolidated entities with significant value, we might become subject to regulation under the Investment Company Act. In such event, we would be required to register as an investment company and incur significant registration and compliance costs. Additionally, the Investment Company Act requires that **several** ~~a number of~~ structural safeguards, such as an independent board of directors and a separate investment adviser whose contract must be approved by a majority of our stockholders, be put in place within such companies. The Investment Company Act also imposes significant disclosure and reporting requirements beyond those found in the Securities Act and the Exchange Act. Likewise, the Investment Company Act contains its own anti- fraud provisions and private remedies, and it strictly limits investments made by one investment company in another to prevent pyramiding of investment companies, leading to consolidated investment companies acting in the interest of other investment companies rather than in the interest of securities holders. Regulation of Douglas Elliman as an investment company would significantly impair our business plan and operations. Risks Relating to Our Structure and Other Business Risks Our quarterly results and other operating metrics may fluctuate from quarter to quarter, which makes these metrics difficult to predict. Our results of operations have fluctuated in the past and are likely to fluctuate significantly from quarter- to- quarter and year- to- year in the future for a variety of reasons, many of which are outside of our control and difficult to predict. As a result, you should not rely upon our historical results of operations as indicators of future performance. Numerous factors can influence our results of operations, including: ◦ our ability to attract and retain agents; ◦ our ability to develop innovative solutions and offer new services on our platform; ◦ changes in interest rates or mortgage underwriting standards; ◦ the actions of our competitors; ◦ costs and expenses related to the strategic acquisitions, investments and joint ventures; ◦ increases in and timing of operating expenses that we may incur to grow and expand our operations and to remain competitive; ◦ changes in the legislative or regulatory environment, including with respect to real estate commission rates and disclosures; ◦ system failures or outages, or actual or perceived breaches of security or privacy, and the costs associated with preventing, responding to, or remediating any such outages or breaches; ◦ adverse judgments, settlements, or other litigation- related costs and the fees associated with investigating and defending claims; ◦ the overall tax rate for our business and the impact of any changes in tax laws or judicial or regulatory interpretations of tax laws, which are recorded in the period such laws are enacted or interpretations are issued and may significantly affect the effective tax rate of that period; ◦ the application of new or changing financial accounting standards or practices; and ◦ changes in real estate market conditions; ◦ changes in regional or national business or macroeconomic conditions, including **because** ~~as a result~~ of a pandemic, which may impact the other factors described above. In addition, our results of operations are tied to certain key business metrics and non- GAAP financial measures that have fluctuated in the past and are likely to fluctuate in the future. **Because** ~~As a result~~ of such variability, our historical performance, including from recent quarters or years, may not be a meaningful indicator of future performance and period- to- period comparisons also may not be meaningful. We are a holding company and depend on cash payments from our subsidiaries ~~in order~~ to pay dividends on our common stock. We are a holding company and have no operations of our own. We hold our interests in our business through our wholly ~~-~~ owned subsidiaries. In addition to our own cash resources, our ability to pay dividends on our common stock depends on the ability of our subsidiaries to make cash available to us. Our receipt of cash payments, as dividends or otherwise, from our subsidiaries is an important source of our liquidity and capital resources. If we do not have sufficient cash resources of our own and do not receive payments from our subsidiaries in an amount sufficient to repay our debts and to pay dividends on our common stock, we must obtain additional funds from other sources. There is a risk that we will not be able to obtain additional funds at all or on terms acceptable to us. Our inability to continue to pay dividends on our common stock would significantly harm us and the value of our common stock. Our liquidity could be adversely affected by conditions in the financial markets or the negative performance of financial institutions. Our available cash and cash equivalents are held in accounts with or managed by financial institutions and consist of cash in our operating accounts and cash and cash equivalents invested in money market funds. The amount of cash in our operating accounts exceeds the Federal Deposit Insurance Corporation (" FDIC ") insurance limits. While we monitor our accounts regularly and adjust our balances as appropriate, the valuation of or our access to these accounts could be negatively impacted if the underlying financial institutions fail or become subject to other adverse conditions in the financial markets. The operations of U. S. and global financial services institutions are interconnected and the performance and financial strength of specific institutions are subject to rapid change, the timing and extent of which cannot be known. To date, we have experienced no material realized losses on or lack of access to our cash held in operating accounts or our invested cash or cash equivalents, however, we can provide no assurances that access to our cash held in operating accounts or our invested cash and cash equivalents will not be impacted by adverse conditions in the financial markets or the negative performance of financial institutions. **In some cases, certain of** ~~Our property management and ancillary real estate services businesses also manage assets owned by~~ our **subsidiaries act as escrow agents for our agents'** clients **. As escrow agents, they receive money to hold until certain conditions** in ~~accounts~~ **the contract of sale are satisfied. Upon the satisfaction of those conditions, they release the funds to the appropriate party pursuant to the contract of sale. The escrowed funds are deposited** with **various** ~~financial institutions where deposits~~ **depository** ~~routinely exceed~~ **banks and may be in excess of** the FDIC insurance ~~limits~~ - **limit** . ~~Should the financial institutions with which~~ **If any of our depository banks become unable to honor any portion of** these ~~assets are deposited experience insolvency or other financial difficulties, access to such~~ deposits ~~could be limited~~ , **impacted** ~~deposit insurance may be inadequate and we could be exposed to liability from our clients and our relationships with our agents and with our~~ clients could ~~be negatively impacted~~ **seek to hold us responsible for such amounts** . **This** ~~Any of these events would~~ **could** negatively impact our liquidity, results of operations and our reputation . Goodwill and indefinite- lived intangible...... unit could result in an impairment loss . Investors' expectations of our performance relating to environmental, social and governance factors may impose additional costs and expose us to new risks. There is an increasing focus from certain investors, employees and other stakeholders concerning corporate responsibility, specifically related to environmental, social and governance factors. Some investors may use these factors to guide their investment strategies and, in some cases, may choose not to invest in us if they believe our policies relating to corporate responsibility are inadequate. Third- party providers of corporate responsibility ratings and reports on companies have increased to meet growing investor demand for measurement of corporate responsibility performance. The criteria by which companies' corporate responsibility practices are assessed may change, which could result in greater expectations of us and cause us to undertake costly initiatives to satisfy such new criteria. If we elect not to or are unable to satisfy such new criteria, investors may conclude that our policies with respect to corporate responsibility are inadequate. We may face reputational damage **if** ~~in the event that~~ our corporate responsibility procedures or standards do not meet the standards set by various constituencies. Furthermore, if our competitors' corporate responsibility performance is perceived to be greater than ours, potential or current investors may elect to invest with our competitors instead. In addition, **if** ~~in the event that~~ we communicate certain initiatives and goals regarding environmental, social and governance matters, we could fail, or be perceived to fail, in our achievement of such initiatives or goals, or we could be criticized for the scope of such initiatives or goals. We may fail to satisfy the expectations of investors, employees and other stakeholders or execute our initiatives as planned. We are periodically subject to claims, lawsuits, government investigations and other proceedings. We ~~may be~~ **are periodically** subject to claims, lawsuits, arbitration proceedings, government investigations and other legal and regulatory proceedings in the ordinary course of business, including those involving labor and employment, anti-discrimination, commercial disputes, competition, professional liability and consumer complaints, intellectual property disputes, compliance with regulatory requirements, antitrust and anti- competition claims (including claims related to NAR or MLS rules regarding buyer- broker commissions **as further described in Note 13 to our combined consolidated financial statements included elsewhere in this Form 10- K**), securities laws and other matters, and we may become subject to additional types of claims, lawsuits, government investigations and legal or regulatory proceedings if the regulatory landscape changes or as our business grows and as we deploy new offerings, including proceedings related to our acquisitions, securities issuances or business practices. The results of any such claims, lawsuits, arbitration proceedings, government investigations or other legal or regulatory proceedings cannot be predicted with certainty. Any claims against us or investigations involving us, whether meritorious or not, could be time- consuming, result in significant defense and compliance costs, be harmful to our reputation, require significant management attention and divert significant resources. Determining reserves for our pending litigation is a complex and fact- intensive process that requires significant subjective judgment and speculation. It is possible that a resolution of one or more such proceedings could result in substantial damages, settlement costs, fines and penalties that could adversely affect our business, financial condition and results of operations. These proceedings could also result in harm to our reputation and brand, sanctions, consent decrees, injunctions or other orders requiring a change in our business practices. Any of these consequences could adversely affect our business, financial condition and results of operations. Furthermore, under certain circumstances, we have contractual and other legal obligations to indemnify and to incur legal expenses on behalf of our business and commercial partners and current and former directors, officers and employees. Adverse decisions in litigation or regulatory actions against companies unrelated to us could impact our business practices. Litigation, investigations, claims and regulatory proceedings against other participants in the residential real estate or relocation industry may impact us when the rulings or settlements in those cases cover practices common to the broader industry and which may generate litigation. Examples may include claims associated with Real Estate Settlement Procedures Act (" RESPA ") compliance (including, but not limited to, those related to the broker- to- broker exception, marketing agreements or consumer rebates), broker fiduciary duties, multiple listing service practices, sales agent classification, federal and state fair housing laws, and state laws limiting or prohibiting inducements, cash rebates and gifts to consumers. Similarly, we may be impacted by litigation and other claims against companies in other industries. To the extent plaintiffs are successful in these types of litigation matters, and we cannot distinguish our or their practices (or our industry' s practices), we could face significant liability and could be required to modify certain business relationships. Some of our potential losses may not be covered by insurance. We may not be able to obtain or maintain adequate insurance coverage. We maintain insurance to cover costs and losses from certain risk exposures in the ordinary course of our operations, but our insurance does not cover all ~~of the~~ costs and losses from all events. We are responsible for certain retentions and deductibles that vary by policy, and we may suffer losses that exceed our insurance coverage limits by a material amount. We may also incur costs or suffer losses arising from events against which we have no insurance coverage. In addition, large- scale market trends or the occurrence of adverse events in our business may raise our cost of procuring insurance or limit the amount or type of insurance we are able to secure. We may not be able to maintain our current coverage, or obtain new coverage in the future, on commercially reasonable terms or at all. Our fraud detection processes and information security systems may not successfully detect all fraudulent activity by third parties aimed at our employees or agents. We make a large number of wire transfers in connection with loan and real estate closings and process sensitive personal data in connection with these transactions. Although we have sophisticated fraud detection processes and have taken other measures to continuously improve controls to identify fraudulent activity, we have not been and may not be able to detect and prevent all such activity. Persistent or pervasive fraudulent activity may cause agents or clients to lose trust in us and decrease or terminate their usage of our platform. If we are unable to satisfy the requirements of Section 404 of the Sarbanes-Oxley Act, or our internal control over financial reporting is not effective, the reliability of our financial statements may be questioned and our stock price may suffer. Section 404 of the Sarbanes- Oxley Act requires any company subject to the reporting requirements of the U. S. securities laws to conduct a comprehensive evaluation of its and its consolidated subsidiaries' internal control over financial reporting. To comply with this statute, we are required to document and test our internal control procedures, our management is required to assess and issue a report concerning its internal control over financial reporting, and our independent auditors are required to issue an opinion on our internal controls over financial reporting. The rules governing the standards that must be met for management to assess its internal control over financial reporting are complex and require significant documentation, testing and possible remediation to meet the detailed standards under the rules.

During the course of its testing, our management may identify material weaknesses or deficiencies which may not be remedied in time to meet the deadline imposed by the Sarbanes- Oxley Act. If our management cannot favorably assess the effectiveness of our internal control over financial reporting or our auditors identify material weaknesses in our internal controls, investor confidence in our financial results may weaken, and our stock price may suffer. Changes in accounting standards, subjective assumptions and estimates used by management related to complex accounting matters could have an adverse effect on our reported results. Generally accepted accounting principles in the United States of America, or GAAP, and related accounting pronouncements, implementation guidance and interpretations with regard to a wide range of matters, such as revenue recognition, lease accounting, stock- based compensation, asset impairments, valuation reserves, income taxes and the fair value and associated useful lives of acquired long- lived assets, intangible assets and goodwill, are highly complex and involve many subjective assumptions, estimates and judgments made by management. Changes in these rules or their interpretations or changes in underlying assumptions, estimates or judgments made by management could significantly change our reported results. Risks Relating to the Distribution Following the Distribution, we are materially dependent on Vector Group' s performance under various agreements. We entered into various agreements with Vector Group related to the Distribution, including a Distribution Agreement, a Tax Disaffiliation Agreement, a Transition Services Agreement, an Employee Matters Agreement and Aviation Agreements. These agreements included the allocation of employee benefits, taxes and certain other liabilities and obligations attributable to periods prior to, at and after the Distribution. In connection with the Distribution, we provided Vector Group with indemnities with respect to liabilities arising out of our business, and Vector Group provided us with indemnities with respect to liabilities arising out of the business retained by Vector Group. Vector Group provides Douglas Elliman with certain business services that were performed by Vector Group prior to the Distribution, such as information technology, accounts payable, payroll, tax, certain legal and accounting functions, human resources, insurance and risk management, government affairs, investor relations, corporate communications, benefit plan administration and reporting, and internal audit functions as well as certain marketing functions. These services include the collection and storage of certain personal information regarding employees and / or customers as well as information regarding Douglas Elliman, Vector Group and our **counterparties** ~~counter- parties~~. We pay Vector Group $ 350, 000 per month for these services as well as office space and secretarial and administrative services provided to members of our management team. Douglas Elliman relies on Vector Group to perform its obligations under all of these agreements. If Vector Group were to breach or be unable to satisfy its material obligations under these agreements, including a failure to satisfy its indemnification or other financial obligations, or these agreements otherwise terminate or expire and we do not enter into replacement agreements, we could suffer operational difficulties and / or significant losses **. Certain of these agreements expire on the third anniversary of the Distribution, and we may seek to extend or renegotiate all or a portion of these agreements, rather than allow them to lapse, which will require the agreement of Vector Group** . The Distribution could result in significant tax liability. Vector Group obtained an opinion from Sullivan & Cromwell LLP substantially to the effect that, among other things, and subject to the assumptions and limitations described therein, the distribution by Vector Group of our common stock to the holders of Vector Group common stock will qualify as a tax- free distribution under the Internal Revenue Code of 1986, as amended. Accordingly, for U. S. federal income tax purposes, the Distribution, excluding the distribution of our common stock with respect to Vector Group stock option awards and restricted stock awards, together with certain related transactions is not expected to result in the recognition of gain to Vector Group with respect to the distribution of our common stock to the Vector Group stockholders in respect of such Vector Group common stock and, except to the extent a stockholder received cash in lieu of fractional shares of our common stock, no income, gain or loss will be recognized by, and no amount will be included in the income of such holder upon the receipt of shares of our common stock pursuant to the Distribution. The opinion ~~will~~ **is** not ~~be~~ binding on the Internal Revenue Service or the courts and there can be no assurance that the IRS will not challenge the validity of the Distribution and such related transactions as a reorganization for U. S. federal income tax purposes under Sections 368 (a) (1) (D) and 355 of the Code eligible for tax- free treatment, or that any such challenge ultimately will not prevail. Certain transactions related to the Distribution that are not addressed by the opinion could result in the recognition of income or gain by Vector Group. The opinion of Sullivan & Cromwell was based on, among other things, certain assumptions as well as on the continuing accuracy of certain factual representations and statements that we and Vector Group made to Sullivan & Cromwell. In rendering its opinion, Sullivan & Cromwell also relied on certain covenants that we and Vector Group entered into, including the adherence by us and by Vector Group to certain restrictions on future actions contained in the Tax Disaffiliation Agreement. If any of the representations or statements that we or Vector Group made are or become inaccurate or incomplete, or if we or Vector Group breach any of such covenants, the Distribution and such related transactions might not qualify for such tax treatment. See our Registration Statement on Form S- 1, initially filed on December 7, 2021, " The Distribution — Material U. S. Federal Income Tax Consequences of the Distribution. " The opinion and above discussed consequences do not apply to the distribution of our common stock with respect to Vector Group stock option awards and restricted stock awards. If the Distribution does not qualify for tax- free treatment for U. S. federal income tax purposes for any reason, including **because** ~~as a result~~ of a breach of a representation or covenant, then, generally, Vector Group would recognize a substantial gain for U. S. federal income tax purposes. In addition, the receipt by Vector Group stockholders of common stock of ours would be a taxable distribution, and each U. S. holder that receives our common stock in the Distribution would be treated as if the U. S. holder had received a distribution equal to the fair market value of our common stock that was distributed to it, which generally would be treated first as a taxable dividend to the extent of such holder' s pro rata share of Vector Group' s earnings and profits, then as a non- taxable return of capital to the extent of the holder' s tax basis in its Vector Group common stock, and thereafter as capital gain with respect to any remaining value. It is expected that the amount of any such taxes to Vector Group stockholders and Vector Group would be substantial. See our Registration Statement on Form S- 1, initially filed on December 7, 2021, " The Distribution — Material U. S. Federal Income Tax Consequences of the Distribution. " We may have a significant indemnity obligation to

Vector Group if the Distribution is treated as a taxable transaction. We entered into a Tax Disaffiliation Agreement with Vector Group, which sets out each party' s rights and obligations with respect to federal, state, local or foreign taxes for periods before and after the Distribution and related matters such as the filing of tax returns and the conduct of IRS and other audits. Pursuant to the Tax Disaffiliation Agreement, we are required to indemnify Vector Group for its losses and taxes resulting from the breach of certain covenants and for certain taxable gain recognized by Vector Group, including as a result of certain acquisitions of our stock or assets. If we are required to indemnify Vector Group under the circumstances set forth in the Tax Disaffiliation Agreement, we may be subject to substantial liabilities. The tax rules applicable to the Distribution may restrict us from engaging in certain corporate transactions or from raising equity capital beyond certain thresholds for a period of time after the Distribution. The U. S. federal income tax laws that apply to transactions like the Distribution generally create a presumption that the Distribution would be taxable to Vector Group (but not to Vector Group stockholders) if we engage in, or enter into an agreement to engage in, an acquisition of all or a significant portion of our common stock beginning two years before the Distribution date, unless it is established that the transaction is not pursuant to a plan or series or transactions related to the Distribution. U. S. Treasury regulations currently in effect generally provide that whether an acquisition transaction and a distribution are part of a plan is determined based on all of the facts and circumstances, including specific factors listed in the Treasury regulations. In addition, these Treasury regulations provide several " safe harbors " for acquisition transactions that are not considered to be part of a plan that includes a distribution. Pursuant to the Tax Disaffiliation Agreement, we have allocated, between Vector Group and ourselves, responsibility for U. S. federal as well as state and local income and other taxes relating to taxable periods before and after the Distribution and provided for computing and apportioning tax liabilities and tax benefits between the parties. In the Tax Disaffiliation Agreement, we agreed that, among other things, we may not take, or fail to take, any action following the Distribution if such action or failure to act would be inconsistent with or prohibit the Distribution and certain related transactions from qualifying as a tax- free reorganization under Sections 368 (a) (1) (D) and 355 and related provisions of the Code to Vector Group and Vector Group stockholders (except with respect to the receipt of cash in lieu of fractional shares of Vector Group stock). ~~To preserve the tax- free treatment of the Distribution to Vector Group and its stockholders, under the Tax Disaffiliation Agreement with Vector Group, for the two- year period following the Distribution, we are subject to restrictions with respect to: • entering into any transaction pursuant to which 35 % or more of our shares or 50 % or more of our assets would be acquired, whether by merger or otherwise, unless certain tests are met; • issuing equity securities, if any such issuances would, in the aggregate, constitute 35 % or more of the voting power or value of our capital stock; • certain repurchases of our common shares; • ceasing to actively conduct our business; • selling or otherwise disposing of assets outside the ordinary course of business or materially changing the manner of operating our business; • amendments to our organizational documents (i) affecting the relative voting rights of our stock or (ii) converting one class of our stock to another; • liquidating or partially liquidating; and • taking any other action that prevents the Distribution and certain related transactions from being tax- free. These restrictions may limit our ability during such period to pursue strategic transactions of a certain magnitude that involve the issuance or acquisition of our stock or engage in new businesses or other transactions that might increase the value of our business. These restrictions may also limit our ability to raise significant amounts of cash through the issuance of stock, especially if our stock price were to suffer substantial declines, or through the sale of certain of our assets. We also agreed to indemnify Vector Group for certain tax liabilities resulting from any such transactions. Further, our stockholders may consider these covenants and indemnity obligations unfavorable as they might discourage, delay or prevent a change of control.~~ For more information, see our Registration Statement on Form S- 1 initially filed on December 7, 2021 and the sections entitled " The Distribution — Material U. S. Federal Income Tax Consequences of the Distribution " and " Certain Relationships and Related Party Transactions — Relationship Between Vector Group and Us After the Distribution — Tax Disaffiliation Agreement. " We share certain key directors and officers with Vector Group, which means those officers do not devote their full time and attention to our affairs and the overlap may give rise to conflicts. Following the Distribution, there is an overlap between certain key directors and officers of ours and of Vector Group. Howard M. Lorber serves as our President and Chief Executive Officer and of Vector Group. Richard J. Lampen serves as our Chief Operating Officer and of Vector Group, J. Bryant Kirkland III serves as our Chief Financial Officer and ~~Treasurer and~~ of Vector Group, Marc N. Bell serves as our General Counsel and Secretary and of Vector Group, and J. David Ballard serves as our Senior Vice President, Enterprise Efficiency and Chief Technology Officer and of Vector Group. As a result, not all of our executive officers devote their full time and attention to our affairs. In addition, three members of our Board, Messrs. Lorber, Lampen and White, are also directors of Vector Group. These overlap ~~persons~~ **people** may have actual or apparent conflicts of interest with respect to matters involving or affecting each company. For example, there will be the potential for a conflict of interest when we on the one hand, and Vector Group and its respective subsidiaries and successors on the other hand, are party to commercial transactions concerning the same or adjacent real property investments. In addition, after the Distribution, certain of our directors and officers continue to own stock and / or stock options or other equity awards of Vector Group. These ownership interests could create actual, apparent or potential conflicts of interest when these individuals are faced with decisions that could have different implications for our Company and Vector Group. Concurrently, we depend on the efforts of these and other executive officers and other key personnel. While we believe that we could find replacements for these key personnel, the loss of their services could have a significant adverse effect on our operations. Our overlapping directors and officers with Vector Group may result in the diversion of corporate opportunities to Vector Group, and other conflicts and provisions in our amended and restated certificate of incorporation may provide us no remedy in that circumstance. Our amended and restated certificate of incorporation acknowledges that directors and officers of ours may also be serving as directors, officers, employees or agents of Vector Group or any subsidiary thereof, and that we may engage in material business transactions with Vector Group. We renounced our rights to certain business opportunities and our amended and restated certificate of incorporation provides that no overlap person will be liable to us or our stockholders for breach of any fiduciary duty that would otherwise occur by reason of the fact that any such individual directs a corporate opportunity (other than certain limited types of opportunities set forth in our amended and restated certificate of incorporation) to Vector Group or any subsidiary thereof instead of us, or does not refer or communicate information regarding such corporate opportunities to us. These provisions in our amended and restated certificate of incorporation also expressly validate certain contracts, agreements, arrangements and transactions (and amendments, modifications or terminations thereof) between us and Vector Group and, to the fullest extent permitted by law, provide that the actions of the overlap persons in connection therewith are not breaches of fiduciary duties owed to us, any of its subsidiaries or their respective stockholders.