REFINITIV

DELTA REPORT

10-Q

ACR PR D - ACRES COMMERCIAL REALTY C

10-Q - MARCH 31, 2024 COMPARED TO 10-Q - SEPTEMBER 30, 2023

The following comparison report has been automatically generated

TOTAL DELTAS	2728
CHANGES	650
DELETIONS	1239
ADDITIONS	839

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

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, March 31, 2023 2024

OR

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

For the transition period from _________ to __________

Commission File Number: 1-32733

0000950170-24-055428img82327870_0.jpg

ACRES COMMERCIAL REALTY CORP.

(Exact name of registrant as specified in its charter)

Maryland	**20-2287134**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

390 RXR Plaza, Uniondale, New York 11556

(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: **516-535-0015**

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

Title of each class	**Trading Symbol(s)**	**Name of each exchange on which registered**
Common Stock, $0.001 par value	ACR	New York Stock Exchange
8.625% Fixed-to-Floating Series C Cumulative Redeemable Preferred Stock	ACRPrC	New York Stock Exchange
7.875% Series D Cumulative Redeemable Preferred Stock	ACRPrD	New York Stock Exchange

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

Large accelerated filer	☐	Accelerated filer	☑
Non-accelerated filer	☐	Smaller reporting company	☑
		Emerging growth company	☐

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

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

The number of outstanding shares of the registrant's common stock on November 6, 2023 May 7, 2024 was 8,455,131 7,958,714 shares.

(Back to Index)

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
INDEX TO QUARTERLY REPORT
ON FORM 10-Q

(Back to Index)

(Back to Index)

PART I

ITEM 1. FINANCIAL STATEMENTS

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)

	September 30, 2023	December 31, 2022	March 31, 2024	December 31, 2023
	(unaudited)		(unaudited)	
ASSETS (1)				
Cash and cash equivalents	$ 64,440	$ 66,232	$ 84,600	$ 83,449
Restricted cash	35,876	38,579	4,035	8,437
Accrued interest receivable	12,433	11,969	11,889	11,783
CRE loans	1,920,205	2,057,590	1,774,883	1,857,093
Less: allowance for credit losses	(27,634)	(18,803)	(33,653)	(28,757)
CRE loans, net	1,892,571	2,038,787	1,741,230	1,828,336
Loan receivable - related party	11,050	11,275	10,925	10,975
Investments in unconsolidated entities	1,548	1,548	21,671	1,548
Properties held for sale	62,163	53,769	62,986	62,605
Investments in real estate	149,180	120,968	171,284	157,621
Right of use assets	19,970	20,281	19,799	19,879
Intangible assets	8,125	8,880	7,638	7,882
Other assets	4,140	4,364	3,795	3,590
Total assets	$ 2,261,496	$ 2,376,652	$ 2,139,852	$ 2,196,105
LIABILITIES (2)				
Accounts payable and other liabilities	$ 17,261	$ 10,391	$ 13,873	$ 13,963
Management fee payable - related party	1,022	898	541	584
Accrued interest payable	5,598	6,921	5,990	8,459
Borrowings	1,738,829	1,867,033	1,625,499	1,676,200
Lease liabilities	44,130	43,695	44,439	44,276

Distributions payable	3,262	3,262	3,229	3,262
Accrued tax liability	142	113	43	121
Liabilities held for sale	3,025	3,025	3,073	3,025
Total liabilities	1,813,269	1,935,338	1,696,687	1,749,890
EQUITY				
Preferred stock, par value $0.001: 10,000,000 shares authorized 8.625% Fixed-to-Floating Series C Cumulative Redeemable Preferred Stock, liquidation preference $25.00 per share; 4,800,000 and 4,800,000 shares issued and outstanding	5	5		
Preferred stock, par value $0.001: 6,800,000 shares authorized 7.875% Series D Cumulative Redeemable Preferred Stock, liquidation preference $25.00 per share; 4,607,857 and 4,607,857 shares issued and outstanding	5	5		
Common stock, par value $0.001: 41,666,666 shares authorized; 8,448,524 and 8,708,100 shares issued and outstanding (including 416,675 and 583,333 unvested restricted shares)	8	9		
Preferred stock, par value $0.001: 10,000,000 shares authorized 8.625% Fixed-to-Floating Series C Cumulative Redeemable Preferred Stock, liquidation preference $25.00 per share; 4,800,000 and 4,800,000 shares issued and outstanding			5	5
Preferred stock, par value $0.001: 6,800,000 shares authorized 7.875% Series D Cumulative Redeemable Preferred Stock, liquidation preference $25.00 per share; 4,507,857 and 4,607,857 shares issued and outstanding			5	5
Common stock, par value $0.001: 41,666,666 shares authorized; 7,685,300 and 7,878,216 shares issued and outstanding (including 416,675 and 416,675 unvested restricted shares)			8	8
Additional paid-in capital	1,173,975	1,174,202	1,165,999	1,169,970
Accumulated other comprehensive loss	(5,202)	(6,394)	(4,404)	(4,801)
Distributions in excess of earnings	(731,088)	(732,359)	(728,835)	(729,391)
Total stockholders' equity	437,703	435,468	432,778	435,796
Non-controlling interests	10,524	5,846	10,387	10,419
Total equity	448,227	441,314	443,165	446,215
TOTAL LIABILITIES AND EQUITY	$ 2,261,496	$ 2,376,652	$ 2,139,852	$ 2,196,105

The accompanying notes are an integral part of these statements

(Back to Index)

(Back to Index)

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS - (Continued)
(in thousands, except share and per share data)

	September 30, 2023	December 31, 2022	March 31, 2024	December 31, 2023
	(unaudited)		(unaudited)	
(1) Assets of consolidated variable interest entities ("VIEs") included in total assets above:				
Restricted cash	$ 35,048	$ 38,180	$ 190	$ 220
Accrued interest receivable	8,841	8,184	9,340	9,188
CRE loans, pledged as collateral (3)	1,430,820	1,456,649	1,409,013	1,466,463
Other assets	71	119	56	71
Total assets of consolidated VIEs	$ 1,474,780	$ 1,503,132	$ 1,418,599	$ 1,475,942
(2) Liabilities of consolidated VIEs included in total liabilities above:				
Accounts payable and other liabilities	$ 179	$ 93	$ 142	$ 143
Accrued interest payable	3,574	3,083	3,634	3,828
Borrowings	1,203,863	1,233,556	1,146,812	1,204,569
Total liabilities of consolidated VIEs	$ 1,207,616	$ 1,236,732	$ 1,150,588	$ 1,208,540

(3) Excludes the allowance for credit losses.

The accompanying notes are an integral part of these statements

(Back to Index)

(Back to Index)

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except share and per share data)
(unaudited)

	For the Three Months Ended September 30, 2023	For the Three Months Ended September 30, 2022	For the Nine Months Ended September 30, 2023	For the Nine Months Ended September 30, 2022	For the Three Months Ended March 31, 2024	For the Three Months Ended March 31, 2023
REVENUES						
Interest income:						
CRE loans	$ 47,567	$ 33,856	$ 138,388	$ 83,477	$ 41,866	$ 44,470
Other	641	209	2,297	283	745	859
Total interest income	48,208	34,065	140,685	83,760	42,611	45,329
Interest expense	33,555	22,939	97,372	53,591	31,251	31,375

Net interest income	14,653	11,126	43,313	30,169	11,360	13,954
Real estate income	9,316	9,785	25,266	21,700	7,371	7,071
Other revenue	37	25	107	60	37	33
Total revenues	24,006	20,936	68,686	51,929	18,768	21,058
OPERATING EXPENSES						
General and administrative	2,246	2,128	7,573	7,938	3,255	2,979
Real estate expenses	9,706	10,099	29,058	24,055	9,531	8,860
Management fees - related party	2,113	1,669	5,776	5,023	1,627	1,773
Equity compensation - related party	482	913	2,095	2,648	477	894
Corporate depreciation and amortization	22	21	68	64	8	23
Provision for credit losses, net	1,983	2,620	9,779	1,342	4,896	5,096
Total operating expenses	16,552	17,450	54,349	41,070	19,794	19,625
	7,454	3,486	14,337	10,859	(1,026)	1,433
OTHER INCOME (EXPENSE)						
Loss on extinguishment of debt	—	—	—	(460)		
Gain on conversion of real estate					5,835	—
Gain on sale of real estate	—	1,870	745	1,870	—	745
Other income	113	130	465	1,103	115	110
Total other income	113	2,000	1,210	2,513	5,950	855
INCOME BEFORE TAXES	7,567	5,486	15,547	13,372	4,924	2,288
Income tax expense	—	—	(129)	(280)		
Income tax benefit					—	5
NET INCOME	7,567	5,486	15,418	13,092	4,924	2,293
Net income allocated to preferred shares	(4,855)	(4,855)	(14,566)	(14,566)	(4,822)	(4,855)
Carrying value in excess of consideration paid for preferred shares					242	—
Net loss allocable to non-controlling interest, net of taxes	158	82	419	106	212	146
NET INCOME (LOSS) ALLOCABLE TO COMMON SHARES	$ 2,870	$ 713	$ 1,271	$ (1,368)	$ 556	$ (2,416)
NET INCOME (LOSS) PER COMMON SHARE - BASIC	$ 0.34	$ 0.08	$ 0.15	$ (0.15)	$ 0.07	$ (0.28)
NET INCOME (LOSS) PER COMMON SHARE - DILUTED	$ 0.33	$ 0.08	$ 0.15	$ (0.15)	$ 0.07	$ (0.28)
WEIGHTED AVERAGE NUMBER OF COMMON SHARES OUTSTANDING - BASIC	8,456,884	8,713,256	8,469,597	8,898,159	7,754,130	8,500,413
WEIGHTED AVERAGE NUMBER OF COMMON SHARES OUTSTANDING - DILUTED	8,592,556	8,758,718	8,609,679	8,898,159	8,033,813	8,500,413

The accompanying notes are an integral part of these statements

(Back to Index)

(Back to Index)

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(in thousands)
(unaudited)

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,		For the Three Months Ended March 31,	
	2023	2022	2023	2022	2024	2023
Net income	$ 7,567	$ 5,486	$ 15,418	$ 13,092	$ 4,924	$ 2,293
Other comprehensive income:						
Reclassification adjustments associated with net unrealized losses from interest rate swaps included in net income	402	415	1,192	1,332	397	393
Total other comprehensive income	402	415	1,192	1,332	397	393
Comprehensive income before allocation to preferred shares	7,969	5,901	16,610	14,424	5,321	2,686
Net loss allocated to non-controlling interests shares	158	82	419	106	212	146
Carrying value in excess of consideration paid for preferred shares					242	—
Net income allocated to preferred shares	(4,855)	(4,855)	(14,566)	(14,566)	(4,822)	(4,855)
Comprehensive income (loss) allocable to common shares	$ 3,272	$ 1,128	$ 2,463	$ (36)	$ 953	$ (2,023)

The accompanying notes are an integral part of these statements

(Back to Index)

(Back to Index)

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY
(in thousands, except share and per share data)
(unaudited)

Common Stock	Common Stock

	Shares	Amount	Series C Preferred Stock	Series D Preferred Stock	Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Retained Earnings (Distributions in Excess of Earnings)	Total Stockholders' Equity	Non-Controlling Interest	Total Equity	Shares	Amount	Series C Preferred Stock	Series D Preferred Stock	Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Retained Earnings (Distributions in Excess of Earnings)	Total Stockholders' Equity	Non-Controlling Interest	Total Equity
Balance, December 31, 2022	8,708,100	$ 9	$ 5	$ 5	$ 1,174,202	$ (6,394)	$ (732,359)	$ 435,468	$ 5,846	$ 441,314										
Balance, December 31, 2023											7,878,216	$ 8	$ 5	$ 5	$ 1,169,970	$ (4,801)	$ (729,391)	$ 435,796	$ 10,419	$ 446,215
Purchase and retirement of common stock	(79,744)	—	—	—	(756)	—	—	(756)	—	(756)	(194,827)	—	—	—	(2,068)	—	—	(2,068)	—	(2,068)
Stock-based compensation	17,780	—	—	—	170	—	—	170	—	170	1,911	—	—	—	19	—	—	19	—	19
Amortization of stock-based compensation	—	—	—	—	894	—	—	894	—	894	—	—	—	—	477	—	—	477	—	477
Preferred stock redemption											—	—	—	—	(2,399)	—	242	(2,157)	—	(2,157)
Contributions from non-controlling interests	—	—	—	—	—	—	—	—	2,332	2,332	—	—	—	—	—	—	—	—	180	180

Net income	—	—	—	—	—	—	2,439	2,439	(146)	2,293	—	—	—	—	—	—	5,136	5,136	(212)	4,924
Distributions and accrual of cumulative preferred stock dividends	—	—	—	—	—	—	(4,855)	(4,855)	—	(4,855)	—	—	—	—	—	—	(4,822)	(4,822)	—	(4,822)
Amortization of terminated derivatives	—	—	—	—	—	393	—	393	—	393	—	—	—	—	—	397	—	397	—	397
Balance, March 31, 2023	8,646,136	$ 9	$ 5	$ 5	$ 1,174,510	$ (6,001)	$ (734,775)	$ 433,753	$ 8,032	$ 441,785										
Purchase and retirement of common stock	(135,416)	—	—	—	(1,200)	—	—	(1,200)	—	(1,200)										
Stock-based compensation	6,875	—	—	—	65	—	—	65	—	65										
Amortization of stock-based compensation	—	—	—	—	719	—	—	719	—	719										
Contributions from non-controlling interests	—	—	—	—	—	—	—	—	1,533	1,533										
Net income	—	—	—	—	—	—	5,673	5,673	(115)	5,558										

Distributions and accrual of cumulative preferred stock dividends	—	—	—	—	—	—	(4,856)	(4,856)	—	(4,856)
Amortization of terminated derivatives	—	—	—	—	—	397	—	397	—	397
Balance, June 30, 2023	8,517,595	$ 9	$ 5	$ 5	$ 1,174,094	$ (5,604)	$ (733,958)	$ 434,551	$ 9,450	$ 444,001
Purchase and retirement of common stock	(83,297)	(1)	—	—	(728)	—	—	(729)	—	(729)
Stock-based compensation	14,226	—	—	—	127	—	—	127	—	127
Amortization of stock-based compensation	—	—	—	—	482	—	—	482	—	482
Contributions from non-controlling interests	—	—	—	—	—	—	—	—	1,232	1,232
Net income	—	—	—	—	—	—	7,725	7,725	(158)	7,567
Distributions and accrual of cumulative preferred stock dividends	—	—	—	—	—	—	(4,855)	(4,855)	—	(4,855)

	Common Stock Shares	Common Stock Amount	Series C Preferred Stock	Series D Preferred Stock	Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Retained Earnings (Distributions in Excess of Earnings)	Total Stockholders' Equity	Non-Controlling Interest	Total Equity
Amortization of terminated derivatives	—	—	—	—	—	402	—	402	—	402
Balance, September 30, 2023	8,448,524	$ 8	$ 5	$ 5	$ 1,173,975	$ (5,202)	$ (731,088)	$ 437,703	$ 10,524	$ 448,227
Balance, March 31, 2024	7,685,300	$ 8	$ 5	$ 5	$ 1,165,999	$ (4,404)	$ (728,835)	$ 432,778	$ 10,387	$ 443,165

The accompanying notes are an integral part of these statements

(Back to Index)

(Back to Index)

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY - (Continued)
(in thousands, except share and per share data)
(unaudited)

Common Stock									
Shares	Amount	Series C Preferred Stock	Series D Preferred Stock	Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Retained Earnings (Distributions in Excess of Earnings)	Total Stockholders' Equity	Non-Controlling Interest	Total Equity

Balance, December 31, 2021	9,149,079	$ 9	$ 5	$ 5	$ 1,179,863	$ (8,127)	$ (723,560)	$ 448,195	$ —	$ 448,195
Offering costs	—	—	—	—	(37)	—	—	(37)	—	(37)
Purchase and retirement of common stock	(314,552)	—	—	—	(3,885)	—	—	(3,885)	—	(3,885)
Amortization of stock-based compensation	—	—	—	—	744	—	—	744	—	744
Net income	—	—	—	—	—	—	2,084	2,084	—	2,084
Distributions and accrual of cumulative preferred stock dividends	—	—	—	—	—	—	(4,855)	(4,855)	—	(4,855)
Amortization of terminated derivatives	—	—	—	—	—	456	—	456	—	456
Balance, March 31, 2022	8,834,527	$ 9	$ 5	$ 5	$ 1,176,685	$ (7,671)	$ (726,331)	$ 442,702	$ —	$ 442,702
Offering costs	—	—	—	—	(33)	—	—	(33)	—	(33)
Balance, December 31, 2022	8,708,100	$ 9	$ 5	$ 5	$ 1,174,202	$ (6,394)	$ (732,359)	$ 435,468	$ 5,846	$ 441,314

Purchase and retirement of common stock	(237,730)	—	—	—	(2,497)	—	—	(2,497)	—	(2,497)	(79,744)	—	—	—	(756)	—	—	(756)	—	(756)
Stock-based compensation	333,333	—	—	—	—	—	—	—	—	—	17,780	—	—	—	170	—	—	170	—	170
Amortization of stock-based compensation	—	—	—	—	991	—	—	991	—	991	—	—	—	—	894	—	—	894	—	894
Contributions from non-controlling interests	—	—	—	—	—	—	—	—	5,036	5,036	—	—	—	—	—	—	—	—	2,332	2,332
Net income	—	—	—	—	—	—	5,546	5,546	(24)	5,522	—	—	—	—	—	—	2,439	2,439	(146)	2,293
Distributions and accrual of cumulative preferred stock dividends	—	—	—	—	—	—	(4,856)	(4,856)	—	(4,856)	—	—	—	—	—	—	(4,855)	(4,855)	—	(4,855)
Amortization of terminated derivatives	—	—	—	—	—	461	—	461	—	461	—	—	—	—	—	393	—	393	—	393
Balance, June 30, 2022	8,930,130	$ 9	$ 5	$ 5	$ 1,175,146	$ (7,210)	$ (725,641)	$ 442,314	$ 5,012	$ 447,326										
Conversion of 4.5% convertible senior notes	—	—	—	—	4	—	—	4	—	4										

Exercise of warrants at $0.03 per share	74,666	—	—	—	2	—	—	2	—	2
Purchase and retirement of common stock	(198,427)	—	—	—	(1,812)	—	—	(1,812)	—	(1,812)
Amortization of stock-based compensation	—	—	—	—	913	—	—	913	—	913
Net income	—	—	—	—	—	—	5,568	5,568	(82)	5,486
Distributions and accrual of cumulative preferred stock dividends	—	—	—	—	—	—	(4,855)	(4,855)	—	(4,855)
Amortization of terminated derivatives	—	—	—	—	—	415	—	415	—	415
Balance, September 30, 2022	8,806,369	$ 9	$ 5	$ 5	$ 1,174,253	$ (6,795)	$ (724,928)	$ 442,549	$ 4,930	$ 447,479
Balance, March 31, 2023	8,646,136	$ 9	$ 5	$ 5	$ 1,174,510	$ (6,001)	$ (734,775)	$ 433,753	$ 8,032	$ 441,785

The accompanying notes are an integral part of these statements

(Back to Index)

(Back to Index)

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)

(unaudited)

	For the Nine Months Ended September 30,		For the Three Months Ended March 31,	
	2023	2022	2024	2023
CASH FLOWS FROM OPERATING ACTIVITIES:				
Net income	$ 15,418	$ 13,092	$ 4,924	$ 2,293
Adjustments to reconcile net income to net cash provided by operating activities:				
Provision for credit losses, net	9,779	1,342	4,896	5,096
Depreciation, amortization and accretion	3,996	7,091	1,563	1,371
Amortization of stock-based compensation	2,095	2,648	477	894
Loss on the extinguishment of debt	—	460		
Gain on conversion of real estate			(5,835)	—
Gain on sale of real estate	(745)	(1,870)	—	(745)
Changes in operating assets and liabilities	5,681	(3,761)	(2,690)	198
Net cash provided by operating activities	36,224	19,002	3,335	9,107
CASH FLOWS FROM INVESTING ACTIVITIES:				
Origination and purchase of loans	(75,002)	(543,783)	(11,406)	(29,559)
Principal payments received on loans and leases	194,856	299,885		
Principal payments received on loans			80,770	94,064
Investments in real estate	(27,434)	(75,273)	(14,543)	(8,918)
Proceeds from sale of real estate	14,309	18,729	—	14,309
Purchase of furniture and fixtures	—	(290)		
Principal payments received on loan - related party	225	225	50	75
Net cash provided by (used in) investing activities	106,954	(300,507)		
Net cash provided by investing activities			54,871	69,971
CASH FLOWS FROM FINANCING ACTIVITIES:				
Repurchase of common stock	(2,684)	(8,194)	(2,068)	(756)
Proceeds from issuance of preferred shares (net of $69 of underwriting discounts and offering costs)	—	(69)		
Proceeds from exercise of warrants	—	2		
Repurchase of preferred stock			(2,157)	—
Proceeds from borrowings:				
Senior secured financing facility	13,500	98,609		
Warehouse financing facilities and repurchase agreements	11,970	405,560	19,260	12,095
Mortgage payable	144	18,710		
Construction loans	6,106	—		
Mortgages payable			9,130	—
Payments on borrowings:				
Securitizations	(32,091)	(237,189)	(58,556)	—
Senior secured financing facility	(40,554)	(10,150)	—	(38,213)
Warehouse financing facilities and repurchase agreements	(89,704)	(94,569)	(22,391)	(29,450)

Convertible senior notes	—	(88,010)		
Payment of debt issuance costs	(4,891)	(646)	—	(3,787)
Proceeds received from non-controlling interests	5,097	5,036	180	2,332
Distributions paid on preferred stock	(14,566)	(14,566)	(4,855)	(4,855)
Net cash (used in) provided by financing activities	(147,673)	74,524		
NET DECREASE IN CASH AND CASH EQUIVALENTS AND RESTRICTED CASH	(4,495)	(206,981)		
Net cash used in financing activities			(61,457)	(62,634)
NET (DECREASE) INCREASE IN CASH AND CASH EQUIVALENTS AND RESTRICTED CASH			(3,251)	16,444
CASH AND CASH EQUIVALENTS AND RESTRICTED CASH AT BEGINNING OF PERIOD	104,811	283,931	91,886	104,810
CASH AND CASH EQUIVALENTS AND RESTRICTED CASH AT END OF PERIOD	$ 100,316	$ 76,950	$ 88,635	$ 121,254

The accompanying notes are an integral part of these statements

(Back to Index)

(Back to Index)

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

SEPTEMBER 30, 2023 MARCH 31, 2024

(unaudited)

NOTE 1 - ORGANIZATION

ACRES Commercial Realty Corp., a Maryland corporation, along with its subsidiaries (collectively, the “Company”), is a real estate investment trust (“REIT”) that is primarily focused on originating, holding and managing commercial real estate (“CRE”) mortgage loans and equity investments in commercial real estate properties through direct ownership and joint ventures. The Company’s manager is ACRES Capital, LLC (the “Manager”), a subsidiary of ACRES Capital Corp. (collectively, “ACRES”), a private commercial real estate lender exclusively dedicated to nationwide middle market CRE lending with a focus on multifamily, student housing, hospitality, office and industrial property in top United States (“U.S.”) markets.

The Company has qualified, and expects to qualify in the current fiscal year, as a REIT.

The Company conducts its operations through the use of subsidiaries that it consolidates into its financial statements. The Company’s core assets are consolidated through its investment in ACRES Realty Funding, Inc. (“ACRES RF”), a wholly-owned subsidiary that holds CRE loans, investments in commercial real estate properties and investments in CRE securitizations, which are consolidated as VIEs as discussed in Note 3.

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Principles of Consolidation

The accompanying consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the U.S. (“GAAP”). The consolidated financial statements include the accounts of the Company, majority-owned or controlled subsidiaries and VIEs for which the Company is considered the primary beneficiary. All inter-company transactions and balances have been eliminated in consolidation.

Basis of Presentation

All adjustments necessary to fairly present the Company's financial position, results of operations and cash flows have been made.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and within the period of financial results. Actual results could differ from those estimates. Estimates affecting the accompanying consolidated financial statements include, but are not limited to, the net realizable and fair values of the Company's investments and derivatives, the estimated useful lives used to calculate depreciation, the expected lives over which to amortize premiums and accrete discounts, reversals of or provisions for expected credit losses and the disclosure of contingent liabilities.

Cash and Cash Equivalents

Cash and cash equivalents include cash on hand and all highly liquid investments with original maturities of three months or less at the time of purchase. At September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, $60.9 82.0 million and $63.3 81.1 million, respectively, of the reported cash balances exceeded the Federal Deposit Insurance Corporation and Securities Investor Protection Corporation deposit insurance limits of $250,000 per respective depository or brokerage institution. However, all of the Company's cash deposits are held at multiple, established financial institutions, in multiple accounts associated with its parent and respective consolidated subsidiaries, to minimize credit risk exposure. The Company has not experienced, and does not expect, any losses on its cash and cash equivalents.

Restricted cash includes required account balance minimums primarily for the Company's CRE debt securitizations as well as cash held in the syndicated corporate loan collateralized debt obligations ("CDOs").

(Back to Index)

(Back to Index)

The following table provides a reconciliation of cash, cash equivalents and restricted cash on the consolidated balance sheets to the total amount shown on the consolidated statements of cash flows (in thousands):

	September 30,		March 31,	
	2023	2022	2024	2023
Cash and cash equivalents	$ 64,440	$ 60,971	$ 84,600	$ 87,314
Restricted cash	35,876	15,979	4,035	33,940
Total cash, cash equivalents and restricted cash shown on the Company's consolidated statements of cash flows	$ 100,316	$ 76,950	$ 88,635	$ 121,254

Investments in Real Estate

The Company depreciates investments in real estate and amortizes related intangible assets over the estimated useful lives of the assets as follows:

Category	Term
Building	35 to 40 years
Building improvements	8 to 35 years

Site improvements	10 years
Tenant improvements	Shorter of lease term or expected useful life
Furniture, fixtures and equipment	3 to 12 years
Right of use assets	7 to 94 years
Intangible assets	90 days to 18 years
Lease liabilities	7 to 94 years

Income Taxes

The Company recorded a full valuation allowance against its net deferred tax assets (tax effected expense of $20.8 21.1 million) at September 30, 2023 March 31, 2024, as the Company believes it is more likely than not that the deferred tax assets will not be realized. This assessment was based on the Company's cumulative historical losses and uncertainties as to the amount of taxable income that would be generated in future years by the Company's taxable REIT subsidiaries.

Earnings per Share

The Company presents both basic and diluted earnings per share ("EPS"). Basic EPS excludes dilution and is computed by dividing net income (loss) allocable to common shareholders by the weighted average number of shares outstanding for the period. Diluted EPS reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock, where such exercise or conversion would result in a lower EPS amount.

Reference Rate Reform Recent Accounting Standards

Historically, Accounting Standards to be Adopted in Future Periods

In November 2023, the Financial Accounting Standards Board ("FASB") issued guidance to improve reportable segment disclosure requirements, enhance interim disclosure requirements and provide new segment disclosure requirements for entities with a single reportable segment. The guidance is effective for fiscal years beginning after December 15, 2023, and for interim periods with fiscal years beginning after December 15, 2024. The guidance is applied retrospectively to all periods presented in the financial statements, unless it is impracticable. The Company is in the process of evaluating the impact of this guidance, however, the Company has used LIBOR as does not expect a material impact to its consolidated financial statements.

In December 2023, the benchmark interest rate FASB issued guidance to improve the transparency of income tax disclosures. This guidance is effective for its floating-rate whole loans fiscal years beginning after December 15, 2024 and is to be adopted on a prospective basis with the option to apply retrospectively. The Company is in the process of evaluating the impact of this guidance, however, the Company has been exposed does not expect a material impact to LIBOR through its floating-rate borrowings. In March 2021, the United Kingdom's, or U.K.'s, Financial Conduct Authority ("FCA") announced that it would cease publication of the one-week and the two-month USD LIBOR immediately after December 31, 2021 and cease publication of the remaining tenors immediately after June 30, 2023. In July 2021, the U.S. Federal Reserve, in conjunction with the Alternative Reference Rates Committee, a steering committee composed of large U.S. consolidated financial institutions, identified the Secured Overnight Financing Rate ("SOFR") as its preferred alternative rate for LIBOR.

Following this announcement, the Company began to transition the contractual benchmark rates of existing floating-rate whole loans and borrowings to alternate rates. At September 30, 2023, the Company's entire portfolio of floating rate whole loans and floating rate borrowings have transitioned to SOFR. statements.

(Back to Index)

(Back to Index)

Recent Accounting Standards

Accounting Standards Adopted in 2023

In March 2022, the Financial Accounting Standards Board ("FASB") issued an amendment eliminating certain previously issued accounting guidance for troubled-debt restructurings ("TDRs") and enhancing disclosure requirements surrounding refinancings, restructurings, and write-offs. Current GAAP provides an exception to the general recognition and measurement guidance for loan restructurings if they meet specific criteria to be considered TDRs. If a modification is a TDR, incremental expected losses are recorded in the allowance for credit losses upon modification and specific disclosures are required. The new amendment eliminates the TDR recognition and measurement guidance and requires the reporting entity to evaluate whether the modification represents a new loan or a continuation of an existing loan, consistent with accounting for other loan modifications. The amendment also requires public business entities to disclose current-period gross write-offs by year of origination for certain financing receivables and net investments in leases. The Company adopted this guidance during the nine months ended September 30, 2023 and the adoption did not have a material impact on the Company's consolidated financial statements.

NOTE 3 - VARIABLE INTEREST ENTITIES

The Company has evaluated its loans, investments in unconsolidated entities, liabilities to subsidiary trusts issuing preferred securities (consisting of unsecured junior subordinated notes), securitizations, guarantees and other financial contracts in order to determine if they are variable interests in VIEs. The Company regularly monitors these legal interests and contracts and, to the extent it has determined that it has a variable interest, analyzes the related entity for potential consolidation.

Consolidated VIEs (the Company is the primary beneficiary)

Based on management's analysis, the Company was the primary beneficiary of five two VIEs at both September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023 (collectively, the "Consolidated VIEs").

The Consolidated VIEs are CRE securitizations and CDOs that were formed on behalf of the Company to invest in real estate-related securities, commercial mortgage-backed securities ("CMBS"), syndicated corporate CRE whole loans and corporate bonds and that were financed by the issuance of debt securities. By financing these assets with long-term borrowings through the issuance of debt securities, the Company seeks to generate attractive risk-adjusted equity returns and to match the term of its assets and liabilities. The primary beneficiary determination for each of these VIEs was made at each VIE's inception and is continually assessed.

In April 2022, the Company contributed an initial investment of $13.0 million for a 72.1% interest in Charles Street-ACRES FSU Student Venture, LLC (the "FSU Student Venture"). The FSU Student Venture, a joint venture between the Company and two unrelated third parties, was formed for the purpose of developing a student housing project. The FSU Student Venture was determined not to be a VIE as there was sufficient equity at risk, it does not have disproportionate voting rights and its members all have the following characteristics: (1) the power to direct activities (2) the obligation to absorb losses and (3) the right to receive residual returns. However, the Company consolidated the FSU Student Venture due to its 72.1% interest that provides the Company with unilateral control over all major decisions of the joint venture. The portion of the joint venture that the Company does not own is presented as non-controlling interest at and for the periods presented in the Company's consolidated financial statements.

The Company has exposure to losses on its securitizations to the extent of its investments in the subordinated debt and preferred equity of each securitization. The Company is entitled to receive payments of principal and interest on the debt securities it holds and, to the extent revenues exceed debt service requirements and other expenses of the securitizations, distributions with respect to its preferred equity interests. As a result of consolidation, the debt and equity interests the Company holds in these securitizations have been eliminated; and the Company's consolidated balance sheets reflect the assets held, debt issued by the securitizations to third parties and any accrued payables to third parties. The Company's operating results and cash flows include the gross amounts related to the securitizations' assets and liabilities as opposed to the Company's net economic interests in the securitizations. Assets and liabilities related to the securitizations are disclosed, in the aggregate, on the Company's consolidated balance sheets. For a discussion of the debt issued through the securitizations, see Note 10.

(Back to Index)

(Back to Index)

Creditors of the Company's Consolidated VIEs have no recourse to the general credit of the Company, nor to each other. During the nine three months ended September 30, 2023 March 31, 2024 and 2022, 2023, the Company did not provide any financial support to any of its VIEs nor does it have any requirement to do so, although it may choose to do so in the future to maximize future cash flows on such investments by the Company. There are no explicit arrangements that obligate the Company to provide financial support to any of its Consolidated VIEs.

(Back to Index)

(Back to Index)

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)

MARCH 31, 2024

(unaudited)

The following table shows the classification and carrying values of assets and liabilities of the Company's Consolidated VIEs at September 30, 2023March 31, 2024 (in thousands):

	CRE Securitizations	Other	Total	
ASSETS				
Restricted cash	$ 34,752	$ 296	$ 35,048	$ 190
Accrued interest receivable	8,841	—	8,841	9,340
CRE loans, pledged as collateral (1)	1,430,820	—	1,430,820	1,409,013
Other assets	15	56	71	56
Total assets (2)	$ 1,474,428	$ 352	$ 1,474,780	$ 1,418,599
LIABILITIES				
Accounts payable and other liabilities	$ 179	$ —	$ 179	$ 142
Accrued interest payable	3,574	—	3,574	3,634
Borrowings	1,203,863	—	1,203,863	1,146,812
Total liabilities	$ 1,207,616	$ —	$ 1,207,616	$ 1,150,588

(1) Excludes allowance for credit losses.
(2) Assets of each of the Consolidated VIEs may only be used to settle the obligations of each respective VIE.

In April 2022, the Company contributed an initial investment of $13.0 million for a 72.1% interest in Charles Street-ACRES FSU Student Venture, LLC (the "FSU Student Venture"). The FSU Student Venture, a joint venture between the Company and two unrelated third parties, was formed for the purpose of developing a student housing project. The FSU Student Venture was determined not to be a VIE as there was sufficient equity at risk, it does not have disproportionate voting rights and its members all have the following characteristics: (1) the power to direct activities (2) the obligation to absorb losses and (3) the right to receive residual returns. However, the Company consolidated the FSU Student Venture due to its 72.1% interest that provides the Company with control over all major decisions of the joint venture. The portion of the joint venture that the Company does not own is presented as non-controlling interest at and for the periods presented in the Company's consolidated financial statements.

Unconsolidated VIEs (the Company is not the primary beneficiary, but has a variable interest)

Based on management's analysis, the Company is not the primary beneficiary of the VIEs discussed below since it does not have both (i) the power to direct the activities that most significantly impact the VIE's economic performance and (ii) the obligation to absorb the losses of the VIE or the right to receive the benefits from the VIE, which could be significant to the VIE. Accordingly, the following VIEs are not consolidated in the Company's financial statements at September 30, 2023March 31, 2024. The Company continuously reassesses whether it is deemed to be the primary beneficiary of its unconsolidated VIEs. The Company's maximum exposure to risk for each of these unconsolidated VIEs is set forth in the "Maximum Exposure to Loss" column in the table below.

Unsecured Junior Subordinated Debentures

The Company has a 100% interest in the common shares of each of Resource Capital Trust I ("RCT I") and RCC Trust II ("RCT II"), respectively, with a value of $1.5 million in the aggregate, or 3.0% of each trust, at September 30, 2023March 31, 2024. RCT I and RCT II were formed for the purposes of providing debt financing to the Company. The Company completed a qualitative analysis to determine whether it is the primary beneficiary of each of the trusts and determined that it was not the primary beneficiary of either trust because it does not have the power to direct the activities most significant to the trusts, which include the collection of principal and interest through servicing rights. Accordingly, neither trust is consolidated into the Company's consolidated financial statements.

The Company records its investments in RCT I and RCT II's common shares of $774,000 each as investments in unconsolidated entities using the cost method, recording dividend income when declared by RCT I and RCT II. The trusts each hold subordinated debentures for which the Company is the obligor in the amount of $25.8

million for each of RCT I and RCT II. The debentures were funded by the issuance of trust preferred securities of RCT I and RCT II.

(Back to Index)

(Back to Index)

65 E. Wacker Joint Venture, LLC

In March 2024, the Company contributed its interest in an East North Central office property to form a joint venture (the “Venture”) with an unrelated third-party (“Managing Member”) for the purpose of converting the office property to multifamily units. At the date of contribution, the office property had a fair value of $20.3 million. The Managing Member is responsible for the day-to-day operations of the Venture, but the Company and the Managing Member must each approve all major decisions related to the operations, financing or disposition of the Venture before any major decision can be taken. The Company accounts for its investment in the Venture as an equity method investment within investments in unconsolidated entities in its consolidated financial statements.

The following table shows the classification, carrying value and maximum exposure to loss with respect to the Company’s unconsolidated VIEs at September 30, 2023 March 31, 2024 (in thousands):

	Unsecured Junior Subordinated Debentures	Maximum Exposure to Loss	Unsecured Junior Subordinated Debentures	65 E Wacker Joint Venture, LLC	Total	Maximum Exposure to Loss
ASSETS						
Accrued interest receivable	$ 32	$ —	$ 31	$ —	$ 31	$ —
Investments in unconsolidated entities	1,548	$ 1,548	1,548	20,123	21,671	$ 21,671
Total assets	1,580		1,579	20,123	21,702	
LIABILITIES						
Accrued interest payable	425	N/A	416	—	416	N/A
Borrowings	51,548	N/A	51,548	—	51,548	N/A
Total liabilities	51,973		51,964	—	51,964	
Net (liability) asset	$ (50,393)		$ (50,385)	$ 20,123	$ (30,262)	

At September 30, 2023 March 31, 2024, there were no explicit arrangements or implicit variable interests that could require the Company to provide financial support to any of its unconsolidated VIEs.

NOTE 4 - SUPPLEMENTAL CASH FLOW INFORMATION

The following table summarizes the Company’s supplemental disclosure of cash flow information (in thousands):

	For the Nine Months Ended September 30,		For the Three Months Ended March 31,	
	2023	2022	2024	2023
Supplemental cash flows:				

Interest expense paid in cash	$ 94,433	$ 46,999	$ 32,045	$ 32,028
Income taxes paid in cash	101	180	83	101
Non-cash investing activities include the following:				
Proceeds from the receipt of deed-in-lieu of foreclosure	$ 20,900	$ 14,299		
Properties held for sale assets related to the receipt of deed-in-lieu of foreclosure	(20,900)	(14,299)		
Transfer of whole loan to investment in real estate			$ 20,123	$ —
Transfer of investment in real estate to investment in unconsolidated entities			(20,123)	—
Non-cash financing activities include the following:				
Incentive compensation paid in common stock	$ 362	$ —	$ 19	$ 170
Distributions on preferred stock accrued but not paid	3,262	3,262	3,229	3,262
Capitalized interest	766	—	643	—

[(Back to Index)](#)

[(Back to Index)](#)

NOTE 5 - LOANS

The following is a summary of the Company's CRE loans held for investment by asset type (dollars in thousands, except amounts in footnotes):

Description	Quantity	Principal	Unamortized (Discount) Premium, net (1)	Amortized Cost	Allowance for Credit Losses	Carrying Value	Contractual Interest Rates (2)	Maturity Dates (3)(4)	Quantity	Principal	Unamortized (Discount) Premium, net (1)	Amortized Cost	Allowance for Credit Losses	Carrying Value	Contractual Interest Rates (2)	Maturity Dates (3)(4)
At September 30, 2023:																
At March 31, 2024:																

Whole loans (5)(6)	74	$ 1,923,014	$ (7,509)	$ 1,915,505	$ (22,934)	$ 1,892,571	1M BR plus 2.86% to 1M BR plus 8.61%	December 2023 to July 2026	65	$ 1,774,901	$ (4,718)	$ 1,770,183	$ (28,953)	$ 1,741,230	1M BR plus 2.50% to 1M BR plus 8.61%	April 2024 to January 2027
Mezzanine loan (5)	1	4,700	—	4,700	(4,700)	—	10.00%	June 2028	1	4,700	—	4,700	(4,700)	—	10.00%	June 2028
Total		$ 1,927,714	$ (7,509)	$ 1,920,205	$ (27,634)	$ 1,892,571				$ 1,779,601	$ (4,718)	$ 1,774,883	$ (33,653)	$ 1,741,230		
At December 31, 2022:																
At December 31, 2023:																
Whole loans (5)(6)	81	$ 2,065,504	$ (12,614)	$ 2,052,890	$ (14,103)	$ 2,038,787	1M BR plus 2.85% to 1M BR plus 8.50%	January 2023 to July 2026	69	$ 1,858,265	$ (5,872)	$ 1,852,393	$ (24,057)	$ 1,828,336	1M BR plus 2.50% to 1M BR plus 8.61%	January 2024 to January 2027
Mezzanine loan (5)	1	4,700	—	4,700	(4,700)	—	10.00%	June 2028	1	4,700	—	4,700	(4,700)	—	10.00%	June 2028

Total	$ 2,070,204	$ (12,614)	$ 2,057,590	$ (18,803)	$ 2,038,787	$ 1,862,965	$ (5,872)	$ 1,857,093	$ (28,757)	$ 1,828,336

(1) Amounts include unamortized loan origination fees of $7.3 4.2 million and $12.3 5.8 million and deferred amendment fees of $198,000 509,000 and $308,000 110,000 at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.

(2) Benchmark rates ("BR") comprise one-month LIBOR or one-month Term SOFR. At September 30, 2023, all of the Company's whole loans used one-month Term SOFR. Secured Overnight Financing Rate ("SOFR"). Weighted-average one-month benchmark rates were 5.37 5.36% and 4.21 5.39% at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively. Additionally, weighted-average benchmark rate floors were 0.68 0.74% and 0.70% at both September 30, 2023 March 31, 2024 and December 31, 2022. December 31, 2023, respectively.

(3) Maturity dates exclude contractual extension options, subject to the satisfaction of certain terms that may be available to the borrowers.

(4) Maturity dates exclude four two and three whole loans, with amortized costs of $47.8 27.2 million and $51.6 41.2 million, in maturity default at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.

(5) Substantially all loans are pledged as collateral under various borrowings at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023.

(6) CRE whole loans had $118.8 97.4 million and $158.2 109.4 million in unfunded loan commitments at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively. These unfunded loan commitments are advanced as the borrowers formally request additional funding and meet certain benchmarks, as permitted under the loan agreement, and any necessary approvals have been obtained.

(Back to Index)

(Back to Index)

The following is a summary of the Company's CRE loans held for investment by property type and geographic location (dollars in thousands):

	September 30, 2023		December 31, 2022		March 31, 2024		December 31, 2023	
Property Type	**Carrying Value**	**% of Loan Portfolio**	**Carrying Value**	**% of Loan Portfolio**	**Carrying Value**	**% of Loan Portfolio**	**Carrying Value**	**% of Loan Portfolio**
Multifamily	$ 1,443,261	76.3 %	$ 1,531,697	75.2 %	$ 1,379,326	79.1 %	$ 1,453,681	79.6 %

	September 30, 2023		December 31, 2022		March 31, 2024		December 31, 2023	
Office (1)(2)	247,062	13.1%	269,201	13.2%	234,612	13.5%	247,410	13.5%
Hotel	146,144	7.7%	178,160	8.7%	70,792	4.1%	70,857	3.9%
Self-Storage	48,079	2.5%	51,704	2.5%	48,475	2.8%	48,363	2.6%
Retail (3)	8,025	0.4%	8,025	0.4%	8,025	0.5%	8,025	0.4%
Total	$ 1,892,571	100%	$ 2,038,787	100%	$ 1,741,230	100%	$ 1,828,336	100%

(1) Includes three one and two whole loans in maturity default with carrying values of $39.7 19.1 million and $42.5 33.1 million at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.

(2) Includes one mezzanine loan with a par value of $4.7 million that is fully reserved at both September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023.

(3) Comprises one whole loan in maturity default at both September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023.

	September 30, 2023		December 31, 2022		March 31, 2024		December 31, 2023	
Geographic Location	Carrying Value	% of Loan Portfolio	Carrying Value	% of Loan Portfolio	Carrying Value	% of Loan Portfolio	Carrying Value	% of Loan Portfolio
Southwest (1)	$ 458,684	24.2%	$ 472,327	23.2%	$ 465,348	26.7%	$ 484,902	26.6%
Southeast	411,790	21.8%	438,403	21.5%	367,216	21.1%	401,624	22.0%
Mountain	274,609	14.5%	329,828	16.2%	275,983	15.8%	275,120	15.0%
Mid Atlantic	242,853	12.8%	248,740	12.2%	236,262	13.6%	236,104	12.9%
Pacific	171,911	9.1%	191,706	9.4%	167,904	9.6%	169,789	9.3%
Northeast (2)	181,510	9.6%	170,236	8.3%	142,797	8.2%	161,172	8.8%

East North Central (3)	87,163	4.6 %	125,211	6.1 %	46,312	2.7 %	60,401	3.3 %
West North Central	64,051	3.4 %	62,336	3.1 %	39,408	2.3 %	39,224	2.1 %
Total	$ 1,892,571	100 %	$ 2,038,787	100 %	$ 1,741,230	100 %	$ 1,828,336	100 %

(1) Includes one whole loan in maturity default with a carrying values value of $20.1 million and $20.7 19.1 million at September 30, 2023 both March 31, 2024 and December 31, 2022, respectively. December 31, 2023.

(2) Includes two and one whole loans loan in maturity default with a carrying values of $13.7 million and $8.0 million at September 30, 2023 both March 31, 2024 and December 31, 2022, respectively. December 31, 2023. Also includes one mezzanine loan with a par value of $4.7 million that is fully reserved at both September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023.

(3) Includes one whole loan in maturity default with a carrying value of $13.9 million at September 30, 2023 and one whole loan in maturity default with a carrying value of $21.7 14.0 million at December 31, 2022 December 31, 2023.

(Back to Index)

(Back to Index)

The following is a summary of the contractual maturities of the Company's CRE loans held for investment, at amortized cost (in thousands, except amounts in the footnotes):

Description	2023	2024	2025 and Thereafter	Total	2024	2025	2026 and Thereafter	Total
At September 30, 2023:								

Description	2023	2024	2025 and Thereafter	Total	2024	2025	2026 and Thereafter	Total
At March 31, 2024:								
Whole loans (1)	$ 66,932	$ 930,439	$ 870,298	$ 1,867,669	$ 762,750	$ 813,334	$ 166,946	$ 1,743,030
Mezzanine loan	—	—	4,700	4,700	—	—	4,700	4,700
Total CRE loans (2)	$ 66,932	$ 930,439	$ 874,998	$ 1,872,369	$ 762,750	$ 813,334	$ 171,646	$ 1,747,730
At December 31, 2022:								
At December 31, 2023:								
Whole loans (1)	$ 268,120	$ 882,175	$ 851,031	$ 2,001,326	$ 916,985	$ 814,772	$ 79,484	$ 1,811,241
Mezzanine loan	—	—	4,700	4,700	—	—	4,700	4,700
Total CRE loans (2)	$ 268,120	$ 882,175	$ 855,731	$ 2,006,026	$ 916,985	$ 814,772	$ 84,184	$ 1,815,941

(1) Maturity dates exclude four two and three whole loans, with amortized costs of $47.8 27.2 million and $51.6 41.2 million, in maturity default at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.

(2) At September 30, 2023 March 31, 2024, the amortized costs of the floating-rate CRE whole loans, summarized by contractual maturity assuming full exercise of the extension options, were $44.8 33.3 million, $74.8 101.6 million and $1.7 1.6 billion in 2023, 2024, 2025 and 2025 2026 and thereafter, respectively. At December 31, 2022 December 31, 2023, the amortized costs of the floating-rate CRE whole loans, summarized by contractual maturity assuming full exercise of the extension options, were $113.8 80.4 million, $68.6 101.7 million and $1.8 1.6 billion in 2023, 2024, 2025 and 2025 2026 and thereafter, respectively.

At September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, no single loan or investment represented more than 10% of the Company's total assets, and no single investment group generated over 10% of the Company's revenue.

Principal Paydowns Receivable

Principal paydowns receivable represents loan principal payments that have been received by the Company's servicers and trustees but have not been remitted to the Company. At both September 30, 2023 and December 31, 2022, the Company had no loan principal paydowns receivable.

NOTE 6 - FINANCING RECEIVABLES

The following table shows the activity in the allowance for credit losses for the nine three months ended September 30, 2023 March 31, 2024 and the year ended December 31, 2022 December 31, 2023 (in thousands):

	Nine Months Ended September 30, 2023	Year Ended December 31, 2022	Three Months Ended March 31, 2024	Year Ended December 31, 2023
Allowance for credit losses at beginning of period	$ 18,803	$ 8,805	$ 28,757	$ 18,803
Provision for credit losses	9,779	12,295	4,896	10,902
Charge offs	(948)	(2,297)	—	(948)
Allowance for credit losses at end of period	$ 27,634	$ 18,803	$ 33,653	$ 28,757

During the three and nine months ended September 30, 2023 March 31, 2024, the Company recorded provisions a provision for expected credit losses of $2.0 4.9 million, and $9.8 million, respectively, primarily driven by increased modeled portfolio credit risk related to ongoing macroeconomic uncertainty in the commercial real estate market.

In June 2023, the Company received the deed-in-lieu of foreclosure on an office loan in the East North Central region with a principal balance of $22.8 million which resulted in a charge off of $948,000 against the allowance for credit losses (see Note 7).

(Back to Index)

(Back to Index)

(unaudited)

During the three and nine months ended September 30, 2022, the Company recorded provisions for expected credit losses of $2.6 million and $1.3 million, respectively, primarily attributable to the negative impact of worsening macroeconomic factors focused on increases in inflation, energy costs and due to higher interest rates and to a lesser extent, lasting longer than expected, compounded by an increase in portfolio modeled credit risk indicated in from the expected worsening of property-level cash flows that collateralize the Company's CRE loan portfolio. performance.

At September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, the Company individually evaluated the following loans for impairment:

- One office mezzanine loan in the Northeast region with a principal balance of $4.7 million at both September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023. The Company fully reserved this loan in the fourth quarter of 2022, and it continues to be fully reserved at September 30, 2023 March 31, 2024. The loan entered payment default in February 2023 and has been placed on nonaccrual status.

(Back to Index)

(Back to Index)

- One retail loan in the Northeast region, with a principal balance of $8.0 million at both September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, for which foreclosure was determined to be probable. The loan was modified in February 2021 to extend its maturity to December 2021. In December 2021, this loan entered payment default and was placed on nonaccrual status. The borrower filed for bankruptcy in 2023 and the property was sold to a third-party bidder at auction in February 2024. The sale closed subsequent to March 31, 2024, at a purchase price of $8.3 million. Both the sale price and the as-is appraised value were in excess of its principal, and, as such, the loan had no allowance for CECL at both March 31, 2024 and December 31, 2023.
- One office loan in the Southwest region, with a principal balance of $19.1 million at both March 31, 2024 and December 31, 2023, for which foreclosure was determined to be probable. The loan had an initial maturity of March 2022 and was modified three times to extend its maturity to June 2022. The loan has since entered into payment default and has been put placed on nonaccrual status. However, in exchange for payments, comprising principal paydowns, interest payments and the reimbursement of certain legal fees, received between October 2022 and May 2024, the Company agreed to temporarily defer its right to foreclose on the property until August 2024. Additionally, at both March 31, 2024 and December 31, 2023, this loan had an as-is appraised value in excess of its principal, and, as such, had no CECL allowance. Subsequent to March 31, 2024, the loan was paid down by $4.7 million from a combination of excess operating cash flow and principal payments received in accordance with the executed forbearance agreements.

Also, at December 31, 2023, the Company had individually evaluated one additional loan:

- One office loan in the East North Central region with a principal balance of $14.0 million at December 31, 2023. During the year ended December 31, 2023, the loan entered into payment default and was placed on nonaccrual status. The loan had an as-is appraised value in excess of its principal and interest balances, and, as such, had no allowance for CECL at September 30, 2023 December 31, 2023. In March 2024, the Company accepted the deed-in-lieu of foreclosure in full satisfaction of the loan and December 31, 2022, respectively. recognized a $

•One 5.8 office loan in million gain upon conversion based on the Southwest region, with a principal balance property's fair value of $20.1 20.3 million and $20.7 million at September 30, 2023 and December 31, 2022, respectively, for which foreclosure million. Upon receipt, the property was determined immediately contributed to be probable. The loan had an initial maturity of March 2022, was modified three times to extend its maturity to June 2022 and has since entered into payment default and has been put on nonaccrual status. However, in exchange for payments, comprising principal paydowns, interest payments a joint venture, and the reimbursement of certain legal fees, received between October 2022 and October 2023, the Company has agreed to temporarily defer its right to foreclose Company's investment in that joint venture is included in investments in unconsolidated entities on the property until January 2024. Additionally, at both September 30, 2023 and December 31, 2022, this loan had an as-is appraised value in excess of its principal and interest balances, and, as such, had no CECL allowance. consolidated balance sheet (see Note 3).

Credit quality indicators

Commercial Real Estate Loans

CRE loans are collateralized by a diversified mix of real estate properties and are assessed for credit quality based on the collective evaluation of several factors, including but not limited to: collateral performance relative to underwritten plan, time since origination, current implied and/or re-underwritten loan-to-collateral value ("LTV") ratios, loan structure and exit plan. Depending on the loan's performance against these various factors, loans are rated on a scale from 1 to 5, with loans rated 1 representing loans with the highest credit quality and loans rated 5 representing loans with the lowest credit quality. The factors evaluated provide general criteria to monitor credit migration in the Company's loan portfolio; as such, a loan's rating may improve or worsen, depending on new information received.

(Back to Index)

(Back to Index)

The criteria set forth below should be used as general guidelines. Therefore, not every loan will have all of the characteristics described in each category below.

Risk Rating	Risk Characteristics
1	• Property performance has surpassed underwritten expectations. • Occupancy is stabilized, the property has had a history of consistently high occupancy, and the property has a diverse and high-quality tenant mix.
2	• Property performance is consistent with underwritten expectations and covenants and performance criteria are being met or exceeded. • Occupancy is stabilized, near stabilized or is on track with underwriting.
3	• Property performance lags behind underwritten expectations. • Occupancy is not stabilized and the property has some tenancy rollover.
4	• Property performance significantly lags behind underwritten expectations. Performance criteria and loan covenants have required occasional waivers. • Occupancy is not stabilized and the property has a large amount of tenancy rollover.
5	• Property performance is significantly worse than underwritten expectations. The loan is not in compliance with loan covenants and performance criteria and may be in default. Expected sale proceeds would not be sufficient to pay off the loan at maturity. • The property has a material vacancy rate and significant rollover of remaining tenants. • An updated appraisal is required upon designation and updated on an as-needed basis.

All CRE loans are evaluated for any credit deterioration by debt asset management and certain finance personnel on at least a quarterly basis. Mezzanine loans may experience greater credit risks due to their nature as subordinated investments.

For the purpose of calculating the quarterly provision for credit losses under CECL, the Company pools CRE loans based on the underlying collateral property type and utilizes a probability of default and loss given default methodology for approximately one year after which it immediately reverts to a historical mean loss ratio.

Credit risk profiles of CRE loans at amortized cost were as follows (in thousands, except amounts in the footnote):

	Ratin g 1	Rating 2	Rating 3	Rating 4	Rating 5	Total (1)	Rating 1	Rating 2	Rating 3	Rating 4	Rating 5	Total (1)
At September 30, 2023:												

At March 31, 2024:												
Whole loans, floating-rate	$ —	$ 1,049,699	709,481	$ 128,161	$ 28,164	$ 1,915,505	$ 74,551	$ 857,411	540,835	$ 270,234	$ 27,152	$ 1,770,183
Mezzanine loan	—	—	—	—	4,700	4,700	—	—	—	—	4,700	4,700
Total	$ —	$ 1,049,699	$ 709,481	$ 128,161	$ 32,864	$ 1,920,205	$ 74,551	$ 857,411	$ 540,835	$ 270,234	$ 31,852	$ 1,774,883
At December 31, 2022:												
At December 31, 2023:												
Whole loans, floating-rate	$ —	$ 1,635,376	$ 309,491	$ 85,226	$ 22,797	$ 2,052,890	$ —	$ 973,424	$ 581,032	$ 256,785	$ 41,152	$ 1,852,393
Mezzanine loan	—	—	—	—	4,700	4,700	—	—	—	—	4,700	4,700
Total	$ —	$ 1,635,376	$ 309,491	$ 85,226	$ 27,497	$ 2,057,590	$ —	$ 973,424	$ 581,032	$ 256,785	$ 45,852	$ 1,857,093

(1) The total amortized cost of CRE whole loans excluded accrued interest receivable of $12.4 million and $11.9 11.8 million at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.

(Back to Index)

(Back to Index)

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
SEPTEMBER 30, 2023 MARCH 31, 2024
(unaudited)

Credit risk profiles of CRE loans by origination year at amortized cost were as follows (in thousands, except amounts in the footnotes):

	2023	2022	2021	2020	2019	Prior	Total (1)	2024	2023	2022	2021	2020	Prior	Total (1)
At September 30, 2023:														

At March 31, 2024:														
Whole loans, floating-rate: (2)														
Rating 1								$ —	$ —	$ —	$ 74,551	$ —	$ —	$ 74,551
Rating 2	$ 38,021	$ 307,911	$ 634,477	$ 52,711	$ 16,579	$ —	$ 1,049,699	—	47,756	189,986	546,471	56,671	16,527	857,411
Rating 3	—	183,713	455,756	34,269	22,083	13,660	709,481	—	15,771	197,128	316,817	—	11,119	540,835
Rating 4	—	33,605	44,035	—	5,672	44,849	128,161	—	—	83,985	135,735	—	50,514	270,234
Rating 5	—	—	—	—	20,139	8,025	28,164	—	—	—	—	—	27,152	27,152
Total whole loans, floating-rate	38,021	525,229	1,134,268	86,980	64,473	66,534	1,915,505	—	63,527	471,099	1,073,574	56,671	105,312	1,770,183
Mezzanine loan (rating 5)	—	—	—	—	—	4,700	4,700	—	—	—	—	—	4,700	4,700
Total	$ 38,021	$ 525,229	$ 1,134,268	$ 86,980	$ 64,473	$ 71,234	$ 1,920,205	$ —	$ 63,527	$ 471,099	$ 1,073,574	$ 56,671	$ 110,012	$ 1,774,883
Current Period Gross Write-Offs	$ —	$ —	$ —	$ —	$ (948)	$ —	$ (948)	$ —	$ —	$ —	$ —	$ —	$ —	$ —
	2022	**2021**	**2020**	**2019**	**2018**	**Prior**	**Total (1)**							

								2023	2022	2021	2020	2019	Prior	Total (1)
At December 31, 2022:														
At December 31, 2023:														
Whole loans, floating-rate: (2)														
Rating 2	$ 526,606	$ 1,003,060	$ 64,944	$ 26,977	$ 13,789	$ —	$ 1,635,376	$ 63,634	$ 212,175	$ 636,487	$ 22,556	$ 38,572	$ —	$ 973,424
Rating 3	—	192,490	44,657	27,881	44,463	—	309,491	—	168,791	364,369	34,232	—	13,640	581,032
Rating 4	—	—	—	20,742	64,484	—	85,226	—	82,918	123,333	—	5,645	44,889	256,785
Rating 5	—	—	—	22,797	—	—	22,797	—	14,000	—	—	19,127	8,025	41,152
Total whole loans, floating-rate	526,606	1,195,550	109,601	98,397	122,736	—	2,052,890	63,634	477,884	1,124,189	56,788	63,344	66,554	1,852,393
Mezzanine loan (rating 5)	—	—	—	—	4,700	—	4,700	—	—	—	—	—	4,700	4,700
Total	$ 526,606	$ 1,195,550	$ 109,601	$ 98,397	$ 127,436	$ —	$ 2,057,590	$ 63,634	$ 477,884	$ 1,124,189	$ 56,788	$ 63,344	$ 71,254	$ 1,857,093

Current Period Gross Write-Offs	$ —	$ —	$ —	$ —	$ (948)	$ —	$ (948)

(1) The total amortized cost of CRE whole loans excluded accrued interest receivable of $12.4 million and $11.9 11.8 million at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.
(2) Acquired CRE whole loans are grouped within each loan's year of origination.

At both September 30, 2023 and December 31, 2022, the The Company had has one additional mezzanine loan that was included in other assets held for sale, that and such loan had no carrying value. value at both March 31, 2024 and December 31, 2023.

(Back to Index)

(Back to Index)

Loan Portfolio Aging Analysis

The following table presents the CRE loan portfolio aging analysis at the dates indicated for CRE loans at amortized cost (in thousands, except amounts in footnotes):

	30-59 Days	60-89 Days	Greater than 90 Days (1)	Total Past Due	Current (2)	Total Loans Receivable (3)	Total Loans > 90 Days and Accruing	30-59 Days	60-89 Days	Greater than 90 Days (1)	Total Past Due	Current	Total Loans Receivable (2)	Total Loans > 90 Days and Accruing
At September 30, 2023:														
At March 31, 2024:														
Whole loans, floating-rate	$ 5,672	$ —	$ 28,164	$ 33,836	$ 1,881,669	$ 1,915,505	$ —	$ —	$ —	$ 27,152	$ 27,152	$ 1,743,031	$ 1,770,183	$ 19,127
Mezzanine loan (4)	4,700	—	—	4,700	—	4,700	—							
Mezzanine loan (3)								—	—	4,700	4,700	—	4,700	—

Total	$ 10,372	$ —	$ 28,164	$ 38,536	$ 1,881,669	$ 1,920,205	$ —	$ —	$ —	$ 31,852	$ 31,852	$ 1,743,031	$ 1,774,883	$ 19,127
At December 31, 2022:														
At December 31, 2023:														
Whole loans, floating-rate	$ —	$ —	$ 28,767	$ 28,767	$ 2,024,123	$ 2,052,890	$ —	$ —	$ —	$ 41,152	$ 41,152	$ 1,811,241	$ 1,852,393	$ 19,127
Mezzanine loan (4)	—	—	—	—	4,700	4,700	—							
Mezzanine loan (3)								—	—	4,700	4,700	—	4,700	—
Total	$ —	$ —	$ 28,767	$ 28,767	$ 2,028,823	$ 2,057,590	$ —	$ —	$ —	$ 45,852	$ 45,852	$ 1,811,241	$ 1,857,093	$ 19,127

(1) During the three and nine months ended September 30, 2023, March 31, 2024 and 2023, the Company recognized interest income of $806,000 665,000 and $2.6 917,000 million, , respectively, on two one CRE whole loans loan with a principal payment past due greater than 90 days at September 30, 2023. During the three and nine months ended September 30, 2022, the Company recognized interest income of $409,000 and $1.1 million, respectively, on two CRE whole loans with a principal payment past due greater than 90 days at September 30, 2023 March 31, 2024.

(2) Includes one CRE whole loan with an amortized cost of $14.0 million in maturity default at September 30, 2023 and one CRE whole loan with an amortized cost of $22.8 million in maturity default at December 31, 2022.

(3) The total amortized cost of CRE whole loans excluded accrued interest receivable of $12.4 million and $11.9 11.8 million at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.

(4) (3) Fully reserved at both September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023.

At September 30, 2023 March 31, 2024 and December 31, 2023, the Company had four two and three CRE whole loans, with total amortized costs of $47.8 27.2 million and $41.2 million, respectively, and one mezzanine loan, with a total amortized cost of $4.7 million, in payment default. At September 30, 2023

Loan Modifications

The Company is required to disclose modifications where it determined the borrower is experiencing financial difficulty and modified the agreement to: (i) forgive principal, (ii) reduce the interest rate, (iii) cause an other-than-insignificant payment delay, (iv) extend the loan term, or (v) any combination thereof.

During the three months ended March 31, 2024, the Company had entered into the following one two CRE whole loan modifications that required disclosure:

- A multifamily loan with a an amortized cost of $52.8 million, representing 3.0% of the total amortized cost of the portfolio, was modified to: (i) extend its maturity from June 2025 to June 2026, (ii) reduce its current interest rate from BR + 3.70% to BR + 1.70%, and (iii) defer interest of 2.00% that will be due at payoff. In connection with the modification, the borrower funded additional capital into the project for interest reserves to cover debt service.
- A multifamily loan with an amortized cost of $44.8 44.1 million, that was placed on nonaccrual status. At December 31, 2022, representing 2.5% of the Company had three CRE whole loans, with total amortized costs cost of $ the portfolio, was modified to: (i) reduce its current pay interest rate from BR + 51.6 3.31 million, in payment default. % to a

  Modifications 5.00

  % fixed rate and (ii) defer the unpaid interest that will be due at loan payoff. In connection with the modification, the borrower funded additional capital into the project for interest reserves to cover debt service.

During the nine three months ended September 30, 2023 March 31, 2023, the Company did not enter into any loan modifications for borrowers that are were experiencing financial difficulty. During the nine months ended September 30, 2022, the Company entered into three agreements that extended one CRE whole loan for a borrower experiencing financial difficulty. At September 30, 2022, this loan had an amortized cost of $21.8 million, which represented 1.0% of the total amortized cost of the portfolio.

NOTE 7 - INVESTMENTS IN REAL ESTATE AND OTHER ACQUIRED ASSETS AND ASSUMED LIABILITIES

At September 30, 2023March 31, 2024, the Company held investments in six real estate properties, four of which are included in investments in real estate, and two of which are included in properties held for sale on the consolidated balance sheets.

In February 2023, the Company sold a hotel property in the Northeast region that was previously designated as a property held for sale. The hotel property sold for $15.1 million with selling costs of $845,000, resulting in a gain of $745,000.

(Back to Index)

(Back to Index)

In June 2023, the Company received the deed-in-lieu of foreclosure on an office property in the East North Central region. The Company determined that the acquisition of the property should be accounted for as an asset acquisition, and the acquisition-date fair value of $20.9 million was determined using a third-party valuation. Additionally on the date of transfer, the Company acquired cash and receivables and assumed trade payables, resulting in a charge off of the loan against the Company's allowance for credit losses of $948,000. At September 30, 2023, the property was reported as property held for sale on the consolidated balance sheets.

(Back to Index)

(Back to Index)

The following table summarizes the book value of the Company's investments in real estateacquired assets and properties held for saleassumed liabilities (in thousands, except amounts in the footnotes):

	September 30, 2023			December 31, 2022			March 31, 2024			December 31, 2023		
	Cost Basis	Accumulated Depreciation & Amortization	Carrying Value	Cost Basis	Accumulated Depreciation & Amortization	Carrying Value	Cost Basis	Accumulated Depreciation & Amortization	Carrying Value	Cost Basis	Accumulated Depreciation & Amortization	Carrying Value
Assets:												
Assets acquired:												
Investments in real estate, equity:												

Investments in real estate (1)	$ 153,522	$ (4,342)	$ 149,180	$ 123,219	$ (2,251)	$ 120,968	$ 177,032	$ (5,748)	$ 171,284	$ 162,662	$ (5,041)	$ 157,621
Right of use assets (2)(3)	19,664	(410)	19,254	19,664	(205)	19,459	19,664	(545)	19,119	19,664	(478)	19,186
Intangible assets (4)	11,474	(3,349)	8,125	11,474	(2,594)	8,880	11,474	(3,836)	7,638	11,474	(3,592)	7,882
Subtotal	184,660	(8,101)	176,559	154,357	(5,050)	149,307	208,170	(10,129)	198,041	193,800	(9,111)	184,689
Investments in real estate from lending activities:												
Properties held for sale (5)	62,163	—	62,163	53,769	—	53,769	62,986	—	62,986	62,605	—	62,605
Total	246,823	(8,101)	238,722	208,126	(5,050)	203,076	271,156	(10,129)	261,027	256,405	(9,111)	247,294
Liabilities:												
Liabilities assumed:												
Investments in real estate, equity:												

Mortgage payable	18,233	311	18,544	18,089	155	18,244						
Construction loans payable	34,210	810	5,020	—	—	—						
Mortgage payables							49,427	1,848	51,275	40,297	1,489	41,786
Other liabilities	247	(210)	37	247	(183)	64	247	(229)	18	247	(220)	27
Lease liabilities (3)(6)	43,261	109	43,370	43,260	(393)	42,867	43,712	—	43,712	43,538	—	43,538
Subtotal	65,951	1,020	66,971	61,596	(421)	61,175	93,386	1,619	95,005	84,082	1,269	85,351
Investments in real estate from lending activities:												
Liabilities held for sale (7)	3,025	—	3,025	3,025	—	3,025	3,073	—	3,073	3,025	—	3,025
Total	68,976	1,020	69,996	64,621	(421)	64,200	96,459	1,619	98,078	87,107	1,269	88,376
Total net investments in real estate and properties held for sale (8)	$ 177,847		$ 168,726	$ 143,505		$ 138,876	$ 174,697		$ 162,949	$ 169,298		$ 158,918

(1) Includes $38.4 million of land, which is not depreciable, at September 30, 2023 both March 31, 2024 and December 31, 2022, respectively. December 31, 2023. Also includes $35.8 59.1 million and $44.9 million of construction in progress, which is also not depreciable until placed in service, at September 30, 2023. There was no construction in progress at December 31, 2022. March 31, 2024 and December 31, 2023, respectively.

(2) Primarily comprises comprised a $18.9 18.8 million and $19.2 million right of use asset, at March 31, 2024 and December 31, 2023, respectively, associated with an acquired the ground lease of $42.8 million (see below) accounted for disclosed at footnote (6) below as an operating lease at September 30, 2023. At December 31, 2022, the value of the right of use asset was $19.0 million associated to the ground lease with a value of $42.4 million. lease. Amortization is booked to real estate expenses on the consolidated statements of operations.

(3) Refer to Note 8 for additional information on the Company's remaining operating leases.

(4) Primarily comprises comprised a franchise intangible of $4.8 4.5 million and $5.3 4.7 million, a management contract intangible of $3.0 million and $3.1 2.9 million and a customer list intangible of $268,000 179,000 and $427,000 223,000, at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.

(5) At December 31, 2022 March 31, 2024 and December 31, 2023, properties held for sale included two properties originally a hotel acquired via deed-in-lieu of foreclosure in November 2020, and July 202 September 30, 2023, properties held for sale included the November 2020 acquisition, as well as the an office property acquired via deed-in-lieu of foreclosure in June 2023.

(6) Primarily comprises comprised a $42.8 43.4 million ground lease with a remaining term of 93 92 years. years at March 31, 2024. Lease expense for the nine months ended September 30, 2023 was $2.0 680,000 million. and $661,000 for the three months ended March 31, 2024 and 2023, respectively.

(7) Comprises Comprised an operating lease liability.

(8) Excludes items of working capital, either acquired or assumed.

(Back to Index)

(Back to Index)

The Company acquired a ground lease with its equity investment in a hotel property in April 2022. This ground lease has an associated above-market lease intangible liability. The ground lease confers the Company the right to use the land on which its hotel operates, and the ground lease payments increase 3.00% per year until 2116. The Company acquired the original 99-year lease with 94 years remaining during the second quarter of 2022. remaining. At September 30, 2023 March 31, 2024, 93 92 years remain in its term.

(Back to Index)

(Back to Index)

The the Company recorded lease payments of $439,000 and $1.3 426,000 million for the three and nine months ended September 30, 2023, respectively, and $426,000 and $839,000 for the three and nine months ended September 30, 2022, respectively. The Company recorded amortization of $51,000 and $153,000 during the three and nine months ended September 30, 2023, respectively, related to the right of use asset and accretion of $620,000 51,000 and $1.8 million during the three and nine months ended September 30, 2023, respectively, and accretion related to its ground lease liability. The Company recorded amortization liability of $51,000 629,000 and $102,000 610,000 during the three and nine months ended September 30, 2022, respectively, related to the right of use asset and accretion of $114,000 and $228,000 during the three and nine months ended September 30, 2022, respectively, related to its ground lease liability. respectively.

During the three and nine months ended September 30, 2023, March 31, 2024 and 2023, the Company recorded amortization expense of $252,000 243,000 and $755,000 252,000, respectively, on its intangible assets. During the three and nine months ended September 30, 2022, the Company recorded amortization expense of $300,000 and $1.7 million, respectively, on its intangible assets. The Company expects to record additional amortization expense of $243,000 718,000 during the remainder of fiscal year 2023. 2024. The Company also expects to record amortization expense of $961,000 793,000, $793,000 748,000, $748,000, $748,000, and $748,000 during the 2024, 2025, 2026, 2027, 2028 and 2028 2029 fiscal years, respectively, on its intangible assets.

NOTE 8 - LEASES

In addition to the ground lease discussed in Note 7, the Company has operating leases for office space and office equipment. The leases have terms that expire between January 2024February and September 2029. The leases on the office space and office equipment contain options for early termination granted to the Company and the lessor. Lease payments are determined as follows:

- Office space: payments are made on a fixed schedule, escalating annually, and also include the Company's responsibility for a percentage of increases in building's property taxes and operating expenses over the base year.
- Office equipment: payments are made on a fixed schedule.

The following table summarizes the Company's operating leases (in thousands):

	September 30, 2023	December 31, 2022	March 31, 2024	December 31, 2023
Operating Leases:				
Right of use assets	$ 716	$ 822	$ 680	$ 693
Lease liabilities	$ (760)	$ (828)	$ (727)	$ (738)
Weighted average remaining lease term:	6.0 years	6.7 years	5.5 years	5.8 years
Weighted average discount rate (1):	8.70 %	8.71 %	8.70 %	8.70 %

(1) The market discount rate is used, when readily determinable, in calculating the present value of lease payments for the operating lease liability. Otherwise, the incremental borrowing rate on the commencement is used.

The following table summarizes the Company's operating lease costs and cash payments for the periods presented (in thousands):

	Three Months Ended September 30, 2023	Three Months Ended September 30, 2022	Nine Months Ended September 30, 2023	Nine Months Ended September 30, 2022	Three Months Ended March 31, 2024	Three Months Ended March 31, 2023
Lease Cost:						
Operating lease cost	$ 39	$ 25	$ 154	$ 73	$ 40	$ 75
Other Information:						
Cash paid for amounts included in the measurement of lease liabilities						
Operating cash flows from operating leases	$ 38	$ 24	$ 113	$ 70	$ 38	$ 37

(Back to Index)

(Back to Index)

The following table summarizes the Company's operating leases cash flow obligations on an undiscounted, annual basis (in thousands):

	Operating Leases	Operating Leases
2023	$ 38	
2024	155	$ 119
2025	159	162
2026	163	166
2027	167	170
2028		174
Thereafter	303	131
Subtotal	985	922
Less: impact of discount	(225)	(195)
Total	$ 760	$ 727

NOTE 9 - INVESTMENTS IN UNCONSOLIDATED ENTITIES

The Company's investments in unconsolidated entities at September 30, 2023 and December 31, 2022 comprised a 100% interest in the common shares of RCT I and RCT II with a value of $1.5 million in the aggregate, or 3.0% of each trust. The Company records its investments in RCT I's and RCT II's common shares as investments in unconsolidated entities using the cost method, recording dividend income when declared by RCT I and RCT II.

During the three and nine months ended September 30, 2023, the Company recorded dividends from its investments in RCT I's and RCT II's common shares, reported in other revenue on the consolidated statement of operations, of $37,000 and $107,000, respectively. During the three and nine months ended September 30, 2022, the Company recorded dividends of $25,000 and $60,000, respectively.

(Back to Index)

(Back to Index)

NOTE 9 - INVESTMENTS IN UNCONSOLIDATED ENTITIES

The following table summarizes the Company's investments in unconsolidated entities at March 31, 2024 and December 31, 2023 and equity in earnings of unconsolidated entities for the three months ended March 31, 2024 and 2023 (dollars in thousands):

	Ownership % at March 31, 2024	March 31, 2024	December 31, 2023	Equity in Earnings of Unconsolidated Entities For the Three Months Ended March 31, 2024	2023
Investment in RCT I and II (1)	3%	$ 1,548	$ 1,548	$ 37	$ 33
65 E. Wacker Joint Venture, LLC (2)	90%	20,123	—	—	—
Total		$ 21,671	$ 1,548	$ 37	$ 33

(1) During the three months ended March 31, 2024 and 2023, dividends from the investments in RCT I's and RCT II's common shares are recorded in other revenue on the Company's consolidated statemen operations.

(2) Refer to Note 3 for details regarding the Venture.

NOTE 10 - BORROWINGS

The Company historically has financed the acquisition of its investments, including investment securities and loans, through the use of secured and unsecured borrowings. Certain information with respect to the Company’s borrowings is summarized in the following table (dollars in thousands, except amounts in the footnotes):

	Principal Outstanding	Unamortized Issuance Costs and Discounts	Outstanding Borrowings	Weighted Average Borrowing Rate	Weighted Average Remaining Maturity	Value of Collateral	Principal Outstanding	Unamortized Issuance Costs and Discounts	Outstanding Borrowings	Weighted Average Borrowing Rate	Weighted Average Remaining Maturity	Value of Collateral
At September 30, 2023:												
At March 31, 2024:												
ACR 2021-FL1 Senior Notes	$643,132	$2,639	$640,493	6.95%	12.7 years	$770,552	$606,048	$1,847	$604,201	6.96%	12.2 years	$733,468
ACR 2021-FL2 Senior Notes	567,000	3,631	563,369	7.25%	13.3 years	700,000	545,435	2,824	542,611	7.26%	12.8 years	678,435
Senior secured financing facility	64,495	3,112	61,383	9.11%	4.3 years	154,633	64,495	2,743	61,752	9.10%	3.8 years	167,994
CRE - term warehouse financing facilities (1)	253,114	2,620	250,494	8.02%	1.9 years	378,385	167,731	1,924	165,807	7.97%	1.6 years	260,101
Mortgage payable	18,854	310	18,544	9.13%	1.5 years	25,400						
Construction loans:												
Oceanview Life and Annuity Company	1,269	1,618	(349)	11.34%	1.4 years							
Florida Pace Funding Agency	5,369	—	5,369	7.26%	29.8 years							
Total Construction loans	6,638	1,618	5,020			42,873						
5.75% Senior Unsecured Notes	150,000	2,022	147,978	5.75%	2.9 years	—						
Mortgages payable							52,909	1,634	51,275	9.32%	9.3 years	93,077

5.75% Senior Unsecured Notes							150,000	1,695	148,305	5.75%	2.4 years	—
Unsecured junior subordinated debentures	51,548	—	51,548	9.53%	12.9 years	—	51,548	—	51,548	9.54%	12.4 years	—
Total	$1,754,781	$15,952	$1,738,829	7.28%	10.1 years	$2,071,843	$1,638,166	$12,667	$1,625,499	7.29%	10.0 years	$1,933,075
	Principal Outstanding	**Unamortized Issuance Costs and Discounts**	**Outstanding Borrowings**	**Weighted Average Borrowing Rate**	**Weighted Average Remaining Maturity**	**Value of Collateral**						
At December 31, 2022:												
							Principal Outstanding	**Unamortized Issuance Costs and Discounts**	**Outstanding Borrowings**	**Weighted Average Borrowing Rate**	**Weighted Average Remaining Maturity**	**Value of Collateral**
At December 31, 2023:												
ACR 2021-FL1 Senior Notes	$675,223	$3,826	$671,397	5.81%	13.5 years	$802,643	$643,040	$2,243	$640,797	6.98%	12.5 years	$770,460
ACR 2021-FL2 Senior Notes	567,000	4,841	562,159	6.13%	14.1 years	700,000	567,000	3,227	563,773	7.28%	13.1 years	700,000
Senior secured financing facility	91,549	3,659	87,890	7.94%	5.0 years	196,837	64,495	2,927	61,568	9.14%	4.1 years	157,722
CRE - term warehouse financing facilities (1)	330,849	2,561	328,288	6.85%	1.8 years	453,550	170,861	2,273	168,588	7.96%	1.6 years	254,081
Mortgage payable	18,710	466	18,244	8.08%	2.3 years	25,400						
5.75% Senior Unsecured Notes	150,000	2,493	147,507	5.75%	3.6 years	—						
Mortgages payable							43,779	1,993	41,786	8.92%	11.3 years	83,739
5.75% Senior Unsecured Notes							150,000	1,860	148,140	5.75%	2.6 years	—

Unsecured junior subordinated debentures	51,548	—	51,548	8.52%	13.7 years	—	51,548	—	51,548	9.60%	12.7 years	—
Total	$1,884,879	$17,846	$1,867,033	6.29%	10.3 years	$2,178,430	$1,690,723	$14,523	$1,676,200	7.28%	10.4 years	$1,966,002

(1) Principal outstanding includes accrued interest payable of $754,000 544,000 and $894,000 539,000 at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.

(Back to Index)

(Back to Index)

Securitizations

The following table sets forth certain information with respect to the Company's consolidated securitizations at September 30, 2023 March 31, 2024 (in thousands, except amount in footnotes) thousands):

	Closing Date	Maturity Date	Reinvestment Period End (1)	Total Note Paydowns from Closing Date through September 30, 2023	Closing Date	Maturity Date	Reinvestment Period End (1)	Total Note Paydowns from Closing Date through March 31, 2024
ACR 2021-FL1	May 2021	June 2036	May 2023	$ 32,091	May 2021	June 2036	May 2023	$ 69,175
ACR 2021-FL2	December 2021	January 2037	December 2023	$ —	December 2021	January 2037	December 2023	$ 21,564

(1) The reinvestment period is the period in which principal proceeds received may be used to acquire CRE loans for reinvestment into the securitization.

The investments held by the Company's securitizations collateralize the securitizations' borrowings and, as a result, are not available to the Company, its creditors, or stockholders. All senior notes of the securitizations held by the Company at both September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023 were eliminated in consolidation.

XAN 2020-RSO8

In March 2020, the Company closed Exantas Capital Corp. 2020-RSO8, Ltd. ("XAN 2020-RSO8"), a $522.6 million CRE debt securitization transaction that provided financing for CRE loans. In March 2022, the Company exercised the optional redemption of XAN 2020-RSO8, and all of the outstanding senior notes were paid off from the sales proceeds of certain of the securitization's assets.

XAN 2020-RSO9

In September 2020, the Company closed Exantas Capital Corp. 2020-RSO9, Ltd. ("XAN 2020-RSO9"), a $297.0 million CRE debt securitization transaction that provided financing for CRE loans. In February 2022, the Company exercised the optional redemption of XAN 2020-RSO9, and all of the outstanding senior notes were paid off from the sales proceeds of certain of the securitization's assets.

ACR 2021-FL1

In May 2021, the Company closed ACRES Commercial Realty 2021-FL1 Issuer, Ltd. (“ACR 2021-FL1”), a $802.6 million CRE debt securitization transaction that provided financing for CRE loans. ACR 2021-FL1 issued a total of $675.2 million of non-recourse, floating-rate notes to third parties at par. Additionally, ACRES RF retained 100% of the Class F and Class G notes and a subsidiary of ACRES RF retained 100% of the outstanding preference shares. The preference shares are subordinated in right of payment to all other securities issued by ACR 2021-FL1. ACR 2021-FL1 included a reinvestment period, which ended in May 2023, that allowed it to acquire CRE loans for reinvestment into the securitization using uninvested principal proceeds. All of the notes issued mature in June 2036, although the Company has the right to call the notes beginning on the payment date in May 2023 and thereafter. The non-recourse, floating-rate notes initially charged one-month Term LIBOR but converted to one-month Term SOFR in June 2023. As of March 31, 2024, the Company had not exercised this right.

ACR 2021-FL2

In December 2021, the Company closed ACRES Commercial Realty 2021-FL2 Issuer, Ltd. (“ACR 2021-FL2”), a CRE debt securitization transaction that can finance up to $700.0 million of CRE loans. ACR 2021-FL2 issued a total of $567.0 million of non-recourse, floating-rate notes to third parties at par. Additionally, ACRES RF retained 100% of the Class F and Class G notes and a subsidiary of ACRES RF retained 100% of the outstanding preference shares. The preference shares are subordinated in right of payment to all other securities issued by ACR 2021-FL2. Additionally, ACR 2021-FL2 includes included a reinvestment period, which ends ended in December 2023, that allows allowed it to acquire CRE loans for reinvestment into the securitization using uninvested principal proceeds. All of the notes issued mature in January 2037, although the Company has the right to call the notes beginning on the payment date in December 2023 and thereafter. The non-recourse, floating-rate notes initially charged one-month Term LIBOR but converted to one-month Term SOFR in June 2023. As of March 31, 2024, the Company had not exercised this right.

(Back to Index)

(Back to Index)

Financing Arrangements

Borrowings under the Company’s senior secured financing facility, term warehouse financing facilities, mortgage payable and construction loans arrangements are guaranteed by the Company or one or more of its subsidiaries. The following table sets forth certain information with respect to the Company’s financing these arrangements (dollars in thousands, except amounts in footnotes):

	September 30, 2023				December 31, 2022				March 31, 2024				December 31, 2023			
	Outstanding Borrowings	Value of Collateral	Number of Positions as Collateral	Weighted Average Interest Rate	Outstanding Borrowings	Value of Collateral	Number of Positions as Collateral	Weighted Average Interest Rate	Outstanding Borrowings	Value of Collateral	Number of Positions as Collateral	Weighted Average Interest Rate	Outstanding Borrowings	Value of Collateral	Number of Positions as Collateral	Weighted Average Interest Rate
Senior Secured Financing Facility																

Massachusetts Mutual Life Insurance Company (1)	$ 61,383	$ 154,633	7	9.11%	$ 87,890	$ 196,837	8	7.94%	$ 61,752	$ 167,994	7	9.10%	$ 61,568	$ 157,722	7	9.14%
CRE - Term Warehouse Financing Facilities (2)																
JPMorgan Chase Bank, N.A. (3)	117,637	187,106	8	7.99%	186,783	255,095	11	6.74%	93,130	153,103	4	7.82%	74,694	125,044	4	7.82%
Morgan Stanley Mortgage Capital Holdings LLC (4)	132,857	191,279	9	8.05%	141,505	198,455	10	7.00%	72,677	106,998	6	8.16%	93,894	129,037	7	8.07%
Mortgage Payable																
Readycap Commercial, LLC (5)	18,544	25,400	1	9.13%	18,244	25,400	1	8.08%								
Construction Loans (6)																
Oceanview Life and Annuity Company (7)	(349)			11.34%	—			—%								
Florida Pace Funding Agency	5,369			7.26%	—			—%								
Total Construction Loans	5,020	42,873	1		—	—	—									
Mortgages Payable																

ReadyCap Commercial, LLC (5)					19,417	25,400	1	9.12%	19,365	25,400	1	9.16%
Oceanview Life and Annuity Company (6) (7)					16,763	67,677	1	11.33%	7,330	58,339	1	11.37%
Florida Pace Funding Agency (6)(8)					15,095	—	—	7.26%	15,091	—	—	7.26%
Total	33 5,4 $ 41	6 0 1, 2 9 $ 1	43 4,4 $ 22	6 7 5, 7 8 $ 7	$ 278,834	$ 521,172			$ 271,942	$ 495,542		

(1) Includes $3.1 2.7 million and $3.7 2.9 million of deferred debt issuance costs at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.
(2) Outstanding borrowings include accrued interest payable.
(3) Includes $1.8 1.5 million and $1.1 1.6 million of deferred debt issuance costs at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.
(4) Includes $840,000 456,000 and $1.4 647,000 million of deferred debt issuance costs at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.
(5) Includes $310,000 207,000 and $466,000 259,000 of deferred debt issuance costs at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.
(6) Outstanding borrowings are collateralized by a student housing construction project. Value of collateral and number of positions as collateral related to Oceanview Life and Annuity Company also applies to F Pace Funding Agency.
(7) Includes $1.6 1.0 million and $1.3 million of deferred debt issuance costs at September 30, 2023. March 31, 2024 and December 31, 2023, respectively.
(8) Includes $415,000 and $419,000 of deferred debt issuance costs at March 31, 2024 and December 31, 2023, respectively.

(Back to Index)

(Back to Index)

The following table shows information about the amount at risk under the Company's financing arrangements (dollars in thousands) thousands, except amounts in footnotes):

	Amount at Risk	Weighted Average Remaining Maturity	Weighted Average Interest Rate
At September 30, 2023:			
Senior Secured Financing Facility (1)			
Massachusetts Mutual Life Insurance Company	$ 90,437	4.3 years	9.11%
CRE - Term Warehouse Financing Facilities (1)			
JPMorgan Chase Bank, N. A.	$ 69,017	2.8 years	7.99%
Morgan Stanley Mortgage Capital Holdings LLC	$ 58,942	1.1 years	8.05%
Mortgage Payable (2)			
Readycap Commercial, LLC	$ 6,450	1.5 years	9.13%
Construction Loans (3)(4)			
Oceanview Life and Annuity Company		1.4 years	11.34%
Florida Pace Funding Agency		29.8 years	7.26%
Total Construction Loans	$ 36,235		

	Amount at Risk	Weighted Average Remaining Maturity	Weighted Average Interest Rate
At March 31, 2024:			
Senior Secured Financing Facility (1)			
Massachusetts Mutual Life Insurance Company	$ 103,791	3.8 years	9.10%
CRE - Term Warehouse Financing Facilities (1)(2)			
JPMorgan Chase Bank, N. A.	$ 59,532	2.3 years	7.82%
Morgan Stanley Mortgage Capital Holdings LLC	$ 34,711	0.6 years	8.16%
Mortgages Payable			
ReadyCap Commercial, LLC (3)	$ 5,672	1.0 years	9.12%
Oceanview Life and Annuity Company (4)(5)	34,349	0.9 years	11.33%
Florida Pace Funding Agency (4)(5)	—	29.3 years	7.26%

(1) Equal to the total of the estimated fair value of securities or loans sold and accrued interest receivable, minus the total of the warehouse financing agreement liabilities and accrued interest payable.

(2) The Company is required to maintain a total minimum unencumbered liquidity balance of $15.0 million.

(3) Equal to the total of the estimated fair value of real estate property investment financed, minus the total of the mortgage payable agreement liability and accrued interest payable.

(3) (4) Equal to the total of the estimated fair value of real estate property investment financed, minus the total of the construction loans agreement liabilities and accrued interest payable. Amount at risk relat Oceanview Life and Annuity Company also applies to Florida Pace Funding Agency.

(4) (5) Outstanding borrowings are collateralized by a student housing construction project.

(Back to Index)

(Back to Index)

The Company was in compliance with all financial covenants in each of the respective agreements at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023.

Senior Secured Financing Facility

On July 31, 2020, an indirect, wholly owned subsidiary ("Holdings"), along with its direct wholly owned subsidiary (the "Borrower"), of the Company entered into a $250.0 million Loan and Servicing Agreement (the "MassMutual Loan Agreement") with MassMutual and the other lenders party thereto (the "Lenders"). The asset-based revolving loan facility (the "MassMutual Facility") provided under the MassMutual Loan Agreement has been used to finance the Company's core CRE lending business. The MassMutual Facility initially had an interest rate of 5.75% per annum payable monthly and initially matured on July 31, 2027.

In December 2022, Holdings, the Borrower and the Lenders entered into an Amended and Restated Loan and Servicing Agreement, which amends and restates the MassMutual Loan Agreement, and reflects a senior secured term loan facility, not to exceed $500.0 million, composed of individual loan series issued upon mutual agreement of the Borrower and Lenders. Each loan series will be available for three months after the closing date agreed upon by the Borrower and Lender ("Commitment Period"), subject to the maximum dollar amount agreed upon for that series. The Commitment Period is subject to immediate termination upon the occurrence of an event of default. Each loan series will have a final maturity of five years from the issuance date for the loan series unless an additional time is mutually agreed upon by the Lenders and Borrower. The advance rate on portfolio assets will be mutually agreed upon by the Lenders and Borrower. Each loan series will have its own mutually agreed upon interest rate equal to one-month Term SOFR plus the applicable spread.

(Back to Index)

(Back to Index)

CRE - Term Warehouse Financing Facilities

In April 2018, an indirect, wholly-owned subsidiary of the Company entered into a master repurchase agreement (the “Barclays Facility”) with Barclays Bank PLC (“Barclays”) to finance the origination of CRE loans. In February 2022, such subsidiary entered into the Third Amendment to Master Repurchase Agreement (the “Barclays Amendment”) with Barclays, which amended the Barclays Facility to add market terms regarding the replacement of LIBOR upon determination of a benchmark transition event. In October 2022, the Barclays Facility matured.

In October 2018, an indirect, wholly-owned subsidiary of the Company entered into a master repurchase agreement (the “JPMorgan Chase Facility”) with JP Morgan Chase to finance the origination of CRE loans. At September 30, 2023, this facility has been As amended, six times to amend various terms. The the JPMorgan Chase Facility has a maximum facility amount of $250.0 million, charges interest of one-month Term SOFR plus market spreads and matures in July 2026. In July 2023, this facility was amended to extend the amendments to (i) EBITDA to Interest Expense ratio (as defined in the JPM Guarantee), (ii) maximum ratio of Total Indebtedness to its Total Equity (as defined in the JPM Guarantee), and (iii) minimum unencumbered Liquidity requirement (as defined in the JPM Guarantee), each through the quarter ending December 2024.

In November 2021, an indirect, wholly-owned subsidiary of the Company entered into a master repurchase and securities contract agreement (the “Morgan Stanley Facility”) with Morgan Stanley Mortgage Capital Holdings LLC (“Morgan Stanley”) to finance the origination of CRE loans. At September 30, 2023, this facility has been As amended, two times to amend various terms. The the Morgan Stanley Facility has a maximum facility amount of $250.0 million, charges interest of one-month Term SOFR plus market spreads and matures in November 2024. The Company also has the right to request a one-year extension. In November 2023, this facility was amended to extend the amendments to (i) EBITDA to interest expense ratio, (ii) maximum ratio of total indebtedness to its total equity and (iii) minimum unencumbered liquidity requirement, each through the quarter ending December 2024. See Part II, Item 5 "Other Information".

Mortgage Mortgages Payable

In April 2022, Chapel Drive West, LLC, a wholly owned subsidiary of the FSU Student Venture, entered into a Loan Agreement (the “Mortgage”) with Readycap ReadyCap Commercial, LLC (“Readycap” ReadyCap”) to finance the acquisition of a student housing complex. The Mortgage is interest only and has a maximum principal balance of $20.4 million, of which, $18.7 million was advanced in the initial funding. Initially, the Mortgage charged interest of 30-day average SOFR plus a spread of 3.80%. In October 2022, the Mortgage was amended to charge interest of one-month Term SOFR plus a spread of 3.80%. The Mortgage matures in April 2025, subject to two one-year extension options.

The Mortgage contains events of default, subject to certain materiality thresholds and grace periods, customary for this type of financing arrangement. The remedies for such events of default are also customary for this type of transaction.

Construction Loans

In January 2023, Chapel Drive East, LLC, a wholly owned subsidiary of the FSU Student Venture, entered into a loan agreement (the "Construction Loan Agreement") with Oceanview Life and Annuity Company ("Oceanview") to finance the construction of a student housing complex (the "Construction Loan"). The Construction Loan is interest only and has a maximum principal balance of $48.0 million. The Construction Loan charges one-month Term SOFR plus a spread of 6.00% and matures in February 2025, subject to three one-year extension options.

In addition to the Construction Loan, Chapel Drive East, LLC, entered into a financing agreement with Florida Pace Funding Agency to fund energy efficient building improvements and has a maximum principal balance of $15.5 million. This agreement charges

(Back to Index)

(Back to Index)

fixed interest of 7.26% and matures in July 2053. Until July 2024, accrued interest will be added to the principal balance. The Company does not guarantee this financing agreement.

In connection with the Company's investment in the student housing complex, ACRES RF entered into guarantees related to the Construction Loan. Pursuant to the guarantees, Jason Pollack, Frank Dellaglio and ACRES RF (collectively, the "Guarantors"), for the benefit of Oceanview, provided limited "bad boy" guaranties to Oceanview pursuant to the Construction Loan Agreement until the earlier of the payment in full of the indebtedness or the date of a sale of the property pursuant to a foreclosure of the mortgage or deed

(Back to Index)

(Back to Index)

or other transfer in lieu of foreclosure is accepted by Oceanview. The Guarantors also entered into a Completion Guaranty Agreement for the benefit of Oceanview to guaranty the timely completion of the project in accordance with the Construction Loan Agreement, as well as a Carry Guaranty Agreement, for the benefit of Oceanview to guaranty and unconditional payment by Chapel Drive East, LLC of all customary or necessary costs and expenses incurred in connection with the operation, maintenance and management of the property and an Environmental Indemnity Agreement jointly and severally in favor of Oceanview whereby the Guarantors serving as Indemnitors provided environmental representations and warranties, covenants and indemnifications (collectively the "Guaranties"). The Guaranties include certain financial covenants required of ACRES RF, including required net worth and liquidity requirements.

Corporate Debt

4.50% Convertible Senior Notes

The Company issued $143.8 million aggregate principal of its 4.50% convertible senior notes due 2022 (“4.50% Convertible Senior Notes”) in August 2017, of which $55.8 million was repurchased in 2021.

During the nine months ended September 30, 2022, the Company repurchased $39.8 million of its 4.50% Convertible Senior Notes, resulting in a charge to earnings of $574,000, comprising an extinguishment of debt charge of $460,000 in connection with the acceleration of the market discount and interest expense of $114,000 in connection with the acceleration of deferred debt issuance costs. In August 2022, the remaining $48.2 million of the 4.50% Convertible Senior Notes were paid off upon maturity at par.

5.75% Senior Unsecured Notes Due 2026

On August 16, 2021, the Company issued $150.0 million of its 5.75% senior unsecured notes due 2026 (the “5.75% Senior Unsecured Notes”) pursuant to its Indenture dated August 16, 2021 (the “Base Indenture”), between it and Wells Fargo, now Computershare Trust Company, N.A. (“CTC”), as trustee (the “Trustee”), as supplemented by the First Supplemental Indenture, dated August 16, 2021, between it and Wells Fargo now CTC, (now CTC) (the “Supplemental Indenture” and, together with the Base Indenture, the “Indenture”). Prior to May 15, 2026, the Company may at its option redeem the 5.75% Senior Unsecured Notes, in whole or in part, at a redemption price equal to the sum of (i) 100% 100% of the principal amount of the notes to be redeemed, plus accrued and unpaid interest to, but not including, the redemption date, and (ii) a make-whole premium. On or after May 15, 2026, the Company may at its option redeem the 5.75% Senior Unsecured Notes, at any time, in whole or in part, on not less than 15 nor more than 60 days’ prior notice, at a redemption price equal to 100% of the principal amount of the 5.75% Senior Unsecured Notes to be redeemed, plus accrued and unpaid interest to, but not including, the redemption date.

Unsecured Junior Subordinated Debentures

During 2006, the Company formed RCT I and RCT II for the sole purpose of issuing and selling capital securities representing preferred beneficial interests. RCT I and RCT II are not consolidated into the Company’s consolidated financial statements because the Company is not deemed to be the primary beneficiary of these entities. In connection with the issuance and sale of the capital securities, the Company issued junior subordinated debentures to RCT I and RCT II of $25.8 million each, representing the Company’s maximum exposure to loss. The debt issuance costs associated with the junior subordinated debentures for RCT I and RCT II were included in borrowings and were amortized into interest expense on the consolidated statements of operations using the effective yield method over a ten year period.

There were no unamortized debt issuance costs associated with the junior subordinated debentures for RCT I and RCT II outstanding at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023. The interest rates for RCT I and RCT II, at September 30, 2023 March 31, 2024, were 9.49 9.55% and

9.58 9.53%, respectively. The interest rates for RCT I and RCT II, at December 31, 2022 December 31, 2023, were 8.68 9.61% and 8.36 9.60%, respectively.

[(Back to Index)]

(Back to Index)

Contractual maturity dates of the Company’s borrowings’ principal outstanding by category and year are presented in the table below (in thousands):

	Total	2024	2025	2026	2027	2028 and Thereafter	Total	2024	2025	2026	2027	2028 and Thereafter
At September 30, 2023:												
At March 31, 2024:												
CRE securitizations	$ 1,210,132	$ —	$ —	$ —	$ —	$ 1,210,132	$ 1,151,483	$ —	$ —	$ —	$ —	$ 1,151,483
Senior Secured Financing Facility	64,495	—	—	—	50,995	13,500	64,495	—	—	—	50,995	13,500
CRE - term warehouse financing facilities (1)	253,114	133,697	—	119,417	—	—	167,731	73,133	—	94,598	—	—
Mortgage payable	18,854	—	18,854	—	—	—						
Construction loans	6,638	—	1,269	—	—	5,369						
Mortgages payable							52,909	—	37,399	—	—	15,510
5.75% Senior Unsecured Notes	150,000	—	—	150,000	—	—	150,000	—	—	150,000	—	—
Unsecured junior subordinated debentures	51,548	—	—	—	—	51,548	51,548	—	—	—	—	51,548
Total	$ 1,754,781	$ 133,697	$ 20,123	$ 269,417	$ 50,995	$ 1,280,549	$ 1,638,166	$ 73,133	$ 37,399	$ 244,598	$ 50,995	$ 1,232,041

(1) Includes accrued interest payable in the balances of principal outstanding.

NOTE 11 - SHARE ISSUANCE AND REPURCHASE

In May 2021, and subsequently in June 2021, the Company issued a total of 4.6 million shares of 7.875% Series D Cumulative Redeemable Preferred Stock (“Series D Preferred Stock”) at a public offering price of $25.00 per share. The Company received net proceeds of $110.4 million after $4.6 million of underwriting discounts and other offering expenses. Dividends are payable quarterly in arrears at the end of January, April, July and October. The Series D Preferred Stock has no maturity date and the Company is not required to redeem the Series D Preferred Stock at any time. On or after May 21, 2026, the Company may, at its option, redeem the Series D Preferred Stock, in whole or part, at any time and from time to time, for cash at $25.00 per share, plus accrued and unpaid dividends, if any, to the redemption date.

On October 4, 2021, the Company and the Manager entered into an Equity Distribution Agreement with JonesTrading Institutional Services LLC, as placement agent (“JonesTrading”), pursuant to which the Company may issue and sell from time to time up to 2.2 million shares of the Series D Preferred Stock. Sales of the Series D Preferred Stock may be made in transactions that are deemed to be “at the market” offerings, as defined in Rule 415 of the Securities Act of 1933, as amended, including without limitation, sales made directly on the New York Stock Exchange, on any other existing trading market for the shares or to or through a market maker. Subject to the terms of the Company’s notice, JonesTrading may also sell the shares by any other method permitted by law, including but not limited to in privately negotiated transactions. The Company will pay JonesTrading a commission up to 3.0% of the gross proceeds from the sales of the Series D Preferred Stock pursuant to the agreement. The terms and conditions of the agreement include various representations and warranties, conditions to closing, indemnification rights and obligations of the parties and termination provisions. During both the nine three months ended September 30, 2023 March 31, 2024 and the year ended December 31, 2023, the Company did not issue any Series D Preferred Stock through this agreement. During the year ended December 31, 2022, the Company did not issue any Series D Preferred Stock through this agreement.

On or after July 30, 2024, the Company may, at its option, redeem its 8.625% Fixed-to-Floating Series C Cumulative Redeemable Preferred Stock (“Series C Preferred Stock”), in whole or in part, at any time and from time to time, for cash at $25.00 per share, plus accrued and unpaid dividends, if any, to the redemption date. Effective July 30, 2024 and thereafter, the Company will pay cumulative dividends distributions on the Series C Preferred Stock at a floating rate equal to the three-month LIBOR replacement Term SOFR rate plus a spread of 5.927% per annum based on the $25.00 liquidation preference, provided that such floating rate shall not be less than the initial rate of 8.625% at any date of determination.

At September 30, 2023 March 31, 2024, the Company had 4.8 million shares of Series C Preferred Stock and 4.6 4.5 million shares of Series D Preferred Stock outstanding, with weighted average issuance prices, excluding offering costs, of $25.00.

In March 2016, the board of directors (the “Board”) approved a securities repurchase plan, and in November 2020, 2021, the Board reauthorized authorized and approved the continued use of this plan its existing share repurchase program to repurchase up to an additional $20.0 million of the outstanding shares of the Company’s Company's common stock. Under the share repurchase program, the Company intends to repurchase shares through open market purchases, privately negotiated transactions, block purchases or otherwise

(Back to Index)

(Back to Index)

common stock. Additionally, the Board authorized the Company to enter into written trading plans under Rule 10b5-1 of the Securities Exchange Act of 1934 (the “Exchange Act”). In July 2021, the authorized amount was fully utilized.

In November 2021, the Board authorized and approved the continued use of its existing share repurchase plan to repurchase an additional $20.0 million of the outstanding shares of the Company's common stock. Under the share repurchase plan, the Company intends to repurchase shares through open market purchases, privately negotiated transactions, block purchases or otherwise in accordance with applicable federal securities laws, including Rule 10b-18 and 10b5-1 of the Exchange Act. In November 2023, the Board authorized and approved the repurchase of an additional $10.0 million of outstanding shares of both common and preferred stock.

During the nine three months ended September 30, 2023 March 31, 2024 and 2022, 2023, the Company repurchased $2.7 2.1 million and $8.2 756,000 million, respectively, of its common stock, respectively, representing 298,000 194,827 and 750,709 79,744 shares, respectively. Additionally, during the three months ended March

31, 2024, the Company repurchased $2.2 million, or 100,000 shares, of its Series D Preferred Stock. At September 30, 2023 March 31, 2024, $4.5 5.6 million of common and preferred stock remains available under the November 2021 this repurchase plan.

On July 31, 2020, In connection with the Company entered into a Note and Warrant Purchase Agreement (the “Note and Warrant Purchase Agreement”) with Oaktree Capital Management, L.P. (“Oaktree”) and Massachusetts Mutual Life Insurance Company (“MassMutual”) pursuant to which the Company could issue to Oaktree and MassMutual from time to time up to $125.0 million aggregate principal amount of 12.00% Senior Unsecured Notes. In connection with the Note and Warrant Purchase Agreement, the 12.00% Senior Unsecured Notes give Oaktree and MassMutual warrants to purchase an aggregate of up to 1,166,653 shares of common stock at an exercise price of $0.03 per share, subject to certain potential adjustments.

On dated July 31, 2020, concurrently with the issuance of the 12.00% Senior Unsecured Notes, the Company issued to Oaktree warrants to purchase 391,995 shares of common stock for an aggregate purchase price of $42.0 million, and issued to MassMutual warrants to purchase 74,666 shares of common stock for an aggregate purchase price of $8.0 million. The warrants are recorded in additional paid-in capital on the consolidated balance sheets at their fair value of $3.1 million at issuance. The warrants are immediately exercisable on issuance at an exercise price of $0.03 per share, subject to certain potential adjustments, and expire seven years from the issuance date. The warrants can be exercised with cash or as a net exercise. In July 2022, MassMutual exercised their warrants to purchase 74,666 shares. At September 30, 2023 March 31, 2024, the Oaktree warrants have not been exercised.

NOTE 12 - SHARE-BASED COMPENSATION

In June 2021, the Company’s shareholders approved the ACRES Commercial Realty Corp. Third Amended and Restated Omnibus Equity Compensation Plan (the “Omnibus Plan”) and the ACRES Commercial Realty Corp. Manager Incentive Plan (the “Manager Plan” and together with the Omnibus Plan, the “Plans”). The Omnibus Plan was amended to (i) increase the number of shares authorized for issuance by an additional 1,100,000 shares of common stock, less any shares of common stock issued or subject to awards granted under the Manager Plan; and (ii) extend the expiration date of the Omnibus Plan from June 2029 to June 2031. The maximum number of shares that may be subject to awards granted under the Plans, determined on a combined basis, is will be 1,700,817 shares of common stock.

The Company recognized stock-based compensation expense of $482,000 and $2.1 million, respectively, during the three and nine months ended September 30, 2023 and $913,000 and $2.6 million, respectively, during the three and nine months ended September 30, 2022.

The following table summarizes the Company’s restricted common stock transactions:

	Manager	Directors	Total Number of Shares	Weighted-Average Grant-Date Fair Value
Unvested shares at January 1, 2023	524,999	58,334	583,333	$ 14.22
Issued	38,881	—	38,881	8.95
Vested	(188,879)	(16,660)	(205,539)	13.55
Unvested shares at September 30, 2023	375,001	41,674	416,675	$ 14.07

(Back to Index)

(Back to Index)

The unvested restricted common stock shares are expected to vest during the following years:

	Shares
2023	—
2024	166,658
2025	166,671
2026	83,346
Total	416,675

At September 30, 2023, total unrecognized compensation costs relating to unvested restricted stock was $2.4 million based on the grant date fair value of shares granted. The cost is expected to be recognized over a weighted average period of 2.2 years.

Under the Company’s Fourth Amended and Restated Management Agreement, as amended (“Management Agreement”), incentive compensation is paid quarterly. Up to 75% of the incentive compensation may be paid in cash and at least 25% must be paid in the form of an award of common stock, recorded in management fees on the consolidated statements of operations. During the three and nine months ended September 30, 2023, the Company incurred incentive compensation expense payable to the Manager of $473,000 and $857,000, respectively, of which 50% was payable in cash and 50% was payable in common stock. At September 30, 2023, $473,000 was included in Management fee payable - related party on the consolidated balance sheets. No incentive compensation was paid to the Manager for the three and nine months ended September 30, 2022.

The Company issued 38,881 shares of common stock during the nine months ended September 30, 2023, pertaining to the portions of the fourth quarter 2022, first quarter 2023 and second quarter 2023 incentive compensation that was payable in shares. In October 2023, the Company issued 30,320 shares of common stock pertaining to the portion of the third quarter 2023 incentive compensation that was payable at September 30, 2023. Shares of common stock issued under the Management Agreement for incentive compensation vest immediately upon issuance.

The Omnibus Plan and the Manager Plan are administered by the compensation committee of the Company's Board (the “Compensation Committee”). In 2020, the Compensation Committee and the Board created parameters for equity awards, whereby they are no longer discretionary but are now based upon the Company’s achievement of performance parameters using book value of the common stock as the appropriate benchmark. See Note 16 for a description of awards made under the Manager Plan.

The Company recognized stock-based compensation expense of $477,000 and $894,000 during the three months ended March 31, 2024 and 2023, respectively, related to restricted stock.

In May 2024, the Company issued 295,237 shares of common stock to the Manager and 38,096 shares of common stock to the Company’s directors (with the exception of Messrs. Fentress and Fogel) under the Plans after the Company reached the established per share book value target of $27.00 per share. Each grant vests 25% per year over four years.

Under the Company’s Fourth Amended and Restated Management Agreement, as amended (“Management Agreement”), incentive compensation is paid quarterly. Up to 75% of the incentive compensation may be paid in cash and at least 25% must be paid in the form of an award of common stock, recorded in management fees on the consolidated statements of operations. During the three months ended March 31, 2024, the Company incurred no incentive compensation payable to the Manager. At March 31, 2024, there was no amount included in Management fee payable - related party on the consolidated balance sheets. During the three months ended March 31, 2023, the Company incurred incentive compensation expense payable to the Manager of $129,000, of which 50% was paid in cash and 50% was payable in common stock.

The Company issued 1,911 shares of common stock to the Manager during the three months ended March 31, 2024, pertaining to the portion of the fourth quarter 2023 incentive compensation that was payable in shares. Shares of common stock issued under the Management Agreement for incentive compensation vest immediately upon issuance.

(Back to Index)

(Back to Index)

The following table summarizes the Company’s restricted common stock transactions:

	Manager	Directors	Total Number of Shares	Weighted-Average Grant-Date Fair Value
Unvested shares at January 1, 2024	375,001	41,674	416,675	$ 14.07
Issued	1,911	—	1,911	9.87
Vested	(1,911)	—	(1,911)	9.87
Unvested shares at March 31, 2024	375,001	41,674	416,675	$ 14.07

The unvested restricted common stock shares are expected to vest during the following years:

	Shares
2024	166,658
2025	166,671
2026	83,346
2027	—
Total	416,675

At March 31, 2024, total unrecognized compensation costs relating to unvested restricted stock was $1.5 million based on the grant date fair value of shares granted. The cost is expected to be recognized over a weighted average period of 1.8 years.

(Back to Index)

(Back to Index)

NOTE 13 - EARNINGS PER SHARE

The following table presents a reconciliation of basic and diluted losses income (losses) per common share for the periods presented (dollars in thousands, except per share amounts):

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,		For the Three Months Ended March 31,	
	2023	2022	2023	2022	2024	2023
Net income	$ 7,567	$ 5,486	$ 15,418	$ 13,092	$ 4,924	$ 2,293
Net income allocated to preferred shares	(4,855)	(4,855)	(14,566)	(14,566)	(4,822)	(4,855)
Carrying value in excess of consideration paid for preferred shares					242	—
Net loss allocable to non-controlling interest, net of taxes	158	82	419	106	212	146
Net income (loss) allocable to common shares	$ 2,870	$ 713	$ 1,271	$ (1,368)	$ 556	$ (2,416)
Weighted average number of common shares outstanding:						
Weighted average number of common shares outstanding - basic	8,064,889	8,312,334	8,077,602	8,453,652	7,362,135	8,108,418
Weighted average number of warrants outstanding (1)	391,995	400,922	391,995	444,507	391,995	391,995
Total weighted average number of common shares outstanding - basic	8,456,884	8,713,256	8,469,597	8,898,159	7,754,130	8,500,413
Effect of dilutive securities - unvested restricted stock	135,672	45,462	140,082	—	279,683	—
Weighted average number of common shares outstanding - diluted	8,592,556	8,758,718	8,609,679	8,898,159	8,033,813	8,500,413

Net income (loss) per common share - basic	$	0.34	$	0.08	$	0.15	$	(0.15)	$	0.07	$	(0.28)
Net income (loss) per common share - diluted	$	0.33	$	0.08	$	0.15	$	(0.15)	$	0.07	$	(0.28)

(1) See Note 11 for further details regarding the warrants.

NOTE 14 - DISTRIBUTIONS

In order to qualify as a REIT, the Company must currently distribute at least 90% of its taxable income. In addition, the Company must distribute 100% of its taxable income in order to not be subject to corporate federal income taxes on retained income. The Company anticipates it will distribute substantially all of its taxable income to its stockholders. Because taxable income differs from cash flow from operations due to non-cash revenues or expenses (such as provisions for loan and lease losses and depreciation) and tax loss carryforwards, in certain circumstances the Company may generate operating cash flow in excess of its distributions or, alternatively, may be required to borrow funds to make sufficient distribution payments.

The Company's 2023 2024 distributions are, and will be, determined by the Company's Board, which will also consider the composition of any distributions declared, including the option of paying a portion in cash and the balance in additional shares of common stock.

For the three and nine months ended September 30, 2023 March 31, 2024 and 2022, 2023, the Company did not pay any common share distributions.

(Back to Index)

(Back to Index)

The following tables present table presents distributions declared (on a per share basis) for the nine three months ended September 30, 2023 March 31, 2024 and the year ended December 31, 2022 December 31, 2023 with respect to the Company's Series C Preferred Stock and Series D Preferred Stock:

	Series C Preferred Stock			Series D Preferred Stock			Series C Preferred Stock			Series D Preferred Stock		
	Date Paid	Total Distribution Paid	Distribution Per Share	Date Paid	Total Distribution Paid	Distribution Per Share	Date Paid	Total Distribution Paid	Distribution Per Share	Date Paid	Total Distribution Paid	Distribution Per Share
		(in thousands)			(in thousands)			(in thousands)			(in thousands)	
2024												
March 31							April 30	$ 2,588	$ 0.5390625	April 30	$ 2,219	$ 0.4921875
2023												

September 30	October 30	$ 2,587	$ 0.5390625	October 30	$ 2,268	$ 0.4921875						
June 30	July 31	2,588	0.5390625	July 31	2,268	0.4921875						
March 31	May 1	2,587	0.5390625	May 1	2,268	0.4921875						
2022												
December 31	January 30, 2023	$ 2,587	$ 0.5390625	January 30, 2023	$ 2,268	$ 0.4921875	January 30, 2024	$	2,588	$ 0.5390625	January 30, 2024	$ 2,268	$ 0.4921875
September 30	October 31	2,587	0.5390625	October 31	2,268	0.4921875	October 30		2,587	0.5390625	October 30	2,268	0.4921875
June 30	August 1	2,588	0.5390625	August 1	2,268	0.4921875	July 31		2,588	0.5390625	July 31	2,268	0.4921875
March 31	May 2	2,588	0.5390625	May 2	2,268	0.4921875	May 1		2,587	0.5390625	May 1	2,268	0.4921875

NOTE 15 - ACCUMULATED OTHER COMPREHENSIVE LOSS

The following table presents the changes in net unrealized loss on derivatives, the sole component of accumulated other comprehensive loss, for the nine three months ended September 30, 2023 March 31, 2024 (in thousands):

	Accumulated Other Comprehensive Loss - Net Unrealized Loss on Derivatives
Balance at January 1, 2023	$ (6,394)
Amounts reclassified from accumulated other comprehensive loss (1)	1,192
Balance at September 30, 2023	$ (5,202)

	Accumulated Other Comprehensive Loss - Net Unrealized Loss on Derivatives
Balance at January 1, 2024	$ (4,801)
Amounts reclassified from accumulated other comprehensive loss (1)	397
Balance at March 31, 2024	$ (4,404)

(1) Amounts reclassified from accumulated other comprehensive loss are reclassified to interest expense on the Company's consolidated statements of operations.

NOTE 16 - RELATED PARTY TRANSACTIONS

Relationship with ACRES Capital Corp. and certain of its Subsidiaries. The Manager is a subsidiary of ACRES Capital Corp., of which Andrew Fentress, the Company's Chairman, serves as Managing Partner, and Mark Fogel, the Company's President, Chief Executive Officer and Director, serves as Chief Executive Officer and President. Mr. Fentress and Mr. Fogel are also shareholders and board members of ACRES Capital Corp.

Effective on July 31, 2020, the Company has a Management Agreement with the Manager pursuant to which the Manager provides the day-to-day management of the Company's operations and receives management fees. On July 31, 2023, this agreement was automatically renewed for a one year term pursuant to the agreement.

For both the three and nine months ended September 30, 2023, March 31, 2024 and 2023, the Manager earned base management fees of $1.6 million and $4.9 million, respectively. For the three and nine months ended September 30, 2022, the Manager earned base management fees of $1.7 million and $5.0 million, respectively. million.

For the three and nine months ended September 30, 2023 March 31, 2024 the Manager did not earn an incentive management fee and at March 31, 2023, the Manager earned incentive management fees of $473,000 and $857,000 129,000, of which 50% was payable paid in cash and 50% was payable paid in common stock.

At March 31, 2024 and December 31, 2023, $No 541,000 and $546,000, respectively, of base management fees were payable by the Company to the Manager. At March 31, 2024, there is no incentive compensation management fee payable and at December 31, 2023, there was earned for $38,000 of incentive management fees payable by the three and nine months ended September 30, 2022 Company to the Manager.

Subsequent to March 31, 2024, the Company issued 295,237 shares of common stock under the Manager Incentive Plan to the Manager after hitting the established per share book value hurdle. This grant vests 25% per year over four years.

(Back to Index)

(Back to Index)

At September 30, 2023 and December 31, 2022, $549,000 and $558,000, respectively, of base management fees were payable by the Company to the Manager. At September 30, 2023 and December 31, 2022, $473,000 and $340,000, respectively, of incentive management fees were payable by the Company to the Manager.

The Manager and its affiliates provided the Company with a Chief Financial Officer and a sufficient number of additional accounting, finance, tax and investor relations professionals. The Company reimbursed the Manager's expenses for (a) the wages, salaries and benefits of the Chief Financial Officer, and (b) a portion of the wages, salaries and benefits of accounting, finance, tax, legal and investor relations professionals, in proportion to such personnel's percentage of time allocated to the Company's operations. The Company reimbursed out-of-pocket expenses and certain other costs incurred by the Manager that related directly to the Company's operations.

For the three and nine months ended September 30, 2023, March 31, 2024 and 2023, the Company reimbursed the Manager $670,000 1.5 million and $3.0 902,000 million, respectively, for all such compensation and costs. For the three and nine months ended September 30, 2022, the Company reimbursed the Manager $663,000 and $3.6 million, respectively, for all such compensation and costs. At September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, the Company had payables to the Manager pursuant to the Management Agreement totaling $309,000 333,000 and $179,000 686,000, respectively, related to such compensation and costs. The Company's base management fee payable and expense reimbursements incentive management fee payable were recorded in management fee payable and while expense reimbursement payables were recorded in accounts payable and other liabilities on the consolidated balance sheets, respectively.

On July 31, 2020, ACRES RF, a direct, wholly owned subsidiary of the Company, provided a $12.0 million loan (the "ACRES Loan") to ACRES Capital Corp. evidenced by the promissory note from ACRES Capital Corp.

The ACRES Loan accrues interest at 3.00% per annum payable monthly. The monthly amortization payment is $25,000. The ACRES Loan matures in July 2026, subject to two one-year extensions (at ACRES Capital Corp.'s option) subject to the payment of a 0.5% extension fee to ACRES RF on the outstanding principal amount of the ACRES Loan.

During the three and nine months ended September 30, 2023, March 31, 2024 and 2023, the Company recorded interest income of $85,000 83,000 and $254,000 84,000, respectively, on the ACRES Loan in other income (expense) on the consolidated statements of operations. During the three At March 31, 2024 and nine months ended September 30, 2022, the Company recorded interest income of $87,000 and $261,000, respectively, on the ACRES Loan in other income (expense) on the consolidated statements of operations At September 30, 2023 and December 31, 2022 December 31, 2023, the ACRES Loan had a principal balance of $11.1 10.9 million and $11.3 11.0 million, respectively, recorded in loan receivable - related party on the consolidated balance sheets. At September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, the ACRES Loan had $28,000 and no accrued interest receivable.

During the year ended December 31, 2022, the Company originated one CRE whole loan with a par value of $38.6 million that was refinanced from a loan originated by affiliates of the Manager. The Company did not originate any loans that were refinanced from loans originated by affiliates of the Manager during the nine months ended September 30, 2023. During the year ended December 31, 2022, the Company acquired 100% equity in one property for $38.6 million, that previously served as collateral for a loan held by an affiliate of the Manager prior to the acquisition. receivable, respectively.

At September 30, 2023 March 31, 2024, the Company retained equity in two securitization entities that were structured for the Company by the Manager. Under the Management Agreement, the Manager was not separately compensated by the Company for executing these transactions this transaction and was not separately compensated for managing the securitization entities entity and their its assets.

During the year ended December 31, 2022, the Company co-originated and entered into joint funding agreements with ACRES Loan Origination, LLC, an affiliate of ACRES Capital Corp. and the Manager, on four loan originations, with total initial fundings of $97.2 million.

Relationship with ACRES Capital Servicing LLC. Under the MassMutual Loan Agreement, ACRES Capital Servicing LLC ("ACRES Capital Servicing"), an affiliate of ACRES Capital Corp. and the Manager, serves as the portfolio servicer. Additionally, ACRES Capital Servicing served as the special servicer of XAN 2020-RSO8 and XAN 2020-RSO9 and serves as special servicer of ACRES Commercial Realty ACR 2021-FL1 Issuer, Ltd. ("and ACR 2021-FL1") and ACRES Commercial Realty 2021-FL2 Issuer, Ltd. ("ACR 2021-FL2").

(Back to Index)

(Back to Index)

2021-FL2.

During the three and nine months ended September 30, 2023, March 31, 2024 and 2023, ACRES Capital Servicing received no portfolio servicing fees and earned $ $1626,000 ,000 and $91,000 45,000, respectively, in special servicing fees, of which $ $49,000 ,000 and $56,000 35,000, respectively, was recorded as a reduction to interest income in the consolidated statement of operations. During the three and nine months ended September 30, 2022, ACRES Capital Servicing received no portfolio servicing fees and $16,000 and $40,000 in special servicing fees, recorded as a reduction to interest income in the consolidated statement of operations.

Relationship with ACRES Commercial Mortgage, LLC. During the nine months year ended September 30, 2023 December 31, 2023, subsequent to approval from its Board, the Company purchased a participation for $22.5 million in one CRE whole loan from ACRES Commercial Mortgage, LLC. LLC, an affiliate of ACRES Capital Corp. and the Manager.

Relationship with ACRES Collateral Manager, LLC. ACRES Collateral Manager, LLC, an affiliate of ACRES Capital Corp. and the Manager, serves as the collateral manager of ACR 2021-FL1 and ACR 2021-FL2, a role for which it waived its fee.

Relationship with ACRES Development Management, LLC. ACRES Development Management, LLC ("DevCo") is a wholly owned subsidiary of ACRES Capital Corp., the parent of the Manager. DevCo acts in various capacities as a co-developer or owner's representative for direct equity investments within the Company's portfolio. In November 2021, December 2021 and April 2022, the joint venture entities of the three CRE equity investments acquired through direct investment entered into development agreements with DevCo (the "Development Agreements").

(Back to Index)

(Back to Index)

Pursuant to the Development Agreements, DevCo agreed to manage the development of the projects associated with each equity investment in accordance with a development standard in exchange for fees equal to between 1.25% and 1.5% of all project costs. During the three and nine months ended September 30, 2023, March 31, 2024 and 2023, $182,000 82,000 and $327,000 54,000, in fees were incurred and paid to DevCo for services rendered under the Development Agreements. During the three and nine months ended September 30, 2022, $13,000respectively, in fees were incurred and paid to DevCo for services rendered under the Development Agreements.

Relationship with ACRES Share Holdings, LLC. During the three and nine months ended September 30, 2023 March 31, 2024, the Company issued 14,226 and 38,881 shares, respectively, to ACRES Share Holdings, LLC in connection with the fourth quarter 2022, first quarter 2023 and second quarter 2023 incentive compensation. In October 2023, the Company issued 30,320 1,911 shares to ACRES Share Holdings, LLC in connection with the third quarter 2023 incentive compensation. compensation payable to the Manager under the Management Agreement. The shares vested fully upon issuance pursuant to the Management Agreement.

In June 2021, the Company's Manager Plan was approved by its shareholders, which authorized up to 1,100,000 shares of common stock for issuance to the Manager (less shares of common stock issued or subject to awards under the Omnibus Plan). There were no shares issued under this plan for the nine months ended September 30, 2023. During the year ended December 31, 2022, the Company issued 299,999 restricted shares to ACRES Share Holdings, LLC under the Manager Plan that will vest 25% each year on the anniversary of the issuance date over four years. See Note 12 for additional details.

NOTE 17 - FAIR VALUE OF FINANCIAL INSTRUMENTS

The Company had no financial instruments carried at fair value on a recurring basis at September 30, 2023 either March 31, 2024 and December 31, 2022 December 31, 2023.

In June 2023, The Company measures the Company received the deed-in-lieu of foreclosure on a property that formerly collateralized a CRE whole loan. The property was appraised and determined to have a fair value of $20.9 million at certain assets on a non-recurring basis when events or changes in circumstances indicate that the time carrying value of acquisition. the assets may be impaired. Adjustments to fair value generally result from the application of lower of amortized cost or fair value accounting for assets held for sale or write-downs of an asset's value due to impairment.

The Company is required to disclose the fair value of financial instruments for which it is practicable to estimate that value. The fair values of the Company's short-term financial instruments such as cash and cash equivalents, restricted cash, accrued interest receivable, principal paydowns receivable, accrued interest payable and distributions payable approximate their carrying values on the consolidated balance sheets. The fair values of the Company's assets and liabilities are estimated as follows:

(Back to Index)

(Back to Index)

CRE whole loans. The fair values of the Company's loans held for investment are measured by discounting the expected future cash flows using the current interest rates at which similar loans would be made to borrowers with similar credit ratings and for the same remaining maturities. Par values of loans with variable interest rates are expected to approximate fair value unless evidence of credit deterioration exists, in which case the fair value approximates the par value less the loan's allowance estimated through individual evaluation. Fair values of loans with fixed rates are calculated using the net present values of future cash flows, discounted at market rates. The Company's floating-rate CRE loans had interest rates from 8.19 7.88% to 13.94% and 7.03 7.88% to 12.67 13.96% at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.

CRE mezzanine loan. Historically, this was measured by discounting the expected remaining cash flows using the current interest rates at which similar instruments would be originated for the same remaining maturity. The Company's mezzanine loan was discounted at a rate of 10.00%. The Company's mezzanine loan had no carrying or fair value at September 30, 2023 March 31, 2024 or December 31, 2022 December 31, 2023.

Loan receivable- related party. This is estimated using a discounted cash flow model.

Senior notes in CRE securitizations, 5.75% Senior Unsecured Notes and junior subordinated notes. These are estimated using a discounted cash flow model with implied yields based on trades for similar securities.

Senior secured financing facility, warehouse financing facilities mortgage payable and construction loan. mortgages payable. These are variable-rate debt instruments that have been historically are indexed to either LIBOR or one-month Term SOFR that reset periodically and as a result, their carrying value approximates their fair value, excluding deferred debt issuance costs. At September 30, 2023, all variable-rate debt instruments are indexed to SOFR.

(Back to Index)

(Back to Index)

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
SEPTEMBER 30, 2023 MARCH 31, 2024
(unaudited)

The fair values of the Company's remaining financial and non-financial assets that are not reported at fair value on the consolidated balance sheets are reported in the following table (in thousands):

		Fair Value Measurements					Fair Value Measurements			
	Carrying Value	Fair Value	Quoted Prices in Active Markets for Identical Assets of Liabilities (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Carrying Value	Fair Value	Quoted Prices in Active Markets for Identical Assets of Liabilities (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
At September 30, 2023:										
At March 31, 2024:										
Assets:										
CRE whole loans	$ 1,892,571	1,923,014	$ —	$ —	$ 1,923,014	$ 1,741,230	1,774,901	$ —	$ —	$ 1,774,901
Loan receivable - related party	11,050	8,391	—	—	8,391	10,925	8,721	—	—	8,721
Liabilities:										
Senior notes in CRE securitizations	1,203,862	1,161,331	—	—	1,161,331	1,146,812	1,121,537	—	—	1,121,537

Senior secured financing facility	61,383	64,495	—	—	64,495	61,752	64,495	—	—	64,495
Warehouse financing facilities	250,494	253,114	—	—	253,114	165,807	167,731	—	—	167,731
Mortgage payable	18,544	18,854	—	—	18,854					
Construction loan	5,020	6,638	—	—	6,638					
5.75% Senior Unsecured Notes	147,978	136,980	—	—	136,980					
Mortgages payable						51,275	52,909	—	—	52,909
5.75% Senior Unsecured Notes						148,305	140,115	—	—	140,115
Junior subordinated notes	51,548	35,955	—	—	35,955	51,548	39,401	—	—	39,401
At December 31, 2022:										
At December 31, 2023:										
Assets:										
CRE whole loans	$ 2,038,787	$ 2,065,504	$ —	$ —	$ 2,065,504	$ 1,828,336	$ 1,858,265	$ —	$ —	$ 1,858,265

Loan receivable - related party	11,275	9,672	—	—	9,672	10,975	8,598	—	—	8,598
Liabilities:										
Senior notes in CRE securitizations	1,233,556	1,179,313	—	—	1,179,313	1,204,570	1,163,048	—	—	1,163,048
Senior secured financing facility	87,890	91,549	—	—	91,549	61,568	64,495	—	—	64,495
Warehouse financing facilities	328,288	330,848	—	—	330,848	168,588	170,861	—	—	170,861
Mortgage payable	18,244	18,710	—	—	18,710					
5.75% Senior Unsecured Notes	147,507	138,435	—	—	138,435					
Mortgages payable						41,786	43,779	—	—	43,779
5.75% Senior Unsecured Notes						148,140	138,795	—	—	138,795
Junior subordinated notes	51,548	35,821	—	—	35,821	51,548	38,406	—	—	38,406

NOTE 18 - MARKET RISK AND DERIVATIVE INSTRUMENTS

The Company is affected by changes in certain market conditions. These changes in market conditions may adversely impact the Company's financial performance and are referred to as "market risks." When deemed appropriate, the Company used derivatives as a risk management tool to mitigate the potential impact of certain market risks. The primary market risks managed by the Company through the use of derivative instruments were interest rate risk and market price risk.

The Company also historically managed its interest rate risk with interest rate swaps. Interest rate swaps are contracts between two parties to exchange cash flows based on specified underlying notional amounts, assets and/or indices.

The Company seeks to manage the extent to which net income changes as a function of changes in interest rates by matching adjustable-rate assets with variable-rate borrowings.

The Company classified its interest rate swap contracts as cash flow hedges, which are hedges that eliminate the risk of changes in the cash flows of a financial asset or liability.

(Back to Index)

(Back to Index)

The Company terminated all of its interest rate swap positions associated with its financed CMBS portfolio in April 2020. At termination, the Company realized a loss of $11.8 million. At September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, the Company had losses of $5.4 4.5 million and $6.6 5.0 million, respectively, recorded in accumulated other comprehensive loss, which will be amortized into earnings over the remaining life of the debt. During the three and nine months ended September 30, 2023, March 31, 2024 and 2023, the Company recorded amortization expense of $425,000 420,000 and $1.3 416,000 million, reported in interest expense on the consolidated statements of operations. During the three and nine months ended September 30, 2022, the Company recorded amortization expense of $438,000 and $1.4 million, reported in interest expense on the consolidated statements of operations.

At September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, the Company had an unrealized gain of $187,000 142,000 and $256,000 164,000, respectively, attributable to two terminated interest rate swaps in accumulated other comprehensive loss on the consolidated balance sheets, to be accreted into earnings over the remaining life of the debt. For each of the three months ended September 30, 2023 March 31, 2024 and 2022, 2023, the Company recorded accretion income, reported in interest expense on the consolidated statements of operations, of $23,000 to accrete the accumulated other comprehensive income on the terminated swap agreements. For each of the nine months ended September 30, 2023 and 2022, the Company recorded accretion income, reported in interest expense on the consolidated statements of operations, of $68,000 to accrete the accumulated other comprehensive income on the terminated swap agreements.

The following table presents the effect of the derivative instruments on the consolidated statements of operations for the nine three months ended September 30, 2023 March 31, 2024 and 2022 2023 (in thousands):

		Realized and Unrealized Gain (Loss) (1)	
	Consolidated Statements of Operations Location	Nine Months Ended September 30, 2023	Nine Months Ended September 30, 2022
Interest rate swap contracts, hedging	Interest expense	$ (1,192)	$ (1,332)

		Realized and Unrealized Gain (Loss) (1)	
	Consolidated Statements of Operations Location	Three Months Ended March 31, 2024	Three Months Ended March 31, 2023
Interest rate swap contracts, hedging	Interest expense	$ (397)	$ (393)

(1) Negative values indicate a decrease to the associated consolidated statement of operations line items.

NOTE 19 - OFFSETTING OF FINANCIAL ASSETS AND LIABILITIES

The following table presents a summary of the Company's offsetting of financial liabilities and derivative liabilities (in thousands, except amounts in footnotes):

	(i) Gross Amounts of Recognized Liabilities	(ii) Gross Amounts Offset on the Consolidated Balance Sheets	(iii) = (i) - (ii) Net Amounts of Liabilities Presented on the Consolidated Balance Sheets	(iv) Gross Amounts Not Offset on the Consolidated Balance Sheets: Financial Instruments (1)	(iv) Gross Amounts Not Offset on the Consolidated Balance Sheets: Cash Collateral Pledged	(v) = (iii) - (iv) Net Amount
At September 30, 2023:						
Term warehouse financing facilities (2)	$ 250,494	$ —	$ 250,494	$ 250,494	$ —	$ —
At December 31, 2022:						
Term warehouse financing facilities (2)	$ 328,288	$ —	$ 328,288	$ 328,288	$ —	$ —

	(i) Gross Amounts of Recognized Liabilities	(ii) Gross Amounts Offset on the Consolidated Balance Sheets	(iii) = (i) - (ii) Net Amounts of Liabilities Presented on the Consolidated Balance Sheets	(iv) Gross Amounts Not Offset on the Consolidated Balance Sheets: Financial Instruments (1)	(iv) Gross Amounts Not Offset on the Consolidated Balance Sheets: Cash Collateral Pledged	(v) = (iii) - (iv) Net Amount
At March 31, 2024:						
Warehouse financing facilities (2)	$ 165,807	$ —	$ 165,807	$ 165,807	$ —	$ —
At December 31, 2023:						
Warehouse financing facilities (2)	$ 168,588	$ —	$ 168,588	$ 168,588	$ —	$ —

(1) Amounts represent financial instruments pledged that are available to be offset against liability balances associated with term warehouse financing facilities, repurchase agreements and derivatives.

(2) The combined fair values of loans pledged against the Company's various term warehouse financing facilities and repurchase agreements was $378.4 260.1 million and $453.6 254.1 million at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.

All balances associated with warehouse financing facilities are presented on a gross basis on the Company's consolidated balance sheets.

Certain of the Company's warehouse financing facilities are governed by underlying agreements that generally provide for a right of offset in the event of default or in the event of a bankruptcy of either party to the transaction.

(Back to Index)

(Back to Index)

NOTE 20 - COMMITMENTS AND CONTINGENCIES

The Company may become involved in litigation on various matters due to the nature of the Company's business activities. The resolution of these matters may result in adverse judgments, fines, penalties, injunctions and other relief against the Company as well as monetary payments or other agreements and obligations. In addition, the Company may enter into settlements on certain matters in order to avoid the additional costs of engaging in litigation. Except as discussed below, the

Company is unaware of any contingencies arising from such litigation that would require accrual or disclosure in the consolidated financial statements at September 30, 2023 March 31, 2024.

Primary Capital Mortgage, LLC ("PCM") is subject to potential litigation related to claims for repurchases or indemnifications on loans that PCM has sold to third parties. At both September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, no such litigation demand was outstanding. Reserves for such potential litigation demands are included in the reserve for mortgage repurchases and indemnifications that totaled $1.1 1.0 million and $1.2 1.1 million at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively. The reserves for mortgage repurchases and indemnifications are included in accounts payable and other liabilities held for sale on the consolidated balance sheets. At September 30, 2023 March 31, 2024, the Company has substantially completed disposing of PCM's business.

The Company did not have any general litigation reserve at September 30, 2023 March 31, 2024 or December 31, 2022 December 31, 2023.

Other Contingencies

PCM is subject to additional claims for repurchases or indemnifications on loans that PCM has sold to investors. At both September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, outstanding demands for indemnification, repurchase or make whole payments totaled $3.3 million. The Company's estimated exposure for such outstanding claims, as well as unasserted claims, is included in its reserve for mortgage repurchases and indemnifications.

Other Guarantees

In January 2023, Chapel Drive East, LLC, a wholly owned subsidiary of the FSU Student Venture, entered into a loan agreement (the "Construction Loan Agreement") with Oceanview Life and Annuity Company ("Oceanview") to finance the construction of a student housing complex (the "Construction Loan").

In connection with the Company's investment in the student housing complex, ACRES RF entered into guarantees related to the Construction Loan. Pursuant to the guarantees, Jason Pollack, Frank Dellaglio and ACRES RF (collectively, the "Guarantors"), for the benefit of Oceanview, provided limited "bad boy" guaranties to Oceanview pursuant to the Construction Loan Agreement until the earlier of the payment in full of the indebtedness or the date of a sale of the property pursuant to a foreclosure of the mortgage or deed or other transfer in lieu of foreclosure is accepted by Oceanview. The Guarantors also entered into a Completion Guaranty Agreement for the benefit of Oceanview to guaranty the timely completion of the project in accordance with the Construction Loan Agreement, as well as a Carry Guaranty Agreement, for the benefit of Oceanview to guaranty and unconditional payment by Chapel Drive East, LLC of all customary or necessary costs and expenses incurred in connection with the operation, maintenance and management of the property and an Environmental Indemnity Agreement jointly and severally in favor of Oceanview whereby the Guarantors serving as Indemnitors provided environmental representations and warranties, covenants and indemnifications (collectively the "Guaranties"). The Guaranties include certain financial covenants required of ACRES RF, including required net worth and liquidity requirements.

Unfunded Commitments

Unfunded commitments on the Company's originated CRE loans generally fall into two categories: (1) pre-approved capital improvement projects and (2) new or additional construction costs subject, in each case, to the borrower meeting specified criteria. Upon completion of the improvements or construction, the Company would receive additional interest income on the advanced amount. Whole loans had $118.8 97.4 million and $158.2 109.4 million in unfunded loan commitments at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.

(Back to Index)

(Back to Index)

NOTE 21 - SUBSEQUENT EVENTS

The Company has evaluated subsequent events through the filing of this report and determined that there have not been any events, other than those described in Note 6, Note 10, Note 12 and Note 16 that have occurred that would require adjustments to or disclosures in the consolidated financial statements.

(Back to Index)

(Back to Index)

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

References in this quarterly report to "we," "us" or the "Company" refer to ACRES Commercial Realty Corp. The following discussion and analysis of the Company's financial condition and results of operations should be read in conjunction with the consolidated financial statements and accompanying notes appearing elsewhere in this report. Certain information contained in the discussion and analysis set forth below includes forward-looking statements that involve risks and uncertainties.

Special Note Regarding Forward-Looking Statements

This report contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Such forward-looking statements can generally be identified by our use of forward-looking terminology such as "may," "will," "continue," "expect," "intend," "anticipate," "estimate," "believe," "look forward" or other similar words or terms. Because such statements include risks, uncertainties and contingencies, actual results may differ materially from the expectations, intentions, beliefs, plans or predictions of the future expressed or implied by such forward-looking statements. For information identifying important factors that could cause actual results to differ materially from those anticipated in the forward-looking statements, including, without limitation, factors impacting whether we will be able to maintain our sources of liquidity and whether we will be able to identify sufficient suitable investments to increase our originations, please refer to the Risk Factors section of the Company's Annual Report on Form 10-K for the year ended December 31, 2022 December 31, 2023 filed with the U.S. Securities and Exchange Commission (the "SEC"). Except as expressly required by applicable securities law, the Company disclaims any intention or obligation to update or revise any forward-looking statements whether as a result of new information, future events or otherwise.

Overview

We are a Maryland corporation and an externally managed real estate investment trust ("REIT") that is primarily focused on originating, holding and managing commercial real estate ("CRE") mortgage loans and equity investments in commercial real estate properties through direct ownership and joint ventures. Our manager is ACRES Capital, LLC (our "Manager"), a subsidiary of ACRES Capital Corp. (collectively, "ACRES"), a private commercial real estate lender exclusively dedicated to nationwide middle market CRE lending with a focus on multifamily, student housing, hospitality, office and industrial property in top United States ("U.S.") markets. Our Manager draws upon the management team of ACRES and its collective investment experience to provide its services. Our longer term objective is to provide our stockholders with total returns over time, including quarterly distributions and capital appreciation, while seeking to manage the risks associated with our investment strategies as well as to maximize long-term stockholder value by maintaining stability through our available liquidity and diversified CRE loan portfolio. Our short term strategy is to drive book value ("BV") growth over the coming years by utilizing our NOL carryforwards of $46.6 million and a portion of our net capital loss carryforwards of $121.9 million, each at December 31, 2022 March 31, 2024. By retaining these expected future earnings, we can grow our investable base and selectively deploy the anticipated capital growth into new whole loan originations at attractive yields, which we expect will grow our earnings available for distribution.

Currently, markets are grappling with inflation rising and the prospect of having higher interest rates bank failures and the lingering impact of the COVID-19 pandemic. for longer than originally forecasted. These market pressures have caused continued disruption in many market segments, including the financial services, real estate and credit markets and these disruptions have affected the availability and the cost of capital. The increase in the cost of capital is expected to cause short-term dislocations in various investment and financing markets in which we participate as we and other market participants adjust to the new financing environment.

The U.S. Federal Reserve has raised the Federal Funds rate by 5.25% in 11 rate hikes between March 2022 and July 2023 to combat inflation. While the U.S Federal Reserve has signaled they may lower rates in 2024, there is no certainty with respect to the timing and pace of potential decreases or if such decreases will occur. Interest rates may remain at or near recent highs, which creates further uncertainty for the economy and our borrowers. A rising interest rate environment generally correlates to increases in our net income. However, increases in interest rates may adversely affect our existing borrowers and could lead to nonperformance, i.e. the borrower's ability inability to pay debt service. Additionally, rising rates and increasing costs may discourage consumer spending and slow corporate profit growth, which may negatively impact the collateral underlying our loans and impact our borrowers' ability to sell or refinance in the current market.

Additionally, the office property market continues to experience high vacancies, slower leasing activity and current tenants reevaluating their needs for physical office space due to remote-work trends across the country. These factors, coupled with inflation, higher interest rates projected longer than originally expected and dislocations in market liquidity, have converged to create higher levels of uncertainty surrounding property values, which in turn, also negatively impact borrowers' ability and willingness to financially support

(Back to Index)

(Back to Index)

and standby their investments in their office properties, their abilities to sell or refinance their positions in the current market and ultimately our financial results.

In response, we continue to manage corporate liquidity actively and responsibly, manage our CRE assets through a solutions-based approach with our borrowers and manage our daily operations in light of changing macroeconomic circumstances. Our Manager also continuously monitors for new capital opportunities and selectively executes on agreements that are expected to enhance our returns.

(Back to Index)

(Back to Index)

We target originating originate transitional floating-rate CRE loans with a target size of between $10.0 million and $100.0 million. During the nine three months ended September 30, 2023 March 31, 2024, we originated two did not originate new floating-rate CRE whole loans, with total commitments of $38.5 million. loans. Loan payoffs during the nine three months ended September 30, 2023 March 31, 2024 were $194.9 million and $80.8 million, offset by net funded commitments were $36.7 million of $11.4 million, producing a net decrease to the portfolio of $119.7 million $69.4 million. During the year ended December 31, 2022 December 31, 2023, we selectively originated 19 three floating-rate CRE whole loans with total commitments of $610.8 million $68.2 million. Loan payoffs during the year ended December 31, 2022 December 31, 2023 were $399.6 million and $293.1 million, offset by net unfunded funded commitments were $21.2 million of $40.5 million, producing a net increase decrease to the portfolio of $190.0 million $184.4 million.

Our CRE loan portfolio, which had carrying values of $1.9 billion $1.7 billion and $2.0 billion $1.8 billion at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively, comprised:

- First mortgage loans, which we refer to as whole loans. These loans are typically secured by first liens on CRE property, including the following property ty multifamily, student housing, hotel, hospitality, office, self-storage and retail. All but four two of our CRE whole loans were current on contractual paymen September 30, 2023 March 31, 2024.
- Mezzanine debt that is senior to the borrower's equity but is subordinated to other third-party debt. These loans are subordinated CRE loans, usually secure a pledge of the borrower's equity ownership in the entity that owns the property or by a second lien mortgage on the property. At both September 2023 March 31, 2024 and December 31, 2022 December 31, 2023, we had one mezzanine loan included in CRE loans held for investment that had no carr value. This mezzanine loan was not current on contractual payments at September 30, 2023 March 31, 2024.

We generate our income primarily from the spread between the revenues we receive from our assets and the cost to finance our ownership of those assets, including corporate debt.

While the CRE whole loans included in the CRE loan portfolio are substantially composed of floating-rate loans benchmarked to the one-month Term Secured Overnight Financing Rate ("SOFR"), asset yields are protected through the use of benchmark floors and minimum interest periods that typically range from 12 to 18 months at the time of a loan's origination. Our benchmark floors provide asset yield protection when the benchmark rate falls below an in-place benchmark floor. Our net investment returns are enhanced by a decline in the cost of our floating-rate liabilities that do not have benchmark floors. Our net investment returns will be negatively impacted by the rising cost of our floating-rate liabilities that do not have floors until the benchmark rate is above the benchmark floor, at which point our floating-rate loans and floating-rate liabilities will be match funded, effectively locking in our net interest margin until the benchmark floor rate is activated again or the floating-rate loan is paid off or refinanced.

In a business environment where benchmark interest rates are increasing significantly, cash flows of the CRE assets underlying our loans may not be sufficient to pay debt service on our loans, which could result in non-performance or default. We partially mitigate this risk by generally requiring our borrowers to purchase interest rate cap agreements with non-affiliated, well-capitalized third parties and by selectively requiring our borrowers to have and maintain debt service reserves. These interest rate caps generally mature prior to the maturity date of the loan and the borrowers are required to pay to extend them. In most cases the sponsors will need to fund additional equity into the properties to cover these costs as the property may not generate sufficient cash flow to pay these costs. At September 30, 2023 March 31, 2024, 88.5% 77% of the par value of our CRE loan portfolio had interest rate caps in place with a weighted-average maturity of eight six months.

At September 30, 2023 March 31, 2024, our $1.9 billion par-value $1.8 billion floating-rate CRE loan portfolio at par, had a weighted average benchmark floor of 0.68%. At December 31, 2022 0.74%, our par-value $2.1 billion floating-rate CRE loan portfolio, which included one loan without a benchmark while at December 31, 2023, this floor had a weighted average benchmark floor of 0.68% was 0.70%. With the trend of rising benchmark interest rates, in 2022 and 2023, we have seen the coupons on all of our floating-rate assets and debt rise accordingly. Because we have equity invested in each floating-rate loan, and because in all instances the benchmark interest rates are above our loan floors, the rise in interest rates expected by the market will result resulted in an increase in our net interest income. See "Interest Rate Risk" in "Item 3: Quantitative and Qualitative Disclosures About Market Risk."

(Back to Index)

(Back to Index)

Our portfolio comprises loans with a diverse array of collateral types. types and locations. Multifamily continues to comprise the majority of our portfolio, with 76.3% 79.1% of our portfolio allocated to multifamily at September 30, 2023 March 31, 2024 and 75.2% 79.6% at December 31, 2022 December 31, 2023. The following charts show our portfolio allocation by property type at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023:

0000950170-24-055428img82327870_1.jpg

0000950170-24-055428img82327870_2.jpg

(Back to Index)

(Back to Index)

From time to time, we may acquire real estate property through direct equity investments or as a result of our lending activities. During the three months ended March 31, 2024, we acquired an office property located in the East North Central region via deed-in-lieu of foreclosure that, at acquisition, had a cost basis of $14.0 million and a fair value of $20.3 million. We recognized a $5.8 million gain upon converting the loan to real estate owned and immediately contributed the property into a joint venture with an unrelated third-party, seeking to maximize the property's value through a multifamily conversion. We reported this investment as an investment in an unconsolidated entity on our consolidated balance sheets.

At September 30, 2023 March 31, 2024, the total carrying value of our net real estate-related assets and liabilities was $168.7 million $162.9 million on six properties owned, four of which are included in investments in real estate and two of which are included in properties held for sale. sale on our consolidated balance sheets. The existence of net capital loss carryforwards available until December 31, 2025, allows for potential future capital gains on certain of these investments to be shielded from income taxes.

We use leverage to enhance our returns. The cost of borrowings to finance our investments is a significant part of our expenses. Our net interest income depends on our ability to control these expenses relative to our revenue. Our CRE loans may initially be financed with term facilities, such as CRE loan warehouse financing facilities, in anticipation of their ultimate securitization. We ultimately seek to finance our CRE loans through the use of non-recourse long-term, match-funded CRE debt securitizations.

Our At March 31, 2024 and December 31, 2023, our financing arrangements were as follows (dollars in thousands):

		Outstanding Borrowings	Percentage of Borrowings
At March 31, 2024:			
CRE debt securitizations(1)(2)	$	1,146,812	70.6 %
CRE - term warehouse financing facilities(1)		165,807	10.2 %
Senior secured financing facility(1)		61,752	3.8 %
Mortgages payable(1)		51,275	3.1 %
5.75% Senior Unsecured Notes		148,305	9.1 %
Unsecured junior subordinated debentures		51,548	3.2 %

Total	$ 1,625,499	100.0 %

At December 31, 2023:	Outstanding Borrowings	Percentage of Borrowings
CRE debt securitizations(1)(2)	$ 1,204,570	71.9 %
CRE - term warehouse financing facilities(1)	168,588	10.1 %
Senior secured financing facility(1)	61,568	3.7 %
Mortgages payable(1)	41,786	2.4 %
5.75% Senior Unsecured Notes	148,140	8.8 %
Unsecured junior subordinated debentures	51,548	3.1 %
Total	$ 1,676,200	100.0 %

(1) Represents an asset-specific borrowings comprised borrowing.

(2) Each of our CRE debt securitizations term warehouse financing facilities, senior secured financing facility, mortgage payable and construction loans. In May 2021, we closed ACRES Commercial Realty 2021 Issuer, Ltd.

(Back to In

(Back to Index)

("ACR 2021-FL1"), a CRE debt securitization financing $802.6 million of CRE loans with $675.2 million of non-recourse, floating-rate notes at a weighted average co one-month LIBOR plus 1.49%. In December 2021, we closed ACRES Commercial Realty 2021-FL2 Issuer, Ltd. ("ACR 2021-FL2"), a CRE debt securitization finan $700.0 million of CRE loans with $567.0 million of non-recourse, floating-rate notes at a weighted average cost of one-month LIBOR plus 1.80%. In June 2023 converted one-month LIBOR to one-month Term SOFR for both ACR 2021-FL1 and ACR 2021-FL2. Each of these 2021 CLOs initially provided for a two-year reinvestr period that allowed us to reinvest CRE loan payoffs and principal paydown proceeds into the securitizations, pending certain eligibility criteria are met and rating age approval is obtained. The reinvestment feature of the periods on both our securitizations would allow us to extend the securitizations' financing lives at favorable inte rates through the reinvestment of loan payoff proceeds into new loans. The reinvestment period on ACR 2021-FL1 ended in May 2023 and the reinvestment period on A 2021-FL2 will end in December 2023.

In February 2022 and March 2022, we exercised the optional redemptions of Exantas Capital Corp. 2020-RSO8, Ltd. ("XAN 2020-RSO8") and Exantas Capital Corp. 2020-RSO9, Ltd. ("XAN 2020-RSO9"), respectively, and all of the outstanding senior notes were paid off from the sales proceeds of certain of the securitizations' assets.

At both September 30, 2023 and December 31, 2022, we had outstanding borrowings of $1.2 billion in CRE debt securitizations, or 69.2% and 66.1%, respectively, of total outstanding borrowings. At September 30, 2023 and December 31, 2022, we had outstanding borrowings of $250.5 million and $328.3 million, respectively, on our term warehouse financing facilities, or 14.4% and 17.6%, respectively, of total outstanding borrowings. At September 30, 2023 and December 31, 2022, we had outstanding borrowings of $61.4 million and $87.9 million, respectively, on our senior secured financing facility, or 3.5% and 4.7%, respectively, of total outstanding borrowings. At September 30, 2023 and December 31, 2022, we had outstanding borrowings of $18.5 million and $18.2 million, respectively, on our mortgage payable, or 1.1% and 1.0%, respectively, of total outstanding borrowings. At September 30, 2023, we had outstanding borrowings of $5.0 million on our construction loans, or 0.3% of total outstanding borrowings.

In February 2022, we repurchased $39.8 million par value of our 4.50% convertible senior notes due 2022 ("4.50% Convertible Senior Notes"). In conjunction with the repurchase, we accelerated $460,000 of the convertible note discount, which was recorded as an extinguishment of debt cost, and $114,000 of deferred debt issuance costs, which were recorded in interest expense. In August 2022, the remaining $48.2 million of outstanding notes were paid off upon maturity at par.

In January 2020, we adopted updated accounting guidance that replaced the incurred loss approach with the CECL model for the determination of our allowance for loan losses. We reevaluate our CECL current expected credit losses ("CECL") allowance quarterly, incorporating our current expectations of macroeconomic factors considered in the determination of our CECL reserves.

At September 30, 2023 March 31, 2024, the CECL allowance on our CRE loan portfolio was $27.6 million $33.7 million, or 1.4% 1.9% of our $1.8 billion loan portfolio. During the three months ended March 31, 2024, we recorded a provision for credit losses primarily attributable to worsening macroeconomic factors due to higher interest rates lasting longer than expected, compounded by an increase in modeled credit risk from the expected worsening of property-level performance.

At December 31, 2023, the CECL allowance on our CRE loan portfolio was $28.8 million or 1.5% of our $1.9 billion loan portfolio. During the nine months year ended September 30, 2023 December 31, 2023, we recorded a provision for credit losses primarily attributable to the modeled increases in general portfolio credit risk compounded by ongoing uncertainty around the commercial real estate market's current macroeconomic outlook, which has affected our borrowers' business plan execution and general market liquidity. In June 2023, we received

(Back to Index)

(Back to Index)

the deed-in-lieu of foreclosure to a property formerly collateralizing an office loan in the East North Central region with a principal balance of $22.8 million, which resulted in a charge off of $948,000 against the allowance for credit losses.

At December 31, 2022, the CECL allowance on our CRE loan portfolio was $18.8 million, or 0.9% of our $2.1 billion loan portfolio. During the year ended December 31, 2022, we recorded a net provision for credit losses, which at the time, reflected changes in macroeconomic conditions and a specific, full reserve on one mezzanine loan with a par value of $4.7 million, which was delinquent with respect to debt service.

Additionally, the decline in our CECL reserves from our highest reserve balance at June 30, 2020 of $61.1 million, or 3.4% of the par balance of our CRE loan portfolio, to our current reserve balance at September 30, 2023 March 31, 2024 of $27.6 million $33.7 million, or 1.4% 1.9% of the par balance of our CRE loan portfolio, has been due to the following: the successful resolution of our individually evaluated loans with specific reserves, the overall newer vintage of our CRE loan portfolio (with 10.3% only 9.4% of the portfolio, at September 30, 2023 March 31, 2024, being originated prior to the fourth quarter of 2020) as well as the increased percentage allocation of our CRE loan portfolio to multifamily loans over time. Multifamily loans have historically had our the lowest credit losses of any asset class, and in the sample population in the third-party model that we use to support our CECL reserves. Our percentage allocation of our CRE loan portfolio to multifamily has grown from 58.4% at June 30, 2020 to 76.3% 79.1% at September 30, 2023 March 31, 2024.

(Back to Index)

(Back to Index)

We historically used derivative financial instruments, including interest rate swaps, to hedge a portion of the interest rate risk associated with our borrowings. In April 2020, we terminated all interest rate hedges in conjunction with the disposition of our financed commercial mortgage-backed securities ("CMBS") portfolio. At September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, we had unrealized losses in connection with the terminated hedges of $5.4 million $4.5 million and $6.6 million $5.0 million, respectively, which will be amortized into interest expense over the remaining life of the debt. During the three and nine months ended September 30, 2023 March 31, 2024, we recognized amortization expense on these terminated contracts of $425,000 and $1.3 million, respectively. $420,000.

Common stock book value was $25.07 $27.25 per share at September 30, 2023 March 31, 2024, a $0.53 $0.60 per share increase from December 31, 2022 December 31, 2023.

Reference Rate Reform

Historically, we have used LIBOR as the benchmark interest rate for our floating-rate whole loans and we have been exposed to LIBOR through our floating-rate borrowings. In March 2021, the United Kingdom's Financial Conduct Authority announced that it would cease publication of the one-week and two-month USD LIBOR immediately after December 31, 2021 and cease publication of the remaining tenors immediately after June 30, 2023. In July 2021, the U.S. Federal Reserve, in conjunction with the Alternative Reference Rates Committee, a steering committee comprised of large U.S. financial institutions, has identified SOFR as its preferred alternative rate for LIBOR.

Following this announcement, we began to transition the contractual benchmark rates of existing floating-rate whole loans and borrowings to alternate rates. At September 30, 2023, our entire portfolio of floating rate whole loans and floating rate borrowings have transitioned to SOFR.

Results of Operations

Our net income allocable to common shares for the three months ended September 30, 2023 March 31, 2024 was $2.9 million $556,000, or $0.34 $0.07 per share-basic ($0.33 0.07 per share-diluted) and our net income allocable to common shares for the nine months ended September 30, 2023 was $1.3 million or $0.15 per share-basic ($0.15 per share-diluted), respectively, as compared to net income loss allocable to common shares for the three months ended September 30, 2022 March 31, 2023 of $713,000, $2.4 million, or $0.08 $0.28 per share-basic ($0.08 0.28 per share-diluted) and net loss allocable to common shares for the nine months ended September 30, 2022 of $1.4 million, or $(0.15) per share-basic ($(0.15) per share-diluted).

(Back to Index)

(Back to Index)

Net Interest Income

The following tables analyze the change in interest income and interest expense for the comparative three and nine months ended September 30, 2023 March 31, 2024 and 2022 2023 by changes in volume and changes in rates. The changes attributable to the combined changes in volume and rate have been allocated proportionately, based on absolute values, to the changes due to volume and changes due to rates (dollars in thousands, except amounts in footnotes):

	Three Months Ended September 30, 2023 Compared to Three Months Ended September 30, 2022				Three Months Ended March 31, 2024 Compared to Three Months Ended March 31, 2023			
			Due to Changes in				Due to Changes in	
	Net Change	Percent Change (1)	Volume	Rate	Net Change	Percent Change (1)	Volume	Rate
Increase (decrease) in interest income:								
(Decrease) increase in interest income:								
CRE whole loans (2)	$ 13,831	41 %	$ (2,256)	$ 16,087	$ (2,591)	(6)%	$ (5,492)	$ 2,901
CRE mezzanine loan	(120)	(100)%	—	(120)	(13)	(100)%	—	(13)
Other	432	207 %	34	398	(114)	(13)%	(335)	221
Total increase in interest income	14,143	42 %	(2,222)	16,365				
Total (decrease) increase in interest income					(2,718)	(6)%	(5,827)	3,109
Increase (decrease) in interest expense:								
Securitized borrowings:								
ACR 2021-FL1 Senior Notes	5,206	77 %	(166)	5,372	675	6 %	(928)	1,603
ACR 2021-FL2 Senior Notes	4,597	74 %	—	4,597	1,134	12 %	(203)	1,337
Senior secured financing facility (3)	107	8 %	(392)	499				
CRE - term warehouse financing facilities (3)	755	16 %	(1,854)	2,609				
4.50% Convertible Senior Notes (3)	(443)	(100)%	(443)	—				
Senior secured financing facility					120	8 %	(45)	165
CRE - term warehouse financing facilities					(2,189)	(36)%	(2,829)	640
5.75% Senior Unsecured Notes (3)	10	0 %	10	—	10	0 %	10	—
12.00% Senior Unsecured Notes (3)	(32)	(100)%	(32)	—				
Unsecured junior subordinated debentures	429	52 %	—	429	122	11 %	—	122
Hedging	(13)	(3)%	(13)	—				
Total increase in interest expense	10,616	46 %	(2,890)	13,506				
Net increase in net interest income	$ 3,527		$ 668	$ 2,859				

Hedging (3)	4	1 %	4	—
Total (decrease) increase in interest expense	(124)	(0)%	(3,991)	3,867
Net decrease in net interest income	$ (2,594)		$ (1,836)	$ (758)

(Back to Index)

(Back to Index)

(1) Percent change is calculated as the net change divided by the respective interest income or interest expense for the three months ended September 30, 2022 March 31, 2023.
(2) Includes a decrease in fee income of $320,000 $341,000 recognized on our CRE whole loans that was due to changes in volume.
(3) Includes decreases in Net change pertains to amortization expense of $107,000, $179,000 and $32,000 on our CRE - term warehouse financing facilities, 4.50% Convertible Senior Notes and 12.00% s unsecured notes, respectively, and increases is reflected in amortization expense of $30,000 and $10,000 on oursenior secured financing facility and 5.75% Senior Unsecured Notes, respectively, that were d changes the change in volume.

(Back to Index)

(Back to Index)

	Nine Months Ended September 30, 2023 Compared to Nine Months Ended September 30, 2022			
			Due to Changes in	
	Net Change	Percent Change (1)	Volume	Rate
Increase (decrease) in interest income:				
CRE whole loans (2)	$ 55,282	67 %	$ (1,268)	$ 56,550
Legacy CRE loan	(29)	(100)%	(29)	—
CRE mezzanine loan	(342)	(96)%	—	(342)
Other	2,014	712 %	48	1,966
Total increase in interest income	56,925	68 %	(1,249)	58,174
Increase (decrease) in interest expense:				
Securitized borrowings: (3)				
XAN 2020-RSO8 Senior Notes	(1,208)	(100)%	(1,208)	—
XAN 2020-RSO9 Senior Notes	(956)	(100)%	(956)	—
ACR 2021-FL1 Senior Notes	19,744	139 %	(166)	19,910
ACR 2021-FL2 Senior Notes	16,811	125 %	—	16,811
Senior secured financing facility (3)	2,020	88 %	1,328	692
CRE - term warehouse financing facilities (3)	8,928	108 %	(146)	9,074
4.50% Convertible Senior Notes (3)	(2,690)	(100)%	(2,690)	—
5.75% Senior Unsecured Notes (3)	29	0 %	29	—
12.00% Senior Unsecured Notes (3)	(306)	(100)%	(306)	—
Unsecured junior subordinated debentures	1,549	77 %	—	1,549
Hedging	(140)	(11)%	(140)	—
Total increase in interest expense	43,781	82 %	(4,255)	48,036
Net increase in net interest income	$ 13,144		$ 3,006	$ 10,138

(1) Percent change is calculated as the net change divided by the respective interest income or interest expense for the nine months ended September 30, 2022.

(2) Includes a decrease in fee income of $1.1 million recognized on our CRE whole loans that was due to changes in volume.

(3) Includes decreases in amortization expense of $1.1 million, $321,000, $1.1 million and $306,000 on our securitized borrowings, CRE - term warehouse financing facilities, 4.50% Convertible Senior Notes and 12.00% senior unsecured notes, respectively, and increases in amortization expense of $90,000 and $29,000 on oursenior secured financing facility and 5.75% Senior Unsecured Notes, respectively, that were due to changes in volume.

Net Change in Interest Income for the Comparative three and nine months ended September 30, 2023 March 31, 2024 and 2022: 2023:

Aggregate interest income increased decreased by $14.1 million and $56.9 million $2.7 million for the comparative three and nine months ended September 30, 2023 March 31, 2024 and 2022, respectively. 2023. We attribute the changes change to the following:

CRE whole loans. The increases decrease of $13.8 million and $55.3 million $2.6 million for the comparative three and nine months ended September 30, 2023 March 31, 2024 and 2022, respectively, were 2023 was primarily attributable to a decrease in total par value of our CRE portfolio, offset by an increase in the benchmark rate over the comparative periods.

Other. The decrease of $114,000 for the comparative three months ended March 31, 2024 and 2023 was primarily attributable to a decrease in restricted cash in our CRE securitizations, offset by an increase in yields on our interest earning money market accounts.

Net Change in Interest Expense for the Comparative three months ended March 31, 2024 and 2023:

Aggregate interest expense decreased by $124,000 for the comparative three months ended March 31, 2024 and 2023. We attribute the change to the following:

Securitized borrowings. The net increase of $1.8 million for the comparative three months ended March 31, 2024 and 2023 was primarily attributable to an increase in the benchmark rate over the comparative periods, offset by paydowns on our borrowings.

Senior secured financing facility. The increase of $120,000 for the comparative three months ended March 31, 2024 and 2023 was primarily attributable to an increase in the benchmark rate over the comparative periods.

CRE mezzanine loan. The decreases of $120,000 and $342,000 for the comparative three and nine months ended September 30, 2023 and 2022, respectively, is attributable to the loan entering payment default in February 2023 and subsequently being placed on nonaccrual status.

Net Change in Interest Expense for the Comparative three and nine months ended September 30, 2023 and 2022:

Aggregate interest expense increased by $10.6 million and $43.8 million for the comparative three and nine months ended September 30, 2023 and 2022, respectively. We attribute the changes to the following:

Securitized borrowings. The net increases of $9.8 million and $34.4 million for the comparative three and nine months ended September 30, 2023 and 2022, respectively, were primarily attributable to an increase in the benchmark rate over the comparative periods. The increase for the comparative nine months ended September 30, 2023 and 2022 was partially offset by the 2022 liquidations of XAN 2020-RSO8 and XAN 2020-RSO9.

(Back to Index)

(Back to Index)

Senior secured financing facility. The increases of $107,000 and $2.0 million for the comparative three and nine months ended September 30, 2023 and 2022, respectively, were primarily attributable to increased utilization of the senior secured financing facility. The increase was also attributable to increased rates over the comparative periods in connection with an amendment of the facility in December 2022, which changed the facility from its initial 5.75% fixed rate to a floating rate structure.

CRE - term warehouse financing facilities. The increases decrease of $755,000 and $8.9 million for the comparative three and nine months ended September 30, 2023 and 2022, respectively, were primarily attributable to an increase in the benchmark rate over the comparative periods. The increase $2.2 million for the comparative three months ended September 30, 2023 March 31, 2024 and 2022 was also partially offset by the decreased utilization of these facilities over the comparative periods.

4.50% Convertible Senior Notes. The decreases of $443,000 and $2.7 million for the comparative three and nine months ended September 30, 2023 and 2022, respectively, 2023 were primarily attributable to the redemption of the remaining $88.0 million of these notes during the year ended December 31, 2022. paydowns on our borrowings.

Unsecured junior subordinated debentures. The increases increase of $429,000 and $1.5 million $122,000 for the comparative three and nine months ended September 30, 2023 March 31, 2024 and 2022, respectively, were 2023 was primarily attributable to an increase in the benchmark rate over the comparative periods.

Average Net Yield and Average Cost of Funds:

The following tables present the average net yield and average cost of funds for the three and nine months ended September 30, 2023March 31, 2024 and 20222023 (dollars in thousands, except amounts in footnotes):

	Three Months Ended September 30, 2023			Three Months Ended September 30, 2022			Three Months Ended March 31, 2024			Three Months Ended March 31, 2023		
	Average Amortized Cost	Interest Income (Expense)	Average Net Yield (Cost of Funds) (1)	Average Amortized Cost	Interest Income (Expense)	Average Net Yield (Cost of Funds) (1)	Average Amortized Cost	Interest Income (Expense)	Average Net Yield (Cost of Funds) (1)	Average Amortized Cost	Interest Income (Expense)	Average Net Yield (Cost of Funds) (1)
Interest-earning assets												
CRE whole loans, floating-rate (2)	$ 1,930,841	$ 47,567	9.77 %	$ 2,079,131	$ 33,736	6.44 %	$ 1,800,747	$ 41,866	9.33 %	$ 2,011,599	$ 44,457	8.96 %
CRE mezzanine loan	4,700	—	— %	4,700	120	9.96 %	4,700	—	— %	4,700	13	1.09 %
Other	71,332	641	3.57 %	62,436	209	1.33 %	73,651	745	4.06 %	111,119	859	3.14 %
Total interest income/average net yield	2,006,873	48,208	9.53 %	2,146,267	34,065	6.30 %	1,879,098	42,611	9.10 %	2,127,418	45,329	8.64 %
Interest-bearing liabilities												
Collateralized by:												
CRE whole loans (3)	1,518,646	(29,588)	(7.73)%	1,659,729	(18,923)	(4.59)%	1,396,158	(27,296)	(7.84)%	1,621,061	(27,556)	(6.89)%
General corporate debt:												
5.75% Senior Unsecured Notes (4)							148,223	(2,321)	(6.28)%	147,585	(2,311)	(6.35)%
Unsecured junior subordinated debentures	51,548	(1,249)	(9.48)%	51,548	(820)	(6.22)%	51,548	(1,237)	(9.49)%	51,548	(1,115)	(8.65)%
4.50% Convertible Senior Notes (4)	—	—	— %	22,970	(443)	(7.56)%						
5.75% Senior Unsecured Notes (5)	147,899	(2,316)	(6.21)%	147,280	(2,306)	(6.21)%						
12.00% Senior Unsecured Notes (6)(7)	—	—	— %	—	(32)	— %						
Hedging (8)	—	(402)	— %	—	(415)	— %						
Hedging (5)							—	(397)	— %	—	(393)	— %

Total interest expense/average cost of funds	1,718,093	(33,555)	(7.65)%	1,881,527	(22,939)	(4.80)%	1,595,929	(31,251)	(7.75)%	1,820,194	(31,375)	(6.90)%
Total net interest income		$ 14,653			$ 11,126			$ 11,360			$ 13,954	

(1) Average net yield includes net amortization/accretion and fee income and is computed based on average amortized cost.

(2) Includes fee income of $2.0 million $1.7 million and $2.4 million $2.1 million recognized on our floating-rate CRE whole loans for the three months ended September 30, 2023 March 31, 2024 and 2022, respectively.

(3) Includes amortization expense of $1.3 million and $1.4 million for the three months ended September 30, 2023 March 31, 2024 and 2022, 2023, respectively, on our interest-bearing liabilities collateralized by whole loans.

(4) Includes amortization expense of $179,000 $164,000 and $155,000 for the three months ended September 30, 2022. March 31, 2024 and 2023, respectively.

(Back to Index)

(Back to Index)

(5) Includes amortization expense of $159,000 and $150,000 for the three months ended September 30, 2023 and 2022, respectively.

(6) Includes amortization expense of $32,000 for the three months ended September 30, 2022.

(7) The outstanding par balance of our 12.00% Senior Unsecured Notes was redeemed in full in August 2021. At any time and from time to time prior to July 31, 2022, we were permitted to elect to issue up to million of principal of additional notes. The interest expense incurred during the three months ended September 30, 2022 comprised amortization of deferred debt issuance costs on the remaining availability.

(8) Includes net amortization expense of $402,000 $397,000 and $415,000 $393,000 for the three months ended September 30, 2023 March 31, 2024 and 2022, 2023, respectively, on 20 and 22 terminated interes swap agreements, respectively, that were in net loss positions at the time of termination. The remaining net losses, reported in accumulated other comprehensive loss on the consolidated balance sheets, w accreted over the remaining life of the debt.

(Back to Index)

(Back to Index)

	Nine Months Ended September 30, 2023			Nine Months Ended September 30, 2022		
	Average Amortized Cost	Interest Income (Expense)	Average Net Yield (Cost of Funds) (1)	Average Amortized Cost	Interest Income (Expense)	Average Net Yield (Cost of Funds) (1)
Interest-earning assets						
CRE whole loans, floating-rate (2)	$ 1,972,052	$ 138,375	9.38 %	$ 1,972,750	$ 83,093	5.63 %
Legacy CRE loan	—	—	— %	211	29	18.08 %
CRE mezzanine loan	4,700	13	0.36 %	4,700	355	9.96 %
Other	90,565	2,297	3.39 %	85,395	283	0.44 %
Total interest income/average net yield	2,067,317	140,685	9.10 %	2,063,056	83,760	5.43 %
Interest-bearing liabilities						
Collateralized by:						
CRE whole loans (3)	1,564,831	(85,690)	(7.32)%	1,545,493	(40,351)	(3.42)%
General corporate debt:						
Unsecured junior subordinated debentures	51,548	(3,550)	(9.08)%	51,548	(2,001)	(5.12)%
4.50% Convertible Senior Notes (4)	—	—	— %	45,795	(2,690)	(7.75)%
5.75% Senior Unsecured Notes (5)	147,743	(6,940)	(6.28)%	147,134	(6,911)	(6.28)%
12.00% Senior Unsecured Notes (6)(7)	—	—	— %	—	(306)	— %
Hedging (8)	—	(1,192)	— %	—	(1,332)	— %
Total interest expense/average cost of funds	1,764,122	(97,372)	(7.28)%	1,789,970	(53,591)	(3.81)%
Total net interest income		$ 43,313			$ 30,169	

(1) Average net yield includes net amortization/accretion and fee income and is computed based on average amortized cost.
(2) Includes fee income of $6.0 million and $7.1 million on our floating-rate CRE whole loans for the nine months ended September 30, 2023 and 2022, respectively.
(3) Includes amortization expense of $4.0 million and $5.3 million for the nine months ended September 30, 2023 and 2022, respectively, on our interest-bearing liabilities collateralized by CRE whole loans.
(4) Includes amortization expense of $1.1 million for the nine months ended September 30, 2022.
(5) Includes amortization expense of $471,000 and $442,000 for the nine months ended September 30, 2023 and 2022, respectively.
(6) Includes amortization expense of $306,000 for the nine months ended September 30, 2022.
(7) The outstanding par balance of our 12.00% Senior Unsecured Notes was redeemed in full in August 2021. At any time and from time to time prior to July 31, 2022, we were permitted to elect to issue up to $ million of principal of additional notes. The interest expense incurred during the nine months ended September 30, 2022 comprised amortization of deferred debt issuance costs on the remaining availability.
(8) Includes net amortization expense of $1.2 million and $1.3 million for the nine months ended September 30, 2023 and 2022, respectively, on 20 and 22 terminated interest rate swap agreements, respectively were in net loss positions at the time of termination. The remaining net losses, reported in accumulated other comprehensive loss on the consolidated balance sheets, will be accreted over the remaining life debt.

Real Estate Income and Other Revenue

The following table sets forth information relating to our real estate income and other revenue for the periods presented (dollars in thousands):

	For the Three Months Ended September 30,			
	2023	2022	Dollar Change	Percent Change
Real estate income and other revenue:				
Real estate income	$ 9,316	$ 9,785	$ (469)	(5)%
Other revenue	37	25	12	48 %
Total	$ 9,353	$ 9,810	$ (457)	(5)%

	For the Nine Months Ended September 30,				For the Three Months Ended March 31,			
	2023	2022	Dollar Change	Percent Change	2024	2023	Dollar Change	Percent Change
Real estate income and other revenue:								
Real estate income	$ 25,266	$ 21,700	$ 3,566	16 %	$ 7,371	$ 7,071	$ 300	4 %
Other revenue	107	60	47	78 %	37	33	4	12 %
Total	$ 25,373	$ 21,760	$ 3,613	17 %	$ 7,408	$ 7,104	$ 304	4 %

Aggregate real estate income and other revenue decreased by $457,000 and increased by $3.6 million $304,000 for the comparative three and nine months ended September 30, 2023 March 31, 2024 and 2022, respectively. 2023. The decrease increase in the comparative three months was primarily attributed to incremental revenues from the acquisition of an office building through deed-in-lieu of foreclosure in June 2023. The impact of those incremental revenues was partially offset by the loss of revenues from two properties that were sold: a the sale of a hotel property in February 2023 and a sale of an office building in September 2022. The decrease in revenue for the comparative three months was partially offset by an increase in revenue at a hotel property and the acquisition of an office building through deed in lieu of foreclosure in June 2023.

(Back to Index)

(Back to Index)

The increase in real estate income for the comparative nine months ended was primarily attributable to the acquisition of a hotel property in April 2022, as well as increased real estate income at our hotel property acquired in 2020 that benefited from increased personal and business travel resulting from lifted COVID-19 restrictions that occurred late in the spring of 2022. The increase for the comparative nine months was partially offset by the sale of an office property in September 2022, as well as decreased revenue on an office property acquired in October 2021.

Operating Expenses

The following tables set forth information relating to our operating expenses for the periods presented (dollars in thousands):

	For the Three Months Ended September 30,	For the Three Months Ended March 31,

	2023	2022	Dollar Change	Percent Change	2024	2023	Dollar Change	Percent Change
Operating expenses:								
General and administrative	$ 2,246	$ 2,128	$ 118	6 %	$ 3,255	$ 2,979	$ 276	9 %
Real estate expenses	9,706	10,099	(393)	(4)%	9,531	8,860	671	8 %
Management fees - related party	2,113	1,669	444	27 %	1,627	1,773	(146)	(8)%
Equity compensation - related party	482	913	(431)	(47)%	477	894	(417)	(47)%
Corporate depreciation and amortization	22	21	1	5 %	8	23	(15)	(65)%
Provision for credit losses, net	1,983	2,620	(637)	(24)%	4,896	5,096	(200)	(4)%
Total	$ 16,552	$ 17,450	$ (898)	(5)%	$ 19,794	$ 19,625	$ 169	1 %

	For the Nine Months Ended September 30,			
	2023	2022	Dollar Change	Percent Change
Operating expenses:				
General and administrative	$ 7,573	$ 7,938	$ (365)	(5)%
Real estate expenses	29,058	24,055	5,003	21 %
Management fees - related party	5,776	5,023	753	15 %
Equity compensation - related party	2,095	2,648	(553)	(21)%
Corporate depreciation and amortization	68	64	4	6 %
Provision for credit losses, net	9,779	1,342	8,437	629 %
Total	$ 54,349	$ 41,070	$ 13,279	32 %

(Back to Index)

(Back to Index)

Aggregate operating expenses decreased by $898,000 and increased by $13.3 million$169,000 for the comparative three and nine months ended September 30, 2023March 31, 2024 and 2022, respectively.2023. We attribute the changeschange to the following:

General and administrative. General and administrative expenses increased by $118,000 and decreased by $365,000$276,000 for the comparative three and nine months ended September 30, 2023March 31, 2024 and 2022, respectively.2023. The following table summarizes the information relating to our general and administrative expenses for the periods presented (dollars in thousands):

	For the Three Months Ended September 30,			
	2023	2022	Dollar Change	Percent Change
General and administrative				
Professional services	$ 960	$ 1,009	$ (49)	(5)%
Wages and benefits	338	317	21	7 %
D&O insurance	276	339	(63)	(19)%
Operating expenses	265	245	20	8 %
Dues and subscriptions	191	121	70	58 %

Director fees	206	206	—	0%
Tax penalties, interest & franchise tax	—	(114)	114	100%
Travel	10	5	5	100%
Total	$ 2,246	$ 2,128	$ 118	6%

(Back to Index)

(Back to Index)

	For the Nine Months Ended September 30,				For the Three Months Ended March 31,			
	2023	2022	Dollar Change	Percent Change	2024	2023	Dollar Change	Percent Change
General and administrative								
Professional services	$ 3,441	$ 4,058	$ (617)	(15)%	$ 1,880	$ 1,520	$ 360	24%
Wages and benefits	1,079	966	113	12%	361	391	(30)	(8)%
D&O insurance	917	1,054	(137)	(13)%	248	319	(71)	(22)%
Operating expenses	772	670	102	15%	225	268	(43)	(16)%
Dues and subscriptions	623	513	110	21%	207	203	4	2%
Director fees	619	619	—	0%	231	206	25	12%
Tax penalties, interest & franchise tax	86	27	59	219%	78	66	12	18%
Travel	36	31	5	16%	25	6	19	317%
Total	$ 7,573	$ 7,938	$ (365)	(5)%	$ 3,255	$ 2,979	$ 276	9%

The increase in general and administrative expense for the comparative three months ended September 30, 2023 March 31, 2024 and 2022 2023 was primarily attributable to the receipt of approximately $123,000 of interest income increase in the third quarter 2022 legal fees related to the receipt of a 2017 federal tax refund, which decreased tax penalties, interest our CRE loan assets and franchise tax in that period.

The decrease in general and administrative expense for the comparative nine months ended September 30, 2023 and 2022 was primarily attributable to a decrease in professional services in connection with (i) legal expenses incurred during the nine months ended September 30, 2022 pertaining to the liquidation of 2020-RSO8 and 2020-RSO9 compounded by reimbursement from a borrower for legal costs during the nine months ended September 30, 2023, (ii) a decrease in marketing expenses over the comparative periods and (iii) the timing of CRE valuations for the year end audit. our interim audit billings.

Real estate expenses. The decrease increase of $393,000 $671,000 for the comparative three months ended September 30, 2023 March 31, 2024 and 2022 2023 was primarily attributable to incremental real estate operating expenses from the sales acquisition of an office property building through deed-in-lieu of foreclosure in September 2022 and June 2023. This was partially offset by the loss of expenses from the sale of a hotel property in February 2023.

Equity compensation - related party. The decrease was also attributable to decreased expenses incurred on a hotel property acquired in November 2020, and was partially offset by the acquisition of a hotel in April 2022 and an office property on which we received the deed-in-lieu of foreclosure in June 2023.

The net increase of $5.0 million $417,000 for the comparative nine three months ended September 30, 2023 March 31, 2024 and 2022 2023 was primarily attributable related to the acquisition vesting of a hotel shares in April 2022. The increase was also attributable 2023. As these shares fully vest, the expense related to the acquisition of a student housing complex in April 2022 and an office property on which we received the deed-in-lieu of foreclosure in June 2023. The increase was partially offset by the sale of an office property in September 2022 and decreased expenses on an office property acquired in October 2021. equity compensation - related party decreases.

Provision for credit losses, net. The provision for credit losses of $2.0 million and $9.8 million for the three and nine months ended September 30, 2023, respectively, was primarily driven by modeled increases in general portfolio credit risk compounded by ongoing uncertainty around the commercial real estate market's current macroeconomic outlook, which has directly affected our borrowers' business plan execution and general market liquidity. The provisions for credit losses of $2.6 million and $1.3 million for the three and nine months ended September 30, 2022, respectively, were primarily attributable to a general decline in macroeconomic conditions.

Other Income (Expense)

The following table sets forth information relating to our other income (expense) incurred for the periods presented (dollars in thousands):

	For the Three Months Ended September 30,			
	2023	2022	Dollar Change	Percent Change
Other income (expense):				
Gain on sale of real estate	$ —	$ 1,870	$ (1,870)	(100)%
Other income	113	130	(17)	(13)%
Total	$ 113	$ 2,000	$ (1,887)	(94)%

(Back to Index)

(Back to Index)

	For the Nine Months Ended September 30,			
	2023	2022	Dollar Change	Percent Change
Other income (expense):				
Loss on extinguishment of debt	$ —	$ (460)	$ 460	(100)%
Gain on sale of real estate	745	1,870	(1,125)	(60)%
Other income	465	1,103	(638)	(58)%
Total	$ 1,210	$ 2,513	$ (1,303)	(52)%

	For the Three Months Ended March 31,			
	2024	2023	Dollar Change	Percent Change
Other income (expense):				
Gain on sale of real estate	$ —	$ 745	$ (745)	(100)%
Gain on conversion of real estate	5,835	—	5,835	100%
Other income	115	110	5	5%
Total	$ 5,950	$ 855	$ 5,095	596%

Aggregate other income decreased $1.9 million and $1.3 million increased $5.1 million for the comparative three and nine months ended September 30, 2023 March 31, 2024 and 2022, respectively. 2023. We attribute the changes change to the following:

Loss on extinguishment of debt. There were no losses on extinguishment of debt in the three and nine months ended September 30, 2023. The loss of $460,000 for the nine months ended September 30, 2022 was attributable to non-cash losses in connection with the ratable acceleration of the 4.50% Convertible Senior Notes' market discount due to the partial redemption of our 4.50% Convertible Senior Notes in February 2022.

Gain on sale of real estate. The decrease of $1.9 million and $1.1 million $745,000 during the comparative three and nine months ended September 30, 2023 March 31, 2024 and 2022, respectively, 2023 was primarily attributed to the sale of a hotel property in the Northeast region in February 2023 that generated a non-recurring gains gain of $745,000 as compared to the sale of an office property in the Midwest Region in September 2022 that generated non-recurring gains of $1.9 million. $745,000. No sale sales of real estate occurred in the three months ended September 30, 2023 March 31, 2024.

Other Income. The decrease of $638,000 during the comparative nine months ended September 30, 2023 and 2022 was primarily attributable to a loan recovery received during the nine months ended September 30, 2022 on a middle market loan that was previously charged off in a prior quarter. During the three and nine months ended September 30, 2023, no loan recoveries occurred.

(Back to Index)

(Back to Index)

Gain on conversion of real estate. The increase of $5.8 million during the comparative three months ended March 31, 2024 and 2023 was primarily attributed to the completion of a deed-in-lieu of foreclosure that generated a non-recurring gain of $5.8 million as the fair value of the property exceeded the amortized cost basis of the loan.

Financial Condition

Summary

Our total assets were $2.3 billion $2.1 billion and $2.4 billion $2.2 billion at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.

Investment Portfolio

The tables below summarize the amortized cost and net carrying amount of our investment portfolio, classified by asset type, at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023 as follows (dollars in thousands, except amounts in footnotes):

At September 30, 2023	Amortized Cost	Net Carrying Amount (1)	Percent of Portfolio	Weighted Average Coupon
Loans held for investment:				
CRE whole loans, floating-rate	$ 1,915,505	$ 1,892,571	91.74 %	9.28%
CRE mezzanine loan	4,700	—	0.00 %	10.00%
	1,920,205	1,892,571	91.74 %	
Other investments:				
Investments in unconsolidated entities	1,548	1,548	0.08 %	N/A (4)
Investments in real estate (2)	109,588	109,588	5.31 %	N/A (4)
Property held for sale (3)	59,138	59,138	2.87 %	N/A (4)
	170,274	170,274	8.26 %	
Total investment portfolio	$ 2,090,479	$ 2,062,845	100.00 %	

At March 31, 2024	Amortized Cost	Net Carrying Amount (1)	Percent of Portfolio	Weighted Average Coupon
Loans held for investment:				
CRE whole loans, floating-rate	$ 1,770,183	$ 1,741,230	87.18 %	9.14%
CRE mezzanine loan	4,700	—	0.00 %	10.00%
	1,774,883	1,741,230	87.18 %	
Other investments:				
Investments in unconsolidated entities	21,671	21,671	1.09 %	N/A (4)
Investments in real estate (2)	171,284	171,284	8.58 %	N/A (4)
Property held for sale (3)	62,986	62,986	3.15 %	N/A (4)
	255,941	255,941	12.82 %	
Total investment portfolio	$ 2,030,824	$ 1,997,171	100.00 %	

At December 31, 2022	Amortized Cost	Net Carrying Amount (1)	Percent of Portfolio	Weighted Average Coupon
Loans held for investment:				
CRE whole loans, floating-rate	$ 2,052,890	$ 2,038,787	93.56 %	7.99%
CRE mezzanine loan	4,700	—	0.00 %	10.00%
	2,057,590	2,038,787	93.56 %	
Other investments:				
Investments in unconsolidated entities	1,548	1,548	0.07 %	N/A (4)

At December 31, 2023	Amortized Cost	Net Carrying Amount (1)	Percent of Portfolio	Weighted Average Coupon
Loans held for investment:				
CRE whole loans, floating-rate	$ 1,852,393	$ 1,828,336	91.93 %	9.15%
CRE mezzanine loan	4,700	—	0.00 %	10.00%
	1,857,093	1,828,336	91.93 %	
Other investments:				
Investments in unconsolidated entities	1,548	1,548	0.08 %	N/A (4)

Investments in real estate (2)	88,132	88,132	4.04 %	N/A (4)	99,338	99,338	4.99 %	N/A (4)
Property held for sale (3)	50,744	50,744	2.33 %	N/A (4)	59,580	59,580	3.00 %	N/A (4)
	140,424	140,424	6.44 %		160,466	160,466	8.07 %	
Total investment portfolio	$ 2,198,014	$ 2,179,211	100.00 %		$ 2,017,559	$ 1,988,802	100.00 %	

(1) Net carrying amount includes an allowance for credit losses of $27.6 million $33.7 million and $18.8 million $28.8 million at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, : respectively.

(2) Includes real estate-related estate related right of use assets of $19.3 million $19.1 million and $19.5 million, mortgage payable of $18.5 million and $18.2 million $19.2 million, intangible assets of $8.1 millior million and $8.9 million $7.9 million, lease liabilities of $43.4 million $43.7 million and $42.9 million $44.3 million, mortgages payable of $51.3 million and $41.8 million, and other liabilities of $37,000 $18,00($64,000 $27,000 at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively. Also includes construction loans payable of $5.0 million at September 30, 2023.

(3) Includes property held for sale-related liabilities of $3.0 million at both September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023.

(4) There are no stated rates associated with these investments.

CRE loans. During the nine three months ended September 30, 2023 March 31, 2024, we originated $38.5 million did not originate new CRE loans. We received $80.8 million in proceeds from loan payoffs offset by funding of floating-rate CRE whole $11.4 million of previously unfunded loan commitments. Loan payoffs during the nine months ended September 30, 2023 were $194.9 million and net funded commitments, were $36.7 million, producing a net change reduction of $119.7 million $69.4 million in the par balance of the portfolio.

(Back to Index)

(Back to Index)

The following is a summary of our loans (dollars in thousands, except amounts in footnotes):

Description	Quantity	Principal	Unamortized (Discount) Premium, net (1)	Amortized Cost	Allowance for Credit Losses	Carrying Value	Contractual Interest Rates (2)	Maturity Dates (3)(4)	Quantity	Principal	Unamortized (Discount) Premium, net (1)	Amortized Cost	Allowance for Credit Losses	Carrying Value	Contractual Interest Rates (2)	Maturity Dates (3)(4)
At September 30, 2023:																
At March 31, 2024:																

Whole loans (5)(6)	74	$ 1,923,014	$ (7,509)	$ 1,915,505	$ (22,934)	$ 1,892,571	1M BR plus 2.86% to 1M BR plus 8.61%	December 2023 to July 2026	65	$ 1,774,901	$ (4,718)	$ 1,770,183	$ (28,953)	$ 1,741,230	1M BR plus 2.50% to 1M BR plus 8.61%	April 2024 to January 2027
Mezzanine loan (5)	1	4,700	—	4,700	(4,700)	—	10.00%	June 2028	1	4,700	—	4,700	(4,700)	—	10.00%	June 2028
Total		$ 1,927,714	$ (7,509)	$ 1,920,205	$ (27,634)	$ 1,892,571				$ 1,779,601	$ (4,718)	$ 1,774,883	$ (33,653)	$ 1,741,230		
At December 31, 2022:																
At December 31, 2023:																
Whole loans (5)(6)	81	$ 2,065,504	$ (12,614)	$ 2,052,890	$ (14,103)	$ 2,038,787	1M BR plus 2.85% to 1M BR plus 8.50%	January 2023 to July 2026	69	$ 1,858,265	$ (5,872)	$ 1,852,393	$ (24,057)	$ 1,828,336	1M BR plus 2.50% to 1M BR plus 8.61%	January 2024 to January 2027
Mezzanine loan (5)	1	4,700	—	4,700	(4,700)	—	10.00%	June 2028	1	4,700	—	4,700	(4,700)	—	10.00%	June 2028

Total	$ 2,070,204	$ (12,614)	$ 2,057,590	$ (18,803)	$ 2,038,787	$ 1,862,965	$ (5,872)	$ 1,857,093	$ (28,757)	$ 1,828,336

(1) Amounts include unamortized loan origination fees of $7.3 million $4.2 million and $12.3 million $5.8 million and deferred amendment fees of $198,000 $509,000 and $308,000 $110,000 at September 30, 2023 M 31, 2024 and December 31, 2022 December 31, 2023, respectively.

(2) Benchmark rates ("BR") comprise one-month LIBOR or one-month Term SOFR. At September 30, 2023, all of our whole loans used one-month Term SOFR. Weighted-average one-month benchmark rates 5.37% 5.36% and 4.21% 5.39% at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively. Additionally, weighted-average benchmark rate floors were 0.68% 0.74% and 0 at both September 30, 2023 March 31, 2024 and December 31, 2022. December 31, 2023, respectively.

(3) Maturity dates exclude contractual extension options, subject to the satisfaction of certain terms that may be available to the borrowers.

(4) Maturity dates exclude four two and three whole loans, with amortized costs of $47.8 million $27.2 million and $51.6 million $41.2 million, in maturity default at September 30, 2023 March 31, 2024 and Decembe 2022 December 31, 2023, respectively.

(5) Substantially all loans are pledged as collateral under various borrowings at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023.

(6) CRE whole loans had $118.8 million $97.4 million and $158.2 million $109.4 million in unfunded loan commitments at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respec These unfunded loan commitments are advanced as the borrowers formally request additional funding and meet certain benchmarks, as permitted under the loan agreement, and any necessary approvals have obtained.

At September 30, 2023 March 31, 2024, 24.2% 26.7%, 21.8% 21.1% and 14.5% 15.8% of our CRE loan portfolio was concentrated in the Southwest, Southeast and Mountain regions, respectively, based on carrying value, as defined by the NCREIF. At December 31, 2022 December 31, 2023, 23.2% 26.6%, 21.5% 22.0% and 16.2% 15.0% of our CRE loan portfolio was concentrated in the Southwest, Southeast and Mountain regions, respectively, based on carrying value. At September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, no single loan or investment represented more than 10% of our total assets and no single investment group generated over 10% of our revenue.

Investments in unconsolidated entities. Our investments in unconsolidated entities at September 30, 2023 and December 31, 2022 March 31, 2024 comprised a 100% interest in the common shares of Resource Capital Trust I (“RCT I”) and RCC Trust II (“RCT II”), with a value of $1.5 million in the aggregate, or 3.0% of each trust. trust and our investment in 65 E. Wacker Joint Venture, LLC (the "Venture"), representing a 90% interest in a joint venture formed for the purpose of converting an office property in the East North Central region to multifamily units with a value of $20.1 million. Our investments in unconsolidated entities at December 31, 2023 solely comprised our investments in RCT I and RCC Trust II.

We record our investments in RCT I’s and RCT II’s common shares as investments in unconsolidated entities using the cost method. We record our investment in the Venture as an equity method recording dividend income when declared by RCT I and RCT II.

We recorded dividends from our investments in RCT I’s and RCT II’s common shares, reported in other revenue on the consolidated statement of operations, of $37,000 and $107,000, respectively, during the three and nine months ended September 30, 2023. During the three and nine months ended September 30, 2022, we recorded dividends of $25,000 and $60,000, respectively. investment.

Investments in real estate and property held for sale. At September 30, 2023 March 31, 2024, we held investments in six real estate properties, four of which are included in investments in real estate and two of which are included in properties held for sale on the consolidated balance sheets.

In February 2023, we sold a hotel property in the Northeast region that we previously designated as a property held for sale. The hotel property sold for $15.1 million with selling costs of $845,000, resulting in a gain of $745,000.

(Back to Index)

(Back to Index)

In June 2023, we received the deed-in-lieu of foreclosure on an office property in the East North Central region. We determined that the acquisition of the property should be accounted for as an asset acquisition, and the acquisition-date fair value of $20.9 million was determined using a third-party valuation. Additionally on the date of transfer, we also acquired cash and receivables, and assumed trade payables, resulting in a charge off of the loan against our allowance for credit losses of $948,000. At September 30, 2023, the property was reported as property held for sale on the consolidated balance sheets.

The following table summarizes the book value of our investments in real estate and related intangible assets at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023 (in thousands, except amounts in the footnotes):

	September 30, 2023			December 31, 2022			March 31, 2024			December 31, 2023		
	Cost Basis	Accumulated Depreciation & Amortization	Carrying Value	Cost Basis	Accumulated Depreciation & Amortization	Carrying Value	Cost Basis	Accumulated Depreciation & Amortization	Carrying Value	Cost Basis	Accumulated Depreciation & Amortization	Carrying Value
Assets:												
Assets acquired:												
Investments in real estate, equity:												
Investments in real estate (1)	$ 153,522	$ (4,342)	$ 149,180	$ 123,219	$ (2,251)	$ 120,968	$ 177,032	$ (5,748)	$ 171,284	$ 162,662	$ (5,041)	$ 157,621
Right of use assets (2)(3)	19,664	(410)	19,254	19,664	(205)	19,459	19,664	(545)	19,119	19,664	(478)	19,186
Intangible assets (4)	11,474	(3,349)	8,125	11,474	(2,594)	8,880	11,474	(3,836)	7,638	11,474	(3,592)	7,882
Subtotal	184,660	(8,101)	176,559	154,357	(5,050)	149,307	208,170	(10,129)	198,041	193,800	(9,111)	184,689
Investments in real estate from lending activities:												

Properties held for sale (5)	62,163	—	62,163	53,769	—	53,769	62,986	—	62,986	62,605	—	62,605
Total	246,823	(8,101)	238,722	208,126	(5,050)	203,076	271,156	(10,129)	261,027	256,405	(9,111)	247,294
Liabilities:												
Liabilities assumed:												
Investments in real estate, equity:												
Mortgage payable	18,233	311	18,544	18,089	155	18,244						
Construction loans payable	4,210	810	5,020	—	—	—						
Mortgage payables							49,427	1,848	51,275	40,297	1,489	41,786
Other liabilities	247	(210)	37	247	(183)	64	247	(229)	18	247	(220)	27
Lease liabilities (3)(6)	43,261	109	43,370	43,260	(393)	42,867	43,712	—	43,712	43,538	—	43,538
Subtotal	65,951	1,020	66,971	61,596	(421)	61,175	93,386	1,619	95,005	84,082	1,269	85,351

Investments in real estate from lending activities:												
Liabilities held for sale (7)	3,025	—	3,025	3,025	—	3,025	3,073	—	3,073	3,025	—	3,025
Total	68,976	1,020	69,996	64,621	(421)	64,200	96,459	1,619	98,078	87,107	1,269	88,376
Total net investments in real estate and properties held for sale (8)	$ 177,847		$ 168,726	$ 143,505		$ 138,876	$ 174,697		$ 162,949	$ 169,298		$ 158,918

(1) Includes $38.4 million of land, which is not depreciable, at both September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023. Also includes $35.8 million $59.1 million and $44.9 milli construction in progress, which is also not depreciable until placed in service, at September 30, 2023. There was no construction in progress at December 31, 2022. March 31, 2024 and December 31, respectively.

(2) Primarily comprises comprised a $18.9 million $18.8 million and $19.2 million right of use asset, at March 31, 2024 and December 31, 2023, respectively, associated with an acquired the ground lease of $42.8 n accounted for disclosed at footnote (6) below as an operating lease at September 30, 2023. At December 31, 2022, the value of the right of use asset was $19.0 million associated to the acquired ground lea $42.4 million. lease. Amortization is booked to real estate expenses on the consolidated statements of operations.

(3) Refer to Note 8 in the Notes to the Consolidated Financial Statements for additional information on our remaining operating leases.

(4) Primarily comprises comprised a franchise intangible of $4.8 million $4.5 million and $5.3 million $4.7 million, a management contract intangible of $3.0 million and $3.1 million $2.9 million and a custome intangible of $268,000 $179,000 and $427,000 $223,000, at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.

(5) At December 31, 2022 March 31, 2024 and December 31, 2023, properties held for sale included two properties originally a hotel acquired via deed-in-lieu of foreclosure in November 2020, and July 202 September 30, 2023, properties held for sale included the November 2020 acquisition, as well as the an office property acquired via deed-in-lieu of foreclosure in June 2023.

(6) Primarily comprises comprised a $42.8 million $43.4 million ground lease with a remaining term of 93 years. 92 years at March 31, 2024. Lease expenses expense was $680,000 and $661,000 for the nine months ended September 30, 2023 were $2.0 million. March 31, 2024 and 2023, respectively.

(7) Comprises Comprised an operating lease liability liability.

(8) Excludes items of working capital, either acquired or assumed.

Financing Receivables

Current market conditions have resulted in, and may continue to result in, a dislocation in capital markets, declining real estate values of certain asset classes and increased delinquencies and defaults, resulting in increased loan modifications, increased allowances for credit losses and an increased risk to borrowers of foreclosure actions. We routinely employ rigorous risk management and underwriting practices to proactively evaluate and maintain the credit quality of our CRE loan portfolio and work closely with our borrowers to mitigate potential losses.

(Back to Index)

(Back to Index)

Financing Receivables

The following tables show the activity in the allowance for credit losses for the nine three months ended September 30, 2023 March 31, 2024 and year ended December 31, 2022 December 31, 2023 (in thousands):

	Nine Months Ended September 30, 2023	Year Ended December 31, 2022	Three Months Ended March 31, 2024	Year Ended December 31, 2023
Allowance for credit losses at beginning of period	$ 18,803	$ 8,805	$ 28,757	$ 18,803
Provision for credit losses	9,779	12,295	4,896	10,902
Charge offs	(948)	(2,297)	—	(948)
Allowance for credit losses at end of period	$ 27,634	$ 18,803	$ 33,653	$ 28,757

During the three and nine months ended September 30, 2023 March 31, 2024, we recorded a provisions for expected credit losses of $2.0 million and $9.8 million, respectively, $4.9 million primarily driven by increased modeled portfolio credit risk related to ongoing macroeconomic uncertainty in the commercial real estate market.

In June 2023, we received the deed-in-lieu of foreclosure on an office loan in the East North Central region with a principal balance of $22.8 million which resulted in a charge off of $948,000 against the allowance for credit losses.

During the three and nine months ended September 30, 2022, we recorded provisions for expected credit losses of $2.6 million and $1.3 million, respectively, primarily attributable to the negative impact of worsening macroeconomic factors focused on increases in inflation, energy costs and due to higher interest rates and to a lesser extent, lasting longer than expected, compounded by an increase in portfolio modeled credit risk indicated in from the expected worsening of property-level cash flows that collateralize our CRE loan portfolio. performance.

At September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, we individually evaluated the following loans for impairment:

- One office mezzanine loan in the Northeast region with a principal balance of $4.7 million at both September 30, 2023 March 31, 2024 and Decemb 2022 December 31, 2023. We fully reserved this loan in the fourth quarter of 2022, and it continues to be fully reserved at September 30, 2023 March 31, 202 loan entered payment default in February 2023 and has been placed on nonaccrual status.
- One retail loan in the Northeast region, with a principal balance of $8.0 million at both September 30, 2023 March 31, 2024 and December 31, 2022 Decemb 2023, for which foreclosure was determined to be probable. The loan was modified in February 2021 to extend the loan's its maturity to December 20 December 2021, and has since this loan entered into payment default and has been put was placed on nonaccrual status. The loan had an as-is borrower fi bankruptcy in 2023 and the property was sold to a third-party bidder at auction in February 2024. The sale closed subsequent to March 31, 2024, at a pur price of $8.3 million. The sale price and the "as-is" appraised value were in excess of its principal, and, interest balances, and, as such, the loan had no allov for CECL at September 30, 2023 both March 31, 2024 and December 31, 2022, respectively. December 31, 2023.
- One office loan in the Southwest region, with a principal balance of $20.1 million $19.1 million at both March 31, 2024 and $20.7 million at September 30, 202 December 31, 2022 December 31, 2023, respectively, for which foreclosure was determined to be probable. The loan had an initial maturity of March 202 modified three times to extend its maturity to June 2022 and 2022. The loan has since entered into payment default and has been put placed on nonaccrual s However, in exchange for payments, comprising principal paydowns, interest payments and the reimbursement of certain legal fees, received between O 2022 and October 2023, May 2024, we have agreed to temporarily defer our right to foreclose on the property until January August 2024. Additionally, a September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, this loan had an as-is "as-is" appraised value in excess of its principal, a such, had no CECL allowance. Subsequent to March 31, 2024, the loan was paid down by $4.7 million from a combination of excess operating cash flo principal payments received in accordance with the executed forbearance agreements.

Also, at December 31, 2023, we individually evaluated one additional loan:

- One office loan in the East North Central region with a principal balance of $14.0 million at December 31, 2023. During the year ended December 31, 2023, th entered into payment default and placed on nonaccrual status. The loan had an "as-is" appraised value in excess of its principal and interest balances, a such, had no allowance for CECL allowance. at December 31, 2023. In March 2024, we accepted the deed-in-lieu of foreclosure in full satisfaction of the loa recognized a $5.8 million gain upon conversion based on the property's fair value of $20.3 million in the consolidated statement of operations. Upon recei property was immediately contributed to a joint venture and our investment in that joint venture is included in investments in unconsolidated entities consolidated balance sheet.

(Back to Index)

(Back to Index)

Credit quality indicators

Commercial Real Estate Loans

CRE loans are collateralized by a diversified mix of real estate properties and are assessed for credit quality based on the collective evaluation of several factors, including but not limited to: collateral performance relative to underwritten plan, time since origination, current implied and/or re-underwritten loan-to-collateral value ("LTV") ratios, loan structure and exit plan. Depending on the loan's performance against these various factors, loans are rated on a scale from 1 to 5, with loans rated 1 representing loans with the highest credit quality and loans rated 5 representing loans with the lowest credit quality. Loans are rated a 2 at origination. The factors evaluated provide general criteria to monitor credit migration in our loan portfolio; as such, a loan's rating may improve or worsen, depending on new information received.

(Back to Index)

(Back to Index)

The criteria set forth below should be used as general guidelines and, therefore, not every loan will have all of the characteristics described in each category below.

Risk Rating	Risk Characteristics
1	• Property performance has surpassed underwritten expectations. • Occupancy is stabilized, the property has had a history of consistently high occupancy, and the property has a diverse and high quality tenant mix.
2	• Property performance is consistent with underwritten expectations and covenants and performance criteria are being met or exceeded. • Occupancy is stabilized, near stabilized or is on track with underwriting.
3	• Property performance lags behind underwritten expectations. • Occupancy is not stabilized and the property has some tenancy rollover.
4	• Property performance significantly lags behind underwritten expectations. Performance criteria and loan covenants have required occasional waivers. • Occupancy is not stabilized and the property has a large amount of tenancy rollover.
5	• Property performance is significantly worse than underwritten expectations. The loan is not in compliance with loan covenants and performance criteria and may be in default. Expected sale proceeds would not be sufficient to pay off the loan at maturity. • The property has a material vacancy rate and significant rollover of remaining tenants. • An updated appraisal is required upon designation and updated on an as-needed basis.

All CRE loans are evaluated for any credit deterioration by debt asset management and certain finance personnel on at least a quarterly basis. Mezzanine loans may experience greater credit risks due to their nature as subordinated investments.

For the purpose of calculating the quarterly provision for credit losses under CECL, we pool CRE loans based on the underlying collateral property type and utilize a probability of default and loss given default methodology for approximately one year after which we immediately revert to a historical mean loss ratio.

(Back to Index)

(Back to Index)

Credit risk profiles of CRE loans at amortized cost were as follows (in thousands, except amounts in the footnotes):

	Rating 1	Rating 2	Rating 3	Rating 4	Rating 5	Total (1)	Rating 1	Rating 2	Rating 3	Rating 4	Rating 5	Total (1)
At September 30, 2023:												
At March 31, 2024:												
Whole loans, floating-rate	$ —	$ 1,049,699	709,481	$ 128,161	$ 28,164	$ 1,915,505	$ 74,551	$ 857,411	540,835	$ 270,234	$ 27,152	$ 1,770,183
Mezzanine loan	—	—	—	—	4,700	4,700	—	—	—	—	4,700	4,700
Total	$ —	$ 1,049,699	$ 709,481	$ 128,161	$ 32,864	$ 1,920,205	$ 74,551	$ 857,411	$ 540,835	$ 270,234	$ 31,852	$ 1,774,883
At December 31, 2022:												
At December 31, 2023:												
Whole loans, floating-rate	$ —	$ 1,635,376	$ 309,491	$ 85,226	$ 22,797	$ 2,052,890	$ —	$ 973,424	$ 581,032	$ 256,785	$ 41,152	$ 1,852,393
Mezzanine loan	—	—	—	—	4,700	4,700	—	—	—	—	4,700	4,700
Total	$ —	$ 1,635,376	$ 309,491	$ 85,226	$ 27,497	$ 2,057,590	$ —	$ 973,424	$ 581,032	$ 256,785	$ 45,852	$ 1,857,093

(1) The total amortized cost of CRE loans excluded accrued interest receivable of $12.4 million $11.8 million at both March 31, 2024 and $11.9 million at September 30, 2023 and December 31, respectively. December 31, 2023.

(Back to Index)

(Back to Index)

Credit risk profiles of CRE loans by origination year at amortized cost were as follows (in thousands, except amounts in footnotes):

	2023	2022	2021	2020	2019	Prior	Total (1)	2024	2023	2022	2021	2020	Prior	Total (1)
At September 30, 2023:														
At March 31, 2024:														
Whole loans, floating-rate: (2)														
Rating 1								$ —	$ —	$ —	$ 74,551	$ —	$ —	$ 74,551

Rating 2	$ 38,021	$ 307,911	$ 634,477	$ 52,711	$ 16,579	$ —	$ 1,049,699	—	47,756	189,986	546,471	56,671	16,527	857,411
Rating 3	—	183,713	455,756	34,269	22,083	13,660	709,481	—	15,771	197,128	316,817	—	11,119	540,835
Rating 4	—	33,605	44,035	—	5,672	44,849	128,161	—	—	83,985	135,735	—	50,514	270,234
Rating 5	—	—	—	—	20,139	8,025	28,164	—	—	—	—	—	27,152	27,152
Total whole loans, floating-rate	38,021	525,229	1,134,268	86,980	64,473	66,534	1,915,505	—	63,527	471,099	1,073,574	56,671	105,312	1,770,183
Mezzanine loan (rating 5)	—	—	—	—	—	4,700	4,700	—	—	—	—	—	4,700	4,700
Total	$ 38,021	$ 525,229	$ 1,134,268	$ 86,980	$ 64,473	$ 71,234	$ 1,920,205	$ —	$ 63,527	$ 471,099	$ 1,073,574	$ 56,671	$ 110,012	$ 1,774,883
Current Period Gross Write-Offs	$ —	$ —	$ —	$ —	$ (948)	$ —	$ (948)	$ —	$ —	$ —	$ —	$ —	$ —	$ —
	2022	**2021**	**2020**	**2019**	**2018**	**Prior**	**Total (1)**							
At December 31, 2022:														
								2023	**2022**	**2021**	**2020**	**2019**	**Prior**	**Total (1)**
At December 31, 2023:														

Whole loans, floating-rate: (2)														
Rating 2	$ 526,606	$ 1,003,060	$ 64,944	$ 26,977	$ 13,789	$ —	$ 1,635,376	$ 63,634	$ 212,175	$ 636,487	$ 22,556	$ 38,572	$ —	$ 973,424
Rating 3	—	192,490	44,657	27,881	44,463	—	309,491	—	168,791	364,369	34,232	—	13,640	581,032
Rating 4	—	—	—	20,742	64,484	—	85,226	—	82,918	123,333	—	5,645	44,889	256,785
Rating 5	—	—	—	22,797	—	—	22,797	—	14,000	—	—	19,127	8,025	41,152
Total whole loans, floating-rate	526,606	1,195,550	109,601	98,397	122,736	—	2,052,890	63,634	477,884	1,124,189	56,788	63,344	66,554	1,852,393
Mezzanine loan (rating 5)	—	—	—	—	4,700	—	4,700	—	—	—	—	—	4,700	4,700
Total	$ 526,606	$ 1,195,550	$ 109,601	$ 98,397	$ 127,436	$ —	$ 2,057,590	$ 63,634	$ 477,884	$ 1,124,189	$ 56,788	$ 63,344	$ 71,254	$ 1,857,093
Current Period Gross Write-Offs								$ —	$ —	$ —	$ —	$ (948)	$ —	$ (948)

(Back to Index)

(Back to Index)

(1) The total amortized cost of CRE loans excluded accrued interest receivable of $12.4 million $11.8 million at both March 31, 2024 and $11.9 million at September 30, 2023 and December 31, 2 respectively. December 31, 2023.

(2) Acquired CRE whole loans are grouped within each loan's year of origination.

At both September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, we had one additional mezzanine loan included in other assets held for sale that had no carrying value.

(Back to Index)

(Back to Index)

Loan Portfolio Aging Analysis

The following table presents the CRE loan portfolio aging analysis as of the dates indicated for CRE loans at amortized cost (in thousands, except amounts in footnotes):

	30-59 Days	60-89 Days	Greater than 90 Days (1)	Total Past Due	Current (2)	Total Loans Receivable (3)	Total Loans > 90 Days and Accruing	30-59 Days	60-89 Days	Greater than 90 Days (1)	Total Past Due	Current	Total Loans Receivable (2)	Total Loans > 90 Days and Accruing
At September 30, 2023:														
At March 31, 2024:														
Whole loans, floating-rate	$ 5,672	$ —	$ 28,164	$ 33,836	$ 1,881,669	$ 1,915,505	$ —	$ —	$ —	$ 27,152	$ 27,152	$ 1,743,031	$ 1,770,183	$ 19,127
Mezzanine loan (4)	4,700	—	—	4,700	—	4,700	—							
Mezzanine loan (3)								—	—	4,700	4,700	—	4,700	—
Total	$ 10,372	$ —	$ 28,164	$ 38,536	$ 1,881,669	$ 1,920,205	$ —	$ —	$ —	$ 31,852	$ 31,852	$ 1,743,031	$ 1,774,883	$ 19,127
At December 31, 2022:														
At December 31, 2023:														
Whole loans, floating-rate	$ —	$ —	$ 28,767	$ 28,767	$ 2,024,123	$ 2,052,890	$ —	$ —	$ —	$ 41,152	$ 41,152	$ 1,811,241	$ 1,852,393	$ 19,127
Mezzanine loan (4)	—	—	—	—	4,700	4,700	—							

Mezzanine loan (3)								—	—	4,700	4,700	—	4,700	—
Total	$ —	$ —	$ 28,767	$ 28,767	$ 2,028,823	$ 2,057,590	$ —	$ —	$ —	$ 45,852	$ 45,852	$ 1,811,241	$ 1,857,093	$ 19,127

(1) During the three and nine months ended September 30, 2023, March 31, 2024 and 2023, we recognized interest income of $806,000 $665,000 and $2.6 million, $917,000, respectively, on two one CRE whole loans loan with a principal payment past due greater than 90 days at September 30, 2023. During the three and nine months ended September 30, 2022, we recognized interest income of $409,000 and $1.1 million, respectively, on two CRE whole loans with a principal payment past due greater than 90 days at September 30, 2023 March 31, 2024.

(2) Includes one CRE whole loan with an amortized cost of $14.0 million in maturity default at September 30, 2023 and one CRE whole loan with an amortized cost of $22.8 million in maturity default at December 31, 2022.

(3) The total amortized cost of CRE loans excluded accrued interest receivable of $12.4 million $11.8 million and $11.9 million at September 30, 2023 both March 31, 2024 and December 31, 2022, respectively. December 31, 2023.

(4) (3) Fully reserved at both September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023.

At September 30, 2023 March 31, 2024 and December 31, 2023, we had four two and three CRE whole loans, with total amortized costs of $47.8 million $27.2 million and $41.2 million, respectively, and one mezzanine loan, with a total amortized cost of $4.7 million, in payment default. At September 30, 2023

Loan Modifications

We are required to disclose modifications where we determined the borrower is experiencing financial difficulty and modified the agreement to: (i) forgive principal, (ii) reduce the interest rate, (iii) cause an other-than-insignificant payment delay, (iv) extend the loan term, or (v) any combination thereof.

During the three months ended March 31, 2024, we had one CRE whole entered into the following two loan modifications that required disclosure:

- A multifamily loan with a an amortized cost of $52.8 million, representing 3.0% of the total amortized cost of $44.8 million the portfolio, was modified to: (i) extend maturity from June 2025 to June 2026, (ii) reduce its current interest rate from BR + 3.70% to BR + 1.70%, and (iii) defer interest of 2.00% that was placed on nonaccrual status. At December 31, 2022 will be due at payoff. In connection with the modification, the borrower funded additional capital into the project for interest reserves to cover debt service.
- A multifamily loan with an amortized cost of $44.1 million, we had three CRE whole loans, with representing 2.5% of the total amortized costs cost of $51.6 million in payment default.

  the portfolio, was modified to: (i) reduce its current pay interest rate from BR + 3.31% to a 5.00% fixed rate and (ii) defer the unpaid interest that will be due at payoff. In connection with the modification, the borrower funded additional capital into the project for interest reserves to cover debt service.

During the nine three months ended September 30, 2023 March 31, 2023, we did not enter into any loan modifications for borrowers that are were experiencing financial difficulty. During the nine months ended September 30, 2022, we entered into three agreements that extended one CRE whole loan for a borrower experiencing financial difficulty. At September 30, 2022, this loan had an amortized cost of $21.8 million, which represented 1.0% of the total amortized cost of the portfolio.

(Back to Index)

(Back to Index)

Restricted Cash

At September 30, 2023 March 31, 2024, we had restricted cash of $35.9 million $4.0 million, which consisted of $35.0 million of restricted cash $3.1 million held within our five consolidated securitization entities in reserve for a construction loan, and $827,000 $916,000 held in escrow for deposits or tax payments at our real estate properties or pledged with minimum reserve balance requirements. At December 31, 2022 December 31, 2023, we had restricted cash of $38.6 million $8.4 million, which consisted of $38.2 million $7.6 million held within our five consolidated securitization entities in reserve for a construction loan, and $400,000 $800,000 held in escrow for deposits or tax payments at our real estate properties or pledged with minimum reserve balance requirements. The decrease of $2.7 million $4.4 million was primarily attributable to reinvesting the proceeds decrease in one of restricted cash at our securitizations prior to the end of the reinvestment period.

(Back to Index)

(Back to Index)

investments in real estate.

Accrued Interest Receivable

The following table summarizes our accrued interest receivable at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023 (in thousands):

	September 30, 2023	December 31, 2022	Net Change	March 31, 2024	December 31, 2023	Net Change
Accrued interest receivable from loans	$ 12,401	$ 11,936	$ 465	$ 11,829	$ 11,750	$ 79
Accrued interest receivable from promissory note, escrow, sweep and reserve accounts	32	33	(1)	60	33	27
Total	$ 12,433	$ 11,969	$ 464	$ 11,889	$ 11,783	$ 106

The increase of $464,000 $106,000 in accrued interest receivable was primarily attributable to rising benchmark rates.

Other Assets

The following table summarizes our other assets at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023 (in thousands):

	September 30, 2023	December 31, 2022	Net Change	March 31, 2024	December 31, 2023	Net Change
Tax receivables and prepaid taxes	$ 197	$ 224	$ (27)	$ 214	$ 214	$ -
Other receivables	332	1,086	(754)	1,067	565	502
Other prepaid expenses	2,648	2,181	467	1,620	1,913	(293)
Fixed assets - non real estate	305	326	(21)	275	281	(6)
Other assets, miscellaneous	658	547	111	619	617	2
Total	$ 4,140	$ 4,364	$ (224)	$ 3,795	$ 3,590	$ 205

The decrease increase of $224,000 $205,000 in other assets was primarily attributable to increases in various receivables and prepaid accounts held at our real estate properties, and miscellaneous receivables from our real estate properties acquired in 2022 and 2023 offset by the purchase of other assets at our real estate properties. amortization.

Deferred Tax Assets

At September 30, 2023 both March 31, 2024 and December 31, 2022 December 31, 2023, our net deferred tax asset was zero, resulting from a full valuation allowance of $20.8 million and $21.2 million $21.1 million, respectively, on our gross deferred tax asset as we believed it was more likely than not that some or all of the deferred tax assets would not be realized. We will continue to evaluate our ability to realize the tax benefits associated with deferred tax assets by analyzing forecasted taxable income using both historical and projected future operating results, the reversal of existing temporary differences, taxable income in prior carry back years (if permitted) and the availability of tax planning strategies.

Derivative Instruments

Historically, we sought to mitigate the potential impact on net income (loss) of adverse fluctuations in interest rates incurred on our borrowings by entering into hedging agreements. We classified our interest rate hedges as cash flow hedges, which are hedges that eliminate the risk of changes in the cash flows of a financial asset or liability.

We terminated interest rate swap positions associated with our prior financed CMBS portfolio in April 2020. At termination, we realized a loss of $11.8 million. At September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, we had a loss of $5.4 million $4.5 million and $6.6 million $5.0 million, respectively, recorded in accumulated other comprehensive loss, which will be amortized into earnings over the remaining life of the debt. During the three and nine months ended September 30, 2023, March 31, 2024 and 2023, we recorded amortization expense of $425,000 $420,000 and $1.3 million, respectively, reported in interest expense on the consolidated statements of operations. During the three and nine months ended September 30, 2022, we recorded amortization expense of $438,000 and $1.4 million, $416,000, respectively, reported in interest expense on the consolidated statements of operations.

(Back to Index)

(Back to Index)

At September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, we had unrealized gains of $187,000 $142,000 and $256,000, $164,000, respectively, attributable to two terminated interest rate swaps, in accumulated other comprehensive loss on the consolidated balance sheets, to be accreted into earnings over the remaining life of the debt. During both the three months ended September 30, 2023 March 31, 2024 and 2022, 2023, we recorded accretion income, reported in interest expense on the consolidated statements of operations, of $23,000, to accrete the accumulated other comprehensive income on the terminated swap agreements. During both the nine months ended September 30, 2023 and 2022, we recorded accretion income, reported in interest expense on the consolidated statements of operations, of $68,000, to accrete the accumulated other comprehensive income on the terminated swap agreements.

The following tables present the effect of derivative instruments on our consolidated statements of operations for the nine three months ended September 30, 2023 March 31, 2024 and 2022 2023 (in thousands):

		Realized and Unrealized Gain (Loss) (1)	
	Consolidated Statements of Operations Location	Nine Months Ended September 30, 2023	Nine Months Ended September 30, 2022
Interest rate swap contracts, hedging	Interest expense	$ (1,192)	$ (1,332)

		Realized and Unrealized Gain (Loss) (1)	
	Consolidated Statements of Operations Location	Three Months Ended March 31, 2024	Three Months Ended March 31, 2023
Interest rate swap contracts, hedging	Interest expense	$ (397)	$ (393)

(1) Negative values indicate a decrease to the associated consolidated statement of operations line items.

Financing Arrangements

Borrowings under our senior secured financing facility, term warehouse financing facilities, mortgage payable and construction loans arrangements are guaranteed by us or one or more of our subsidiaries. The following table sets forth certain information with respect to our financing arrangements borrowings (dollars in thousands, except amounts in footnotes):

	September 30, 2023				December 31, 2022				March 31, 2024				December 31, 2023			
	Outstanding Borrowings	Value of Collateral	Number of Positions as Collateral	Weighted Average Interest Rate	Outstanding Borrowings	Value of Collateral	Number of Positions as Collateral	Weighted Average Interest Rate	Outstanding Borrowings	Value of Collateral	Number of Positions as Collateral	Weighted Average Interest Rate	Outstanding Borrowings	Value of Collateral	Number of Positions as Collateral	Weighted Average Interest Rate
Senior Secured Financing Facility																

Massachusetts Mutual Life Insurance Company (1)	$ 61,383	$ 154,633	7	9.11 %	$ 87,890	$ 196,837	8	7.94 %	$ 61,752	$ 167,994	7	9.10%	$ 61,568	$ 157,722	7	9.14%
CRE - Term Warehouse Financing Facilities (2)																
JPMorgan Chase Bank, N.A. (3)	117,637	187,106	8	7.99 %	186,783	255,095	11	6.74 %	93,130	153,103	4	7.82%	74,694	125,044	4	7.82%
Morgan Stanley Mortgage Capital Holdings LLC (4)	132,857	191,279	9	8.05 %	141,505	198,455	10	7.00 %	72,677	106,998	6	8.16%	93,894	129,037	7	8.07%
Mortgage Payable																
Readycap Commercial, LLC (5)	18,544	25,400	1	9.13 %	18,244	25,400	1	8.08 %								
Construction Loans (6)																
Oceanview Life and Annuity Company (7)	(349)			11.34%	—			—%								
Florida Pace Funding Agency	5,369			7.26 %	—			—%								
Total Construction Loans	5,020	42,873	1		—	—	—									
Mortgages Payable																

ReadyCap Commercial, LLC (5)					19,417	25,400	1	9.12%	19,365	25,400	1	9.16%
Oceanview Life and Annuity Company (6) (7)					16,763	67,677	1	11.33%	7,330	58,339	1	11.37%
Florida Pace Funding Agency (6)(8)					15,095	—	—	7.26%	15,091	—	—	7.26%
Total	33 5,4 $ 41	6 0 1, 2 9 $ 1	43 4,4 $ 22	6 7 5, 7 8 $ 7	$ 278,834	$ 521,172			$ 271,942	$ 495,542		

(1) Includes $3.1 million $2.7 million and $3.7 million $2.9 million of deferred debt issuance costs at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.
(2) Outstanding borrowings include accrued interest payable.
(3) Includes $1.8 million $1.5 million and $1.1 million $1.6 million of deferred debt issuance costs at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.
(4) Includes $840,000 $456,000 and $1.4 million $647,000 of deferred debt issuance costs at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.
(5) Includes $310,000 $207,000 and $466,000 $259,000 of deferred debt issuance costs at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.
(6) Outstanding borrowings are collateralized by a student housing construction project. Value of collateral and number of positions as collateral related to Oceanview Life and Annuity Company also applies to Florida Pace Funding Agency.
(7) Includes $1.6 million $1.0 million and $1.3 million of deferred debt issuance costs at September 30, 2023. March 31, 2024 and December 31, 2023, respectively.
(8) Includes $415,000 and $419,000 of deferred debt issuance costs at March 31, 2024 and December 31, 2023, respectively.

We were in compliance with all covenants in the respective agreements at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023.

(Back to Index)

(Back to Index)

Senior Secured Financing Facility

In July 2020, an indirect, wholly-owned subsidiary of ours (“Holdings”), along with its direct wholly-owned subsidiary (the “Borrower”), entered into a $250.0 million loan and servicing agreement (the “MassMutual Loan Agreement”) with Massachusetts Mutual Life Insurance Company (“MassMutual”) and the other lenders party thereto (the “Lenders”) to form an asset-based revolving loan facility ("MassMutual Facility") to finance our core CRE lending business. The MassMutual Facility initially had an interest rate of 5.75% per annum payable monthly and initially matured on July 31, 2027.

In December 2022, Holdings, the Borrower and the Lenders entered into an Amended and Restated Loan and Servicing Agreement, which amends and restates the MassMutual Loan Agreement, and reflects a senior secured term loan facility, not to exceed $500.0 million, composed of individual loan series issued upon mutual agreement of the Borrower and Lenders. Each loan series will be available for three months after the closing date agreed upon by the Borrower and Lender (“Commitment Period”), subject to the maximum dollar amount agreed upon for that series. The Commitment Period is subject to immediate termination upon the occurrence of an event of default. Each loan series will have a final maturity of five years from the issuance date for the loan series unless an additional time is mutually agreed upon by the Lenders and Borrower. The advance rate on portfolio assets will be mutually agreed upon by the Lenders and Borrower. Each loan series will have its own mutually agreed upon interest rate equal to one-month Term SOFR plus the applicable spread.

CRE - Term Warehouse Financing Facilities

In April 2018, an indirect, wholly-owned subsidiary of ours entered into a master repurchase agreement (the “Barclays Facility”) with Barclays Bank PLC (“Barclays”) to finance the origination of CRE loans. In February 2022, such subsidiary entered into the Third Amendment to Master Repurchase Agreement (the “Barclays Amendment”) with Barclays, which amended the Barclays Facility to add market terms regarding the replacement of LIBOR upon determination of a benchmark transition event. In October 2022, the Barclays Facility matured.

In October 2018, an indirect, wholly-owned subsidiary of ours entered into a master repurchase agreement (the “JPMorgan Chase Facility”) with JP Morgan Chase to finance the origination of CRE loans. At September 30, 2023, this facility has been As amended, six times to amend various terms. The the JPMorgan Chase Facility has a maximum facility amount of $250.0 million, charges interest of one-month benchmark plus market spreads and has a maturity date of July 2026. In July 2023, this facility was amended to extend the amendments to (i) EBITDA to Interest Expense ratio (as defined in the JPM Guarantee), (ii) maximum ratio of Total Indebtedness to its Total Equity (as defined in the JPM Guarantee), and (iii) minimum unencumbered Liquidity requirement (as defined in the JPM Guarantee), each through the quarter ending December 2024.

In November 2021, an indirect, wholly-owned subsidiary of ours entered into a master repurchase and securities contract agreement (the “Morgan Stanley Facility”) with Morgan Stanley Mortgage Capital Holdings LLC (“Morgan Stanley”) to finance the origination of CRE loans. At September 30, 2023, this facility has been As amended, two times to amend various terms. The the Morgan Stanley Facility has a maximum facility amount of $250.0 million, charges interest of one-month Term SOFR plus market spreads and matures in November 2024. We also have the right to request a one-year extension. In November 2023, this facility was amended to extend the amendments to (i) EBITDA to interest expense ratio, (ii) maximum ratio of total indebtedness to its total equity and (iii) minimum unencumbered liquidity requirement, each through the quarter ending December 2024. See Part II, Item 5 "Other Information".

Mortgage Mortgages Payable

In April 2022, Chapel Drive West, LLC, a wholly owned subsidiary of Charles Street – ACRES FSU Student Venture, LLC entered into a Loan Agreement (the “Mortgage”) with Readycap Commercial, LLC (“Readycap”) to finance the acquisition of a student housing complex. The Mortgage is interest only and has a maximum principal balance of $20.4 million, of which, $18.7 million was advanced in the initial funding. The Mortgage charges interest of one-month Term SOFR plus a spread of 3.80% and matures in April 2025, subject to two one-year extension options.

The Mortgage contains events of default, subject to certain materiality thresholds and grace periods, customary for this type of financing arrangement. The remedies for such events of default are also customary for this type of transaction.

Construction Loans

In January 2023, Chapel Drive East, LLC, a wholly owned subsidiary of the FSU Student Venture, entered into a loan agreement (the "Construction Loan Agreement") with Oceanview Life and Annuity Company ("Oceanview") to finance the construction of a student housing complex (the "Construction Loan"). The Construction Loan is interest only and has a maximum principal balance

(Back to Index)

(Back to Index)

of $48.0 million. The Construction Loan charges one-month Term SOFR plus a spread of 6.00% and matures in February 2025, subject to three one-year extension options.

In addition to the Construction Loan, Chapel Drive East, LLC entered into a financing agreement with Florida Pace Funding Agency to fund energy efficient building improvements and has a maximum principal balance of $15.5 million. This agreement charges fixed interest of 7.26% and matures in July 2053. Until July 2024, accrued interest will be added to the principal balance. We do not guarantee this financing agreement.

In connection with our investment in the student housing complex, ACRES RF entered into guarantees related to the Construction Loan. Pursuant to the guarantees, Jason Pollack, Frank Dellaglio and ACRES RF (collectively, the "Guarantors"), for the benefit of Oceanview, provided limited "bad boy" guaranties to Oceanview pursuant to the Construction Loan Agreement until the earlier of the payment in full of the indebtedness or the date of a sale of the property pursuant to a foreclosure of the mortgage or deed or other transfer in lieu of foreclosure is accepted by Oceanview. The Guarantors also entered into a Completion Guaranty Agreement for the benefit of Oceanview to guaranty the timely completion of the project in accordance with the Construction Loan Agreement, as well as a Carry Guaranty Agreement, for the benefit of Oceanview to guaranty and unconditional payment by Chapel Drive East, LLC

(Back to Index)

(Back to Index)

of all customary or necessary costs and expenses incurred in connection with the operation, maintenance and management of the property and an Environmental Indemnity Agreement jointly and severally in favor of Oceanview whereby the Guarantors serving as Indemnitors provided environmental representations and warranties, covenants and indemnifications (collectively the "Guaranties"). The Guaranties include certain financial covenants required of ACRES RF, including required net worth and liquidity requirements.

Securitizations

At September 30, 2023 March 31, 2024, we retained equity in two CRE loan securitizations that we executed, as follows:

ACR 2021-FL1

In May 2021, we closed ACR 2021-FL1, an $802.6 million CRE debt securitization transaction that provided financing for CRE loans. ACR 2021-FL1 included a reinvestment period, which ended in May 2023, that allowed it to acquire CRE loans for reinvestment into the securitization using uninvested principal proceeds. ACR 2021-FL1 issued a total of $675.2 million of non-recourse, floating-rate notes to third parties at par. We retained 100% of the Class F and Class G notes in addition to 100% of the outstanding preference shares. The preference shares are subordinated in right of payment to all other securities issued by ACR 2021-FL1. All notes issued mature in June 2036, although we have the right to call the notes beginning on the payment date in May 2023 and thereafter. The non-recourse, floating-rate notes initially charged one-month Term LIBOR, but converted to one-month Term SOFR in June 2023. As of March 31, 2024, we had not exercised this right.

ACR 2021-FL2

In December 2021, we closed ACR 2021-FL2, a CRE debt securitization transaction that can finance up to $700.0 million of CRE loans. ACR 2021-FL2 includes a reinvestment period, which ends in December 2023, that allows it to acquire CRE loans for reinvestment into the securitization using uninvested principal proceeds. ACR 2021-FL2 issued a total of $567.0 million of non-recourse, floating-rate notes to third parties at par. We retained 100% of the Class F and Class G notes in addition to 100% of the outstanding preference shares. The preference shares are subordinated in right of payment to all other securities issued by ACR 2021-FL2. All notes issued mature in January 2037, although we have the right to call the notes beginning on the payment date in December 2023 and thereafter. The non-recourse, floating-rate notes initially charged one-month Term LIBOR, but converted to one-month Term SOFR in June 2023. As of March 31, 2024, we had not exercised this right.

Corporate Debt

4.50% Convertible Senior Notes

We issued $143.8 million aggregate principal of our 4.50% Convertible Senior Notes in August 2017, of which $55.8 million was repurchased in 2021.

In February 2022, we repurchased $39.8 million of our 4.50% Convertible Senior Notes, resulting in a charge to earnings of $574,000, comprising an extinguishment of debt charge of $460,000 in connection with the acceleration of the market discount and interest expense of $114,000 in connection with the acceleration of deferred debt issuance costs. In August 2022, the remaining $48.2 million of the 4.50% Convertible Senior Notes were paid off upon maturity at par.

(Back to Index)

(Back to Index)

5.75% Senior Unsecured Notes Due 2026

On August 16, 2021, we issued $150.0 million of our 5.75% senior unsecured notes due 2026 (the “5.75% Senior Unsecured Notes”) pursuant to our Indenture, dated August 16, 2021 (the “Base Indenture”), between Wells Fargo, now Computershare Trust Company, N.A. (“CTC”), as trustee (the “Trustee”), and us as supplemented by the First Supplemental Indenture, dated August 16, 2021, between Wells Fargo, now CTC, and us (the “Supplemental Indenture” and, together with the Base Indenture, the “Indenture”). Prior to May 15, 2026, we may at our option redeem the 5.75% Senior Unsecured Notes, in whole or in part, at a redemption price equal to the sum of (i) 100% of the principal amount of the notes to be redeemed, plus accrued and unpaid interest to, but not including, the redemption date, and (ii) a make-whole premium.

Unsecured Junior Subordinated Debentures

During 2006, we formed RCT I and RCT II for the sole purpose of issuing and selling capital securities representing preferred beneficial interests. RCT I and RCT II are not consolidated into our consolidated financial statements because we are not deemed to be the primary beneficiary of these entities. In connection with the issuance and sale of the capital securities, we issued junior subordinated debentures to RCT I and RCT II of $25.8 million each, representing our maximum exposure to loss. The debt issuance costs associated with the junior subordinated debentures for RCT I and RCT II were included in borrowings and were amortized into interest expense on the consolidated statements of operations using the effective yield method over a ten year period.

There were no unamortized debt issuance costs associated with the junior subordinated debentures for RCT I and RCT II outstanding at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023. The interest rates for RCT I and RCT II, at September 30, 2023 March 31, 2024, were 9.49% 9.55% and 9.58% 9.53%, respectively. The interest rates for RCT I and RCT II, at December 31, 2022 December 31, 2023, were 8.68% 9.61% and 8.36% 9.60%, respectively.

(Back to Index)

58

(Back to Index)

Equity

Total equity at September 30, 2023 March 31, 2024 was $448.2 million $443.2 million, comprising $224.0 million of preferred equity and $219.2 million of common equity, and gave effect to $5.2 million $4.4 million of net unrealized losses on our terminated cash flow hedges, shown as a component of accumulated other comprehensive loss. Equity Total equity at December 31, 2022 December 31, 2023 was $441.3 million $446.2 million, comprising $226.5 million of preferred equity and gave $219.7 million of common equity, and after giving effect to $6.4 million $4.8 million of net unrealized losses on our terminated cash flow hedges, shown as a component of accumulated other comprehensive loss. The increase decrease in equity during the nine three months ended September 30, 2023 March 31, 2024 was primarily attributable to contributions from non-controlling interests, partially offset by distributions on our preferred stock, in excess repurchases of earnings as well as preferred stock and common stock repurchases. This is partially offset by net income prior to preferred distributions, contributions from non-controlling interests and non-cash amortization of terminated cash flow hedges.

(Back Our preferred equity is composed of the following at March 31, 2024:

- 4.8 million shares of 8.625% fixed to Index)

67

(Back floating rate Series C cumulative redeemable preferred stock with a $25.00 per share liquidation preference ("Series C Preferred Stock"). The Series C Preferred Stock has no maturity date and we are not required to Index) redeem it at any time. However, we may redeem it at our election, in whole or in apart, on or after July 30, 2024. Effective July 30, 2024, the Series C Preferred Stock will convert from its fixed rate of 8.625% to a floating rate equal to three-month Term SOFR plus a spread of 5.927%, but at no time shall the floating rate be less than 8.625%. Dividends are payable quarterly in arrears.

- 4.5 million shares of fixed 7.875% Series D cumulative redeemable preferred stock with a $25.00 per share liquidation preference (Series D Preferred Stock"). The Series D Preferred Stock has no maturity and we are not required to redeem it at any time. However, we may redeem it at our election, in whole or in apart, on or after May 21, 2026. Dividends are payable quarterly in arrears.

Balance Sheet - Book Value Reconciliation

The following table rolls forward our common stock book value for the three and nine months ended September 30, 2023 March 31, 2024 (in thousands, except per share data and amounts in footnotes):

	Three Months Ended September 30, 2023		Nine Months Ended September 30, 2023		Three Months Ended March 31, 2024	
	Total Amount	Per Share Amount	Total Amount	Per Share Amount	Total Amount	Per Share Amount
Common stock book value at beginning of period (1)	$ 208,060	$ 24.50	$ 208,976	$ 24.54	$ 209,306	$ 26.65
Net income allocable to common shares (2)	2,870	0.34	1,271	0.15	556	0.07
Change in other comprehensive income on derivatives	402	0.05	1,192	0.14	397	0.05
Repurchase of common stock (3)	(729)	0.15	(2,684)	0.56	(2,068)	0.41
Net impact to equity of share-based compensation	610	0.03	2,458	(0.32)		

Total net increase	3,153	0.57	2,237	0.53		
Impact to equity of share-based compensation					596	0.07
Total net (decrease)/increase					(519)	0.60
Common stock book value at end of period (4)	$ 211,213	$ 25.07	$ 211,213	$ 25.07	$ 208,787	$ 27.25

(1) Per share calculations exclude unvested restricted stock, as disclosed on our consolidated balance sheets, of 416,675 at March 31, 2024 and 583,333 shares at September 30, 2023 and Decembe 2022 December 31, 2023, respectively, and include warrants to purchase up to 391,995 shares of common stock at both September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2 respectively. The denominators for the calculations were 8,423,844 7,660,620 and 8,516,762 7,853,536 shares at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.

(2) The per share amounts are calculated with the denominator referenced in footnote (1) at September 30, 2023 March 31, 2024. We calculated net income per common share-diluted of $0.33 and $0.15 $0.07 u the weighted average diluted shares outstanding during the three and nine months ended September 30, 2023, respectively. March 31, 2024.

(3) In November 2021, our Board authorized and approved the continued use of our existing share repurchase program to repurchase up to $20.0 million of our outstanding common stock. In November 202 additional $10.0 million of outstanding shares of both common and preferred stock was authorized. We purchased 1.4 million 2.2 million common shares for $15.5 million $22.2 million and 100,000 preferred sh for $2.2 million through September 30, 2023 March 31, 2024. Because we repurchased our common stock at significant discounts to book value, these repurchases were accretive to per share book value sinc inception of the program. For the three and nine months ended September 30, 2023, $727,000 and $2.7 million, respectively, or 83,000 and 298,000 shares, respectively, were repurchased under the reautho plan.

(4) We calculated common stock book value as total stockholders' equity of $437.7 million $432.8 million less preferred stock equity of $226.5 million $224.0 million at September 30, 2023 March 31, 2024.

Management Agreement Equity

Our monthly base management fee, as defined in our Management Agreement, is equal to 1/12 of the amount of our equity multiplied by 1.50% and is calculated and paid monthly in arrears.

(Back to Index)

(Back to Index)

The following table summarizes the calculation of equity, as defined in the Management Agreement (in thousands):

	Amount	Amount
At September 30, 2023:		
At March 31, 2024:		
Proceeds from capital stock issuances, net (1)	$ 1,330,472	$ 1,330,472
Retained earnings, net (2)	(649,069)	(647,100)
Payments for repurchases of capital stock	(242,444)	(250,742)
Total	$ 438,959	$ 432,630

(1) Deducts underwriting discounts and commissions and other expenses and costs relating to such issuances.
(2) Excludes non-cash equity compensation expense incurred to date.

Earnings Available for Distribution

Earnings Available for Distribution ("EAD") is a non-GAAP financial measure intended to supplement our financial results computed in accordance with accounting principles generally accepted in the United States of America ("GAAP"), and we believe EAD will serve serves as a useful indicator for investors in evaluating our performance and ability to pay dividends.

EAD excludes the effects of certain transactions and adjustments in accordance with GAAP that we believe are not necessarily indicative of our current CRE loan portfolio and other CRE-related investments and operations. EAD excludes income (loss) from all non-core assets such as commercial finance, middle market lending, residential mortgage lending, certain legacy CRE loans and other non-CRE assets designated as assets held for sale at the initial measurement date of December 31, 2016.

(Back to Index)

(Back to Index)

EAD, for reporting purposes, is defined as GAAP net income (loss) allocable to common shares, excluding (i) non-cash equity compensation expense, (ii) unrealized gains and losses, (iii) non-cash provisions for credit losses, (iv) non-cash impairments on securities, (v) non-cash amortization of discounts or premiums associated with borrowings, (vi) net income or loss from a limited partnership interest owned at the initial measurement date, (vii) net income or loss from non-core assets, (viii) real estate depreciation and amortization, (ix) foreign currency gains or losses and (x) income or loss from discontinued operations. EAD may also be adjusted periodically to exclude certain one-time events pursuant to changes in GAAP and certain non-cash items.

Although pursuant to the Management Agreement we calculate incentive compensation using EAD that excludes incentive compensation payable to our Manager, we include incentive compensation payable to our Manager in calculating EAD for reporting purposes.

(Back to Index)

(Back to Index)

The following table provides a reconciliation from GAAP net income (loss) allocable to common shares to EAD allocable to common shares for the periods presented (in thousands, except per share data and amounts in the footnotes) data):

	For the Three Months Ended September 30,				For the Nine Months Ended September 30,				For the Three Months Ended March 31,			
	2023	Per Share Data	2022	Per Share Data	2023	Per Share Data	2022	Per Share Data	2024	Per Share Data	2023	Per Share Data
Net income (loss) allocable to common shares - GAAP	$ 2,870	$ 0.33	$ 713	$ 0.08	$ 1,271	$ 0.15	$ (1,368)	$ (0.15)	$ 556	$ 0.07	$ (2,416)	$ (0.28)
Realized gain on sale of investment in real estate	—	—	(1,870)	(0.21)	(745)	(0.09)	(1,870)	(0.21)	—	—	(745)	(0.09)
Net income (loss) allocable to common shares - GAAP, adjusted	$ 2,870	$ 0.33	$ (1,157)	$ (0.13)	$ 526	$ 0.06	$ (3,238)	$ (0.36)	$ 556	$ 0.07	$ (3,161)	$ (0.37)
Reconciling items from continuing operations:												

Non-cash equity compensation expense	482	0.06	913	0.10	2,095	0.24	2,648	0.30	477	0.06	894	0.10
Non-cash provision for CRE credit losses	1,983	0.23	2,620	0.30	9,779	1.13	1,342	0.15	4,896	0.61	5,096	0.59
Realized (loss) gain on sale of investment in real estate	—	—	(372)	(0.04)	745	0.09	(372)	(0.04)				
Realized gain on sale of investment in real estate									—	—	745	0.09
Unrealized gain on core activities									(5,835)	(0.73)	—	—
Real estate depreciation and amortization	933	0.11	1,347	0.15	2,833	0.33	4,302	0.48	1,238	0.16	954	0.11
Non-cash amortization of discounts or premiums associated with borrowings	—	—	144	0.02	—	—	1,271	0.14				
Net loss (income) from non-core assets (1)	24	—	(28)	—	(28)	—	(760)	(0.09)				
Reconciling items from CRE assets:												
Net interest income on legacy CRE assets (1)	—	—	—	—	—	—	(29)	—				
Net income from non-core assets (1)									(50)	(0.01)	(26)	—
Earnings Available for Distribution allocable to common shares	$ 6,292	$ 0.73	$ 3,467	$ 0.40	$ 15,950	$ 1.85	$ 5,164	$ 0.58	$ 1,282	$ 0.16	$ 4,502	$ 0.52
Weighted average common shares - diluted on Earnings Available for Distribution allocable to common shares	8,593		8,759		8,610		8,898		8,034		8,702	

Earnings Available for Distribution per common share - diluted	$ 0.73	$ 0.40	$ 1.85	$ 0.58	$ 0.16	$ 0.52

(1) Non-core assets are investments and securities owned by us at the initial measurement date in (i) commercial finance, (ii) middle market lending, (iii) residential mortgage lending, (iv) legacy CRE loans desig as held for sale and (v) other non-CRE assets included in assets held for sale.

For the three and nine months ended September 30, 2023, March 31, 2024 and 2023, EAD in accordance with the Management Agreement, which excludes incentive compensation payable, was $6.8 million $1.3 million and $16.8 million $4.6 million, respectively, or $0.79 $0.16 and $1.95, $0.53, respectively, per common share outstanding. Incentive There was no incentive compensation payable incurred by the Company was $473,000 and $857,000 us for the three and nine months ended September 30, 2023, respectively. March 31, 2024 and $129,000 for the three months ended March 31, 2023.

Incentive Compensation Hurdle

Prior With respect to the each fiscal quarter ended December 31, 2022, in accordance with the Management Agreement, incentive compensation was earned by our Manager when our EAD (as defined in the Management Agreement) for such quarter exceeded an amount equal to: (1) the weighted average of (a) book value (as defined in the Management Agreement) as of the end of such quarter divided by 10,293,783

(Back to Index)

(Back to Index)

shares and (b) the price per share (including the conversion price, if applicable) paid for common shares in each offering (or issuance, upon the conversion of convertible securities) by us subsequent to September 30, 2017, in each case at the time of issuance, multiplied by (2) the greater of (a) 1.75% and (b) 0.4375% plus one-fourth of the ten year treasury rate, as defined in the Management Agreement, for such quarter (the “Incentive Compensation Hurdle”).

Commencing commencing with the quarter ended December 31, 2022, an incentive compensation was management fee calculated and payable in arrears in an amount, not less than zero, equal to:

(i) *for the first full calendar quarter ended December 31, 2022,* the product of (a) 20% and (b) the excess of (i) our EAD (as defined in the Management Agreement) for such calendar quarter, over (ii) the product of (A) our book value equity (as defined in the Management Agreement) as of the end of such calendar quarter, and (B) 7% per annum;

(ii) *for each of the second, third and fourth full calendar quarters following the calendar quarter ending ended December 31, 2022*, the excess of (1) the product of (a) 20% and (b) the excess of (i) our EAD (as defined in the Management Agreement) for the calendar quarter(s) following September 30, 2022, over (ii) the product of (A) our book value equity (as defined in the Management Agreement) in the calendar quarter(s) following September 30, 2022, and (B) 7% per annum, over (2) the sum of any incentive compensation paid to our Manager with respect to the prior calendar quarter(s) following September 30, 2022 (other than the most recent calendar quarter); and

(iii) *for each calendar quarter thereafter*, the excess of (1) the product of (a) 20% and (b) the excess of (i) our EAD (as defined in the Management Agreement) for the previous 12-month period, over (ii) the product of (A) our book value equity (as defined in the Management Agreement) in the previous 12-month period, and (B) 7% per annum, over (2) the sum of any incentive compensation paid to our Manager with respect to the first three calendar quarters of such previous 12-month period; provided, however, that no incentive compensation shall be payable with respect to any calendar quarter unless EAD (as defined in the Management Agreement) for the 12 most recently completed calendar quarters (or such lesser number of completed calendar quarters from September 30, 2022) in the aggregate is greater than zero.

The following table summarizes the calculation of the Incentive Compensation Hurdle for the three months ended September 30, 2023 March 31, 2024 (dollars in thousands, except per share data):

Book Value Equity	**Amount**
Stockholders' equity less equity attributable to any outstanding preferred stock at September 30, 2022	$ 216,026
Cumulative EAD from and after October 1, 2022 to the end of the most recently completed calendar quarter	22,367
Amount paid to repurchase common stock after October 1, 2022	(3,618)
Incentive Compensation paid after October 1, 2022	(723)
Book value equity at September 30, 2023	$ 234,052

Incentive Compensation Hurdle (1)	$	16,384
Average closing price of 30 day period ending three days prior to issuance date	$	7.81

(Back to Index)

(Back to Index)

Book Value Equity		Amount
Stockholders' equity less equity attributable to any outstanding preferred stock at September 30, 2022	$	216,026
Cumulative EAD from and after October 1, 2022 to the end of the most recently completed calendar quarter		28,064
Amount paid to repurchase common stock after October 1, 2022 (1)		(4,992)
Incentive Compensation paid after October 1, 2022 (1)		(831)
Book value equity at March 31, 2024	$	238,267
Incentive Compensation Hurdle (2)	$	16,679
Average closing price of 30 day period ending three days prior to issuance date	$	13.88

(1) Calculated on a daily weighted average basis for the 12-month period ended March 31, 2024.
(2) Calculated as book value equity at September 30, 2023 March 31, 2024 multiplied by 7% 1.75% (7% per annum. annum).

The amount by which EAD (as defined in the Management Agreement) for the calendar quarters following September 30, 2022 exceeds the Incentive Compensation Hurdle is multiplied by 20% to arrive at incentive compensation for the quarter.

Liquidity and Capital Resources

Liquidity is a measurement of our ability to meet potential cash requirements, including ongoing commitments to pay dividends, fund investments, repay borrowings and provide for other general business needs, including payment of our base management fee and incentive compensation. Our ability to meet our on-going liquidity needs is subject to our ability to generate cash from operating activities, which was $36.2 million $3.3 million for the nine three months ended September 30, 2023 March 31, 2024, and our ability to maintain and/or obtain additional debt financing and equity capital together with the funds referred to below.

At March 31, 2024, our liquidity consisted of $84.6 million of unrestricted cash and cash equivalents, and $7.5 million of potential proceeds from unlevered financeable CRE loans.

During the nine three months ended September 30, 2023 March 31, 2024, our principal sources of liquidity were: (i) gross proceeds of $95.0 million $19.3 million from CRE whole loan purchases by advances from our managed CRE securitization ACR 2021-FL1; term warehouse financing facilities; (ii) proceeds of $9.1 million from our mortgage payable with Oceanview Life and Annuity Company; and (iii) net proceeds of $32.2 million $4.4 million from repayments on our CRE portfolio, (iii) gross proceeds of $14.3 million from the sale of a real estate property; (iv) proceeds of $13.5 million from an advance on our senior secured financing facility; (v) proceeds of $12.3 million from the purchase of loan advances by our managed CRE securitizations ACR 2021-FL1 and ACR 2021-FL2; (vi) gross proceeds of $12.1 million from our CRE - term financing facilities, and; (vii) proceeds of $6.6 million from construction financing.

(Back to Index)

(Back to Index)

portfolio.

These sources of liquidity were offset by our paydowns on our senior secured and term warehouse facilities, deployments in CRE whole loans and real estate investments, repurchases of common and preferred stock, distributions on our preferred stock and ongoing operating expenses and substantially resulted in the $64.4 million $84.6 million of unrestricted cash we held at September 30, 2023 March 31, 2024.

The outstanding balance of our loan to ACRES Capital Corp., the parent of our Manager, was $11.1 million $10.9 million and $11.3 million $11.0 million at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively. The note bears interest at 3.00% per annum, payable monthly, and matures in July 2026, subject to two one-year extensions, at ACRES Capital Corp.'s option, and amortizes at a rate of $25,000 per month.

Cash Flows

For the three months ended March 31, 2024, our restricted and unrestricted cash and cash equivalents balance decreased $3.3 million, to $88.6 million. The cash movements can be summarized by the following:

Cash flows from operating activities. For the three months ended March 31, 2024, operating activities increased our cash balances by $3.3 million, primarily driven by net income after removing non-cash CECL provision, gain on conversion of real estate, non-cash amortization and depreciation and net changes in other assets and liabilities.

Cash flows from investing activities. For the three months ended March 31, 2024, investing activities increased our cash balances by $54.9 million, primarily driven by repayments of CRE loans, partially offset by funding of existing commitments on CRE whole loans and deployments in our investment in real estate.

Cash flows from financing activities. For the three months ended March 31, 2024, financing activities decreased our cash balances by $61.5 million, primarily driven by repayments on our term warehouse financing facilities and CRE securitization notes and distributions on our preferred stock and repurchases of our common stock and preferred stock, partially offset by proceeds from financing on our investments in real estate and term warehouse financing facilities.

Financing Availability

(Back to Index)

(Back to Index)

We utilize a variety of financing arrangements to finance certain assets. We generally utilize the following five types of financing arrangements:

1. *Senior Secured Financing Facility:* Our senior secured financing facility allows us to borrow against loans and real estate investments that we own. This facility has an individual floating rate loan series structure that have a three month commitment period after the financing is approved by the lender, subject to the maximum dollar amount agreed upon for the series. Each floating rate loan series will have mutually agreed upon terms including (i) total commitment, including the capacity to fund future funding commitments, where applicable; (ii) advance rate on portfolio assets; (iii) interest rate composed of one-month Term SOFR plus a market rate spread; and (iv) maturity date of five years from the issuance date for the loan series unless an additional time is mutually agreed upon by the parties. The facility has a maximum portfolio LTV of 85% and contains customary events of default, subject to certain materiality thresholds and grace periods, customary for this type of financing arrangement.

2. *Term Warehouse Financing Facilities (CRE loans):* Term warehouse financing facilities effectively allow us to borrow against loans that we own. Under these agreements, we transfer loans to a counterparty and agree to purchase the same loans from the counterparty at a price equal to the transfer price plus interest. The counterparty retains the sole discretion over both whether to purchase the loan from us and, subject to certain conditions, the collateral value of such loan for purposes of determining whether we are required to pay margin to the counterparty. Generally, if the lender determines (subject to certain conditions) that the value of the collateral in a repurchase transaction has decreased by more than a defined minimum amount, we would be required to repay any amounts borrowed in excess of the product of (i) the revised collateral or market value multiplied by (ii) the applicable advance rate. During the term of these agreements, we receive the principal and interest on the related loans and pay interest to the counterparty.

3. *Securitizations:* We seek non-recourse long-term financing from securitizations of our investments in CRE loans. The securitizations generally involve a senior portion of our loan but may involve the entire loan. Securitization generally involves transferring notes to a special purpose vehicle (or the issuing entity), which then issues one or more classes of non-recourse notes pursuant to the terms of an indenture. The notes are secured by the pool of assets. In exchange for the transfer of assets to the issuing entity, we receive cash proceeds from the sale of non-recourse notes. Securitizations of our portfolio investments might magnify our exposure to losses on those portfolio investments because the retained subordinate interest in any particular overall loan would be subordinate to the loan components sold and we would, therefore, absorb all losses sustained with respect to the overall loan before the owners of the senior notes experience any losses with respect to the loan in question.

4. *Mortgage payable:* We have entered into a loan agreement to finance the acquisition of a student housing complex. This loan is interest only and has a maximum principal balance, most of which was advanced in the initial funding. The loan agreement contains events of default, subject to certain materiality thresholds and grace periods, customary for this type of financing arrangement. The remedies for such events of default are also customary for this type of transaction.

5. *Construction loans:* We have entered into a construction loan agreement to finance the construction of a student housing complex. This loan is interest only and has a maximum principal balance of $48.0 million. The loan agreement contains events of default, subject to certain materiality thresholds and grace periods, customary for this type of financing arrangement. The remedies for such events of default are also customary for this type of transaction. Additionally, we have entered into a financing agreement to fund energy efficient building improvements at this student housing complex, with a maximum principal balance of $15.5 million.

The issuances of ACR 2021-FL1 and ACR 2021-FL2 included 24-month reinvestment periods ending in May 2023 and December 2023, respectively, that allowed us to reinvest CRE loan payoffs and paydowns into the securitizations upon the satisfaction of certain eligibility and reinvestment criteria along with rating agency approval. The reinvestment features of the securitizations allowed us to extend the securitizations' financing capabilities at attractive weighted-average rates by increasing the useful lives of the senior

(Back to Index)

(Back to Index)

notes through the reinvestment of loan proceeds into new loans. We were also able to acquire future funding participations of the collateral in the securitizations during the reinvestment period.

We were in compliance with all of our covenants at September 30, 2023 March 31, 2024 in accordance with the terms provided in agreements with our lenders.

(Back to Index)

(Back to Index)

At September 30, 2023 March 31, 2024, we had a senior secured financing facility, term warehouse financing facilities, mortgage payable and construction loans arrangements as summarized below (in thousands, except amounts in footnotes):

	Execution Date	Maturity Date	Maximum Capacity	Facility Principal Outstanding	Availability	Execution Date	Maturity Date	Maximum Capacity	Facility Principal Outstanding	Availability
Senior Secured Financing Facility (1)										
Massachusetts Mutual Life Insurance Company	July 2020	June 2028	$ 500,000	$ 64,495	$ 435,505	July 2020	June 2028	$ 500,000	$ 64,495	$ 435,505
CRE - Term Warehouse Financing Facilities (2)										
JPMorgan Chase Bank, N.A.	October 2018	July 2026	250,000	119,021	130,979	October 2018	July 2026	250,000	94,269	155,731
Morgan Stanley Mortgage Capital Holdings LLC	November 2021	November 2024	250,000	133,339	116,661	November 2021	November 2024	250,000	72,918	177,082
Mortgage Payable (3)										

Readycap Commercial, LLC	April 2022	April 2025	20,375	18,854	1,521
Construction Loans (4)					
Oceanview Life and Annuity Company	January 2023	February 2025	48,000	1,269	46,731
Florida Pace Funding Agency	January 2023	January 2053	15,500	5,369	10,131
Mortgages Payable					
ReadyCap Commercial, LLC (3)	April 2022	April 2025	20,375	19,624	751
Oceanview Life and Annuity Company (4)	January 2023	February 2025	48,000	17,775	30,225
Florida Pace Funding Agency (5)	January 2023	January 2053	15,510	15,510	-
Total				$ 342,347	
				$ 284,591	

(1) Facility principal outstanding excludes Excludes deferred debt issuance costs of $3.1 million at September 30, 2023 $2.7 million. In December 2022, we amended the previous revolving fixed rate credit facilit floating rate term loan series structure. Each loan series will have a maturity date of five years from the issuance date for the loan series.
(2) Facilities principal outstanding excludes Excludes accrued interest payable of $754,000 $544,000 and deferred debt issuance costs of $2.6 million at September 30, 2023 $1.9 million. In July 2023, we extende maturity of the JPMorgan facility to July 2026.
(3) Mortgage payable excludes Excludes deferred debt issuance costs of $310,000 at September 30, 2023. $207,000.
(4) Facility principal outstanding excludes Excludes deferred debt issuance costs of $1.6 million at September 30, 2023 $1.0 million.
(5) Excludes deferred debt issuance costs of $415,000.

The following table summarizes the average principal outstanding during the three months ended September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023 and the principal outstanding on our financing arrangements at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023 (in thousands, except amounts in footnotes):

	Three Months Ended September 30, 2023	September 30, 2023	Three Months Ended December 31, 2022	December 31, 2022	Three Months Ended March 31, 2024	March 31, 2024	Three Months Ended December 31, 2023	December 31, 2023
	Average Principal Outstanding	Principal Outstanding (1)(2)	Average Principal Outstanding	Principal Outstanding (1)(2)	Average Principal Outstanding	Principal Outstanding	Average Principal Outstanding	Principal Outstanding
Financing Arrangement								
Senior secured financing facility	$ 52,316	$ 64,495	$ 88,795	$ 91,549				
Term warehouse financing facilities - CRE loans	252,393	252,360	359,829	329,955				
Senior secured financing facility (1)					$ 64,495	$ 64,495	$ 64,495	$ 64,495

Term warehouse financing facilities - CRE loans (2)					177,743	167,187	226,373	170,322
Total	$ 304,709	$ 316,855	$ 448,624	$ 421,504	$ 242,238	$ 231,682	$ 290,868	$ 234,817

(1) Excludes Principal outstanding excludes accrued interest payable on the senior secured financing facility collateralized by CRE loans of $310,000 and investments in real estate of $262,000 and $202,0 September 30, 2023 and December 31, 2022, respectively. Also excludes deferred debt issuance costs on the senior secured financing facility of $3.1 million and $3.7 million at September 30, 2023 and Dece 31, 2022, respectively.

(2) Excludes accrued interest payable on term warehouse financing facilities collateralized by CRE loans of $754,000 and $894,000 $311,000 and deferred debt issuance costs of $2.6 million $2.7 million and million at both September 30, 2023 March 31, 2024 and December 31, 2022. December 31, 2023, respectively.

(2) Principal outstanding excludes accrued interest payable of $544,000 and $539,000 and deferred debt issuance costs of $1.9 million and $2.3 million at March 31, 2024 and December 31, 2023, respectively.

(Back to Index)

(Back to Index)

The following table summarizes the maximum month-end principal outstanding on our financing arrangements during the periods presented (in thousands):

	Maximum Month-End Principal Outstanding During the		Maximum Month-End Principal Outstanding During the	
	Nine Months Ended September 30, 2023	Year Ended December 31, 2022	Three Months Ended March 31, 2024	Year Ended December 31, 2023
Financing Arrangement				
Senior secured financing facility	$ 64,495	$ 94,549	$ 64,495	$ 64,495
Term warehouse financing facilities - CRE loans	333,834	392,716	189,563	333,834

Historically, we have financed the acquisition of our investments through collateralized debt obligations ("CDO") and securitizations that essentially match the maturity and repricing dates of these financing vehicles with the maturities and repricing dates of our investments. In the past, we have derived substantial operating cash from our equity investments in our CDOs and securitizations, which will cease if the CDOs and securitizations fail to meet certain tests. Through September 30, 2023 March 31, 2024, we did not experience difficulty in maintaining our existing CDO and securitization financing and passed all of the critical tests required by these financings.

The following table sets forth the distributions received by us and coverage test summaries for our active securitizations for the periods presented (in thousands, except amount in the footnotes) thousands):

Cash Distributions	Overcollateralization Cushion (1)	Annualized Interest Coverage Cushion (2)(3)	Cash Distributions	Overcollateralization Cushion (1)	Annualized Interest Coverage Cushion (2)(3)

Name	Nine Months Ended September 30, 2023	Year Ended December 31, 2022	September 30, 2023	Initial Measurement Date	September 30, 2023	Reinvestment Period End (4)	Three Months Ended March 31, 2024	Year Ended December 31, 2023	March 31, 2024	Initial Measurement Date	March 31, 2024	Reinvestment Period End (4)
ACR 2021-FL1	$ 19,283	$ 21,141	$ 12,488	$ 6,758	$ 22,221	May 2023	$ 4,527	$ 24,923	$ 19,119	$ 6,758	$ 10,450	May 2023
ACR 2021-FL2	14,791	14,537	5,652	5,652	14,690	December 2023	5,064	19,652	10,495	5,652	8,028	December 2023

(1) Overcollateralization cushion represents the amount by which the collateral held by the securitization issuer exceeds the minimum amount required.
(2) Interest coverage includes annualized amounts based on the most recent trustee statements.
(3) Interest coverage cushion represents the amount by which annualized interest income expected exceeds the annualized amount payable on our active securitizations.
(4) The reinvestment period is the period in which principal proceeds received before the end of the period may be used to acquire CRE loans or the funded commitments of existing collateral for reinvestment int securitization.

The following table sets forth the distributions received by us and liquidation details for our liquidated securitizations for the periods presented (in thousands):

	Cash Distributions		Liquidation Details	
Name	Nine Months Ended September 30, 2023	Year Ended December 31, 2022	Liquidation Date	Remaining Assets at the Liquidation Date (1)
XAN 2020-RSO9 (2)	$ —	$ 14,308	February 2022	$ 111,335
XAN 2020-RSO8	—	1,628	March 2022	171,225

(1) The remaining assets at the liquidation date were distributed to us in exchange for our notes owned and preference shares in the respective securitization.
(2) Cash distributions during the year ended December 31, 2022 included a principal distribution on our preference share at liquidation of $13.5 million for XAN 2020-RSO9.

At September 30, 2023, our liquidity consisted of $64.4 million of unrestricted cash and cash equivalents, $34.6 million of reinvestment cash at our CRE securitizations and $5.0 million of unlevered financeable CRE loans. Subsequently, we used $29.0 million of the $34.6 million in liquidity in our CLO for loan purchases.

Our leverage ratio, defined as the ratio of borrowings to total equity, may vary as a result of the various funding strategies we use. At September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, our leverage ratio under GAAP was 3.9 3.7 and 4.2 3.8 times, respectively. The leverage ratio decreased during the period due to the net decrease in borrowings in combination with a net increase decrease to total equity.

(Back to Index)

(Back to Index)

Net Operating Losses and Loss Carryforwards

The following table sets forth the net operating losses and loss carryforwards for the periods presented (in millions):

Tax Asset Item	Tax Year Recognized	REIT (QRS) Tax Loss Carryforwards Operating	REIT (QRS) Tax Loss Carryforwards Capital	TRS Tax Loss Carryforwards Operating	TRS Tax Loss Carryforwards Capital
Net Operating Loss Carryforwards:					
Cumulative as of 2022	2022 Return	$ 46.6	$ —	$ 60.2	$ —
Net Capital Loss Carryforwards:					
Cumulative as of 2022	2022 Return	—	121.9	—	1.0
Total tax asset estimates		**$ 46.6**	**$ 121.9**	**$ 60.2**	**$ 1.0**
Useful life		Unlimited	5 years	Various	5 years

(Back to Index)

(Back to Index)

At September 30, 2023 March 31, 2024, we have $46.6 million of cumulative net operating losses ("NOL") to carry forward to future years. NOL can generally be carried forward to offset both ordinary taxable income and capital gains in future years. The Tax Cuts and Jobs Act ("TCJA"), along with revisions made by the Coronavirus Aid, Relief, and Economic Security ("CARES") Act reduced the deduction for NOLs to 80% of taxable income and granted an indefinite carryforward period. Additionally, we have cumulative total net capital losses of $121.9 million, which are set to carry forward to future years. expire at December 31, 2025.

We also have tax assets in our taxable REIT subsidiaries ("TRS"). These tax assets are analyzed and disclosed quarterly in our financial statements. At September 30, 2023 March 31, 2024, our TRSs have $60.2 million of NOLs comprising: $39.8 million of pre-TCJA NOLs, some of which are set to expire beginning in 2044 and $20.4 million of NOLs with an indefinite carryforward period. Additionally, our TRSs have cumulative total net capital losses of $1.0 million, which are set to carry forward to future years. expire at December 31, 2024.

Distributions

We did not pay distributions on our common shares during the nine three months ended September 30, 2023 March 31, 2024 as we were focused on prudently retaining and managing sufficient excess liquidity. As a result of losses during 2020, we received significant NOL carryforwards and net capital loss carryforwards, as finalized in our 2020 tax return. We intend to retain taxable income by utilizing our NOL carryforwards and expect to generate capital gains to use a portion of our net capital loss carryforwards, thereby growing book value and our investable equity base. As we continue to take steps necessary to stabilize our earnings available for distribution, our Board will expects to establish a plan for the prudent resumption of the payment of common share distributions. No assurance, however, can be given as to the amounts or timing of future distributions as such distributions are subject to our earnings, financial condition, capital requirements and such other factors as our Board deems relevant.

We intend to continue to make regular quarterly distributions to holders of our preferred stock.

U.S. federal income tax law generally requires that a REIT distribute at least 90% of its REIT taxable income annually, determined without regard to the deduction for dividends paid and excluding net capital gains, and that it pay tax at regular corporate rates to the extent that it annually distributes less than 100% of its taxable income. Before we pay any dividend, whether for U.S. federal income tax purposes or otherwise, we must first meet both our operating and debt service requirements on our repurchase agreements and other debt payable. If our cash available for distribution is less than our taxable income, we could be required to sell assets or borrow funds to make cash distributions, or we may make a portion of the required distribution in the form of a taxable stock distribution or distribution of debt securities.

(Back to Index)

[(Back to Index)](#)

Contractual Obligations and Commitments

	Contractual Commitments (dollars in thousands, except amounts in footnotes) Payments due by Period					Contractual Commitments (dollars in thousands, except amounts in footnotes) Payments due by Period				
	Total	Less than 1 year	1 - 3 years	3 - 5 years	More than 5 years	Total	Less than 1 year	1 - 3 years	3 - 5 years	More than 5 years
At September 30, 2023:										
At March 31, 2024:										
CRE securitizations	$ 1,210,132	$ —	$ —	$ —	$ 1,210,132	$ 1,151,483	$ —	$ —	$ —	$ 1,151,483
Senior secured financing facility (1)	64,495	—	—	64,495	—	64,495	—	—	64,495	—
CRE - term warehouse financing facilities (2)	253,114	—	253,114	—	—	167,731	73,133	94,598	—	—
Mortgage payable (3)	18,854	—	18,854	—	—					
Construction loans	6,638	—	1,269	—	5,369					
Mortgages payable (3)						52,909	17,775	19,624	—	15,510
5.75% Senior Unsecured Notes (4)	150,000	—	150,000	—	—	150,000	—	150,000	—	—
Unsecured junior subordinated debentures (5)	51,548	—	—	—	51,548	51,548	—	—	—	51,548
Lease liabilities (6)	855,109	1,608	5,546	6,061	841,894	854,021	1,643	5,697	6,225	840,456
Unfunded commitments on CRE loans (7)	118,812	45,041	73,771	—	—	97,415	48,787	48,628	—	—
Base management fees (8)	6,584	6,584	—	—	—	6,489	6,489	—	—	—
Total	$ 2,735,286	$ 53,233	$ 502,554	$ 70,556	$ 2,108,943	$ 2,596,091	$ 147,827	$ 318,547	$ 70,720	$ 2,058,997

(1) Excludes $262,000 $310,000 of accrued interest payable.
(2) Includes $754,000 $544,000 of accrued interest payable.
(3) Excludes $96,000 $146,000 of accrued interest payable.
(4) Excludes $25.9 million $21.6 million of interest expense payable through maturity in August 2026.
(5) Excludes $28.0 million $26.2 million and $29.2 million $27.3 million of estimated interest expense payable through maturity, in June 2036 and October 2036, respectively.
(6) Lease liabilities includes a ground rent lease for a hotel property with a term of 93 92 years and an annual growth rate of 3%.
(7) Unfunded commitments on our originated CRE loans generally fall into two categories: (i) pre-approved capital improvement projects and (ii) new or additional construction costs subject, in each case, to the bor meeting specified criteria. Upon completion of the improvements or construction, we would receive additional interest income on the advanced amount. At September 30, 2023 March 31, 2024, we had unfu commitments on 55 48 CRE whole loans.
(8) Base management fees presented are based on an estimate of base management fees payable to our Manager over the next 12 months. Our Management Agreement also provides for an incentive compens arrangement that is based on operating performance. The incentive compensation is not a fixed and determinable amount, and therefore it is not included in this table.

Off-Balance Sheet Arrangements

General

At September 30, 2023March 31, 2024, we did not maintain any relationships with unconsolidated entities or financial partnerships that were established for the purpose of facilitating off-balance sheet arrangements or contractually narrow or limited purposes, although we do have interests in unconsolidated entities not established for those purposes. Except as set forth below, at September 30, 2023March 31, 2024, we had not guaranteed obligations of any unconsolidated entities or entered into any commitment or letter of intent to provide additional funding to any such entities.

Unfunded Commitments

In the ordinary course of business, we make commitments to borrowers whose loans are in our CRE loan portfolio to provide additional loan funding in the future. Disbursement of funds pursuant to these commitments is subject to the borrower meeting pre-specified criteria. These commitments are subject to the same underwriting requirements and ongoing portfolio maintenance as are the on-balance sheet financial investments that we hold. Since these commitments may expire without being drawn upon, the total commitment amount does not necessarily represent future cash requirements. Whole loans had $118.8 million$97.4 million and $158.2 million$109.4 million in unfunded loan commitments at September 30, 2023March 31, 2024 and December 31, 2022December 31, 2023, respectively. Unfunded commitments are not considered in the CECL reserve if they are unconditionally cancellable.

Guarantees and Indemnifications

In the ordinary course of business, we may provide guarantees and indemnifications that contingently obligate us to make payments to the guaranteed or indemnified party based on changes in the value of an asset, liability or equity security of the guaranteed or indemnified party. As such, we may be obligated to make payments to a guaranteed party based on another entity's failure to perform or achieve specified performance criteria, or we may have an indirect guarantee of the indebtedness of others.

(Back to Index)

(Back to Index)

In January 2023, Chapel Drive East, LLC, a wholly owned subsidiary of the FSU Student Venture, entered into a loan agreement (the "Construction Loan Agreement") with Oceanview Life and Annuity Company ("Oceanview") to finance the construction of a student housing complex (the "Construction Loan").

In connection with our investment in the student housing complex, ACRES RF entered into guarantees related to the Construction Loan. Pursuant to the guarantees, Jason Pollack, Frank Dellaglio and ACRES RF (collectively, the "Guarantors"), for the benefit of Oceanview, provided limited "bad boy" guaranties to Oceanview pursuant to the Construction Loan Agreement until the earlier of the payment in full of the indebtedness or the date of a sale of the property pursuant to a foreclosure of the mortgage or deed or other transfer in lieu of foreclosure is accepted by Oceanview. The Guarantors also entered into a Completion Guaranty Agreement for the benefit of Oceanview to guaranty the timely completion of the project in accordance with the Construction Loan Agreement, as well as a Carry Guaranty Agreement, for the benefit of Oceanview to guaranty and unconditional payment by Chapel Drive East, LLC of all customary or necessary costs and expenses incurred in connection with the operation, maintenance and management of the property and an Environmental Indemnity Agreement jointly and severally in favor of Oceanview whereby the Guarantors serving as Indemnitors provided environmental representations and warranties, covenants and indemnifications (collectively the "Guaranties"). The Guaranties include certain financial covenants required of ACRES RF, including required net worth and liquidity requirements.

(Back to Index)

(Back to Index)

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

At September 30, 2023 March 31, 2024, the primary components of our market risk were credit risk, counterparty risk, financing risk, and interest rate risk, as described below. While we do not seek to avoid risk completely, we do seek to assume risk that can be quantified from historical experience, to actively manage that risk, to earn sufficient compensation to justify assuming that risk and to maintain capital levels consistent with the risk we undertake or to which we are exposed. Additionally, refer to Item 1A, "Risk Factors" included in our Annual Report on Form 10-K for the year ended December 31, 2023 for additional information on risks we face.

Credit Risks

Our loans and investments are subject to credit risk. The performance and value of our loans and investments depend upon the sponsors' ability to operate the properties that serve as our collateral so that they produce cash flows adequate to pay interest and principal due to us. To monitor this risk, ACRES Capital, LLC's asset management team reviews our investment portfolios and in certain instances is in regular contact with our borrowers, monitoring performance of the collateral and enforcing our rights as necessary.

In addition, we are exposed to the risks generally associated with the commercial real estate ("CRE") market, including variances in occupancy rates, capitalization rates, absorption rates, and other macroeconomic factors beyond our control. We seek to manage these risks through our underwriting and asset management processes.

In a business environment where benchmark interest rates are increasing significantly, cash flows of the CRE assets underlying our loans may not be sufficient to pay debt service on our loans, which could result in non-performance or default. We partially mitigate this risk by generally requiring our borrowers to purchase interest rate cap agreements with non-affiliated, well-capitalized third parties and by selectively requiring our borrowers to have and maintain debt service reserves. These interest rate caps generally mature prior to the maturity date of the loan and the borrowers are required to pay to extend them. In most cases the sponsors will need to fund additional equity into the properties to cover these costs as the property may not generate sufficient cash flow to pay these costs. At September 30, 2023 March 31, 2024, 88.5% 77.0% of the par value of our CRE loan portfolio had interest rate caps in place with a weighted-average maturity of eight six months.

Macroeconomic conditions may persist into the future and impair our borrowers' ability to comply with the terms under our loan agreements. We maintain a robust asset management relationship with our borrowers and have utilized these relationships to address the rising interest rates, lingering impacts of the COVID-19 pandemic, and other macroeconomic factors on our loans secured by properties experiencing cash flow pressure. While we believe the principal amounts of our loans are generally adequately protected by underlying collateral value, there is a risk that we will not realize the entire principal value of certain investments. In order to mitigate that risk, we have proactively engaged with our borrowers, particularly with those with near-term maturities, in order to maximize recovery.

Counterparty Risk

The nature of our business requires us to hold our cash and cash equivalents and obtain financing from with various financial institutions. This exposes us to the risk that these financial institutions may not fulfill their obligations to us under these various contractual arrangements. We mitigate this exposure by depositing our cash and cash equivalents and entering into financing agreements with high credit-quality institutions.

Financing Risk

We finance our target assets using our CRE debt securitizations, a senior secured financing facility, and warehouse financing facilities. facilities and mortgage payables. Over time, as market conditions change, we may use other forms of leverage in addition to these methods of financing. Weakness or volatility in the financial markets, the CRE and mortgage markets or the economy generally could adversely affect one or more of our lenders or potential lenders and could cause one or more of our lenders or potential lenders to be unwilling or unable to provide us with financing, or to decrease the amount of our available financing, or to increase the costs of that financing.

(Back to Index)

(Back to Index)

Interest Rate Risk

Our business model is such that rising interest rates will increase our net income, while declining interest rates will decrease net income, subject to the impact of interest rate floors. At September 30, 2023 March 31, 2024, 99.8% 99.7% of our CRE loan portfolio by par value earned a floating rate of interest and may be financed with liabilities that both pay interest at floating rates and that are fixed. Floating-rate loans financed with fixed rate liabilities have a negative correlation with declining interest rates to the extent of our financing. The remaining 0.2% 0.3% of our CRE loan portfolio by par value has a contractual fixed rate of interest. To the extent that interest rate floors on our floating-rate CRE loans are in the money, our net interest will have a negative correlation with rising interest rates to the extent of those interest rate floors. Our floating-rate loan portfolio of $1.9 billion $1.8 billion had a weighted-average benchmark floor of 0.68% 0.74% at September 30, 2023 March 31, 2024.

The following table estimates the hypothetical impact on our net interest income assuming an immediate increase or decrease of 100 basis points in the applicable interest rate benchmark (in thousands, except per share data):

	Three Months Ended September 30, 2023					Three Months Ended March 31, 2024				
At September 30, 2023	100 Basis Point Decrease (4)		100 Basis Point Increase							
At March 31, 2024						At March 31, 2024	100 Basis Point Decrease (4)		100 Basis Point Increase	
Net Assets Subject to Interest Rate Sensitivity (1)(2)(3)	Net Assets Subject to Interest Rate	Decrease to Net Interest Income	Decrease to Net Interest Income Per Share	Increase to Net Interest Income	Increase to Net Interest Income Per Share	Net Assets Subject to Interest Rate Sensitivity (1)(2)(3)	Decrease to Net Interest Income	Decrease to Net Interest Income Per Share	Increase to Net Interest Income	Increase to Net Interest Income Per Share

Sensitivity (1)(2)(3)										
$ 344,478	$ (866)	$ (0.10)	$ 873	$ 0.10	340,188	$ (855)	$ (0.11)	$ 862	$ 0.11	

(1) Includes our floating-rate CRE loans at September 30, 2023 March 31, 2024.
(2) Includes amounts outstanding on our securitizations, CRE term warehouse financing facilities, senior secured financing facility and unsecured junior subordinated debentures.
(3) Certain of our floating rate loans are subject to a benchmark floor.
(4) Decrease in rates assumes the applicable benchmark rate does not fall below 0%.

Risk Management

To the extent consistent with maintaining our status as a REIT, we seek to manage our interest rate risk exposure to protect our variable rate debt against the effects of major interest rate changes. We generally seek to manage our interest rate risk by monitoring and adjusting, if necessary, the reset index and interest rate related to our borrowings.

(Back to Index)

(Back to Index)

ITEM 4. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our Securities Exchange Act of 1934 reports is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission’s rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and our Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, our management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and our management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Under the supervision of our Chief Executive Officer and Chief Financial Officer, we have carried out an evaluation of the effectiveness of our disclosure controls and procedures as of the end of the period covered by this report. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures are effective at the reasonable assurance level.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting during the quarter ended September 30, 2023March 31, 2024 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

(Back to Index)

(Back to Index)

PART II

ITEM 1. LEGAL PROCEEDINGS

We may become involved in litigation on various matters due to the nature of our business activities. The resolution of these matters may result in adverse judgments, fines, penalties, injunctions and other relief against us as well as monetary payments or other agreements and obligations. In addition, we may enter into settlements on certain matters in order to avoid the additional costs of engaging in litigation. Except as discussed below, we are unaware of any contingencies arising from such litigation that would require accrual or disclosure in the consolidated financial statements at September 30, 2023March 31, 2024.

Our subsidiary, Primary Capital Mortgage, LLC ("PCM"), is subject to potential litigation related to claims for repurchases or indemnifications on loans that PCM has sold to third parties. At September 30, 2023March 31, 2024 and December 31, 2022December 31, 2023, no such litigation demand was outstanding. Reserves for such litigation demands are included in the reserve for mortgage repurchases and indemnifications that totaled $1.0 million and $1.1 million at March 31, 2024 and $1.2 million at September 30, 2023 and December 31, 2022December 31, 2023, respectively. The reserves for mortgage repurchases and indemnifications are included in liabilities held for sale on the consolidated balance sheets. At September 30, 2023March 31, 2024, we have substantially completed disposing of PCM's business.

ITEM 1A. RISK FACTORS

As of the date of this report, there have been no material changes to the risk factors disclosed under Part I, Item 1A, "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2022December 31, 2023 filed with the Securities and Exchange Commission ("SEC"), except we may disclose changes to such factors or disclose additional factors from time to time in our future filings with the SEC.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES, USE OF PROCEEDS AND ISSUER PURCHASES OF EQUITY SECURITIES

Issuer Purchases of Equity Securities

In March 2016, our Board approved oura securities repurchase program. In November 2020, our Board authorized and approved the continued use of our existing share repurchase program in order to repurchase up to $20.0 million of our outstanding shares of common stock. In July 2021, the authorized amount was fully utilized and in November 2021, 2023, our Board authorized and approved the continued use repurchase of our existing share repurchase program to repurchase an additional $20.0 million$10.0 million of our outstanding shares of both common and preferred stock. At March 31, 2024, $5.6 million remains available under this repurchase program.

The following table presents information about our common and preferred stock repurchases made during the ninethree months ended September 30, 2023March 31, 2024 in accordance with our repurchase program (dollars in thousands, except per share data):

	Common Stock

	Total Number of Shares Purchased	Average Price Paid per Share (1)		Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares that may yet be Purchased under the Plans or Programs	
January 19, 2023 - January 31, 2023	9,822	$	9.78	9,822	$	7,121
February 1, 2023 - February 28, 2023	24,754		9.48	24,754		6,887
March 1, 2023 - March 31, 2023	45,168		9.39	45,168		6,464
April 3, 2023 - April 28, 2023	45,645		9.48	45,645		6,032
May 1, 2023 - May 31, 2023	62,001		8.61	62,001		5,499
June 1, 2023 - June 30, 2023	27,770		8.41	27,770		5,266
July 3, 2023 - July 31, 2023	29,242		9.01	29,242		5,003
August 1, 2023 - August 31, 2023	36,137		8.77	36,137		4,687
September 4, 2023 - September 29, 2023	17,918		8.29	17,918		4,539

	Total Number of Shares Purchased	Average Price Paid per Share (1)		Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares that may yet be Purchased under the Plans or Programs	
January 2, 2024 - January 31, 2024	75,138	$	9.86	75,138	$	9,087,747
January 17, 2024 (2)	100,000		21.57	100,000		6,932,747
February 1, 2024 - February 29, 2024	52,195		10.14	52,195		6,404,704
March 1, 2024 - March 28, 2024	67,494		11.84	67,494		5,607,039

(1) The average price paid per share as reflected above includes broker fees and commissions.

(2) These repurchases pertain to our Series D Cumulative Preferred Stock. All other repurchases listed pertain to our common stock.

On October 31, 2023 February 9, 2024, we issued 30,320 1,911 shares of common stock to our Manager, ACRES Capital, LLC, representing the equity portion of the third fourth quarter 2023 incentive compensation that was payable at September 30, 2023 December 31, 2023, in accordance with our Fourth Amended and Restated Management Agreement, as amended. Such shares were issued pursuant to the exemption from registration contained in Section 4(a)(2) of the Securities Act of 1933, as amended.

(Back to Index)

(Back to Index)

ITEM 5. OTHER INFORMATION

During the three months ended September 30, 2023 March 31, 2024, no director or officer of the Company adopted, modified or terminated a “Rule 10b5-1 trading arrangement” or “non-Rule 10b5-1 trading arrangement,” as each term is defined in Item 408(a) of Regulation S-K.

On November 3, 2023, the Company entered into Amendment No. 2 to Guaranty (the “Morgan Stanley Amendment”) by and between the Company and Morgan Stanley Mortgage Capital Holdings LLC (“Morgan Stanley”), which makes certain amendments and modifications to the Guaranty, dated November 3, 2021 between the Company and Morgan Stanley as amended (the “MS Guaranty”) including but not limited to amending the (i) EBITDA to Interest Expense ratio (as defined in the MS Guaranty), (ii) maximum ratio of Total Indebtedness to its Total Equity (as defined in the MS Guaranty) and (iii) minimum unencumbered Liquidity requirement (as defined in the MS Guaranty), each through the quarter ending December 2024.

The foregoing descriptions of the Morgan Stanley Amendment do not purport to be complete and are qualified in their entirety by reference to the full text of the Morgan Stanley Amendment, which has been filed with this Quarterly Report on Form 10-Q as Exhibit 99.2.

(Back to Index)

(Back to Index)

On May 7, 2024, the Company issued a total of 333,333 shares of common stock under its Manager Incentive Plan to ACRES Share Holdings, LLC, a subsidiary of the Manager and under its Third Amended and Restated Omnibus Equity Compensation Plan to the Company's directors (with the exception of Messrs. Fentress and Fogel), after the Company reached the established per share book value target of $27.00 per share. Each grant vests 25% over four years. Of this amount, ACRES Share Holdings, LLC was granted 295,237 shares of common stock and now holds approximately 12.1% of the Company's outstanding common stock. Shares issued to ACRES Share Holdings, LLC under the Management Incentive Plan were issued pursuant to the exemption from registration contained in Section 4(a)(2) of the Securities Act.

On May 7, 2024, the Company granted ACRES Share Holdings, LLC a stock ownership waiver allowing it to exceed the 9.8% ownership limitations set forth in the Company's charter. The stock ownership waiver allows ACRES Share Holdings, LLC to hold up to 15% of the Company's outstanding shares of common stock.

(Back to Index)

(Back to Index)

ITEM 6. EXHIBITS

Exhibit No.	Description
2.1	Asset Purchase Agreement, dated June 6, 2017, by and among Stearns Lending, LLC, Primary Capital Mortgage, LLC, and Resource Capital Corp. (10)
3.1(a)	Amended and Restated Articles of Incorporation of Resource Capital Corp. (1)
3.1(b)	Articles of Amendment to Restated Certificate of Incorporation of Resource Capital Corp. (9)
3.1(c)	Articles Supplementary 8.625% Fixed-to-Floating Series C Cumulative Redeemable Preferred Stock. (7)
3.1(d)	Articles Supplementary 7.875% Series D Cumulative Redeemable Preferred Stock, as corrected. (24)
3.1(e)	Articles of Amendment, effective May 25, 2018. (12)
3.1(f)	Articles of Amendment, effective February 16, 2021. (21)
3.1(g)	Articles of Amendment, effective May 28, 2021. (25)
3.2	Fourth Amended and Restated Bylaws of ACRES Commercial Realty Corp. (21)
4.1(a)	Form of Certificate for Common Stock for Resource Capital Corp. (1)
4.1(b)	Form of Certificate for 8.625% Fixed-to-Floating Series C Cumulative Redeemable Preferred Stock. (7)
4.1(c)	Form of Certificate for 7.875% Series D Cumulative Redeemable Preferred Stock. (24)
4.2(a)	Junior Subordinated Indenture between Resource Capital Corp. and Wells Fargo Bank, N.A., dated May 25, 2006. (2)
4.2(b)	Amendment to Junior Subordinated Indenture and Junior Subordinated Note due 2036 between Resource Capital Corp. and Wells Fargo Bank, N.A., dated October 26, 2009 and effective September 30, 2009. (6)
4.3(a)	Amended and Restated Trust Agreement among Resource Capital Corp., Wells Fargo Bank, N.A., Wells Fargo Delaware Trust Company and the Administrative Trustees named therein, dated May 25, 2006. (2)
4.3(b)	Amendment to Amended and Restated Trust Agreement and Preferred Securities Certificate among Resource Capital Corp., Wells Fargo Bank, N.A. and the Administrative Trustees named therein, dated October 26, 2009 and effective September 30, 2009. (6)
4.4	Junior Subordinated Note due 2036 in the principal amount of $25,774,000, dated October 26, 2009. (6)
4.5(a)	Junior Subordinated Indenture between Resource Capital Corp. and Wells Fargo Bank, N.A., dated September 29, 2006. (3)
4.5(b)	Amendment to Junior Subordinated Indenture and Junior Subordinated Note due 2036 between Resource Capital Corp. and Wells Fargo Bank, N.A., dated October 26, 2009 and effective September 30, 2009. (6)
4.6(a)	Amended and Restated Trust Agreement among Resource Capital Corp., Wells Fargo Bank, N.A., Wells Fargo Delaware Trust Company and the Administrative Trustees named therein, dated September 29, 2006. (3)

4.6(b)	Amendment to Amended and Restated Trust Agreement and Preferred Securities Certificate among Resource Capital Corp., Wells Fargo Bank, N.A. and the Administrative Trustees named therein, dated October 26, 2009 and effective September 30, 2009. (6)
4.7	Junior Subordinated Note due 2036 in the principal amount of $25,774,000, dated October 26, 2009. (6)
4.8	Description of Registrant's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934. (35)
4.9(a)	Base Indenture, dated August 16, 2021, between the Company and the Trustee. (28)
4.9(b)	First Supplemental Indenture, dated August 16, 2021, between the Company and the Trustee. (28)
4.9(c)	Form of 5.75% Senior Note due 2026 (included in Exhibit 4.9(b)).
10.1(a)	Fourth Amended and Restated Management Agreement, dated as of July 31, 2020, by and among Exantas Capital Corp., ACRES Capital, LLC and ACRES Capital Corp. (16)
10.1(b)	First Amendment to Fourth Amended and Restated Management Agreement, dated as of February 16, 2021, by and among ACRES Commercial Realty Corp. f/k/a Exantas Capital Corp., ACRES Capital, LLC and ACRES Capital Corp. (22)
10.1(c)	Second Amendment to Fourth Amended and Restated Management Agreement, dated as of May 6, 2022, by and among ACRES Commercial Realty Corp. f/k/a Exantas Capital Corp., ACRES Capital, LLC and ACRES Capital Corp. (36)
10.1(d)	Third Amendment to Fourth Amended and Restated Management Agreement, dated February 15, 2024, by and among ACRES Commercial Realty Corp., ACRES Capital, LLC and ACRES Capital Corp.(45)
10.2(a)	Second Amended and Restated Omnibus Equity Compensation Plan. (14)
10.2(b)	Amendment No. 1 to the Exantas Capital Corp. Second Amended and Restated Omnibus Equity Compensation Plan. (17)
10.2(c)	Third Amended and Restated Omnibus Equity Compensation Plan. (23)
10.2(d)	Form of Stock Award Agreement. (8)
10.2(e)	Form of Stock Award Agreement (for employees with Resource America, Inc. employment agreements). (8)
10.3	Form of Indemnification Agreement. (11)
10.4(a)	Loan and Servicing Agreement, dated as of July 31, 2020, among RCC Real Estate SPE Holdings LLC, as Holdings, RCC Real Estate SPE 9 LLC, as the Borrower, Massachusetts Mutual Life Insurance Company and the other Lenders from time to time party thereto, Wells Fargo Bank, National Association, as the Administrative Agent, Massachusetts Mutual Life Insurance Company, as the Facility Servicer, ACRES Capital Servicing LLC, as the Portfolio Asset Servicer, and Wells Fargo Bank, National Association, as the Collateral Custodian. (16)
10.4(b)	First Amendment to Loan and Servicing Agreement, dated as of September 16, 2020, among RCC Real Estate SPE Holdings LLC, RCC Real Estate SPE 9 LLC, Massachusetts Mutual Life Insurance Company and Wells Fargo Bank, National Association, as the Administrative Agent. (18)

(Back to Index)

(Back to Index)

10.4(c)	Second Amendment to Loan and Servicing Agreement, dated as of May 25, 2021, among RCC Real Estate SPE Holdings LLC, RCC Real Estate SPE 9 LLC, Massachusetts Mutual Life Insurance Company and Wells Fargo Bank, National Association as the Administrative Agent. (27)
10.4(d)	Third Amendment to Loan and Servicing Agreement, dated as of August 16, 2021, among RCC Real Estate SPE Holdings LLC, RCC Real Estate SPE 9 LLC, the Lenders party thereto and Massachusetts Mutual Life Insurance Company and Wells Fargo Bank, National Association as the Administrative Agent.(33)
10.4(e)	Fourth Amendment to Loan and Servicing Agreement, dated as of April 12, 2022, among RCC Real Estate SPE Holdings LLC, RCC Real Estate SPE 9 LLC, the Lenders party thereto and Massachusetts Mutual Life Insurance Company and Wells Fargo Bank, National Association as the Administrative Agent. (36)
10.4(f)	Fifth Amendment to Loan and Servicing Agreement, dated as of July 26, 2022, among RCC Real Estate SPE Holdings LLC, RCC Real Estate SPE 9 LLC, the Lenders party thereto and Massachusetts Mutual Life Insurance Company and Wells Fargo Bank, National Association as the Administrative Agent. (37)
10.4(g)	Sixth Amendment to Loan and Servicing Agreement, dated as of August 29, 2022, among RCC Real Estate SPE Holdings LLC, RCC Real Estate SPE 9 LLC, the Lenders party thereto and Massachusetts Mutual Life Insurance Company and Wells Fargo Bank, National Association as the Administrative Agent. (38)
10.4(h)	Guaranty, dated as of July 31, 2020, by Exantas Capital Corp., and each of Exantas Real Estate Funding 2018-RSO6 Investor, LLC, Exantas Real Estate Funding 2019-RSO7 Investor, LLC, and Exantas Real Estate Funding 2020-RSO8 Investor, LLC, in favor of the Secured Parties. (16)

10.4(i)	Amended and Restated Loan and Servicing Agreement, dated as of December 22, 2022, among RCC Real Estate SPE Holdings LLC, RCC Real Estate SPE 9 LLC, Plymouth Meeting Holdings, LLC, Exantas Phili Holdings, LLC, ACRES Real Estate TRS 9 LLC, Massachusetts Mutual Life Insurance Company and ACRES Capital Servicing. (40)
10.4(j)	Guaranty, dated May 25, 2021 between Exantas Phili Holdings, LLC in favor of the Secured Parties. (36)
10.4(k)	Guaranty, dated May 25, 2021 between 65 E. Wacker Holdings, LLC in favor of the Secured Parties. (36)
10.4(l)	Guaranty, dated May 25, 2021 between Plymouth Meeting Holdings, LLC in favor of the Secured Parties. (36)
10.4(m)	Pledge and Guaranty Agreement, dated August 16, 2021 between ACRES Real Estate TRS 9 LLC in favor of the Secured Parties. (36)
10.4(n)	Guaranty, dated April 12, 2022 between Appleton Hotel Holdings, LLC and Appleton Hotel Leasing, LLC in favor of the Secured Parties. (36)
10.5(a)	Note and Warrant Purchase Agreement, dated as of July 31, 2020, by and among Exantas Capital Corp. and the Purchasers signatory thereto. (16)
10.5(b)	Agreement between the Company, OCM XAN Holdings PT, LLC and the Massachusetts Mutual Life Insurance Company, dated August 18, 2021. (29)
10.5(c)	Amendment No. 1 to Note and Warrant Purchase Agreement, dated January 31, 2022, between ACRES Commercial Realty Corp. and the Purchasers signatory thereto. (34)
10.6	Promissory Note, dated as of July 31, 2020, issued by ACRES Capital Corp. to RCC Real Estate, Inc. (16)
10.7(a)	Manager Incentive Plan. (23)
10.7(b)	Form of Stock Award Agreement Under the Manager Incentive Plan. (26)
10.8	Equity Distribution Agreement, dated October 4, 2021, by and among ACRES Commercial Realty Corp., ACRES Capital, LLC and JonesTrading Institutional Services LLC. (31)
10.9(a)	Building Loan Agreement, dated as of January 24, 2023 between Chapel Drive East, LLC and Oceanview Life and Annuity Company. (42)
10.9(b)	Guaranty Agreement executed January 24, 2023 by Jason Pollack, Frank Dellaglio and ACRES Realty Funding, Inc. for the benefit of Oceanview Life and Annuity Company. (39)
10.9(c)	Completion Guaranty Agreement executed January 24, 2023 by Jason Pollack, Frank Dellaglio and ACRES Realty Funding, Inc. for the benefit of Oceanview Life and Annuity Company. (39)
10.9(d)	Carry Guaranty Agreement executed January 24, 2023 by Jason Pollack, Frank Dellaglio and ACRES Realty Funding, Inc. for the benefit of Oceanview Life and Annuity Company. (39)
10.9(e)	Environmental Indemnity Agreement executed January 24, 2023 by Jason Pollack, Frank Dellaglio and ACRES Realty Funding, Inc. in favor of Oceanview Life and Annuity Company. (39)
31.1	Rule 13a-14(a)/Rule 15d-14(a) Certification of Chief Executive Officer.
31.2	Rule 13a-14(a)/Rule 15d-14(a) Certification of Chief Financial Officer.
32.1	Certification Pursuant to 18 U.S.C. Section 1350.
32.2	Certification Pursuant to 18 U.S.C. Section 1350.
97.1	Policy for the Recovery of Erroneously Awarded Compensation. (45)
99.1(a)	Master Repurchase Agreement for $250,000,000 between RCC Real Estate SPE 8, LLC, as Seller, and JPMorgan Chase Bank, National Association, as Buyer, dated October 26, 2018. (13)
99.1(b)	First Amendment to Uncommitted Master Repurchase Agreement dated as of August 14, 2020 between RCC Real Estate SPE 8, LLC and JPMorgan Chase Bank, National Association. (20)
99.1(c)	Amendment No. 2 to Master Repurchase Agreement, dated September 1, 2021 between RCC Real Estate SPE 8, LLC and JPMorgan Chase Bank, National Association. (30)
99.1(d)	Amendment No. 3 to Master Repurchase Agreement and Guarantee Agreement, dated October 26, 2021 between RCC Real Estate SPE 8, LLC, JPMorgan Chase Bank, National Association and ACRES Commercial Realty Corp., as guarantor (32)

(Back to Index)

(Back to Index)

99.1(e)	Amendment No. 4 to Master Repurchase Agreement, dated July 21, 2023, between RCC Real Estate SPE 8, LLC and JPMorgan Chase Bank, National Association. (43)

99.1(f)	Guarantee made by Exantas Capital Corp., as guarantor, in favor of JPMorgan Chase Bank, National Association, dated October 26, 2018. (13)
99.1(g)	First Amendment to Guarantee Agreement, dated May 6, 2020, between Exantas Capital Corp. and JPMorgan Chase Bank, National Association. (15)
99.1(h)	Amendment No. 2 To Guarantee Agreement, dated October 2, 2020 between Exantas Capital Corp. and JPMorgan Chase Bank, National Association. (19)
99.1(i)	Amendment No. 4 To Guarantee Agreement, dated November 17, 2022 between ACRES Commercial Realty Corp. and JPMorgan Chase Bank, National Association. (41)
99.1(j)	Amendment No. 5 to Guarantee Agreement, dated July 21, 2023, between ACRES Commercial Realty Corp. and JPMorgan Chase Bank, National Association. (43)
99.2(a)	Master Repurchase and Securities Contract Agreement between ACRES Real Estate SPE 10, LLC, as Seller, and Morgan Stanley Mortgage Capital Holdings LLC, as Administrative Agent, dated November 3, 2021. (33)
99.2(b)	First Amendment to Master Repurchase and Securities Contract Agreement, dated January 28, 2022, between ACRES Real Estate SPE 10, LLC and Morgan Stanley Mortgage Capital Holdings LLC, as Administrative Agent. (34)
99.2(c)	Guaranty made by ACRES Commercial Realty Corp., as Guarantor, in favor of Morgan Stanley Mortgage Capital Holdings LLC, dated November 3, 2021. (33)
99.2(d)	Amendment No. 1 to Guaranty, dated November 18, 2022 between ACRES Commercial Realty Corp. and Morgan Stanley Mortgage Capital Holdings LLC. (41)
99.2(e)	Amendment No. 2 to Guaranty, dated November 3, 2023 between ACRES Commercial Realty Corp. and Morgan Stanley Mortgage Capital Holdings LLC. (44)
99.3	Material Federal Income Tax Considerations. (42) (45)
101.INS	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document.
101.CAL	Inline XBRL Taxonomy Extension Calculation Document With Embedded Linkbase Document.
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document. Documents.
104	Cover Page Interactive Data File.

(Back to Index)

(Back to Index)

(1)	Filed previously as an exhibit to the Company's Registration Statement on Form S-11, Registration No. 333-126517.
(2)	Filed previously as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2006.
(3)	Filed previously as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2006.
(4)	Filed previously as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2013.
(5)	Filed previously as an exhibit to the Company's Current Report on Form 8-K filed on June 26, 2014.
(6)	Filed previously as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2009.
(7)	Filed previously as an exhibit to the Company's Registration Statement on Form 8-A filed on June 9, 2014.
(8)	Filed previously as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2014.
(9)	Filed previously as an exhibit to the Company's Current Report on Form 8-K filed on September 1, 2015.
(10)	Filed previously as an exhibit to the Company's Current Report on Form 8-K filed on June 8, 2017.
(11)	Filed previously as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2017.
(12)	Filed previously as an exhibit to the Company's Current Report on Form 8-K filed on May 25, 2018.
(13)	Filed previously as an exhibit to the Company's Current Report on Form 8-K filed on October 30, 2018.
(14)	Filed previously as an exhibit to the Company's Proxy Statement filed on April 18, 2019.
(15)	Filed previously as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2020.

(16)	Filed previously as an exhibit to the Company's Current Report on Form 8-K filed on August 3, 2020.
(17)	Filed previously as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2020.
(18)	Filed previously as an exhibit to the Company's Current Report on Form 8-K filed on September 22, 2020.
(19)	Filed previously as an exhibit to the Company's Current Report on Form 8-K filed on October 7, 2020.
(20)	Filed previously as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2020.
(21)	Filed previously as an exhibit to the Company's Current Report on Form 8-K filed on February 18, 2021.
(22)	Filed previously as an exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2020.
(23)	Filed previously as an exhibit to the Company's Proxy Statement filed on April 12, 2021.
(24)	Filed previously as an exhibit to the Company's Current Report on Form 8-K filed on May 21, 2021.
(25)	Filed previously as an exhibit to the Company's Current Report on Form 8-K filed on June 1, 2021.
(26)	Filed previously as an exhibit to the Company's Current Report on Form 8-K filed on June 9, 2021.
(27)	Filed previously as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2021.
(28)	Filed previously as an exhibit to the Company's Current Report on Form 8-K filed on August 17, 2021.
(29)	Filed previously as an exhibit to the Company's Current Report on Form 8-K filed on August 20, 2021.
(30)	Filed previously as an exhibit to the Company's Current Report on Form 8-K filed on September 2, 2021.
(31)	Filed previously as an exhibit to the Company's Current Report on Form 8-K filed on October 7, 2021.
(32)	Filed previously as an exhibit to the Company's Current Report on Form 8-K filed on October 29, 2021.
(33)	Filed previously as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2021.
(34)	Filed previously as an exhibit to the Company's Current Report on Form 8-K filed on February 3, 2022.
(35)	Filed previously as an exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2021.
(36)	Filed previously as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022.
(37)	Filed previously as an exhibit to the Company's Current Report on Form 8-K filed on July 27, 2022.
(38)	Filed previously as an exhibit to the Company's Current Report on Form 8-K filed on August 30, 2022.
(39)	Filed previously as an exhibit to the Company's Current Report on Form 8-K filed on January 25, 2023.
(40)	Filed previously as an exhibit to the Company's Current Report on Form 8-K filed on December 22, 2022.
(41)	Filed previously as an exhibit to the Company's Current Report on Form 8-K filed on November 18, 2022.
(42)	Filed previously as an exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2022.
(43)	Filed previously as an exhibit to the Company's Current Report on Form 8-K filed on July 25, 2023.
(44)	Filed previously as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2023.
(45)	Filed previously as an exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2023.

(Back to Index)

(Back to Index)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

		ACRES COMMERCIAL REALTY CORP.
		(Registrant)
November 7, 2023 May 8, 2024	By:	/s/ Mark Fogel
		Mark Fogel

		President & Chief Executive Officer
November 7, 2023 May 8, 2024	By:	/s/ David J. Bryant Eldron C. Blackwell
		David J. Bryant Eldron C. Blackwell
		Senior Vice President
		Chief Financial Officer and Treasurer
November 7, 2023 May 8, 2024	By:	/s/ Eldron C. Blackwell Linda M. Kilpatrick
		Eldron C. Blackwell Linda M. Kilpatrick
		Vice President
		Chief Accounting Officer and Controller

(Back to Index)

Exhibit 31.1

CERTIFICATION

I, Mark Fogel, certify that:

1. I have reviewed this report on Form 10-Q for the quarter ended September 30, 2023 March 31, 2024 of ACRES Commercial Realty Corp.;

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(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) 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.

November 7, 2023 May 8, 2024

/s/ Mark Fogel

Mark Fogel

President & Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, David J. Bryant, Eldron C. Blackwell, certify that:

1. I have reviewed this report on Form 10-Q for the quarter ended September 30, 2023 March 31, 2024 of ACRES Commercial Realty Corp.;

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(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) 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.

November 7, 2023 May 8, 2024

/s/ David J. Bryant Eldron C. Blackwell

David J. Bryant Eldron C. Blackwell

Chief Financial Officer and Treasurer

Exhibit 32.1

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 Quarterly Report of ACRES Commercial Realty Corp. (the "Company") on Form 10-Q for the quarter ended September 30, 2023 March 31, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Mark Fogel, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

November 7, 2023 May 8, 2024

/s/ Mark Fogel
Mark Fogel
President & Chief Executive Officer

This certification is being furnished and shall not be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

A signed original of this certification required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

Exhibit 32.2

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 Quarterly Report of ACRES Commercial Realty Corp. (the "Company") on Form 10-Q for the quarter ended September 30, 2023 March 31, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, David J. Bryant, Eldron C. Blackwell, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

November 7, 2023 May 8, 2024

/s/ David J. Bryant Eldron C. Blackwell
David J. Bryant Eldron C. Blackwell
Chief Financial Officer and Treasurer

This certification is being furnished and shall not be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

A signed original of this certification required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

Exhibit 99.2

AMENDMENT NO. 2 TO GUARANTY

AMENDMENT NO. 2 TO GUARANTY, dated as of November 3, 2023 (this "Amendment"), between ACRES COMMERCIAL REALTY CORP, a Maryland corporation ("Guarantor"), and MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS LLC, a New York limited liability company, as administrative agent (in such capacity, together with its permitted successors and assigns, the "Administrative Agent") for MORGAN STANLEY BANK, N.A., a national banking association ("MSBNA"), and such other financial institutions from time to time party to the Repurchase Agreement (as defined below) as buyers (MSBNA, together with its successors and assigns, and together with such other financial institutions from time to time party to the Repurchase Agreement and their respective successors and assigns, collectively "Buyers" and individually, each a "Buyer"). Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Repurchase Agreement (as defined below).

RECITALS

WHEREAS, ACRES REAL ESTATE SPE 10, LLC, a Delaware limited liability company ("Seller"), MSBNA, and Administrative Agent, on behalf of Buyers, are parties to that certain Master Repurchase and Securities Contract Agreement, dated as of November 3, 2021 (as amended by that certain First Amendment to Master Repurchase and Securities Contract Agreement, dated as of January 28, 2022, and as may be further amended, restated, supplemented or otherwise modified and in effect from time to time, the "Repurchase Agreement");

WHEREAS, in connection with the Repurchase Agreement, Guarantor entered into that certain Guaranty, dated as of November 3, 2021, as amended by that certain Amendment No. 1 to Guaranty, dated as of November 18, 2022 (as amended hereby, and as may be further amended, restated, supplemented or otherwise modified and in effect from time to time, the "Guaranty"); and

WHEREAS, Guarantor and Administrative Agent, on behalf of Buyers, have agreed to amend certain provisions of the Guaranty in the manner set forth herein.

NOW THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor and Administrative Agent, on behalf of Buyers, agree as follows:

SECTION 1. Amendments to Guaranty.

(a) Section 9(a)(i) of the Guaranty is hereby amended by amending and restating that section in its entirety to read as follows:

"(i) permit its unpledged, unencumbered Liquidity of (1) from the Closing Date through September 30, 2022, to be less than the greater of (A) $10,000,000 and (B) five percent (5%) of the aggregate outstanding Repurchase Price of all Purchased Assets as of such time; (2) from October 1, 2022 through December 31, 2024, to

---

be less than the greater of (A) $15,000,000 and (B) seven and a half percent (7.5%) of the aggregate outstanding Repurchase Price of all Purchased Assets as of such time; and (3) from and after December 31, 2024, to be less than the greater of (A) $10,000,000 and (B) five percent (5%) of the aggregate outstanding Repurchase Price of all Purchased Assets as of such time."

(b) Section 9(a)(iii) of the Guaranty is hereby amended by amending and restating that section in its entirety to read as follows:

"(iii) permit, for any Test Period, the ratio of its Total Indebtedness to its Total Equity to be (1) from the Closing Date through the calendar quarter ending September 30, 2022, greater than 6.00 to 1.00; (2) from calendar quarter ending December 31, 2022 through the calendar quarter ending December 31, 2024, greater than 5.50 to 1.00; and (3) at all times after the calendar quarter ending December 31, 2024, greater than 6.00 to 1.00. For the avoidance of doubt, any calculation of Total Indebtedness will include any and all recourse and non-recourse debt of any Consolidated Subsidiary of Guarantor."

(c) Section 9(a)(v) of the Guaranty is hereby amended by amending and restating that section in its entirety to read as follows:

"(v) permit, for any Test Period, the ratio of (i) the sum of the trailing four (4) fiscal quarters EBITDA for Guarantor and its Consolidated Subsidiaries for such Test Period to (ii) the trailing four (4) fiscal quarters Interest Expense for Guarantor and its Consolidated Subsidiaries for such Test Period to be (1) from the Closing Date through the calendar quarter ending September 30, 2022, less than 1.50 to 1.00; (2) from the calendar quarter ending December 31, 2022 through the calendar quarter ending December 31, 2024, less than 1.25 to 1.00; and at all times after the calendar quarter ending December 31, 2024, less than 1.50 to 1.00."

SECTION 2. Conditions Precedent; Effective Date. This Amendment shall become effective on the date on which this Amendment is executed and delivered by a duly authorized officer of each of Guarantor and Administrative Agent, on behalf of Buyers (the "Amendment Effective Date").

SECTION 3. Guarantor's Representations and Warranties. On and as of the Amendment Effective Date, and after giving effect to the matters contained in this Amendment, Guarantor hereby represents and warrants to Administrative Agent, on behalf of Buyers, that (a) it is in compliance with all the terms and provisions set forth in the Guaranty on its part to be observed or performed, (b) both prior to and after giving effect to this Amendment, no Default or Event of Default under the Repurchase Agreement has occurred and is continuing, (c) it has no, and hereby waives all, defenses, rights of setoff, claims, counterclaims or causes of action of any kind or description against Administrative Agent or any Buyer arising under or in respect of the Guaranty or any other Transaction Document (other than a defense of payment or performance), (d) no amendments have been made to the organizational documents of Guarantor since November 3, 2021, and (e) the person signing this Amendment on behalf of Guarantor is duly authorized to do so on its behalf. Guarantor hereby confirms

and reaffirms the representations and warranties contained in the Guaranty and all of the other Transaction Documents.

SECTION 4. Acknowledgments of Guarantor. Guarantor hereby acknowledges and agrees that (a) it continues to be bound by the Guaranty, and (b) as of the date hereof, Administrative Agent and each Buyer is in compliance with its undertakings and obligations under the Repurchase Agreement, the Guaranty and each of the other Transaction Documents.

SECTION 5. Limited Effect. The Guaranty (except as the foregoing is expressly amended and modified by this Amendment), and each of the other Transaction Documents remain, in full force and effect in accordance with their respective terms; provided, however, that on the Amendment Effective Date, (a) all references in the Repurchase Agreement to the "Transaction Documents" shall be deemed to include, in any event, this Amendment, and (b) each reference to the "Guaranty" in any of the Transaction Documents shall be deemed to be a reference to the Guaranty, as amended hereby.

SECTION 6. Counterparts. This Amendment may be executed in counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument, and the words "executed," signed," "signature," and words of like import as used above and elsewhere in this Amendment or in any other certificate, agreement or document related to this transaction shall include, in addition to manually executed signatures, images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, "pdf", "tif" or "jpg") and other electronic signatures (including, without limitation, any electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code.

SECTION 7. Costs and Expenses. Guarantor shall pay Administrative Agent's reasonable actual out of pocket costs and expenses, including reasonable fees and expenses of attorneys, incurred in connection with the preparation, negotiation, execution and consummation of this Amendment.

SECTION 8. No Novation, Effect of Agreement. Guarantor and Administrative Agent, on behalf of Buyers, have entered into this Amendment solely to amend the terms of the Guaranty and do not intend this Amendment or the transactions contemplated hereby to be, and this Amendment and the transactions contemplated hereby shall not be construed to be, a novation of any of the obligations of Guarantor under or in connection with the Guaranty.

SECTION 9.SUBMISSION TO JURISDICTION; WAIVERS. EACH OF GUARANTOR AND ADMINISTRATIVE AGENT, ON BEHALF OF BUYERS, HEREBY IRREVOCABLY AND UNCONDITIONALLY:

(A) SUBMITS TO THE NON-EXCLUSIVE GENERAL JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK, THE COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND APPELLATE COURTS FROM ANY THEREOF, SOLELY FOR THE PURPOSE OF ANY SUIT, ACTION OR PROCEEDING BROUGHT TO ENFORCE ITS OBLIGATIONS UNDER THE GUARANTY, AS AMENDED BY THIS AMENDMENT, OR RELATING IN ANY WAY TO THE GUARANTY, AS AMENDED BY THIS AMENDMENT, THE REPURCHASE AGREEMENT OR ANY TRANSACTION UNDER THE REPURCHASE AGREEMENT;

(B) CONSENTS THAT ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT IN SUCH COURTS AND WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, ANY DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT AND ANY RIGHT OF JURISDICTION ON ACCOUNT OF ITS PLACE OF RESIDENCE OR DOMICILE;

(C) AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, TO ITS ADDRESS SET FORTH IN SECTION 16 OF THE GUARANTY OR AT SUCH OTHER ADDRESS OF WHICH ADMINISTRATIVE AGENT, ON BEHALF OF BUYERS, SHALL HAVE BEEN NOTIFIED; AND

(D) AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT TO SUE IN ANY OTHER JURISDICTION.

SECTION 10.WAIVER OF JURY TRIAL. EACH OF GUARANTOR AND ADMINISTRATIVE AGENT, ON BEHALF OF BUYERS, EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THE GUARANTY, AS AMENDED BY THIS AMENDMENT, OR ANY RELATED DOCUMENT AND FOR ANY COUNTERCLAIM HEREIN OR THEREIN.

SECTION 11.GOVERNING LAW. THIS AMENDMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AMENDMENT, THE RELATIONSHIP OF THE PARTIES TO THIS AMENDMENT, AND/OR THE INTERPRETATION AND ENFORCEMENT OF THE RIGHTS AND DUTIES OF THE PARTIES TO THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS AND DECISIONS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CHOICE OF LAW RULES THEREOF. THE PARTIES

HERETO INTEND THAT THE PROVISIONS OF SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW SHALL APPLY TO THIS AMENDMENT.

SECTION 12. No Waiver. The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of Administrative Agent or any Buyer under the Guaranty or any other Transaction Document, nor constitute a waiver of any provision of the Guaranty or any other Transaction Document by any of the parties hereto.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the day and year first above written and effective as of the Amendment Effective Date.

ACRES COMMERCIAL REALTY CORP, a Maryland corporation

By: /s/ Andrew Fentress

Name: Andrew Fentress

Title: Chairman

MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS LLC, a New York limited liability company, as Administrative Agent

By: /s/ William P. Bowman

Name: William P. Bowman

Title: Authorized Signatory

DISCLAIMER

THE INFORMATION CONTAINED IN THE REFINITIV CORPORATE DISCLOSURES DELTA REPORT™ IS A COMPARISON OF TWO FINANCIALS PERIODIC REPORTS. THERE MAY BE MATERIAL ERRORS, OMISSIONS, OR INACCURACIES IN THE REPORT INCLUDING THE TEXT AND THE COMPARISON DATA AND TABLES. IN NO WAY DOES REFINITIV OR THE APPLICABLE COMPANY ASSUME ANY RESPONSIBILITY FOR ANY INVESTMENT OR OTHER DECISIONS MADE BASED UPON THE INFORMATION PROVIDED IN THIS REPORT. USERS ARE ADVISED TO REVIEW THE APPLICABLE COMPANY'S ACTUAL SEC FILINGS BEFORE MAKING ANY INVESTMENT OR OTHER DECISIONS.