

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

(Mark One)

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

For the fiscal year ended December 31, 2023

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



ACRES COMMERCIAL REALTY CORP.

(Exact name of registrant as specified in its charter)

Maryland
(State or other jurisdiction of
incorporation or organization)

20-2287134
(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

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

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

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

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 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	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☒

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). ☐

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

The aggregate market value of the voting common equity held by non-affiliates of the registrant, based on the closing price of such stock on the last business day of the registrant's most recently completed second fiscal quarter (June 30, 2023) was \$67,026,118.

The number of outstanding shares of the registrant's common stock on March 4, 2024 was 7,748,393 shares.

DOCUMENTS INCORPORATED BY REFERENCE

The information required by Part III of this Form 10-K, to the extent not set forth herein or by amendment, is incorporated by reference from the registrant's definitive proxy statement to be filed with the Securities and Exchange Commission not later than 120 days after December 31, 2023.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
INDEX TO ANNUAL REPORT
ON FORM 10-K

	PAGE
<u>Forward-Looking Statements</u>	3
<u>PART I</u>	
Item 1: Business	5
Item 1A: Risk Factors	16
Item 1B: Unresolved Staff Comments	39
Item 1C: Cybersecurity	39
Item 2: Properties	40
Item 3: Legal Proceedings	40
Item 4: Mine Safety Disclosures	40
<u>PART II</u>	
Item 5: Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	41
Item 6: [Reserved]	43
Item 7: Management's Discussion and Analysis of Financial Condition and Results of Operations	44
Item 7A: Quantitative and Qualitative Disclosures About Market Risk	80
Item 8: Financial Statements and Supplementary Data	82
Item 9: Changes in and Disagreements with Accountants on Accounting and Financial Disclosure	138
Item 9A: Controls and Procedures	138
Item 9B: Other Information	140
Item 9C: Disclosure Regarding Foreign Jurisdictions that Prevent Inspections	140
<u>PART III</u>	
Item 10: Directors, Executive Officers and Corporate Governance	141
Item 11: Executive Compensation	141
Item 12: Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	141
Item 13: Certain Relationships and Related Transaction and Director Independence	141
Item 14: Principal Accountant Fees and Services	141
<u>PART IV</u>	
Item 15: Exhibits and Financial Statement Schedules	142
Item 16: Form 10-K Summary	145
<u>SIGNATURES</u>	146

FORWARD-LOOKING STATEMENTS

In this annual report on Form 10-K, references to “Company,” “we,” “us,” or “our” refer to ACRES Commercial Realty Corp. and its subsidiaries; references to the Company’s “Manager” refer to ACRES Capital, LLC, a subsidiary of ACRES Capital Corp., unless specifically stated otherwise or the context otherwise indicates. This report contains certain forward-looking statements. Forward-looking statements relate to expectations, beliefs, projections, future plans and strategies, anticipated events or trends and similar expressions concerning matters that are not historical facts. In some cases, you can identify forward-looking statements by terms such as “anticipate,” “believe,” “could,” “estimate,” “expects,” “intend,” “may,” “plan,” “potential,” “project,” “should,” “will” and “would” or the negative of these terms or other comparable terminology.

Forward-looking statements contained in this report are based on our beliefs, assumptions and expectations regarding our future performance, taking into account all information currently available to us. These beliefs, assumptions and expectations can change as a result of many possible events or factors, not all of which are known to us or are within our control. If a change occurs, our business, financial condition, liquidity and results of operations may vary materially from those expressed in our forward-looking statements. Forward-looking statements we make in this report are subject to various risks and uncertainties that could cause actual results to vary from our forward-looking statements, including:

- changes in our industry, interest rates, the debt securities markets, real estate markets or the general economy;
- increased rates of default and/or decreased recovery rates on our investments;
- the performance and financial condition of our borrowers;
- the cost and availability of our financings, which depend in part on our asset quality, the nature of our relationships with our lenders and other capital providers, our business prospects and outlook and general market conditions;
- the availability and attractiveness of terms of additional debt repurchases;
- availability, terms and deployment of short-term and long-term capital;
- events giving rise to increases in our current expected credit loss reserve, including the impact of the current economic environment;
- availability of, and ability to retain, qualified personnel;
- changes in our business strategy;
- the degree and nature of our competition;
- the resolution of our non-performing and sub-performing assets;
- the long-term macroeconomic effects of the novel coronavirus (“COVID-19”);
- our ability to comply with financial covenants in our debt instruments;
- the adequacy of our cash reserves and working capital;
- the timing of cash flows, if any, from our investments;
- unanticipated increases in financial and other costs, including a rise in interest rates;
- our ability to maintain compliance with over-collateralization and interest coverage tests in our collateralized loan obligations (“CLOs”);
- our dependence on ACRES Capital, LLC (our “Manager”) and ability to find a suitable replacement in a timely manner, or at all, if our Manager or we were to terminate the management agreement;
- environmental and/or safety requirements;
- our ability to satisfy complex rules in order for us to qualify as a real estate investment trust (“REIT”), for federal income tax purposes and qualify for our exemption under the Investment Company Act of 1940, as amended, and our ability and the ability of our subsidiaries to operate effectively within the limitations imposed by these rules;

[\(Back to Index\)](#)

- legislative and regulatory changes (including changes to laws governing the taxation of REITs or the exemptions from registration as an investment company); and
- the factors described in this report, including those set forth under the sections captioned "Risk Factors," "Business" and "Management's Discussion and Analysis of Financial Conditions and Results of Operations."

We caution you not to place undue reliance on these forward-looking statements, which speak only as of the date of this report. All subsequent written and oral forward-looking statements attributable to us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. Except to the extent required by applicable law or regulation, we undertake no obligation to update these forward-looking statements to reflect events or circumstances after the date of this report or to reflect the occurrence of unanticipated events.

PART I

ITEM 1. BUSINESS

General

We are a Maryland corporation, incorporated in 2005, and a real estate finance company that is organized and conducts our operations to qualify as a real estate investment trust ("REIT") for federal income tax purposes under Subchapter M of the Internal Revenue Code of 1986, as amended, or the Code. On February 16, 2021, we amended our certificate of incorporation to change our name to ACRES Commercial Realty Corp. from Exantas Capital Corp. Our investment strategy is primarily focused on originating, holding and managing commercial real estate ("CRE") mortgage loans and equity investments in commercial real estate property through direct ownership and joint ventures. We are externally managed by 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, industrial and office property in top United States, or U.S., markets. Our Manager draws upon the management team of ACRES and its collective investment experience to provide its services.

Our objective is to provide our stockholders with total returns over time, including the payment of quarterly distributions when approved by our board of directors, (our "Board") and capital appreciation, while seeking to manage the risks associated with our investment strategies. We finance a substantial portion of our portfolio investments through borrowing strategies seeking to match the maturities and repricing dates of our financings with the maturities and repricing dates of our investments.

Our investment strategy targets the following CRE credit investments, including:

- Floating-rate first mortgage loans, which we refer to as whole loans;
- First priority interests in first mortgage loans, which we refer to as A-notes;
- Subordinated interests in first mortgage loans, which we refer to as B-notes;
- Preferred equity investments related to CRE that are subordinate to first mortgage loans and are not collateralized by the property underlying the investment; and
- CRE equity investments.

We generate our income primarily from the spread between the revenues we receive from our interest-bearing assets and the cost to finance our ownership of those assets, including corporate debt. We also derive rental income from our direct equity investments in commercial real estate property.

We typically target transitional floating-rate CRE loans between \$10.0 million and \$100.0 million. During the year ended December 31, 2023, we selectively originated three CRE loans with total commitments of \$68.2 million. At December 31, 2023, our CRE loan portfolio at par comprised \$1.9 billion of floating-rate CRE whole loans with a weighted average spread of 3.77% over the one-month benchmark interest rates utilized, which have a weighted average floor of 0.70%. Additionally, our CRE loan portfolio comprised one fully reserved \$4.7 million mezzanine loan at December 31, 2023.

Our Business Strategy

The core components of our business strategy are:

Investment in CRE assets. We are currently invested in CRE whole loans, CRE mezzanine loans and CRE equity investments. Our goal is to allocate 90% to 100% of our equity to our CRE assets.

Managing our investment portfolio. At December 31, 2023, we managed \$2.2 billion of assets, including \$1.5 billion of assets that were financed and held in variable interest entities. The core of our management process is credit analysis, which our Manager, with the assistance of ACRES, uses to actively monitor our existing investments and as a basis for evaluating new investments. Senior management of ACRES has extensive experience in underwriting the credit risk associated with our targeted asset classes and conducts detailed due diligence on all investments. After we make investments, our Manager actively monitors them for early detection of trouble or deterioration. If a default occurs, we will use our senior management team's asset management experience in seeking to mitigate the severity of any loss and to optimize the recovery from assets collateralizing the investment.

[\(Back to Index\)](#)

Managing our interest rate, pricing and liquidity risk. We engage in a number of business activities that are vulnerable to interest rate, pricing and liquidity risk and we seek to manage those risks. The risks on our long-term financing agreements, principally our term financing facilities, are managed by seeking to match the maturities and repricing dates of our financed investments with the maturities and repricing dates of our long-term financing facilities. Additionally, we seek to match investment and financing maturities and repricing dates using securitization vehicles structured by our Manager and, subject to the availability of markets for securitization financings, we expect to continue to use securitizations in the future to accomplish our long-term match funding financing strategy.

At December 31, 2023, our financing arrangements were as follows (in thousands):

	Outstanding Borrowings ⁽¹⁾	Value of Collateral	Equity at Risk ⁽²⁾
At December 31, 2023:			
CRE Securitizations			
ACR 2021-FL1	\$ 640,797	\$ 770,460	\$ 127,420
ACR 2021-FL2	563,773	700,000	133,000
Senior Secured Financing Facility			
Massachusetts Mutual Life Insurance Company	\$ 61,568	\$ 157,722	\$ 93,518
CRE -Term Warehouse Financing Facilities			
JPMorgan Chase Bank, N.A.	\$ 74,694	\$ 125,044	\$ 49,570
Morgan Stanley Mortgage Capital Holdings LLC	93,894	129,037	35,471
Mortgages Payable			
ReadyCap Commercial, LLC	\$ 19,365	\$ 25,400	\$ 5,672
Oceanview Life and Annuity Company ⁽³⁾	7,330	58,339	34,180
Florida Pace Funding Agency ⁽³⁾	15,091	—	—
Total	<u>\$ 1,476,512</u>	<u>\$ 1,966,002</u>	

(1) CRE securitizations, senior secured financing facility and mortgages payable include deferred debt issuance costs. Term warehouse financing facilities include accrued interest payable and deferred debt issuance costs.

(2) The senior secured financing facility and term warehouse financing facilities include accrued interest receivable and accrued interest payable, which are excluded from the value of collateral. CRE securitizations reflect the par value of equity investments in retained notes.

(3) Value of collateral and equity at risk related to Oceanview Life and Annuity Company also applies to Florida Pace Funding Agency.

The CRE securitizations, senior secured financing facility, term warehouse financing facilities, mortgages payable with ReadyCap Commercial, LLC and Oceanview Life and Annuity Company charge a floating rate of interest. The mortgage payable with Florida Pace Funding Agency charges a fixed rate of interest. For more information concerning our financing arrangements, see "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources," and Note 11 contained in "Item 8. Financial Statements and Supplementary Data - Notes to Consolidated Financial Statements" of this report. We continuously monitor our compliance with all of the financial covenants. We were in compliance with all financial covenants, as defined in the respective agreements, at December 31, 2023.

Diversification of investments. We manage our investment risk by maintaining a diversified portfolio of CRE mortgage loans and other CRE-related investments. As funds become available for investment or reinvestment, we seek to maintain diversification by property type or geographic location while allocating our capital to investment opportunities that we believe are the most economically attractive. The percentage of assets that we have invested in certain non-qualifying, non-core and other real estate-related investments is subject to the federal income tax requirements for REIT qualification and the requirements for exclusion from regulation under the Investment Company Act of 1940, or the Investment Company Act.

Our Operating Policies

Investment guidelines. We have established investment policies, procedures and guidelines that are reviewed and approved by our Manager's investment committee and our Board. The investment committee and/or our Board, as applicable, meets regularly to consider and approve proposed specific investments. Our Board monitors the execution of our overall investment strategies and targeted asset classes. We acquire our investments primarily for income. We do not have a policy that requires us to focus our investments in one or more particular geographic areas or industries.

Financing policies. We use leverage in order to increase potential returns to our stockholders and for financing our portfolio. We do not speculate on changes in interest rates. Although we have identified leverage targets for each of our targeted asset classes, our investment policies do not have any minimum or maximum leverage limits. Our Manager's investment committee has the discretion, without the need for further approval by our Board, to increase the amount of leverage we incur above our targeted range for individual asset classes subject, however, to any leverage constraints that may be imposed by existing financing arrangements.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

We use borrowing and securitization strategies to accomplish our long-term match funding financing strategy. Based upon current conditions in the credit markets for collateralized loan obligations (sometimes, collectively, referred to as CLOs) we expect to modestly increase leverage through new CRE debt securitizations and the continued use of our senior secured financing facility and term financing facilities. We may also seek other credit arrangements to finance new investments that we believe can generate attractive risk-adjusted returns, subject to availability.

Credit and risk management policies. Our Manager focuses its attention on credit and risk assessment from the earliest stage of the investment selection process. In addition, our Manager screens and monitors all potential investments to determine their impact on maintaining our REIT qualification under federal income tax laws and our exclusion from investment company status under the Investment Company Act. Portfolio risks, including risks related to credit losses, interest rate volatility, liquidity and counterparty credit, are generally managed on an asset and portfolio type basis by our Manager.

Floating-Rate Loan Portfolio and Borrowings

As discussed in the “Managing our interest rate, pricing and liquidity risk” section above, our investments in floating-rate assets and utilization of floating-rate borrowings expose us to interest rate risk. 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 December 31, 2023, 85.4% of the par value of our CRE loan portfolio had interest rate caps in place with a weighted-average maturity of six months.

Historically, we have used the London Interbank Offered Rate (“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, 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 comprising large U.S. financial institutions, has identified Secured Overnight Financing Rate (“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 December 31, 2023, our entire portfolio of floating rate whole loans and floating rate borrowings have transitioned to SOFR.

Investment Portfolio

The table below summarizes the amortized costs and net carrying amounts of our investments at December 31, 2023, classified by asset type (dollars in thousands, except amounts in footnotes):

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⁾	99,338	99,338	4.99%	N/A ⁽⁴⁾
Properties held for sale ⁽³⁾	59,580	59,580	3.00%	N/A ⁽⁴⁾
	160,466	160,466	8.07%	
Total investment portfolio	\$ 2,017,559	\$ 1,988,802	100.00%	

(1)Net carrying amount includes an allowance for credit losses of \$28.8 million.

(2)Includes real estate-related right of use assets of \$19.2 million, mortgages payable of \$41.8 million, intangible assets of \$7.9 million, lease liabilities of \$43.5 million and other liabilities of \$27,000.

(3)Includes property held for sale-related liabilities of \$3.0 million.

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

[\(Back to Index\)](#)

[\(Back to Index\)](#)

The negative impact of COVID-19 on our commercial mortgage-backed securities, or CMBS, investments and 2020 results created net operating loss ("NOL") carryforwards and net capital loss carryforwards ("CLCFs"). At December 31, 2023, after the utilization of the dividends paid deduction, we estimate that we will generate \$19.0 million of taxable income that we will offset with our available NOLs. We have \$46.6 million of NOL carryforwards, which was reported on our tax return filed in October 2023 for the 2022 tax year. We also have \$121.9 million of CLCFs from prior years, which are set to expire on December 31, 2025. Additionally, we have NOL carryforwards of \$60.2 million, of which \$20.4 million have an indefinite carryforward period and \$39.8 million begin to expire in 2044, and CLCFs of \$1.0 million, which are set to expire on December 31, 2024, at our taxable REIT subsidiaries ("TRSs").

In previous years we have acquired equity investments in CRE properties to utilize CLCFs in our REIT. These equity investments offer the opportunity for capital appreciation returns that may be reinvested into the loan origination pipeline when and if realized.

We hold investments in 100% of the common shares of two trusts, Resource Capital Trust I and RCC Trust II, that were formed for the purpose of providing us with unsecured junior subordinated debt financing and are accounted for as investments in unconsolidated entities.

CRE Debt Investments

Floating-rate whole loans. We predominantly originate floating-rate first mortgage loans, or whole loans, directly to borrowers. The direct origination of whole loans enables us to better control the structure of the loans and to maintain direct lending relationships with borrowers. Additionally, we may acquire whole loans from third parties that conform to our investment strategy. We may create tranches of a loan we originate, consisting of an A-note (described below) and a B-note (described below), as well as mezzanine loans or other participations, which we may hold or sell to third parties. We do not obtain ratings on these investments. With respect to our portfolio at December 31, 2023, our whole loan investments had loan-to-collateral value, or LTV, ratios that typically do not exceed 85%. Typically, our whole loans are structured with an original term of up to three years, with one-year extensions that bring the loan to a maximum term of five years. Substantially all of our CRE loans held at December 31, 2023 were whole loans. We expect to hold our whole loans to maturity.

Whole Loan Participations. We may opportunistically invest in participations of whole loans with third-parties or with related parties, whereby we purchase or otherwise share in the ownership interests of a whole loan made by another financial institution (the lead financial institution) to a borrower with whom we do not have a direct lending relationship on a pari passu basis. In this arrangement the lead financial institution fully maintains the lending relationship and all communications with the borrower; however, we re-underwrite the investment subject to our underwriting standards for whole loans prior to investing. This type of investment allows us to strategically diversify risk, share in the profits of the lead financial institution and further diversify our asset holdings. We expect our investments in participation loans to have LTV ratios not to exceed 85%. At December 31, 2023, our loan portfolio included 2 related-party whole loan participations with a par value of \$59.7 million.

Whole Loan Syndications. We may also opportunistically invest in the syndications of whole loans with third-parties or with related parties, whereby we co-originate a whole loan to a borrower with another financial institution on a pari passu basis, as well as maintain a direct lending relationship with the borrower. In this arrangement each lender in the syndicate has a separate promissory note with the borrower, subject to a co-lender agreement. This type of investment allows us to strategically diversify risk, as well as further diversify our asset holdings and borrower base. We expect our investments in whole loan syndications to have LTV ratios not to exceed 85%. At December 31, 2023, our loan portfolio included 2 related-party whole loan syndications with a par value of \$46.4 million.

Senior interests in whole loans (A-notes). We may invest in senior interests in whole loans, referred to as A-notes, either directly originated or purchased from third parties. We do not intend to obtain ratings on these investments. We expect our typical A-note investments to have LTV ratios not exceeding 70% and will generally be structured with an original term of up to three years, with one-year extensions that bring the loan to a maximum term of five years. We expect to hold any A-note investments to maturity. We did not hold any A-note investments at December 31, 2023.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

Subordinate interests in whole loans (B-notes). To a lesser extent, we may invest in subordinate interests in whole loans, referred to as B-notes, which we will either directly originate or purchase from third parties. B-notes are loans secured by a first mortgage but are subordinated to an A-note. The subordination of a B-note is generally evidenced by an intercreditor or participation agreement between the holders of the A-note and the B-note. In some instances, the B-note lender may require a security interest in the stock or other equity interests of the borrower as part of the transaction. B-note lenders have the same obligations, collateral and borrower as the A-note lender, but typically are subordinated in recovery upon a default to the A-note lender. B-notes share certain credit characteristics with second mortgages in that both are subject to greater credit risk with respect to the underlying mortgage collateral than the corresponding first mortgage or A-note. We do not intend to obtain ratings on these investments. We expect our typical B-note investments to have LTV ratios between 55% and 80% and will generally be structured with an original term of up to three years, with one-year extensions that bring the loan to a maximum term of five years. We expect to hold any B-note investments to maturity. We did not hold any B-note investments at December 31, 2023.

In addition to the accrued interest receivable on a B-note, we may earn fees charged to the borrower under the note or additional income by receiving principal payments in excess of the discounted price (below par value) we paid to acquire the note. Our ownership of a B-note with controlling class rights may, in the event the financing fails to perform according to its terms, cause us to pursue our remedies as owner of the B-note, which may include foreclosure on, or modification of, the note. In some cases, the owner of the A-note may be able to foreclose or modify the note against our wishes as owner of the B-note. As a result, our economic and business interests may diverge from the interests of the owner of the A-note.

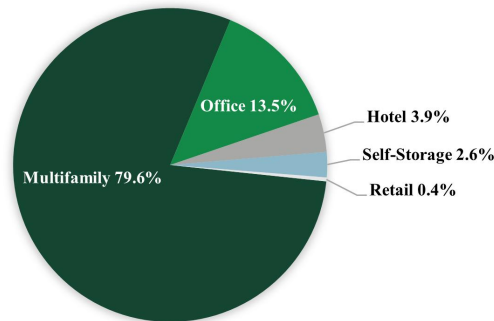
Mezzanine financing. Historically, we have invested in mezzanine loans that are senior to the borrower's equity in, and subordinate to the mortgage loan on, a property. A mezzanine loan is typically secured by a pledge of the ownership interests in the entity that directly owns the real property or by a second lien mortgage loan on the property. In addition, mezzanine loans typically include credit enhancements such as letters of credit, personal guarantees of the principals of the borrower, or collateral unrelated to the property. A mezzanine loan may be structured so that we receive a stated fixed or variable interest rate on the loan as well as a percentage of gross revenues and a percentage of the increase in the fair market value of the property securing the loan, payable upon maturity, refinancing or sale of the property. Mezzanine loans may also have prepayment lockouts, penalties, minimum profit hurdles and other mechanisms to protect and enhance returns in the event of premature repayment. At December 31, 2023, our loan portfolio included one mezzanine loan with no carrying value.

Preferred equity investments. Historically, we have invested in preferred equity investments in entities that own or acquire CRE properties. These investments are subordinate to first mortgage loans and mezzanine debt and are typically structured to provide some credit enhancement differentiating it from the common equity. We expect our preferred equity investments to have LTV ratios between 65% and 90% with stated maturities from three to eight years. We expect to hold preferred equity investments to maturity. We did not hold any preferred equity investments at December 31, 2023.

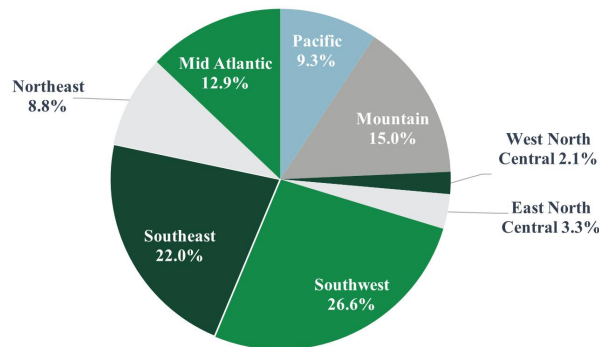
[\(Back to Index\)](#)

The following charts describe the property type and the geographic breakdown, by National Council of Real Estate Investment Fiduciaries (“NCREIF”) region of our CRE loan portfolio at December 31, 2023 (based on carrying value):

PROPERTY TYPE AT DECEMBER 31, 2023



GEOGRAPHIC AREA AT DECEMBER 31, 2023



The total CRE loan portfolio, at carrying value, was \$1.8 billion at December 31, 2023. The Southwest region constituted 26.6% of our portfolio, of which 100.0% was in Texas, and its collateral comprised 96.1% multifamily properties. The Southeast region constituted 22.0% of our portfolio, of which 73.3% was in Florida, and its collateral comprised 80.1% multifamily properties. The Mountain region constituted 15.0% of our portfolio, of which 62.4% was in Arizona, and its collateral comprised 92.3% multifamily properties. We view our investment and credit strategies as being adequately diversified across property types in the Southwest, Southeast and Mountain regions.

[\(Back to Index\)](#)

Investments in Real Estate

We may invest directly in the ownership of CRE equity investments by making direct investments where NOL carryforwards exist and can absorb the creation of REIT taxable income or by restructuring CRE loans and taking control of the properties where we believe we can protect capital and ultimately generate capital appreciation. We may acquire CRE equity investments through a joint venture or wholly-owned subsidiary and may classify these investments in real estate as held for investment or held for sale. We intend to primarily use an affiliate of our Manager to manage the CRE equity investments when held. At December 31, 2023, we held four investments in real estate acquired through direct equity investments and two investments in real estate acquired from lending activities (i.e. through the receipt of the deeds-in-lieu of foreclosure on the properties that collateralized former non-performing loans). At December 31, 2023, two of these investments were classified as held for sale.

The following table summarizes the investments in real estate at December 31, 2023 (in thousands, except amounts in footnotes):

	Cost Basis	December 31, 2023 Accumulated Depreciation & Amortization	Carrying Value
Assets acquired:			
Investments in real estate, equity:			
Investments in real estate ⁽¹⁾	\$ 162,662	\$ (5,041)	\$ 157,621
Right of use assets ⁽²⁾⁽³⁾	19,664	(478)	19,186
Intangible assets ⁽⁴⁾	11,474	(3,592)	7,882
Subtotal	193,800	(9,111)	184,689
Investments in real estate from lending activities:			
Properties held for sale ⁽⁵⁾	62,605	—	62,605
Total	256,405	(9,111)	247,294
Liabilities assumed:			
Investments in real estate, equity:			
Mortgages payable	40,297	1,489	41,786
Other liabilities	247	(220)	27
Lease liabilities ⁽³⁾⁽⁶⁾	43,538	—	43,538
Subtotal	84,082	1,269	85,351
Investments in real estate from lending activities:			
Liabilities held for sale ⁽⁷⁾	3,025	—	3,025
Total	87,107	1,269	88,376
Total net investments in real estate and properties held for sale ⁽⁸⁾	<u>\$ 169,298</u>		<u>\$ 158,918</u>

(1)Includes \$38.4 million of land, which is not depreciable. Also includes \$44.9 million of construction in progress, which is also not depreciable until placed in service.

(2)Primarily comprises a \$19.2 million right of use asset, associated with a \$43.2 million ground lease accounted for as an operating lease. Amortization is booked to real estate expenses on the consolidated statements of operations.

(3)Refer to Note 9 in the Notes to the Consolidated Financial Statements for additional information on our remaining operating leases.

(4)Primarily comprises a franchise intangible of \$4.7 million, a management contract intangible of \$2.9 million and a customer list intangible of \$223,000.

(5)Includes one property acquired in November 2020 and one property acquired via deed-in-lieu of foreclosure in June 2023.

(6)Primarily comprises a \$43.2 million ground lease with a remaining term of 93 years. Lease expenses for the year ended December 31, 2023 were \$2.7 million.

(7)Comprises an operating lease liability.

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

Competition

See "Item 1A. Risk Factors - Risks Related to Our Investments - We may face competition for suitable investments."

[\(Back to Index\)](#)

Management Agreement

We have a management agreement, amended and restated on July 31, 2020 and further amended on February 16, 2021, May 6, 2022 and February 15, 2024, or the "Management Agreement," with our Manager pursuant to which our Manager provides the day-to-day management of our operations. The amended Management Agreement was entered into with our Manager and ACRES Capital Corp. The terms were substantially the same as the previous management agreement, except for the term, board designation rights, termination fee, Manager compensation and definition of incentive compensation, all discussed in detail below.

The Management Agreement requires our Manager to manage our business affairs in conformity with the policies and investment guidelines established by our Board. Our Manager provides its services under the supervision and direction of our Board. Our Manager is responsible for the selection, purchase and sale of our portfolio investments, our financing activities and providing us with investment advisory services. Our Manager and its affiliates also provide us with a Chief Financial Officer and a sufficient number of additional accounting, finance, tax and investor relations professionals. Our Manager receives fees and is reimbursed for its expenses as follows:

- A monthly base management fee equal to 1/12th of the amount of our equity multiplied by 1.50%. Under the Management Agreement, "equity" is equal to the net proceeds from issuances of shares of capital stock (or the value of common shares upon the conversion of convertible securities), after deducting any underwriting discounts and commissions and other expenses and costs relating to such issuance, plus or minus our retained earnings (excluding non-cash equity compensation incurred in current or prior periods) less all amounts we have paid for common stock and preferred stock repurchases. The calculation is adjusted for one-time events due to changes in accounting principles generally accepted in the U.S., or GAAP, as well as other non-cash charges, upon approval of our independent directors.
- Incentive compensation, calculated quarterly until the quarter ended December 31, 2022 as follows: (A) 20% of the amount by which our Earnings Available for Distribution ("EAD") (as defined in the Management Agreement) for a quarter exceeded the product of (i) the weighted average of (x) the book value divided by 10,293,783 and (y) the per share price (including the conversion price, if applicable) paid for our common shares in each offering (or issuance upon the conversion of convertible securities) by us subsequent to September 30, 2017, multiplied by (ii) the greater of (x) 1.75% and (y) 0.4375% plus one-fourth of the Ten Year Treasury Rate for such quarter; multiplied by (B) the weighted average number of common shares outstanding during such quarter; subject to adjustment (a) to exclude events pursuant to changes in GAAP or the application of GAAP as well as non-recurring or unusual transactions or events, after discussion between our Manager and the independent directors and approval by a majority of the independent directors in the case of non-recurring or unusual transactions or events, and (b) to deduct an amount equal to any fees paid directly by a TRS (or any subsidiary thereof) to employees, agents and/or affiliates of the Manager with respect to profits of such TRS (or subsidiary thereof) generated from the services of such employees, agents and/or affiliates, the fee structure of which shall have been approved by a majority of the independent directors and which fees may not exceed 20% of the net income (before such fees) of such TRS (or subsidiary thereof).

With respect to each fiscal quarter commencing with the quarter ending December 31, 2022, an incentive management fee calculated and payable in arrears in an amount, not less than zero, equal to:

- *for the first full calendar quarter ending December 31, 2022*, the product of (a) 20% and (b) the excess of (i) EAD of the Company for such calendar quarter, over (ii) the product of (A) the Company's book value equity as of the end of such calendar quarter, and (B) 7% per annum;
- *for each of the second, third and fourth full calendar quarters following the calendar quarter ending December 31, 2022*, the excess of (1) the product of (a) 20% and (b) the excess of (i) EAD of the Company for the calendar quarter(s) following September 30, 2022, over (ii) the product of (A) the Company's book value equity in the calendar quarter(s) following September 30, 2022, and (B) 7% per annum, over (2) the sum of any incentive compensation paid to the Manager with respect to the prior calendar quarter(s) following September 30, 2022 (other than the most recent calendar quarter); and
- *for each calendar quarter thereafter*, the excess of (1) the product of (a) 20% and (b) the excess of (i) EAD of the Company for the previous 12-month period, over (ii) the product of (A) the Company's book value equity in the previous 12-month period, and (B) 7% per annum, over (2) the sum of any incentive compensation paid to the 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 for the twelve most recently completed calendar quarters (or such lesser number of completed calendar quarters from September 30, 2022) in the aggregate is greater than zero.

- Per-loan underwriting and review fees in connection with valuations of and potential investments in certain subordinate commercial mortgage pass-through certificates, in amounts approved by a majority of the independent directors.
- Reimbursement of out-of-pocket expenses and certain other costs incurred by our Manager and its affiliates that relate directly to us and our operations.
- Reimbursement of our Manager's and its affiliates' expenses for (A) the wages, salaries and benefits of our Chief Financial Officer, and (B) a portion of the wages, salaries and benefits of accounting, finance, tax and investor relations professionals, in proportion to such personnel's percentage of time allocated to our operations.

Incentive compensation is calculated and payable quarterly to our Manager to the extent it is earned. Up to 75% of the incentive compensation is payable in cash and at least 25% is payable in the form of an award of common stock. Our Manager may elect to receive more than 25% of its incentive compensation in common stock. All shares are fully vested upon issuance; however, our Manager may not sell such shares for one year after the incentive compensation becomes due and payable unless the Management Agreement is terminated. Shares payable as incentive compensation are valued as follows:

- if such shares are traded on a securities exchange, at the average of the closing prices of the shares on such exchange over the 30-day period ending three days prior to the issuance of such shares;
- if such shares are actively traded over-the-counter, at the average of the closing bid or sales price as applicable over the 30-day period ending three days prior to the issuance of such shares; and
- if there is no active market for such shares, at the fair market value as reasonably determined in good faith by our Board.

The Management Agreement's current contract term ends on July 31, 2024, and the agreement provides for automatic one-year renewals on such date and on each July 31 thereafter until terminated. Our Board reviews our Manager's performance annually. The Management Agreement may be terminated annually upon the affirmative vote of at least two-thirds of our independent directors, or by the affirmative vote of the holders of at least a majority of the outstanding shares of our common stock, based upon unsatisfactory performance that is materially detrimental to us or a determination by our independent directors that the management fees payable to our Manager are not fair, subject to our Manager's right to prevent such a compensation termination by accepting a mutually acceptable reduction of management fees. Our Board must provide 180 days' prior notice of any such termination. If we terminate the Management Agreement, our Manager is entitled to a termination fee equal to four times the sum of the average annual base management fee and the average annual incentive compensation earned by our Manager during the two 12-month periods immediately preceding the date of termination, calculated as of the end of the most recently completed fiscal quarter before the date of termination.

We may also terminate the Management Agreement for cause with 30 days' prior written notice from our Board. No termination fee is payable in the event of a termination for cause. The Management Agreement defines cause as:

- our Manager's continued material breach of any provision of the Management Agreement following a period of 30 days after written notice thereof;
- our Manager's fraud, misappropriation of funds, or embezzlement against us;
- our Manager's gross negligence in the performance of its duties under the Management Agreement;
- the dissolution, bankruptcy or insolvency, or the filing of a voluntary bankruptcy petition by our Manager; or
- a change of control (as defined in the Management Agreement) of our Manager if a majority of our independent directors determines, at any point during the 18 months following the change of control, that the change of control was detrimental to the ability of our Manager to perform its duties in substantially the same manner conducted before the change of control.

Cause does not include unsatisfactory performance that is materially detrimental to our business.

Our Manager may terminate the Management Agreement at its option, (A) in the event that we default in the performance or observance of any material term, condition or covenant contained in the Management Agreement and such default continues for a period of 30 days after written notice thereof, or (B) without payment of a termination fee by us, if we become regulated as an investment company under the Investment Company Act, with such termination deemed to occur immediately before such event.

[\(Back to Index\)](#)

Regulatory Aspects of Our Investment Strategy:

Exclusion from Regulation Under the Investment Company Act

We operate our business so as to be excluded from regulation under the Investment Company Act. Because we conduct our business through wholly-owned subsidiaries, we must ensure not only that we qualify for an exclusion from regulation under the Investment Company Act, but also that each of our subsidiaries also qualifies.

We believe that ACRES Realty Funding, Inc., ("ACRES RF") the subsidiary that at December 31, 2023 held substantially all of our CRE loan assets, is excluded from Investment Company Act regulation under Section 3(c)(5)(C), a provision designed for companies that do not issue redeemable securities and are primarily engaged in the business of purchasing or otherwise acquiring mortgages and other liens on and interests in real estate. To qualify for this exclusion, at least 55% of ACRES RF's assets must consist of mortgage loans and other assets that are considered the functional equivalent of mortgage loans for purposes of the Investment Company Act and interests in real properties, which we refer to as Qualifying Interests. Moreover, 80% of ACRES RF's assets must consist of Qualifying Interests and other real estate-related assets. ACRES RF has not issued, and does not intend to issue, redeemable securities.

We treat our investments in CRE whole loans, A-notes, specific types of B-notes and specific types of mezzanine loans as Qualifying Interests for purposes of determining our eligibility for the exclusion provided by Section 3(c)(5)(C) to the extent such treatment is consistent with guidance provided by the Securities and Exchange Commission, or SEC, or its staff. We believe that SEC staff guidance allows us to treat B-notes as Qualifying Interests where we have unilateral rights to instruct the servicer to foreclose upon a defaulted mortgage loan, replace the servicer in the event the servicer, in its discretion, elects not to foreclose on such a loan, and purchase the A-note in the event of a default on the mortgage loan. We believe, based upon an analysis of existing SEC staff guidance, that we may treat mezzanine loans as Qualifying Interests where (i) the borrower is a special purpose bankruptcy-remote entity whose sole purpose is to hold all of the ownership interests in another special purpose entity that owns commercial real property, (ii) both entities are organized as limited liability companies or limited partnerships, (iii) under their organizational documents and the loan documents, neither entity may engage in any other business, (iv) the ownership interests of either entity have no value apart from the underlying real property which is essentially the only asset held by the property-owning entity, (v) the value of the underlying property in excess of the amount of senior obligations is in excess of the amount of the mezzanine loan, (vi) the borrower pledges its entire interest in the property-owning entity to the lender which obtains a perfected security interest in the collateral and (vii) the relative rights and priorities between the mezzanine lender and the senior lenders with respect to claims on the underlying property are set forth in an intercreditor agreement between the parties which gives the mezzanine lender certain cure and purchase rights in case there is a default on the senior loan. If the SEC staff provides future guidance that these investments are not Qualifying Interests, then we will treat them, for purposes of determining our eligibility for the exclusion provided by Section 3(c)(5)(C), as real estate-related assets or miscellaneous assets, as appropriate. Historically, we have held "whole pool certificates" in mortgage loans, although, at December 31, 2023 and 2022, we had no whole pool certificates in our portfolios. Pursuant to existing SEC staff guidance, we consider whole pool certificates to be Qualifying Interests. A whole pool certificate is a certificate that represents the entire beneficial interest in an underlying pool of mortgage loans. By contrast, a certificate that represents less than the entire beneficial interest in the underlying mortgage loans is not considered to be a Qualifying Interest for purposes of the 55% test, but constitutes a real estate-related asset for purposes of the 80% test.

To the extent ACRES RF holds its CRE loan assets through wholly or majority-owned CRE debt securitization vehicles or special purpose entities, or SPEs, ACRES RF also intends to conduct its operations so that it will not come within the definition of an investment company set forth in Section 3(a)(1)(C) of the Investment Company Act because less than 40% of the value of its total assets (exclusive of government securities and cash items) on an unconsolidated basis will consist of "investment securities," which we refer to as the 40% test. "Investment securities" exclude U.S. government securities and securities of majority-owned subsidiaries that are not themselves investment companies and are not relying on the exception from the definition of investment company under Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act. Certain of the wholly-owned CRE debt securitization subsidiaries of ACRES RF rely on Section 3(c)(5)(C) for their Investment Company Act exemption, with the result that ACRES RF's interests in the CRE debt securitization subsidiaries do not constitute "investment securities" for the purpose of the 40% test.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

RCC TRS, LLC, or RCC TRS, and our other former subsidiaries, RCC Commercial, Inc., or RCC Commercial, RCC Commercial II, Inc., or Commercial II, RCC Commercial III, Inc., or Commercial III, Resource TRS, LLC, or Resource TRS, and RSO EquityCo, LLC, or RSO Equity, do not qualify for the Section 3(c)(5)(C) exclusion. However, we believe they qualify for exclusion under either Section 3(c)(1) or 3(c)(7). As required by these exclusions, we will not allow any of these entities to make, or propose to make, a public offering of its securities. In addition, with respect to those subsidiaries for which we rely upon the Section 3(c)(1) exclusion, and as required thereby, we limit the number of holders of their securities to not more than 100 persons calculated in accordance with the attribution rules of Section 3(c)(1), and with respect to those subsidiaries for which we rely on the Section 3(c)(7) exclusion, and as required thereby, we limit ownership of their securities to "qualified purchasers." If we form other subsidiaries, we must ensure that they qualify for an exemption or exclusion from regulation under the Investment Company Act.

Moreover, we must ensure that ACRES Commercial Realty Corp. itself qualifies for an exclusion from regulation under the Investment Company Act. We do so by monitoring the value of our interests in our subsidiaries so that we can ensure that ACRES Commercial Realty Corp. satisfies the 40% test. Our interest in ACRES RF does not constitute an "investment security" for purposes of the 40% test, but our former interests in RSO Equity and our investments in the common shares of Resource Capital Trust I and RCC Trust II, both of which are held directly by ACRES Commercial Realty Corp., do. Accordingly, we must monitor the value of our interests in that subsidiary and those investments to ensure that the value of our interests in them does not exceed 40% of the value of our total assets.

We have not received, nor have we sought, a no-action letter from the SEC regarding how our investment strategy fits within the exclusions from regulation under the Investment Company Act. To the extent that the SEC provides more specific or different guidance regarding the treatment of assets as Qualifying Interests or real estate-related assets, we may have to adjust our investment strategy. Any additional or different guidance from the SEC could inhibit our ability to pursue our investment strategy.

Employees and Human Capital

We have no direct employees. Under our Management Agreement, our Manager provides us with all management and support personnel and services necessary for our day-to-day operations. To provide its services, our Manager draws upon the expertise and experience of ACRES. Under our Management Agreement, our Manager and its affiliates also must provide us with our Chief Financial Officer, and a sufficient number of additional accounting, finance, tax and investor relations professionals. We bear the expense of the wages, salaries and benefits of our Chief Financial Officer, and the accounting, finance, tax and investor relations professionals to the extent dedicated to us.

Environmental, Social and Governance ("ESG") Policies

Together with our Manager, we recognize the critical importance that ESG factors play when making decisions throughout our organization, including in our investment strategy and execution in our workplace. We are committed to being a good corporate citizen and have implemented policies and practices, which cover our day-to-day operations, our investment strategy, hiring practices and training and development.

Internet Address and Availability of Information

Our internet address is www.acresreit.com. We make available, free of charge through a link on our site, all reports filed with or furnished to the SEC as soon as reasonably practicable after such filing or furnishing. Our site also contains our code of business conduct and ethics, corporate governance guidelines and the charters of the audit committee, nominating and environmental, social and governance committee and compensation committee of our Board. A complete list of our filings is available on the SEC's website at <http://www.sec.gov>.

[\(Back to Index\)](#)

ITEM 1A. RISK FACTORS

This section describes material risks affecting our business. In connection with the forward-looking statements that appear in this annual report, you should carefully review the factors discussed below and the cautionary statements referred to in "Forward-Looking Statements."

Risk Factors Summary

Our risk factors include discussion of risks to our business attributable to the impact of current economic conditions, risks related to our financing, risks related to our operations, risks related to our investments, risks related to our Manager, risks related to our organization and structure, tax risks and general risks, including as follows:

- If current economic and market conditions were to deteriorate, our ability to obtain the capital and financing necessary for growth may be limited, which could limit our profitability, ability to make distributions and the market price of our common stock.
- Our portfolio has been financed in material part through the use of leverage that may reduce the return on our investments and cash available for distribution.
- Our repurchase agreements, warehouse facilities and other short-term financings have credit risks that could result in losses.
- We are exposed to loss if lenders under our repurchase agreements, warehouse facilities, senior secured financing facility or other short-term financings liquidate the assets securing those facilities. Moreover, assets acquired by us pursuant to our repurchase agreements, warehouse facilities, senior secured financing facility or other short-term financings may not be suitable for refinancing through long-term arrangements that may require us to liquidate some or all of the related assets.
- We will incur losses on our repurchase transactions if the counterparty to the transactions defaults on its obligation to resell the underlying assets back to us at the end of the transaction term, or if the value of the underlying assets has declined as of the end of the term or if we default in our obligations to purchase the assets.
- We may have to repurchase assets that we have sold in connection with CRE debt securitizations and other securitizations.
- Financing our REIT qualifying assets with repurchase agreements and warehouse facilities could adversely affect our ability to qualify as a REIT.
- Historically, we have financed most of our investments through CRE debt securitizations and have retained the equity. CRE debt securitization equity receives distributions from the CRE debt securitization only if the CRE debt securitization generates enough income to first pay the holders of its debt securities and its expenses.
- If our CRE debt securitization financings fail to meet their performance tests, including over-collateralization and interest coverage requirements, our net income and cash flow from these CRE debt securitizations will be eliminated.
- If we issue debt securities, the terms may restrict our ability to make cash distributions, require us to obtain approval to sell our assets or otherwise restrict our operations in ways that could make it difficult to execute our investment strategy and achieve our investment objectives.
- Depending upon market conditions, we intend to seek financing through CRE debt securitizations, which would expose us to risks relating to the accumulation of assets for use in the CRE debt securitizations.
- We may change our investment strategy without stockholder consent, which may result in riskier investments than those currently targeted.
- Our business is highly dependent on communications and information systems, and systems failures or cybersecurity incidents could significantly disrupt our business, which may, in turn, negatively affect the market price of our common stock and our ability to operate our business.
- Declines in the market values of our investments may reduce periodic reported results, credit availability and our ability to make distributions.
- Increases in interest rates and other factors could reduce the value of our investments, result in reduced earnings or losses and reduce our ability to pay distributions.
- We record some of our portfolio investments, including those classified as assets held for sale, at fair value as estimated by our management and, as a result, there will be uncertainty as to the value of these investments.
- We may face competition for suitable investments.

[\(Back to Index\)](#)

- Many of our investments may be illiquid, which may result in our realizing less than their recorded value should we need to sell such investments quickly.
- Our investments in real estate and commercial mortgage loans, mezzanine loans and CRE equity investments are subject to the risks inherent in owning the real estate securing or underlying those investments that could result in losses to us.
- Our investments in real estate are subject to particular conditions that may have a negative impact on our results of operations.
- Our investments in real estate are illiquid. We may not be able to dispose of properties when desired or on favorable terms.
- If our allowance for credit losses is not adequate to cover actual future loan and lease losses, our earnings may decline.
- The current expected credit losses, or CECL, model may require us to increase our allowance for credit losses and therefore may have a material adverse effect on our business, financial condition and results of operations.
- Our investment portfolio may have material geographic, sector, property-type and sponsor concentrations.
- We may be exposed to environmental liabilities with respect to properties that we own or take title to in the future.
- We depend on our Manager and ACRES to develop and operate our business and may not find suitable replacements if the Management Agreement terminates.
- Our Manager's fee structure may not create proper incentives, and the incentive compensation we pay our Manager may increase the investment risk of our portfolio.
- Our Manager manages our portfolio pursuant to very broad investment guidelines and our Board does not approve each investment decision, which may result in our making riskier investments.
- Our Manager and ACRES will face conflicts of interest relating to the allocation of investment opportunities and such conflicts may not be resolved in our favor, which could limit our ability to acquire assets and, in turn, limit our ability to make distributions and reduce your overall investment return.
- Our officers and many of the investment professionals that provide services to us through our Manager are also officers or employees of ACRES and may face conflicts regarding the allocation of their time.
- Our charter and bylaws contain provisions that may inhibit potential acquisition bids that you and other stockholders may consider favorable, and the market price of our common stock may be lower as a result.
- Maryland takeover statutes may prevent a change in control of us, and the market price of our common stock may be lower as a result.
- Our rights and the rights of our stockholders to take action against our directors and officers are limited, which could limit your recourse in the event of actions not in your best interests.
- We have not established a minimum distribution payment level and we cannot assure you of our ability to make distributions in the future. In the future, we may use uninvested offering proceeds or borrowed funds to make distributions.
- Loss of our exclusion from regulation under the Investment Company Act would require significant changes in our operations and could reduce the market price of our common stock and our ability to make distributions.
- Legislative, regulatory or administrative changes could adversely affect our stockholders or us.

[\(Back to Index\)](#)

Risks Related to Impact of Current Economic Conditions

If current economic and market conditions were to deteriorate, our ability to obtain the capital and financing necessary for growth may be limited, which could limit our profitability, ability to make distributions and the market price of our common stock.

We depend upon the availability of adequate debt and equity capital for growth in our operations. Although historically we have been able to raise both debt and equity capital, recent market and economic conditions have made obtaining additional equity capital highly dilutive to existing shareholders and may possibly affect our ability to raise debt capital. If current economic conditions were to deteriorate, our ability to access debt or equity capital on acceptable terms, could be further limited, which could limit our ability to generate growth, our profitability, our ability to make distributions and the market price of our common stock. In addition, as a REIT, we must distribute annually at least 90% of our REIT taxable income, determined without regard to the deduction for dividends paid and excluding net capital gain, to our stockholders and are therefore not able to retain significant amounts of our earnings for new investments, except where the existence of NOL and net capital loss carryforwards enable us to do so. While we may, through our TRSs retain earnings as new capital, we are subject to REIT qualification requirements that limit the value of TRS stock and securities relative to the other assets owned by a REIT.

A prolonged economic slowdown or lengthy or severe recession causing declining real estate values could impair our investments and harm our operations.

We believe the risks associated with our business will be more severe during periods of economic slowdown or recession if these periods are accompanied by declining real estate values. Declining real estate values will likely reduce the level of new mortgage loan originations and other real estate-related investment activities since borrowers often use the appreciation in their existing real estate holdings or the expected appreciation in value-add projects to support the purchase of or incremental investment in additional properties. Further, declining real estate values significantly increase the likelihood that we will incur losses on our loans in the event of default because the value of our collateral may be insufficient to cover our investment in the loan. Any sustained period of increased payment delinquencies, foreclosures or losses could adversely affect our ability to invest in, sell or securitize loans, which could materially and adversely affect our results of operations, financial condition, liquidity and our ability to pay distributions.

The outbreak of widespread contagious disease, such as COVID-19, has caused, and may continue to cause, disruptions to the U.S. and global economy and to our business, which has had, and may continue to have, an adverse impact on our financial condition, our results of operations and our liquidity and capital resources.

Outbreaks of contagious diseases, such as COVID-19 or any future pandemic or epidemic, may have a material adverse impact on our financial condition, liquidity and results of operations and the market price of our common stock and preferred stock. We expect that while the direct impacts of COVID-19 have subsided, indirect impacts are likely to continue to some extent as the longer-term macro-economic effects of the pandemic continue.

The rapid development of the pandemic and the resulting economic effects have created uncertainty surrounding the ultimate impact of the COVID-19 pandemic on the global economy generally, and the CRE business in particular. As a result, we cannot project the ultimate adverse impact of COVID-19 and any future pandemics or epidemics, on the global economy or our business, including our financial condition and performance. The extent of the impact of COVID-19, or any future pandemics or epidemics, will depend on future developments, including new information that may emerge about the severity of the pandemic or epidemic, the timing, scope and effectiveness of additional governmental responses to the pandemic or epidemic, including the potential re-imposition of quarantines, states of emergencies, restrictions on travel and stay-at-home orders and the ensuing reactions by consumers, companies, governmental entities and global markets.

Risks Related to Our Financing

Our portfolio has been financed in material part through the use of leverage that may reduce the return on our investments and cash available for distribution.

Our portfolio has been financed in material part through the use of leverage and, as credit market conditions permit, we will seek such financing in the future. Using leverage subjects us to risks associated with debt financing, including the risks that:

- the cash provided by our operating activities will not be sufficient to meet required payments of principal and interest,
- the cost of financing may increase relative to the income from the assets financed, reducing the income we have available to pay distributions, and

- our investments may have maturities that differ from the maturities of the related financing and, consequently, the risk that the terms of any refinancing we obtain will not be as favorable as the terms of existing financing.

If we are unable to secure refinancing of our currently outstanding financing, when due, on acceptable terms, we may be forced to dispose of some of our assets at disadvantageous terms or to obtain financing at unfavorable terms, either of which may result in losses to us or reduce the cash flow available to meet our debt service obligations or to pay distributions.

Financing that we may obtain and financing we have obtained through CRE debt securitizations typically require, or will require, us to maintain a specified ratio of the amount of the financing to the value of the assets financed. A decrease in the value of these assets may lead to margin calls or calls for the pledge of additional assets, which we will have to satisfy. We may not have sufficient funds or unpledged assets to satisfy any such calls, which could result in our loss of distributions from and interests in affected CRE debt securitizations, which would reduce our assets, income and ability to make distributions.

Our repurchase agreements, warehouse facilities and other short-term financings have credit risks that could result in losses.

If we accumulate assets for a CRE debt securitization on a short-term credit facility and do not complete the CRE debt securitization financing, or if a default occurs under the facility, the short-term lender may sell the assets and we would be responsible for the amount by which the original purchase price of the assets exceeds their sale price, up to the amount of our investment or guaranty.

We may lose money on our repurchase transactions if the counterparty to the transaction defaults on its obligation to resell the underlying security back to us at the end of the transaction term, or if the value of the underlying security has declined as of the end of the term or if we default on our obligations under the repurchase agreements.

We are exposed to loss if lenders under our repurchase agreements, warehouse facilities, senior secured financing facility or other short-term financings liquidate the assets securing those facilities. Moreover, assets acquired by us pursuant to our repurchase agreements, warehouse facilities, senior secured financing facility or other short-term financings may not be suitable for refinancing through long-term arrangements and may require us to liquidate some or all of the related assets.

We have entered into repurchase agreements, warehouse facilities and senior secured financing facility and expect in the future to seek additional debt to finance our growth. Lenders typically have the right to liquidate assets securing or acquired under these facilities upon the occurrence of specified events, such as an event of default. We are exposed to loss if the proceeds received by the lender upon liquidation are insufficient to satisfy our obligation to the lender. We are also subject to the risk that the assets subject to such repurchase agreements, warehouse facilities or other debt might not be suitable for long-term refinancing or securitization transactions. If we are unable to refinance these assets on a long-term basis, or if long-term financing is more expensive than we anticipated at the time of our acquisition of the assets to be financed, we might be required to liquidate assets.

We will incur losses on our repurchase transactions if the counterparty to the transactions defaults on its obligation to resell the underlying assets back to us at the end of the transaction term, or if the value of the underlying assets has declined as of the end of the term or if we default in our obligations to purchase the assets.

When engaged in repurchase transactions, we generally sell assets to the transaction counterparty and receive cash from the counterparty. The counterparty must resell the assets back to us at the end of the term of the transaction. Because the cash we receive from the counterparty when we initially sell the assets is less than the market value of those assets, if the counterparty defaults on its obligation to resell the assets back to us we will incur a loss on the transaction. We will also incur a loss if the value of the underlying assets has declined as of the end of the transaction term, as we will have to repurchase the assets for their initial value but would receive assets worth less than that amount. If we default upon our obligation to repurchase the assets, the counterparty may liquidate them at a loss, which we are obligated to repay. Any losses we incur on our repurchase transactions would reduce our equity and our earnings, and thus our cash available for distribution to our stockholders.

We may have to repurchase assets that we have sold in connection with CRE debt securitizations and other securitizations.

If any of the assets that we originate or acquire and sell or securitize do not comply with representations and warranties that we make about them, we may have to repurchase these assets from the CRE debt securitization or securitization vehicle, or replace them. In addition, we may have to indemnify purchasers for losses or expenses incurred as a result of a breach of a representation or warranty. Any significant repurchases or indemnification payments could materially reduce our liquidity, earnings and ability to make distributions.

[\(Back to Index\)](#)

Financing our REIT qualifying assets with repurchase agreements and warehouse facilities could adversely affect our ability to qualify as a REIT.

We have entered into and intend to enter into, sale and repurchase agreements under which we nominally sell certain REIT qualifying assets to a counterparty and simultaneously enter into an agreement to repurchase the sold assets. We believe that we will be treated for U.S. federal income tax purposes as the owner of the assets that are the subject of any such agreement, notwithstanding that we may transfer record ownership of the assets to the counterparty during the term of the agreement. It is possible, however, that the Internal Revenue Service, or IRS, could assert that we did not own the assets during the term of the sale and repurchase agreement, in which case our ability to qualify as a REIT would be adversely affected. If any of our REIT qualifying assets are subject to a repurchase agreement and are sold by the counterparty in connection with a margin call, the loss of those assets could impair our ability to qualify as a REIT. Accordingly, unlike other REITs, we may be subject to additional risk regarding our ability to qualify and maintain our qualification as a REIT.

Historically, we have financed most of our investments through CRE debt securitizations and have retained the equity. CRE debt securitization equity receives distributions from the CRE debt securitization only if the CRE debt securitization generates enough income to first pay the holders of its debt securities and its expenses.

Historically, we have financed most of our investments through CRE debt securitizations in which we retained the equity interest. Depending on market conditions and credit availability, we intend to use CRE debt securitizations to finance our investments in the future. The equity interests of a CRE debt securitization are subordinate in right of payment to all other securities issued by the CRE debt securitization. The equity is usually entitled to all of the income generated by the CRE debt securitization after the CRE debt securitization pays all of the interest due on the debt securities and its other expenses. However, there will be little or no income available to the CRE debt securitization equity if there are excessive defaults by the issuers of the underlying collateral, which would significantly reduce the value of that interest. Reductions in the value of the equity interests we have in a CRE debt securitization, if we determine that they are other-than-temporary, will reduce our earnings. In addition, the liquidity of the equity securities of CRE debt securitizations is constrained and, because they represent a leveraged investment in the CRE debt securitization's assets, the value of the equity securities will generally have greater fluctuations than the value of the underlying collateral.

If our CRE debt securitization financings fail to meet their performance tests, including over-collateralization and interest coverage requirements, our net income and cash flow from these CRE debt securitizations will be eliminated.

Our CRE debt securitizations generally provide that the principal amount of their assets must exceed the principal balance of the related securities issued by them by a certain amount, commonly referred to as "over-collateralization." If delinquencies and/or losses exceed specified levels, based on the analysis by the rating agencies (or any financial guaranty insurer) of the characteristics of the assets collateralizing the securities issued by the CRE debt securitization issuer, the required level of over-collateralization may be increased or may be prevented from decreasing as would otherwise be permitted if losses or delinquencies did not exceed those levels. A failure by a CRE debt securitization to satisfy an over-collateralization test typically results in accelerated distributions to the holders of the senior debt securities issued by the CRE debt securitization entity, resulting in a reduction or elimination of distributions to more junior securities until the over-collateralization requirements have been met or the senior debt securities have been paid in full.

Our equity holdings and, when we acquire debt interests in CRE debt securitizations, our debt interests, if any, generally are subordinate in right of payment to the other classes of debt securities issued by the CRE debt securitization entity. Accordingly, if over-collateralization tests are not met, distributions on the subordinated debt and equity we hold in these CRE debt securitizations will cease, resulting in a substantial reduction in our cash flow. Other tests (based on delinquency levels, interest coverage or other criteria) may restrict our ability to receive cash distributions from assets collateralizing the securities issued by the CRE debt securitization entity. Although at December 31, 2023, all of our CRE debt securitizations met their performance tests, we cannot assure you that our CRE debt securitizations will satisfy the performance tests in the future. For information concerning compliance by our CRE debt securitizations with their over-collateralization tests and interest coverage tests, see "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operation - Liquidity and Capital Resources."

If any of our CRE debt securitizations fail to meet collateralization, interest coverage or other tests relevant to the most senior debt issued and outstanding by the CRE debt securitization issuer, an event of default may occur under that CRE debt securitization. If that occurs, our Manager's ability to manage the CRE debt securitization likely would be terminated and our ability to attempt to cure any defaults in the CRE debt securitization would be limited, which would increase the likelihood of a reduction or elimination of cash flow and returns to us in those CRE debt securitizations for an indefinite time.

[\(Back to Index\)](#)

If we issue debt securities, the terms may restrict our ability to make cash distributions, require us to obtain approval to sell our assets or otherwise restrict our operations in ways that could make it difficult to execute our investment strategy and achieve our investment objectives.

Any debt securities we may issue in the future will likely be governed by an indenture or other instrument containing covenants restricting our operating flexibility. Holders of senior securities may be granted the right to hold a perfected security interest in certain of our assets, to accelerate payments due under the indenture if we breach financial or other covenants, to restrict distributions, and to require us to obtain their approval to sell assets. These covenants could limit our ability to operate our business or manage our assets effectively. Additionally, any convertible or exchangeable securities that we issue may have rights, preferences and privileges more favorable than those of our common stock. We, and indirectly our stockholders, will bear the cost of issuing and servicing such securities.

Depending upon market conditions, we intend to seek financing through CRE debt securitizations, which would expose us to risks relating to the accumulation of assets for use in the CRE debt securitizations.

Historically, we have financed a significant portion of our assets through the use of CRE debt securitizations, and have accumulated assets for these financings through short-term credit facilities, typically repurchase agreements or warehouse facilities. Depending upon market conditions, and, consequently, the extent to which such financing is available to us, we expect to seek similar financing arrangements in the future. In addition to risks discussed above, these arrangements could expose us to other credit risks, including the following:

- An event of default under one short-term facility may constitute a default under other credit facilities we may have, potentially resulting in asset sales and losses to us, as well as increasing our financing costs or reducing the amount of investable funds available to us.
- We may be unable to acquire a sufficient amount of eligible assets to maximize the efficiency of a CRE debt securitization issuance, which would require us to seek other forms of term financing or liquidate the assets. We may not be able to obtain term financing on acceptable terms, or at all, and liquidation of the assets may be at prices less than those we paid, resulting in losses to us.
- Using short-term financing to accumulate assets for a CRE debt securitization issuance may require us to obtain new financing as the short-term financing matures. Residual financing may not be available on acceptable terms, or at all. Moreover, an increase in short-term interest rates at the time that we seek to enter into new borrowings may reduce the spread between the income on our assets and the cost of our borrowings. This would reduce returns on our assets, which would reduce earnings and, in turn, cash available for distribution to our stockholders.

We may be subject to losses arising from current and future guarantees of debt and contingent obligations of our subsidiaries or joint venture partners.

We may guarantee the performance of the obligations of our subsidiaries, including credit and repurchase facilities, derivative agreements, unsecured indebtedness and indebtedness incurred by our joint venture partners. Non-performance on such obligations may cause losses to us in excess of the capital invested in our subsidiary or the relevant joint venture and there is no assurance that we will have sufficient capital to cover any such losses.

The debt facilities that we use to finance our investments may require us to provide additional collateral.

If the market value of the loans or investments pledged or sold by us to a funding source decline in value, we may be required by the lender to provide additional collateral or pay down a portion of the funds advanced. We may not have the funds available to pay down such future debt, which could result in defaults. Posting additional collateral to support these facilities would reduce our liquidity and limit our ability to leverage our assets. In the event we do not have sufficient liquidity to meet such requirements, lenders can accelerate the indebtedness, increase interest rates and terminate our ability to borrow. Further, lenders may require us to maintain a certain amount of uninvested cash or set aside unlevered assets sufficient to maintain a specified liquidity position. As a result, we may not be able to leverage our assets as fully as we would choose, which could reduce our return on assets. In the event that we are unable to meet these collateral obligations, our financial condition could deteriorate rapidly.

Risks Related to Our Operations

We may change our investment strategy without stockholder consent, which may result in riskier investments than those currently targeted.

Subject to maintaining our qualification as a REIT and our exclusion from regulation under the Investment Company Act, we may change our investment strategy, including the percentage of assets that may be invested in each asset class, or in the case of securities, in a single issuer, at any time without the consent of our stockholders, which could result in our making investments that are different from, and possibly riskier than, the investments described in this report. A change in our investment strategy may increase our exposure to interest rate, credit market and real estate market fluctuations, all of which may reduce the market price of our common stock and reduce our ability to make distributions to stockholders. Furthermore, a change in our asset allocation could result in our making investments in asset categories different from those described in this report.

We believe earnings available for distribution ("EAD"), a non-GAAP financial measure, is an appropriate measure to evaluate our performance and ability to pay dividends; however, in certain instances EAD may not be reflective of actual economic results.

We utilize EAD as a measure to evaluate our performance and ability to pay dividends and believe that it is useful to analysts, investors and other parties in the evaluations of REITs. We believe EAD is a useful measure of our performance and ability to pay dividends because it excludes the effects of certain transactions and GAAP adjustments that we believe are not necessarily indicative of our current CRE loan origination portfolio and other CRE-related investments and operations. EAD excludes (i) non-cash equity compensation expense, (ii) unrealized gains or losses, (iii) non-cash provision for loan losses, (iv) non-cash impairments on securities, (v) non-cash amortization of discounts or premiums associated with borrowings, (vi) net income or loss from limited partnership interests 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 losses 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 excluding incentive compensation payable to our Manager, we include incentive compensation payable to our Manager in EAD for reporting purposes. EAD does not represent net income or cash generated from operating activities and should not be considered as an alternative to GAAP net income or as a measure of liquidity under GAAP. Our methodology for calculating EAD may differ from methodologies used by other companies to calculate similar supplemental performance measures, and accordingly, our reported EAD may not be comparable to similar performance measures used by other companies.

If we fail to maintain an effective system of internal controls, we may not be able to accurately report our financial results or prevent fraud.

If we fail to maintain an effective system of internal control, fail to correct any flaws in the design or operating effectiveness of internal controls over financial reporting and disclosure, or fail to prevent fraud, our stockholders could lose confidence in our financial and other reporting, which could harm our business and the trading price of our common stock.

Our due diligence may not reveal all of an investment's weaknesses.

Before investing in any asset, we will assess the strength and skills of the asset's management and operations, the value of the asset and, for debt investments, the value of any collateral securing the debt, the ability of the asset or underlying collateral to service the debt and other factors that we believe are material to the performance of the investment. In making the assessment and otherwise conducting customary due diligence, we will rely on the resources available to us and, in some cases, an investigation by third parties. Our due diligence processes, however, may not uncover all facts that may be relevant to an investment decision.

Our business is highly dependent on communications and information systems, and systems failures or cybersecurity incidents could significantly disrupt our business, which may, in turn, negatively affect the market price of our common stock and our ability to operate our business.

We depend on the information systems of our Manager, ACRES and third parties. Any failure or interruption of our systems or cyber-attacks or security breaches of our networks or systems could cause delays or other problems in our lending activities. A disruption or breach could also lead to unauthorized access to and release, misuse, loss or destruction of our confidential information or personal or confidential information of our Manager, ACRES or third parties, which could lead to regulatory fines, litigation, costs of remediating the breach and reputational harm. In addition, we also face the risk of operational failure, termination or capacity constraints of any of the third parties with which we do business or that facilitate our business activities, including clearing agents or other financial intermediaries we use to facilitate our securities transactions, if their respective systems experience failure, interruption, cyber-attacks, or security breaches. If unauthorized parties gain access to our technology systems, they may be able to steal, publish, delete or modify private and sensitive information. Although we have implemented various measures to manage risks relating to these types of events, such systems could prove to be inadequate and, if compromised, could become inoperable for extended periods of time, cease to function properly or fail to adequately secure private information, including material nonpublic information. We may face increased costs as we continue to evolve our cyber defenses in order to contend with changing risks. These costs and losses associated with these risks are difficult to predict and quantify, but could have a significant adverse effect on our operating results.

The costs related to cyber or other security threats or disruptions may not be fully insured or indemnified by other means. As our and our borrowers' reliance on technology has increased, so have the risks posed to our information systems, both internal and those provided by third-party service providers, and the information systems of our borrowers. We have implemented processes, procedures and internal controls to help mitigate cybersecurity risks and cyber intrusions, but these measures, as well as our increased awareness of the nature and extent of a risk of a cyber-incident, do not guarantee that a cyber-incident will not occur and/or that our operations or confidential information will not be negatively impacted by such an incident.

Computer malware, viruses, computer hacking and phishing attacks have become more prevalent in our industry and may occur on our systems. We rely heavily on our financial, accounting and other data processing systems. Although we have not detected a material cybersecurity breach to date, other financial services institutions have reported material breaches of their systems, some of which have been significant. Even with all reasonable security efforts, not every breach can be prevented or even detected. It is possible that we have experienced an undetected breach. There is no assurance that we, or the third parties that facilitate our business activities, have not or will not experience a breach. Cyber-attacks on our network or other systems could have a material adverse effect on our business and results of operations, due to, among other things, the loss of investor or proprietary data, interruptions or delays in the operation of our business and damage to our reputation. There can be no assurance that measures we take to ensure the integrity of our systems will provide protection, especially because cyberattack techniques used change frequently or are not recognized until successful. It is difficult to determine what, if any, negative impact may directly result from any specific interruption or cyber-attacks or security breaches of our networks or systems (or the networks or systems of third parties that facilitate our business activities) or any failure to maintain performance, reliability and security of our technical infrastructure, but such computer malware, viruses and computer hacking and phishing attacks may negatively affect our operations.

Risks Related to Our Investments

Declines in the market values of our investments may reduce periodic reported results, credit availability and our ability to make distributions.

Historically, we have classified a substantial portion of our assets for accounting purposes as "available-for-sale." As a result, reductions in the market values of those assets were directly charged to accumulated other comprehensive loss and reduce our stockholders' equity. A decline in these values would reduce the book value of our assets. Moreover, if there is an indication of credit quality issues for a specific investment, under the current expected credit losses, or CECL, accounting guidance, we must record a provision to our earnings in order to estimate expected losses.

A decline in the market value of our assets may also adversely affect us in instances where we have borrowed money based on the market value of those assets. If the market value of those assets declines, the lender may require us to post additional collateral to support the loan. If we are unable to post the additional collateral, we would have to repay some portion or all of the loan, which may require us to sell assets, which could potentially be under adverse market conditions. As a result, our earnings would be reduced or we could sustain losses, and cash available to make distributions could be reduced or eliminated.

[\(Back to Index\)](#)

Increases in interest rates and other factors could reduce the value of our investments, result in reduced earnings or losses and reduce our ability to pay distributions.

A significant risk associated with our investment in CRE-related loans, and, historically, our CMBS and other debt investments is the risk that either or both of long-term and short-term interest rates increase significantly. If long-term rates increase, the market value of our assets would decline. Even if assets underlying investments we may own in the future are guaranteed by one or more persons, including government or government-sponsored agencies, those guarantees do not protect against declines in market value of the related assets caused by interest rate changes. At the same time, with respect to assets that are not match-funded or that have been acquired with variable rate or short-term financing, an increase in short-term interest rates would increase our interest expense, reducing our net interest spread or possibly result in negative cash flow from those assets. This could result in reduced profitability and distributions or losses.

Heightened consumer demand, combined with constrained labor markets and supply chain imbalances, have created inflationary pressure within the U.S. economy. While our ownership of commercial real estate and floating rate loans can act as effective hedges against inflation, increased costs could compromise property performance and thus mortgage loan performance.

Increased consumer demand, along with tight labor markets and supply chain imbalances, have created inflationary pressure on the U.S. economy. Our ownership of commercial real estate can act as an effective hedge against inflation, since in an inflationary environment, increases in the cost of construction and higher mortgage rates are likely to make new supply more expensive, leading to a limited supply of buildings, which in turn increases both rental rates and property values. Further, the Federal Reserve has raised, and may continue to raise, interest rates in an effort to combat inflation, and so the interest payable on our existing fixed rate debt on our real estate portfolio becomes relatively cheaper, and the rates on our floating rate loans and financing adjust accordingly.

Increased costs, such as increased energy costs and wages, could stress property performance and thus mortgage loan performance. We use interest rate hedges to mitigate the effect of inflation on our fixed rate loans. While our diversified portfolio may serve to mitigate the negative effects of inflation on any singular location or property type, certain assets or markets may be more negatively affected by inflation.

The transition away from reference rates and the use of alternative replacement reference rates may adversely affect the value of our loans, investments and borrowings and could affect our results of operations.

Historically, we have used the London Interbank Offered Rate ("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, 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 comprising large U.S. financial institutions, identified Secured Overnight Financing Rate ("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 December 31, 2023, our entire portfolio of floating rate whole loans and floating rate borrowings have transitioned to SOFR.

There can be no guarantee that existing or future provisions for alternative reference rates will include adequate methodologies for adjustments or that the alternative reference rates will be similar to or produce the economic equivalent of, or be more or less favorable than the current reference rate, particularly during times of economic stress. As such, the potential effect of any such event on our cost of capital and net investment income cannot yet be determined and any changes to benchmark interest rates could increase our financing costs or reduce our interest income, which could impact our results of operations, cash flows and the market value and liquidity of our investments. There could be a mismatch between the timing of the transition to a replacement rate between our investments and our financing, or a mismatch between the replacement rate used by our investments and our financing. Changes or uncertainty resulting from the transition to a replacement rate, including any market dislocations and disruptions as a result thereof, could adversely affect our business, reputation, increase the risk of litigation or other disputes, and increase transition-related expenses, among other adverse consequences.

[\(Back to Index\)](#)

Investing in mezzanine debt, preferred equity, mezzanine or other subordinated tranches of CMBS involves greater risks of loss than senior secured debt investments.

Subject to maintaining our qualification as a REIT and exclusion from regulation under the Investment Company Act, we may invest in mezzanine debt, preferred equity and mezzanine or other subordinated tranches of CMBS. We currently have investments in mezzanine debt. These types of investments carry a higher degree of risk of loss than senior secured debt investments such as our whole loan investments because, in the event of default and foreclosure, holders of senior liens will be paid in full before mezzanine investors. Depending on the value of the underlying collateral at the time of foreclosure, there may not be sufficient assets to pay all or any part of amounts owed to mezzanine investors. Moreover, mezzanine and other subordinate debt investments may have higher LTV than conventional senior lien financing, resulting in less equity in the collateral and increasing the risk of loss of principal. If a borrower defaults or declares bankruptcy, we may be subject to agreements restricting or eliminating our rights as a creditor, including rights to call a default, cure a default, foreclose on collateral, and accelerate maturity or control decisions made in bankruptcy proceedings. In addition, the prices of lower credit quality securities are generally less sensitive to interest rate changes than more highly rated investments, but more sensitive to economic downturns or individual issuer developments because the ability of obligors of investments underlying the securities to make principal and interest payments may be impaired. In such event, existing credit support relating to the securities' structure may not be sufficient to protect us against loss of our principal. For additional risks regarding real estate-related loans, see "Risks Related to Investments- Our commercial mortgage loans and mezzanine loans are subject to the risks inherent in owning the real estate securing or underlying those investments that could result in losses to us."

Our investments in preferred equity involve a greater risk of loss than traditional first mortgage debt investments we make.

We may make preferred equity investments in entities that own or acquire CRE properties. Preferred equity investments involve a higher degree of risk than first mortgage loans due to a variety of factors, including the risk that, similar to mezzanine loans, such investments are subordinate to first mortgage loans and are not collateralized by property underlying the investment. Unlike mezzanine loans, preferred equity investments generally do not have a pledge of the ownership interests of the entity that owns the interest in the entity owning the property. Although as a holder of preferred equity we may enhance our position with covenants that limit the activities of the entity in which we hold an interest and protect our equity by obtaining an exclusive right to control the underlying property after an event of default, should such a default occur on our investment, we would only be able to proceed against the entity in which we hold an interest, and not the property owned by such entity and underlying our investment. As a result, we may not recover some or all of our investment.

We record some of our portfolio investments, including those classified as assets held for sale, at fair value as estimated by our management and, as a result, there will be uncertainty as to the value of these investments.

We currently hold, and expect that we will hold in the future, portfolio investments that are not publicly traded. The fair value of securities and other investments that are not publicly traded may not be readily determinable. We value these investments quarterly at fair value as determined under policies approved by our Board. Because such valuations are inherently uncertain, may fluctuate over short periods of time and may be based on estimates, our determinations of fair value may differ materially from the values that we would have obtained if a ready market for them existed. The value of our common stock will likely decrease if our determinations regarding the fair value of these investments are materially higher than the values that we ultimately realize upon their disposal.

We may face competition for suitable investments.

There are numerous REITs and other financial investors seeking to invest in the types of assets we target. This competition may cause us to forgo particular investments or to accept economic terms or structural features that we would not otherwise have accepted, and it may cause us to seek investments outside of our currently targeted areas. Competition for investment assets may slow our growth or limit our profitability and ability to make distributions to our stockholders.

We may not have control over certain of our CRE loans and CRE investments.

Our ability to manage our portfolio of loans and investments may be limited by the form in which they are made. In certain situations, we may:

- acquire investments subject to rights of senior classes and servicers under inter-creditor or servicing agreements;
- acquire only a minority and/or non-controlling participation in an underlying investment;
- co-invest with third parties through partnerships, joint ventures or other entities, thereby acquiring non-controlling interests; or

- rely on independent third-party management or strategic partners with respect to the management of an asset.

Therefore, we may not be able to exercise control over the loan or investment. Such financial assets may involve risks not present in investments where senior creditors, servicers or third-party controlling investors are not involved. Our rights to control the process following a borrower default may be subject to the rights of senior creditors or servicers whose interests may not be aligned with ours. A third-party partner or co-venturer may have financial difficulties resulting in a negative impact on such asset, may have economic or business interest or goals which are inconsistent with ours, or may be in a position to take action contrary to our investment objectives. In addition, in certain circumstances we may be liable for the actions of our third-party partners or co-venturers.

Many of our investments may be illiquid, which may result in our realizing less than their recorded value should we need to sell such investments quickly.

If we determine to sell one or more of our investments, we may encounter difficulties in finding buyers in a timely manner as real estate debt and other of our investments generally cannot be disposed of quickly, especially when market conditions are poor. Moreover, some of these assets may be subject to legal and other restrictions on resale. If we are required to liquidate all or a portion of our portfolio quickly, we may realize significantly less than the value at which we have previously recorded our investments. In addition, we may face other restrictions on our ability to liquidate an investment in a business entity to the extent that we, our Manager or ACRES has or could be attributed with material non-public information regarding such business entity. These factors may limit our ability to vary our portfolio promptly in response to changes in economic or other conditions and may also limit our ability to use portfolio sales as a source of liquidity, which could limit our ability to make distributions to our stockholders or repay debt.

Our investments in real estate and commercial mortgage loans, mezzanine loans and CRE equity investments are subject to the risks inherent in owning the real estate securing or underlying those investments that could result in losses to us.

Commercial mortgage loans are secured by, and mezzanine loans depend on, the performance of the underlying property and are subject to risks of delinquency and foreclosure, and risks of loss, that are greater than similar risks associated with loans made on the security of single-family residential properties. The ability of a borrower to repay a loan or make distributions secured by or dependent upon an income-producing property typically depends primarily upon the successful operation of the property rather than upon the existence of independent income or assets of the borrower. If the net operating income of the property is reduced, the borrower's ability to repay the loan or ability to make distributions may be impaired. Net operating income of an income producing property can be affected by, among other things:

- tenant mix, success of tenant businesses, tenant bankruptcies and property management decisions;
- property location and condition;
- competition from comparable types of properties;
- shifts in consumer habits or adoption of telework policies;
- changes in laws that increase operating expenses or limit rents that may be charged;
- any need to address environmental contamination at the property;
- the occurrence of any uninsured casualty at the property;
- changes in national, regional or local economic conditions and/or the conditions of specific industry segments in which the lessees may operate;
- declines in regional or local real estate values;
- declines in regional or local rental or occupancy rates;
- increases in interest rates, real estate tax rates and other operating expenses;
- the availability of debt or equity financing;
- increases in costs of construction material;
- changes in governmental rules, regulations and fiscal policies, including environmental legislation and zoning laws; and
- acts of God, terrorism, pandemic, social unrest and civil disturbances.

[\(Back to Index\)](#)

We risk loss of principal on defaulted CRE loans we hold to the extent of any deficiency between the value we can realize from the sale of the collateral securing the loan upon foreclosure and the loan's principal and accrued interest. Moreover, foreclosure of a mortgage loan can be an expensive and lengthy process that could reduce the net amount we can realize on the foreclosed mortgage loan. In a bankruptcy of a mortgage loan borrower, the mortgage loan will be deemed to be secured only to the extent of the value of the underlying collateral at the time of bankruptcy as determined by the bankruptcy court, and the lien securing the mortgage loan will be subject to the avoidance powers of the bankruptcy trustee or debtor-in-possession to the extent the lien is unenforceable under state law.

We may be obligated to fund a portion of the loan at one or more future dates. We may not have the funds available at such future date(s) to meet our funding obligation under the loan. In that event, we would likely be in breach of the loan documents unless we are able to raise the capital, which we may not be able to achieve on favorable terms or at all. Additionally, if we are in breach of the loan documents, the borrower may file a claim against us for failure to perform under the loan documents.

For a discussion of additional risks associated with mezzanine loans, see "Risks Related to Our Investments - Investing in mezzanine debt, preferred equity and mezzanine or other subordinated debt investments involves greater risks of loss than senior secured debt investments."

If our allowance for credit losses is not adequate to cover actual future loan losses, our earnings may decline.

We maintain an allowance for credit losses to provide for loan defaults and non-performance by borrowers of their obligations. Our allowance for credit losses may not be adequate to cover actual future loan losses and future provisions for credit losses could materially reduce our income. We base our allowance for credit losses on historical loss experience, current portfolio and market conditions and reasonable and supportable forecasts for the duration of each respective loan. However, losses have in the past, and may in the future, exceed our current estimates, and the difference could be substantial. The amount of future losses is susceptible to changes in economic, operating and other conditions that may be beyond our control and difficult to estimate, including changes in interest rates, changes in borrowers' creditworthiness and the value of collateral securing loans. Additionally, if we seek to expand our loan portfolios, we may need to make additional provisions for credit losses to ensure that the allowance remains at levels deemed appropriate by our management for the size and quality of our portfolios. While we believe that our allowance for credit losses at December 31, 2023 is adequate to cover our anticipated losses, we cannot assure you that it will not increase in the future. Any increase in our allowance for credit losses will reduce our income and, if sufficiently large, could cause us to incur significant losses.

The CECL model may require us to increase our allowance for credit losses and therefore may have a material adverse effect on our business, financial condition and results of operations.

The CECL allowance required is a valuation account that is deducted from the related loans' and debt securities' amortized cost basis on our consolidated balance sheets, which reduces our total stockholders' equity. Additional changes to the CECL allowance are recognized through net income on our consolidated statements of operations. While the guidance does not require any particular method for determining the CECL allowance, it does specify the allowance should be based on relevant information about past events, including historical loss experience, current portfolio and market conditions, and reasonable and supportable forecasts for the duration of each respective loan. Because our methodology for determining CECL allowances may differ from the methodologies employed by other companies, our CECL allowances may not be comparable with the CECL allowances reported by other companies. In addition, other than pursuant to a few narrow exceptions, the guidance requires that all financial instruments subject to the CECL model have some amount of reserve to reflect the GAAP principal underlying the CECL model that all loans, debt securities, and similar assets have some inherent risk of loss, regardless of credit quality, subordinate capital, or other mitigating factors. Accordingly, the adoption of the CECL model materially affected our determination of the allowance for credit losses and required us to increase our allowance upon adoption and recognize provisions for credit losses earlier in the lending cycle. Moreover, the CECL model has created more volatility in the level of our allowance for credit losses. If we are required to materially increase our level of allowance for credit losses for any reason, such increase could adversely affect our business, financial condition and results of operations.

Our investment portfolio may have material geographic, sector, property-type and sponsor concentrations.

We may have material geographic concentrations related to our direct or indirect investments in real estate loans and properties. We also may have material concentrations in the property types and industry sectors that are in our loan portfolio. Where we have any kind of concentration risk in our investments, we may be affected by sector-specific economic or other problems that are not reflected in the national economy generally or in more diverse portfolios. Where we have a significant concentration of investments with a small number of sponsors, we may be materially affected by an individual sponsors' performance. An adverse development in that area of concentration could reduce the value of our investment and our return on that investment and, if the concentration affects a material amount of our investments, impair our ability to execute our investment strategies successfully, reduce our earnings and reduce our ability to make distributions.

[\(Back to Index\)](#)

The B-notes in which we may invest may be subject to additional risks relating to the privately negotiated structure and terms of the transaction, which may result in losses to us.

We may invest in B-notes. A B-note is a loan typically secured by a first mortgage on a single large commercial property or group of related properties and subordinated to a senior note secured by the same first mortgage on the same collateral. As a result, if a borrower defaults, there may not be sufficient funds remaining for B-note owners after payment to the senior note owners. Since each transaction is privately negotiated, B-notes can vary in their structural characteristics and risks. For example, the rights of holders of B-notes to control the process following a borrower default may be limited in certain investments. Depending upon market and economic conditions, we may make B-note investments at any time. B-notes are less liquid than other forms of CRE debt investments, such as CMBS, and, as a result, we may be able to dispose of underperforming or non-performing B-note investments only at a significant discount to book value.

We may be exposed to environmental liabilities with respect to properties that we own or take title to in the future.

In the course of our business, we have made direct investments in, and expect we will continue to make direct investments in, properties or taken title to, and expect we will in the future take title to, real estate through foreclosure on collateral underlying real estate debt investments. When we do take title to any property, we could be subject to environmental liabilities with respect to it. In such a circumstance, we may be held liable to a governmental entity or to third parties for property damage, personal injury, investigation and clean-up costs they incur as a result of environmental contamination, or may have to investigate or clean up hazardous or toxic substances, or chemical releases at a property. The costs associated with investigation or remediation activities could be substantial and could reduce our income and ability to make distributions. Additionally, the presence of hazardous substances on a property we own may adversely affect our ability to sell the property.

Real estate ownership is subject to particular conditions that may have a negative impact on our results of operations.

We are subject to all of the inherent risks associated with the ownership of real estate. We may not be successful in the development or redevelopment/expansion of the acquired properties. In addition, the real estate investments may not perform as well as expected, impacting our anticipated return on investment. We are subject to other risks in connection with any acquisition, development and redevelopment/expansion activities, including the following:

- acquisition or construction costs of a project may be higher than projected, potentially making the project unfeasible or unprofitable;
- development, redevelopment or expansions may take considerably longer than expected, delaying the commencement due to supply chain disruptions;
- we may be unable to obtain zoning, occupancy or other governmental approvals; and
- occupancy rates and rents may not meet our projections and the project may not be accretive.

We risk the loss of our investment if a development or redevelopment/expansion project is unsuccessful, either because it is not meeting our expectations when operational or was not completed according to the project planning.

Real estate property investments are illiquid. We may not be able to dispose of properties when desired or on favorable terms.

Real estate investments are relatively illiquid. Many factors that are beyond our control affect the real estate market. Our ability to quickly sell or exchange any of our properties in response to changes in economic and other conditions will be limited. No assurances can be given that we will recognize full value, at a price and at terms that are acceptable to us, for any property that we are required to sell for liquidity reasons. Our inability to respond rapidly to changes in the performance of our investments could adversely affect our financial condition and results of operations.

We may not have control, or control may be limited, over certain of our loans and real estate equity investments.

Some of our loans or real estate equity investments may be co-lender, joint venture or other arrangements in which we share the rights, obligations and benefits of the loan or real estate equity investment with other lenders, servicers or joint venture partners. We may need the consent of these parties to exercise our rights under the respective agreements, including rights with respect to amendment of loan documentation, enforcement proceedings in the event of default and the institution of, and control over, foreclosure proceedings. The participants of these agreements may have interests that may not be aligned with ours and may be able to take actions to which we object but will be bound if our investment interest represents a non-controlling interest. We may be adversely affected by such actions. Additionally, our co-lenders, servicers or joint venture partners may have financial difficulties and may not be able to perform their

[\(Back to Index\)](#)

financial obligations in accordance with their respective agreements, in which case we may be obligated to perform on their behalf. If we do not have the capital available or are unable to access funding, we may not have the capital available to meet those obligations, which will most likely result in a default under the respective agreement and could adversely affect our results of operations and financial condition.

Risks Related to Our Manager

We depend on our Manager and ACRES to develop and operate our business and may not find suitable replacements if the Management Agreement terminates.

We have no direct employees. Our officers, portfolio managers, administrative personnel and support personnel are employees of ACRES. We have no separate facilities and completely rely on our Manager; and ACRES has significant discretion as to the implementation of our operating policies and investment strategies. If our Management Agreement terminates, we may be unable to find a suitable replacement for our Manager. Moreover, we believe that our success depends to a significant extent upon the experience of the portfolio managers and officers of our Manager and ACRES who provide services to us, whose continued service is not guaranteed. The departure of any such persons could harm our investment performance.

Our Manager's fee structure may not create proper incentives, and the incentive compensation we pay our Manager may increase the investment risk of our portfolio.

Our Manager is entitled to receive a base management fee equal to 1/12th of our equity, as defined in the Management Agreement, multiplied by 1.50%. Since the base management fee is based on our outstanding equity, our Manager could be incentivized to recommend strategies that increase our equity, and there may be circumstances where increasing our equity will not optimize the returns for our stockholders.

In addition to its base management fee, our Manager is entitled to receive incentive compensation. This compensation is equal to 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.

In evaluating investments and other management strategies, the opportunity to earn incentive compensation based on EAD may lead our Manager to place undue emphasis on the maximization of EAD at the expense of other criteria, such as preservation of capital, in order to achieve higher incentive compensation. Investments with higher yields generally have higher risk of loss than investments with lower yields. If our interests and those of our Manager are not aligned, the execution of our business plan and our results of operations could be adversely affected, which could adversely affect our results of operations and financial condition.

Our Manager manages our portfolio pursuant to very broad investment guidelines and our Board does not approve each investment decision, which may result in our making riskier investments.

Our Manager is authorized to follow very broad investment guidelines. While our directors periodically review our investment guidelines and our investment portfolio, they do not review all of our proposed investments. In addition, in conducting periodic reviews, the directors may rely primarily on information provided to them by our Manager. Furthermore, our Manager may use complex strategies, and transactions entered into by our Manager, which may be difficult or impossible to unwind by the time they are reviewed by the directors. Our Manager has great latitude within the broad investment guidelines in determining the types of investments it makes for us. Poor investment decisions could impair our ability to make distributions to our stockholders.

[\(Back to Index\)](#)

Termination of the Management Agreement by us without cause is difficult and could be costly.

Termination of our Management Agreement without cause is difficult and could be costly. We may terminate the Management Agreement without cause only annually upon the affirmative vote of at least two-thirds of our independent directors or by a vote of the holders of at least a majority of our outstanding common stock, based upon unsatisfactory performance by our Manager that is materially detrimental to us or a determination that the management fee payable to our Manager is not fair. Moreover, with respect to a determination that the management fee is not fair, our Manager may prevent termination by accepting a mutually acceptable reduction of management fees. We must give not less than 180 days' prior notice of any termination. Upon any termination without cause, our Manager will be paid a termination fee equal to four times the sum of the average annual base management fee and the average annual incentive compensation earned by it during the two 12-month periods immediately preceding the date of termination, calculated as of the end of the most recently completed fiscal quarter before the date of termination.

Our Manager and ACRES will face conflicts of interest relating to the allocation of investment opportunities and such conflicts may not be resolved in our favor, which could limit our ability to acquire assets and, in turn, limit our ability to make distributions and reduce your overall investment return.

Our Management Agreement does not prohibit our Manager, or ACRES from investing in or managing entities that invest in asset classes that are the same as, or similar to, our targeted asset classes, except that they may not raise funds for, sponsor or advise any new publicly-traded REIT that invests primarily in MBS in the U.S. We rely on our Manager to identify suitable investment opportunities for us. Our executive officers and several of the other key real estate professionals, acting on behalf of our Manager, are also the key real estate professionals acting on behalf of the advisors of other investment programs sponsored by, and other clients managed by, ACRES. As such, these investment programs and clients rely on many of the same real estate professionals as will future programs and vehicles sponsored by ACRES. Many investment opportunities that are suitable for us may also be suitable for one or more of these investment programs or clients. When an investment opportunity becomes available, the allocation committee established by ACRES, in accordance with its investment allocation policies and procedures, will offer the opportunity to the investment program or clients for which the investment opportunity is most suitable based on the available capital, investment objectives, portfolio and criteria of each. Thus, the allocation committees could direct attractive investment opportunities to an investment program or client other than us, which could result in us not investing in investment opportunities that could provide an attractive return or investing in investment opportunities that provide less attractive returns. Any of the foregoing may reduce our ability to make distributions to you.

Our officers and many of the investment professionals that provide services to us through our Manager are also officers or employees of ACRES and may face conflicts regarding the allocation of their time.

Our officers, other than our Chief Financial Officer, Chief Accounting Officer and several accounting and tax professionals on their staff, as well as the officers, directors and employees of ACRES who provide services to us, are not required to work full time on our affairs, and may devote significant time to the affairs of ACRES. As a result, there may be significant conflicts between us, on the one hand, and our Manager and ACRES on the other, regarding allocation of our Manager's and ACRES' resources to the management of our investment portfolio.

We have engaged in and may again engage in transactions with entities affiliated with our Manager. Our policies and procedures may be insufficient to address any conflicts of interest that may arise.

We have established policies and procedures regarding review, approval and ratification of transactions that may give rise to a conflict of interest between persons affiliated or associated with our Manager and us. In the ordinary course of our business, we have ongoing relationships and have engaged in and may again engage in transactions with entities affiliated or associated with our Manager. See "Item 13. Certain Relationships and Related Transactions and Director Independence - Relationships and Related Transactions" in this report. Our policies and procedures may not be sufficient to address any conflicts of interest that arise.

Our Manager's liability is limited under the Management Agreement, and we have agreed to indemnify our Manager against certain liabilities.

Our Manager does not assume any responsibility other than to render the services called for under the Management Agreement, and will not be responsible for any action of our Board in following or declining to follow its advice or recommendations. ACRES, our Manager, their directors, managers, officers, employees and affiliates will not be liable to us, any subsidiary of ours, our directors, our stockholders or any subsidiary's stockholders for acts performed in accordance with and pursuant to the Management Agreement, except for acts constituting bad faith, willful misconduct, gross negligence, or reckless disregard of their duties under the Management Agreement. We have agreed to indemnify the parties for all damages and claims arising from acts not constituting bad faith, willful misconduct, gross negligence, or reckless disregard of duties, performed in good faith in accordance with and pursuant to the Management Agreement.

Risks Related to Our Organization and Structure

Our charter and bylaws contain provisions that may inhibit potential acquisition bids that you and other stockholders may consider favorable, and the market price of our common stock may be lower as a result.

Our charter and bylaws contain provisions that may have an anti-takeover effect and inhibit a change in our Board. These provisions include the following:

- *There are ownership limits and restrictions on transferability and ownership in our charter.* For purposes of assisting us in maintaining our REIT qualification under the Code, our charter generally prohibits any person from beneficially or constructively owning more than 9.8% in value or number of shares, whichever is more restrictive, of any class or series of our outstanding capital stock. This restriction may:
 - discourage a tender offer or other transactions or a change in the composition of our Board or control that might involve a premium price for our shares or otherwise be in the best interests of our stockholders; or
 - result in shares issued or transferred in violation of such restrictions being automatically transferred to a trust for a charitable beneficiary, resulting in the forfeiture of those shares.
- *Our charter permits our Board to issue stock with terms that may discourage a third-party from acquiring us.* Our Board may amend our charter without stockholder approval to increase the total number of authorized shares of stock or the number of shares of any class or series and issue common or preferred stock having preferences, conversion or other rights, voting powers, restrictions, limitations as to distributions, qualifications, or terms or conditions of redemption as determined by our Board. Thus, our Board could authorize the issuance of stock with terms and conditions that could have the effect of discouraging a takeover or other transaction in which holders of some or a majority of our shares might receive a premium for their shares over the then-prevailing market price.
- *Our charter and bylaws contain other possible anti-takeover provisions.* Our charter and bylaws contain other provisions, including advance notice procedures for the introduction of business and the nomination of directors, that may have the effect of delaying or preventing a change in control of us or the removal of existing directors and, as a result, could prevent our stockholders from being paid a premium for their common stock over the then-prevailing market price.

Maryland takeover statutes may prevent a change in control of us, and the market price of our common stock may be lower as a result.

Maryland Control Share Acquisition Act. Maryland law provides that “control shares” of a corporation acquired in a “control share acquisition” will have no voting rights except to the extent approved by a vote of two-thirds of the votes eligible to be cast on the matter under the Maryland Control Share Acquisition Act, or the Maryland Act. The Maryland Act defines “control shares” as voting shares of stock that, if aggregated with all other shares of stock owned by the acquirer or in respect of which the acquirer is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquirer to exercise voting power in electing directors within one of the following ranges of voting power: one-tenth or more but less than one-third, one-third or more but less than a majority, or a majority or more of all voting power. A “control share acquisition” means the acquisition of control shares, subject to specific exceptions.

If voting rights or control shares acquired in a control share acquisition are not approved at a stockholders' meeting or if the acquiring person does not deliver an acquiring person statement as required by the Maryland Act then, subject to specific conditions and limitations, the issuer may redeem any or all of the control shares for fair value. If voting rights of such control shares are approved at a stockholders' meeting and the acquirer becomes entitled to vote a majority of the shares entitled to vote, all other stockholders may exercise appraisal rights.

Our bylaws contain a provision exempting acquisitions of our shares from the Maryland Act. However, our Board may amend our bylaws in the future to repeal this exemption.

Business combinations. Under Maryland law, "business combinations" between a Maryland corporation and an interested stockholder or an affiliate of an interested stockholder are prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. These business combinations include a merger, consolidation, share exchange or, in circumstances specified in the statute, an asset transfer or issuance or reclassification of equity securities. An interested stockholder is defined as:

- any person who beneficially owns ten percent or more of the voting power of the corporation's shares; or
- an affiliate or associate of the corporation who, at any time within the two-year period before the date in question, was the beneficial owner of ten percent or more of the voting power of the then outstanding voting stock of the corporation.

A person is not an interested stockholder under the statute if the board of directors approved in advance the transaction by which such person otherwise would have become an interested stockholder. However, in approving a transaction, the board of directors may provide that its approval is subject to compliance, at or after the time of approval, with any terms and conditions determined by the board.

After the five-year prohibition, any business combination between the Maryland corporation and an interested stockholder generally must be recommended by the board of directors of the corporation and approved by the affirmative vote of at least:

- 80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation; and
- two-thirds of the votes entitled to be cast by holders of voting stock of the corporation other than shares held by the interested stockholder with whom or with whose affiliate the business combination is to be effected or held by an affiliate or associate of the interested stockholder.

These super-majority vote requirements do not apply if the corporation's common stockholders receive a minimum price, as defined under Maryland law, for their shares in the form of cash or other consideration in the same form as previously paid by the interested stockholder for its shares.

The statute permits exemptions from its provisions, including business combinations that are exempted by the board of directors before the time that the interested stockholder becomes an interested stockholder.

Our rights and the rights of our stockholders to take action against our directors and officers are limited, which could limit your recourse in the event of actions not in your best interests.

Our charter limits the liability of our directors and officers to our stockholders and us for money damages, except for liability resulting from:

- actual receipt of an improper benefit or profit in money, property or services; or
- a final judgment based upon a finding of active and deliberate dishonesty by the director or officer that was material to the cause of action adjudicated.

In addition, our charter authorizes us to, and we do, indemnify our present and former directors and officers for actions taken by them in those capacities to the maximum extent permitted by Maryland law. Our bylaws require us to indemnify each present or former director or officer, to the maximum extent permitted by Maryland law, in the defense of any proceeding to which he or she is made, or threatened to be made, a party by reason of his or her service to us. In addition, we may be obligated to fund the defense costs incurred by our directors and officers.

Our right to take action against our Manager is limited.

The obligation of our Manager under the Management Agreement is to render its services in good faith. It will not be responsible for any action taken by our Board or investment committee in following or declining to follow its advice and recommendations. Furthermore, as discussed above under "Risks Related to Our Manager," it will be difficult and costly for us to terminate the Management Agreement without cause. In addition, we will indemnify our Manager, ACRES and their officers and affiliates for any actions taken by them in good faith.

[\(Back to Index\)](#)

We have not established a minimum distribution payment level and we cannot assure you of our ability to make distributions in the future. In the future, we may use uninvested offering proceeds or borrowed funds to make distributions.

We expect to make quarterly distributions to our stockholders in amounts such that we distribute all or substantially all of our taxable income in each year, subject to certain adjustments. We have not established a minimum distribution payment level, and our ability to make distributions may be impaired by the risk factors described in this report. All distributions will be made at the discretion of our Board and will depend on our earnings, our financial condition, maintenance of our REIT qualification and other factors as our Board may deem relevant from time to time. We may not be able to make distributions in the future. In addition, some of our distributions may include a return of capital. To the extent that we decide to make distributions in excess of our current and accumulated taxable earnings and profits, such distributions would generally be considered a return of capital for federal income tax purposes. A return of capital is not taxable, but it has the effect of reducing the holder's tax basis in its investment. Although we currently do not expect that we will do so, we have in the past and may in the future also use proceeds from any offering of our securities that we have not invested or borrowed funds to make distributions. If we use uninvested offering proceeds to pay distributions in the future, we will have less funds available for investment and, as a result, our earnings and cash available for distribution would be less than we might otherwise have realized had such funds been invested. Similarly, if we borrow to fund distributions, our future interest costs would increase, thereby reducing our future earnings and cash available for distribution from what they otherwise would have been.

Loss of our exclusion from regulation under the Investment Company Act would require significant changes in our operations and could reduce the market price of our common stock and our ability to make distributions.

We rely on an exclusion from registration as an investment company afforded by Section 3(a)(1)(C) of the Investment Company Act. To qualify for this exclusion, we do not engage in the business of investing, reinvesting, owning, holding, or trading securities and we do not own "investment securities" with a value that exceeds 40% of the value of our total assets (exclusive of government securities and cash items) on an unconsolidated basis. We may not be able to maintain such a mix of assets in the future, and attempts to maintain such an asset mix may impair our ability to pursue otherwise attractive investments. In addition, these rules are subject to change and such changes may have an adverse impact on us. We may need to avail ourselves of alternative exclusions and exemptions that may require a change in the organizational structure of our business.

Furthermore, as it relates to our investment in our real estate subsidiary, ACRES RF, we rely on an exclusion from registration as an investment company afforded by Section 3(c)(5)(C) of the Investment Company Act. Given the material size of ACRES RF relative to our 3(a)(1)(C) exclusion, were ACRES RF to be deemed to be an investment company (other than by application of the Section 3(c)(1) exemption for closely held companies and the Section 3(c)(7) exemption for companies owned by "qualified purchasers"), we would not qualify for our 3(a)(1)(C) exclusion. Under the Section 3(c)(5)(C) exclusion, ACRES RF is required to maintain, on the basis of positions taken by the SEC staff in interpretive and no-action letters, a minimum of 55% of the value of the total assets of its portfolio in Qualifying Interests and a minimum of 80% in Qualifying Interests and real estate-related assets, with the remainder permitted to be miscellaneous assets. Because registration as an investment company would significantly affect ACRES RF's ability to engage in certain transactions or to organize itself in the manner it is currently organized, we intend to maintain its qualification for this exclusion from registration.

Historically, we treat our investments in mezzanine loans and our investments in CMBS as Qualifying Interests for purposes of determining our eligibility for the exclusion provided by Section 3(c)(5)(C) to the extent such treatment is consistent with guidance provided by the SEC or its staff. In the absence of specific guidance or guidance that otherwise supports the treatment of these investments as Qualifying Interests, we will treat them, for purposes of determining our eligibility for the exclusion provided by Section 3(c)(5)(C), as real estate-related assets or miscellaneous assets, as appropriate.

If ACRES RF's portfolio does not comply with the requirements of the exclusion we rely upon, it could be forced to alter its portfolio by selling or otherwise disposing of a substantial portion of the assets that are not Qualifying Interests or by acquiring a significant position in assets that are Qualifying Interests. Altering its portfolio in this manner may have an adverse effect on its investments if it is forced to dispose of or acquire assets in an unfavorable market, and may adversely affect our stock price.

If it were established that we were an unregistered investment company, there would be a risk that we would be subject to monetary penalties and injunctive relief in an action brought by the SEC that we would be unable to enforce contracts with third parties, that third parties could seek to obtain rescission of transactions undertaken during the period it was established that we were an unregistered investment company, and that we would be subject to limitations on corporate leverage that would have an adverse impact on our investment returns.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

Rapid changes in the values of our real estate-related investments may make it more difficult for us to maintain our qualification as a REIT or exclusion from regulation under the Investment Company Act.

If the market value or income potential of our real estate-related investments declines as a result of economic conditions, increased interest rates, prepayment rates or other factors, we may need to increase our real estate-related investments and income and/or liquidate our non-qualifying assets in order to maintain our REIT qualification or exclusion from registration under the Investment Company Act. If the decline in real estate asset values and/or income occurs quickly, this may be especially difficult to accomplish. We may have to make investment decisions that we otherwise would not make absent REIT qualification and Investment Company Act considerations.

Risks Related to Our REIT Status and Certain Other Tax Items

Complying with REIT requirements may cause us to forgo otherwise attractive opportunities.

To qualify as a REIT for federal income tax purposes, we must continually satisfy various tests regarding the sources of our income, the nature and diversification of our assets, the amounts we distribute to our stockholders and the ownership of our common stock. In order to meet these tests, we may be required to forgo investments we might otherwise make. Thus, compliance with the REIT requirements may hinder our investment performance.

In particular, at least 75% of our assets at the end of each calendar quarter must consist of real estate assets, government securities, cash and cash items. For this purpose, "real estate assets" generally include interests in real property, such as land, buildings, leasehold interests in real property, stock of other entities that qualify as REITs, interests in mortgage loans secured by real property, investments in stock or debt investments during the one-year period following the receipt of new capital and regular or residual interests in a real estate mortgage investment conduit ("REMIC"). In addition, the amount of securities of a single issuer, other than a TRS, that we hold must generally not exceed either 5% of the value of our gross assets or 10% of the vote or value of such issuer's outstanding securities.

Certain of the assets that we hold are not qualified and will not be qualified real estate assets for purposes of the REIT asset tests. CMBS securities should generally qualify as real estate assets. However, to the extent that we own non-REMIC collateralized mortgage obligations or other debt investments secured by mortgage loans (rather than by real property) or secured by non-real estate assets, or debt securities that are not secured by mortgages on real property, those securities are likely not qualifying real estate assets for purposes of the REIT asset test, and will not produce qualifying real estate income. Further, whether securities held by warehouse lenders or financed using repurchase agreements are treated as qualifying assets or as generating qualifying real estate income for purposes of the REIT asset and income tests depends on the terms of the warehouse or repurchase financing arrangement.

We generally will be treated as the owner of any assets that collateralize CRE debt securitization transactions to the extent that we retain all of the equity of the securitization vehicle and do not make an election to treat such securitization vehicle as a TRS, as described in further detail below. It may be possible to reduce the impact of the REIT asset and gross income requirements by holding certain assets through our TRSs, subject to certain limitations as described below.

Our qualification as a REIT and exemption from U.S. federal income tax with respect to certain assets may depend on the accuracy of legal opinions or advice rendered or given or statements by the issuers of securities in which we invest, and the inaccuracy of any such opinions, advice or statements may adversely affect our REIT qualification and result in significant corporate level tax.

When purchasing securities, we have relied and may rely on opinions or advice of counsel for the issuer of such securities, or statements made in related offering documents, for purposes of determining whether such securities represent debt or equity securities for U.S. federal income tax purposes, and also to what extent those securities constitute REIT real estate assets for purposes of the REIT asset tests and produce income that qualifies under the 75% REIT gross income test. In addition, when purchasing CRE debt securitization equity, we have relied and may rely on opinions or advice of counsel regarding the qualification of interests in the debt of such CRE debt securitizations for U.S. federal income tax purposes. The inaccuracy of any such opinions, advice or statements may adversely affect our REIT qualification and result in significant corporate-level tax.

[\(Back to Index\)](#)

We may realize excess inclusion income that would increase our tax liability and that of our stockholders.

Excess inclusion income could result if we hold a residual interest in a REMIC or if we were to own an interest in a taxable mortgage pool. Excess inclusion income also is generated if we issue debt obligations, such as certain CRE debt securitizations, with two or more maturities and the terms of the payments on these obligations bear a relationship to the payments that we receive on our mortgage related securities securing those debt obligations. While we do not expect to acquire significant amounts of residual interests in REMICs, nor do we currently own residual interests in taxable mortgage pools, we do issue debt in certain CRE debt securitizations that generates excess inclusion income.

If we realize excess inclusion income and allocate it to stockholders, this income cannot be offset by net operating losses of the stockholders. If the stockholder is a tax-exempt entity, then this income would be fully taxable as unrelated business taxable income under Section 512 of the Code. If the stockholder is a foreign person, it would be subject to federal income tax withholding on this income without reduction or exemption pursuant to any otherwise applicable income tax treaty.

If we realize excess inclusion income, we will be taxed at the highest corporate income tax rate on a portion of such income that is allocable to the percentage of our stock held in record name by "disqualified organizations," which are generally cooperatives, governmental entities and tax-exempt organizations that are exempt from unrelated business taxable income. To the extent that our stock owned by "disqualified organizations" is held in record name by a broker-dealer or other nominee, the broker/dealer or other nominee would be liable for the corporate level tax on the portion of our excess inclusion income allocable to the stock held by the broker-dealer or other nominee on behalf of "disqualified organizations." We expect that disqualified organizations will own our stock. Because this tax would be imposed on us, all of our investors, including investors that are not disqualified organizations, would bear a portion of the tax cost associated with the classification of us or a portion of our assets as a taxable mortgage pool. A regulated investment company or other pass through entity owning stock in record name will be subject to tax at the highest corporate rate on any excess inclusion income allocated to its owners that are disqualified organizations. Finally, if we fail to qualify as a REIT, our taxable mortgage pool securitizations will be treated as separate corporations, for federal income tax purposes that cannot be included in any consolidated corporate tax return.

Failure to qualify as a REIT would subject us to federal income tax, which would reduce the cash available for distribution to our stockholders.

We believe that we have been organized and operated in a manner that has enabled us to qualify as a REIT for federal income tax purposes commencing with our taxable year ended on December 31, 2005. However, the federal income tax laws governing REITs are extremely complex, and interpretations of the federal income tax laws governing qualification as a REIT are limited. Qualifying as a REIT requires us to meet various tests regarding the nature of our assets and our income, the ownership of our outstanding stock, and the amount of our distributions on an ongoing basis.

If we fail to qualify as a REIT in any calendar year and we do not qualify for certain statutory relief provisions, we will be subject to federal income tax, including any applicable alternative minimum tax on our taxable income, at regular corporate rates. Distributions to stockholders would not be deductible in computing our taxable income. Corporate tax liability would reduce the amount of cash available for distribution to our stockholders. Under some circumstances, we might need to borrow money or sell assets in order to pay that tax. Furthermore, if we fail to maintain our qualification as a REIT and we do not qualify for the statutory relief provisions, we no longer would be required to distribute substantially all of our REIT taxable income, determined without regard to the dividends paid deduction and excluding net capital gains, to our stockholders. Unless our failure to qualify as a REIT was excused under federal tax laws, we could not re-elect to qualify as a REIT until the fifth calendar year following the year in which we failed to qualify. In addition, if we fail to qualify as a REIT, our taxable mortgage pool securitizations will be treated as separate corporations for U.S. federal income tax purposes.

A determination that we have not made required distributions would subject us to tax or require us to pay a deficiency dividend; payment of tax would reduce the cash available for distribution to our stockholders.

In order to qualify as a REIT, in each calendar year we must distribute to our stockholders at least 90% of our REIT taxable income, determined without regard to the deduction for dividends paid and excluding net capital gain. To the extent that we satisfy the 90% distribution requirement, but distribute less than 100% of our taxable income, we will be subject to federal corporate income tax on our undistributed income. In addition, we will incur a 4% nondeductible excise tax on the amount, if any, by which our distributions in any calendar year are less than the sum of:

- 85% of our ordinary income for that year;
- 95% of our capital gain net income for that year; and

[\(Back to Index\)](#)

- 100% our undistributed taxable income from prior years.

We intend to make distributions to our stockholders in a manner intended to satisfy the 90% distribution requirement and to distribute all or substantially all of our net taxable income to avoid both corporate income tax and the 4% nondeductible excise tax. There is no requirement that a domestic TRS distribute its after-tax net income to its parent REIT or their stockholders and our U.S. TRS may determine not to make any distributions to us. However, non-U.S. TRSs will generally be deemed to distribute their earnings to us on an annual basis for federal income tax purposes, regardless of whether such TRSs actually distribute their earnings.

Our taxable income may substantially exceed our net income as determined by GAAP because, for example, realized capital losses will be deducted in determining our GAAP net income but may not be deductible in computing our taxable income. In addition, we may invest in assets that generate taxable income in excess of economic income or in advance of the corresponding cash flow from the assets, referred to as phantom income. Although some types of phantom income are excluded to the extent they exceed 5% of our REIT taxable income in determining the 90% distribution requirement, we will incur corporate income tax and the 4% nondeductible excise tax with respect to any phantom income items if we do not distribute those items on an annual basis. As a result, we may generate less cash flow than taxable income in a particular year. It is also possible that a loss that we treat as an ordinary loss would be re-characterized as a capital loss. In such event we might have to pay tax for the year in question or pay a deficiency dividend so that we meet the dividends paid requirement for that year. In all such events, we may be required to use cash reserves, incur debt, or liquidate non-cash assets at rates or times that we regard as unfavorable in order to satisfy the distribution requirement and to avoid corporate income tax and the 4% nondeductible excise tax in that year.

If we make distributions in excess of our current and accumulated earnings and profits, they will be treated as a return of capital, which will reduce the adjusted basis of your stock. To the extent such distributions exceed your adjusted basis, you may recognize a capital gain upon distribution.

Unless you are a tax-exempt entity, distributions that we make to you generally will be subject to tax as ordinary income to the extent of our current and accumulated earnings and profits as determined for federal income tax purposes. If the amount we distribute to you exceeds your allocable share of our current and accumulated earnings and profits, the excess will be treated as a return of capital to the extent of your adjusted basis in your stock, which will reduce your basis in your stock but will not be subject to tax. To the extent the amount we distribute to you exceeds both your allocable share of our current and accumulated earnings and profits and your adjusted basis, this excess amount will be treated as a gain from the sale or exchange of a capital asset. For risks related to the use of uninvested offering proceeds or borrowings to fund distributions to stockholders, see - "Risks Related to Our Organization and Structure. - We have not established a minimum distribution payment level and we cannot assure you of our ability to make distributions in the future."

Our ownership of and relationship with our TRSs will be limited and a failure to comply with the limits would jeopardize our REIT qualification and may result in the application of a 100% excise tax.

A REIT may own up to 100% of the securities of one or more TRSs. A TRS may earn types of income or hold assets that would not be qualifying income or assets if earned or held directly by the parent REIT. Both the subsidiary and the REIT must jointly elect to treat the subsidiary as a TRS. A corporation of which a TRS directly or indirectly owns more than 35% of the voting power or value of the stock will automatically be treated as a TRS. Overall, no more than 20% of the value of a REIT's assets may consist of stock or securities of one or more TRSs. A TRS will pay federal, state and local income tax at regular corporate rates on any income that it earns, whether or not it distributes that income to us. In addition, the TRS rules limit the deductibility of interest paid or accrued by a TRS to its parent REIT to assure that the TRS is subject to an appropriate level of corporate taxation. The rules also impose a 100% excise tax on certain transactions between a TRS and its parent REIT that are not conducted on an arm's-length basis.

Exantas Real Estate TRS, Inc. ("XAN RE TRS") will pay federal, state and local income tax on its taxable income, and its after-tax net income is available for distribution to us but is not required to be distributed to us. Income that is not distributed to us by XAN RE TRS will not be subject to the REIT 90% distribution requirement and therefore will not be available for distributions to our stockholders. We anticipate that the aggregate value of the securities we hold in our TRS will be less than 20% of the value of our total assets, including our TRS securities. We will monitor the compliance of our investments in TRSs with the rules relating to value of assets and transactions not on an arm's-length basis. We cannot assure you, however, that we will be able to comply with such rules.

[\(Back to Index\)](#)

Complying with REIT requirements may limit our ability to hedge effectively.

The REIT provisions of the Code substantially limit our ability to hedge MBS and related borrowings. Under these provisions, our annual gross income from non-qualifying hedges of our borrowings, together with any other income not generated from qualifying real estate assets, cannot exceed 25% of our gross income. In addition, our aggregate gross income from non-qualifying hedges, fees and certain other non-qualifying sources cannot exceed 5% of our annual gross income determined without regard to income from qualifying hedges. As a result, we might have to limit our use of advantageous hedging techniques or implement those hedges through XAN RE TRS. This could increase the cost of our hedging activities or expose us to greater risks associated with changes in interest rates than we would otherwise want to bear.

The tax on prohibited transactions will limit our ability to engage in transactions, including certain methods of securitizing mortgage loans that would be treated as sales for federal income tax purposes.

A REIT's net income from prohibited transactions is subject to a 100% tax. In general, prohibited transactions are sales or other dispositions of property, other than foreclosure property, but including mortgage loans, held primarily for sale to customers in the ordinary course of business. We might be subject to this tax if we were able to sell or securitize loans in a manner that was treated as a sale of the loans for federal income tax purposes. Therefore, in order to avoid the prohibited transactions tax, we may choose not to engage in certain sales of loans and may limit the structures we utilize for our securitization transactions even though such sales or structures might otherwise be beneficial to us.

Legislative, regulatory or administrative changes could adversely affect our stockholders or us.

Legislative, regulatory or administrative changes could be enacted or promulgated at any time, either prospectively or with retroactive effect, and may adversely affect our stockholders and/or us. The U.S. federal tax rules that affect REITs are under review constantly by persons involved in the legislative process, the IRS and the U.S. Treasury Department, which results in statutory changes as well as frequent revisions to Treasury regulations and interpretations. Revisions in U.S. federal tax laws and interpretations thereof could cause us to change our investments, commitments and strategies, which could also affect the tax considerations of an investment in our stock.

Dividends paid by REITs do not qualify for the reduced tax rates provided for under current law.

Dividends paid by REITs are generally not eligible for the reduced 15% maximum tax rate for dividends paid to individuals (20% for those with taxable income above certain thresholds that are adjusted annually under current law). The more favorable rates applicable to regular corporate dividends could cause stockholders who are individuals to perceive investments in REITs to be relatively less attractive than investments in the stock of non-REIT corporations that pay dividends to which more favorable rates apply, which could reduce the value of the stocks of REITs. However, for taxable years beginning before January 1, 2026, non-corporate taxpayers may deduct up to 20% of certain pass-through business income, including "qualified REIT dividends" (generally, dividends received by a REIT stockholder that are not designated as capital gain dividends or qualified dividend income), subject to certain limitations. Dividends from REITs as well as regular corporate dividends will also be subject to a 3.8% Medicare surtax for taxpayers with modified adjusted gross income above \$200,000 (if single) or \$250,000 (if married and filing jointly).

We may lose our REIT qualification or be subject to a penalty tax if we modify mortgage loans or acquire distressed debt in a way that causes us to fail our REIT gross income or asset tests.

Many of the terms of our mortgage loans, mezzanine loans and B-notes and the loans supporting our MBS have been modified and may in the future be modified to avoid foreclosure actions and for other reasons. If the terms of the loan are modified in a manner constituting a "significant modification," such modification triggers a deemed exchange for tax purposes of the original loan for the modified loan. Under existing Treasury Regulations, if a loan is secured by real property and other property and the highest principal amount of the loan outstanding during a taxable year exceeds the fair market value of the real property securing the loan as of (1) the date we agreed to acquire or originate the loan or (2) in the event of certain significant modifications, the date we modified the loan, then a portion of the interest income from such a loan will not be qualifying income for purposes of the 75% gross income test, but will be qualifying income for purposes of the 95% gross income test. Although the law is not entirely clear, a portion of the loan may not be treated as a qualifying "real estate asset" for purposes of the 75% asset test. The non-qualifying portion of such a loan would be subject to, among other requirements, the 10% value test.

[\(Back to Index\)](#)

Revenue Procedure 2011-16, as modified and superseded by Revenue Procedure 2014-51, provides a safe harbor pursuant to which we will not be required to redetermine the fair market value of the real property securing a loan for purposes of the REIT gross income and asset tests in connection with a loan modification that is: (1) occasioned by a borrower default; or (2) made at a time when we reasonably believe that the modification to the loan will substantially reduce a significant risk of default on the original loan. We cannot assure you that all of our loan modifications have qualified or will qualify for the safe harbor in Revenue Procedure 2011-16, as modified and superseded by Revenue Procedure 2014-51. To the extent we significantly modify loans in a manner that does not qualify for that safe harbor, we will be required to redetermine the value of the real property securing the loan at the time it was significantly modified. In determining the value of the real property securing such a loan, we may not obtain third-party appraisals, but rather may rely on internal valuations. No assurance can be provided that the IRS will not successfully challenge our internal valuations. If the terms of our mortgage loans, mezzanine loans and B-notes and loans supporting our MBS are significantly modified in a manner that does not qualify for the safe harbor in Revenue Procedure 2011-16, as modified and superseded by Revenue Procedure 2014-51, and the fair market value of the real property securing such loans has decreased significantly, we could fail the 75% gross income test, the 75% asset test and/or the 10% value test. Unless we qualified for relief under certain cure provisions in the Code, such failures could cause us to fail to qualify as a REIT.

Our subsidiaries and we have invested and may invest in the future in distressed debt, including distressed mortgage loans, mezzanine loans, B-notes and MBS. Revenue Procedure 2011-16, as modified and superseded by Revenue Procedure 2014-51, provides that the IRS will treat a distressed mortgage loan acquired by a REIT that is secured by real property and other property as producing in part non-qualifying income for the 75% gross income test. Specifically, Revenue Procedure 2011-16, as modified and superseded by Revenue Procedure 2014-51, indicates that interest income on a loan will be treated as qualifying income based on the ratio of (1) the fair market value of the real property securing the loan determined as of the date the REIT committed to acquire the loan and (2) the face amount of the loan (and not the purchase price or current value of the loan). The face amount of a distressed mortgage loan and other distressed debt will typically exceed the fair market value of the real property securing the debt on the date the REIT commits to acquire the debt. We believe that we will continue to invest in distressed debt in a manner consistent with complying with the 75% gross income test and maintaining our qualification as a REIT.

The failure of a loan subject to a repurchase agreement, a mezzanine loan or a preferred equity investment to qualify as a real estate asset would adversely affect our ability to qualify as a REIT.

We have entered into and we intend to continue to enter into sale and repurchase agreements under which we nominally sell certain of our loan assets to a counterparty and simultaneously enter into an agreement to repurchase the sold assets. We believe that we have been and will be treated for U.S. federal income tax purposes as the owner of the loan assets that are the subject of any such agreement notwithstanding that the agreement may transfer record ownership of the assets to the counterparty during the term of the agreement. It is possible, however, that the IRS could assert that we did not own the loan assets during the term of the sale and repurchase agreement, in which case we could fail to qualify as a REIT.

In addition, we have acquired in the past and may continue to acquire mezzanine loans, which are loans secured by equity interest in a partnership or limited liability company that directly or indirectly owns real property, and preferred equity investments, which are senior equity interests in entities that own or acquire real properties. In Revenue Procedure 2003-65, or the Revenue Procedure, the IRS provided a safe harbor pursuant to which a mezzanine loan, if it meets each of the requirements contained in the Revenue Procedure, will be treated by the IRS as a real estate asset for purposes of the REIT asset tests, and interest derived from the mezzanine loan will be treated as qualifying mortgage interest for purposes of the REIT 75% income test. Although the Revenue Procedure provides a safe harbor on which taxpayers may rely, it does not prescribe rules of substantive tax law. We have acquired and may continue to acquire mezzanine loans that may not meet all of the requirements for reliance on this safe harbor. In the event we own a mezzanine loan that does not meet the safe harbor, the IRS could challenge the loan's treatment as a real estate asset for purposes of the REIT asset and income tests, and if the challenge were sustained, we could fail to qualify as a REIT.

General Risk Factors

We cannot predict the effects on us of actions taken by the U.S. government and governmental agencies in response to economic conditions in the U.S.

In response to economic and market conditions, U.S. and foreign governments and governmental agencies have established or proposed a number of programs designed to improve the financial system and credit markets, and to stimulate economic growth. Many governments, including federal, state and local governments in the U.S., are incurring substantial budget deficits and seeking financing in international and national credit markets as well as proposing or enacting austerity programs that seek to reduce government spending, raise taxes, or both. Many credit providers, including banks, may need to obtain additional capital before they will be able to expand

[\(Back to Index\)](#)

[\(Back to Index\)](#)

their lending activities. We are unable to evaluate the effects these programs and conditions will have upon our financial condition, income, or ability to make distributions to our stockholders.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 1C. CYBERSECURITY

Cybersecurity Risk Management and Strategy

As an externally managed REIT, our risk management function, including cybersecurity, is governed by the cybersecurity policies and procedures of our Manager, a subsidiary of ACRES Capital Corp. ("ACRES"). As such, our Manager participates in ACRES' processes for assessing, identifying, and managing risks from cybersecurity threats, as detailed below.

ACRES upholds a robust cybersecurity initiative, encompassing policies and protocols aimed at safeguarding its systems, operations, and entrusted data, including ours, from potential threats or risks. ACRES employs a range of protective measures within its cybersecurity framework including physical and digital access controls, identity verification, mobile device management software, employee training programs emphasizing cybersecurity awareness and best practices, tools for identifying abnormal activities, and vigilant monitoring of data usage, hardware, and software.

At least annually, ACRES' third-party cybersecurity compliance consultant conducts a cybersecurity risk assessment. We periodically review reporting on these risks and our cybersecurity threats, the status of our security infrastructure, our risk management activities and the status of, and our responses to, any cybersecurity incidents. We also periodically perform simulations and tabletop exercises. All employees are required to complete training that includes various topics on cybersecurity risk management best practices. Additionally, employees are regularly tested with phishing campaigns reinforcing their awareness of email threats.

Cybersecurity threat risks have not materially affected our company, including our business strategy, results of operations or financial condition. For further discussion of the risks we face from cybersecurity threats, including those that could materially affect us, see "Item 1A. Risk Factors—Risks Related to Our Operations—Our business is highly dependent on communications and information systems, and systems failures or cybersecurity incidents could significantly disrupt our business, which may, in turn, negatively affect the market price of our common stock and our ability to operate our business" in this report.

Cybersecurity Governance

As described above, ACRES has engaged a third-party IT firm and cybersecurity compliance consultant to whom we have outsourced primary responsibility to oversee, implement and manage our processes and controls to assess, identify, and manage material risks from cybersecurity threats. ACRES management team oversees the work of the third-party IT and cybersecurity compliance consultant and regularly communicates with members of the team. Through the policies and controls described above, including an incident response policy, representatives of the third-party IT firm as well as members of ACRES management team are informed about cybersecurity threats and incidents affecting our information systems and direct our efforts to prevent, detect, mitigate and remediate cybersecurity threats and incidents.

The representatives of our third-party IT firm and cybersecurity compliance consultant who lead our cybersecurity risk management and risk assessment process have experience in managing information systems, developing cybersecurity strategy, implementing information security and cybersecurity programs, identifying and assessing cybersecurity risks and establishing incident response plans.

Our Company's Board and the audit committee are jointly responsible for overseeing our overall risk assessment and risk management program as well as our Manager's policies and practices related to our information technology systems, information security and cybersecurity risks. The Company's Board and the audit committee reviews at least annually our enterprise risks and related risk management program. In addition, the Company's Board receives periodic reports from our cybersecurity compliance firm on the primary cybersecurity risks that we and our Manager face and the measures we are taking to mitigate such risks. The chair of the audit committee would be notified following any cybersecurity incident meeting specified severity levels, and the Company's Board would also be expected to review the Manager's materiality assessment regarding any cybersecurity incident requiring disclosure to the SEC.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

ITEM 2. PROPERTIES

We maintain offices in Uniondale, New York and Philadelphia, Pennsylvania. Our principal office is located in leased space at 390 RXR Plaza, Uniondale, New York 11556. We do not own any material principal real property, other than certain investments in real estate properties.

ITEM 3. LEGAL PROCEEDINGS

Refer to “Part II - Item 8. Financial Statements and Supplementary Data – Note 23 - Commitments and Contingencies” for the applicable disclosures.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

[\(Back to Index\)](#)

PART II

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

Market Information

Our common stock is listed on the New York Stock Exchange, or NYSE, under the symbol "ACR".

We are organized and conduct our operations to qualify as a real estate investment trust ("REIT") which requires that we distribute at least 90% of our REIT taxable income. As a result of losses incurred during the year ended December 31, 2020 in connection with the economic impact of the novel coronavirus ("COVID-19") pandemic, we received significant net operating loss ("NOL") carryforwards. NOLs are able to offset future taxable income, limiting the requirement for common share distributions. We also recognized net capital loss carryforwards as finalized in our 2020 tax return. During the year ended December 31, 2023, all taxable income was offset by our NOLs, and therefore, no common share distribution was required. As we continue to take steps necessary to stabilize our earnings available for distribution ("EAD"), our board of directors, (our "Board"), will 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.

The following table summarizes our current and estimated tax loss carryforwards (dollars in millions):

Tax Asset Item	Tax Year Recognized	REIT (QRS) Tax Loss Carryforwards		TRS Tax Loss Carryforwards	
		Operating	Capital	Operating	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

At December 31, 2023, we had \$46.6 million of cumulative 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 expire on 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 December 31, 2023, 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 expire on December 31, 2024.

At March 4, 2024, there were 7,748,393 shares of common stock outstanding held by 196 holders of record. The 196 holders of record include Cede & Co., which holds shares as nominee for The Depository Trust Company, which itself holds shares on behalf of the beneficial owners of our common stock. Such information was obtained through our registrar and transfer agent.

[\(Back to Index\)](#)

The following table summarizes certain information about our 2005 Stock Incentive Plan, Third Amended and Restated Omnibus Equity Compensation Plan and ACRES Commercial Realty Corp. Manager Incentive Plan at December 31, 2023:

Plan Category	(a) Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights	(b) Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights	(c) Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans Excluding Securities Reflected in Column (a)
Equity compensation approved by security holders:			
Restricted stock ⁽¹⁾	416,675	N/A	
Equity compensation plans not approved by security holders	N/A	N/A	
Total	<u>416,675</u>		1,034,155

(1) All restricted stock awards consist of unvested shares.

Our 8.625% Fixed-to-Floating Series C Cumulative Redeemable Preferred Stock, or Series C Preferred Stock, is listed on the NYSE and trades under the symbol "ACRPrC." We have declared and paid the specified quarterly dividend per share of \$0.5390625 through January 2024. No dividends are currently in arrears on the Series C Preferred Stock.

Our 7.875% Series D Cumulative Redeemable Preferred Stock, or Series D Preferred Stock, is listed on the NYSE and trades under the symbol "ACRPrD." In October 2021, we and our Manager entered into an Equity Distribution Agreement with JonesTrading Institutional Services LLC, as placement agent, pursuant to which we may issue and sell from time to time up to 2.2 million shares of the Series D Preferred Stock. We have declared and paid the specified quarterly dividend per share of \$0.4921875 through January 2024. No dividends are currently in arrears on the Series D Preferred Stock.

Issuer Purchases of Equity Securities

In March 2016, our Board approved a 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.

In November 2021, our Board authorized and approved the continued use of our existing share repurchase program to repurchase an additional \$20.0 million of our outstanding common stock. In November 2023, our Board authorized and approved the repurchase of an additional \$10.0 million of outstanding shares of both common and preferred stock. At December 31, 2023, \$9.8 million remains available under this repurchase program.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

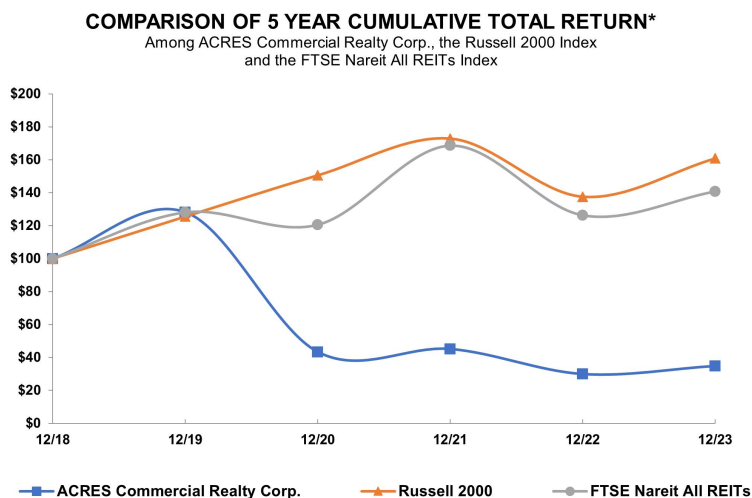
The following table presents information about our common stock repurchases made during the year ended December 31, 2023 in accordance with our repurchase program (dollars in thousands, except per share amounts):

	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
October 2, 2023 - October 31, 2023	19,199	7.83	19,199	4,389
November 1, 2023 - November 30, 2023	42,291	7.68	42,291	14,065
December 1, 2023 - December 29, 2023	539,138	7.88	539,138	9,827
Total	899,085	\$ 8.24	899,085	

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

Performance Graph

The following line graph presentation compares cumulative total shareholder returns on our common stock with the Russell 2000 Index and the FTSE NAREIT All REIT Index for the period from December 31, 2018 to December 31, 2023. The graph and table assume that \$100 was invested in each of our common stock, the Russell 2000 Index and the FTSE NAREIT All REIT Index on December 31, 2018, and that all dividends were reinvested. This data is furnished by the Research Data Group.



*\$100 invested on 12/31/18 in stock or index, including reinvestment of dividends.

ITEM 6. [RESERVED]

[\(Back to Index\)](#)

[\(Back to Index\)](#)

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

The following discussion should be read in conjunction with our consolidated financial statements and accompanying notes included in "Item 8. Financial Statements and Supplementary Data" of this annual report on Form 10-K.

We have omitted discussion of the earliest of the three years covered by our consolidated financial statements presented in this report as that disclosure is included in our Annual Report on Form 10-K for the year ended December 31, 2022 filed with the Securities and Exchange Commission ("SEC") on March 7, 2023. You are encouraged to reference the discussion and analysis of our results of operations for the year ended December 31, 2021 compared to the year ended December 31, 2022 in "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" within that report.

Overview

We are a Maryland corporation and an externally managed 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, 2023. By retaining 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 interest rates, bank failures and the lingering impact of the COVID-19 pandemic. 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 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.

In response, we continue to manage corporate liquidity actively and responsibly, manage our CRE assets 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.

We target originating transitional floating-rate CRE loans between \$10.0 million and \$100.0 million. During the year ended December 31, 2023, we selectively originated three floating-rate CRE whole loans, with total commitments of \$68.2 million. Loan payoffs during the year ended December 31, 2023 were \$293.1 million and net funded commitments were \$40.5 million, producing a net decrease to the portfolio of \$184.4 million.

Our CRE loan portfolio, which had a \$1.8 billion and \$2.0 billion carrying value at December 31, 2023 and 2022, 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 types: multifamily, student housing, hospitality, office, self-storage and retail. All but three of our CRE whole loans were current on contractual payments at December 31, 2023.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

- Mezzanine debt that is senior to borrower's equity but is subordinated to other third-party debt. These loans are subordinated CRE loans, usually secured by 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 December 31, 2023 and 2022, we had one mezzanine loan included in CRE loans held for investment that had no carrying value. This mezzanine loan was not current on contractual payments at December 31, 2023.

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 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.

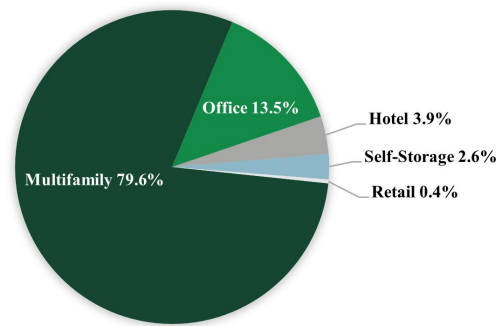
In a business environment where benchmark rates are increasing significantly, cash flows of the CRE assets underlying our loans may not be sufficient to pay debt service on our loans, which could result in non-performance or default. We partially mitigate this risk by generally requiring our borrowers 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 December 31, 2023, 85.4% of the par value of our CRE loan portfolio had interest rate caps in place with a weighted-average maturity of six months.

At December 31, 2023, our par-value \$1.9 billion floating-rate CRE loan portfolio had a weighted average benchmark floor of 0.70%. At December 31, 2022, our par-value \$2.1 billion floating rate CRE loan portfolio, which included one whole loan without a benchmark floor, had a weighted average benchmark floor of 0.68%. With the trend of rising benchmark 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 rates are above our loan floors, the rise in interest rates resulted in an increase in our net interest income. See "Interest Rate Risk" in "Item 7A: Quantitative and Qualitative Disclosures About Market Risk."

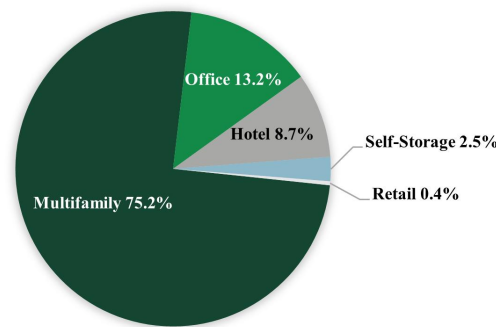
[\(Back to Index\)](#)

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

PROPERTY TYPE AT DECEMBER 31, 2023

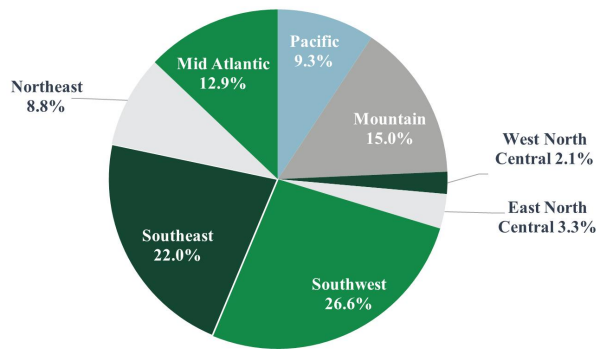


PROPERTY TYPE AT DECEMBER 31, 2022

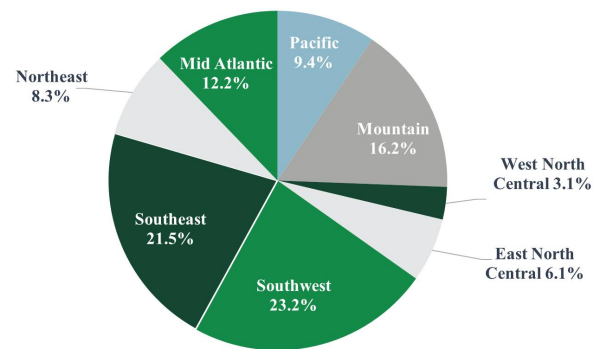


Our properties are located throughout the U.S., with two National Council of Real Estate Investment Fiduciaries (“NCREIF”) regions, the Southwest and Southeast, in excess of 20% of the total portfolio carrying value at both December 31, 2023 and 2022. The following charts shows our portfolio allocation by property type at December 31, 2023 and 2022:

GEOGRAPHIC AREA AT DECEMBER 31, 2023



GEOGRAPHIC AREA AT DECEMBER 31, 2022



From time to time, we may acquire real estate property through direct equity investments or as a result of our lending activities. At December 31, 2023, the total carrying value of our net real estate-related assets and liabilities was \$158.9 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. 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.

[\(Back to Index\)](#)

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.

At December 31, 2023 and 2022, our financing arrangements were as follows (dollars in thousands):

	Outstanding Borrowings	Percentage of Borrowings
At December 31, 2023:		
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	2.5%
5.75% Senior Unsecured Notes	148,140	8.8%
Unsecured junior subordinated debentures	51,548	3.1%
Total	<u>\$ 1,676,200</u>	<u>100.00%</u>
	Outstanding Borrowings	Percentage of Borrowings
At December 31, 2022:		
CRE debt securitizations ⁽¹⁾⁽²⁾	\$ 1,233,556	66.1%
CRE - term warehouse financing facilities ⁽¹⁾	328,288	17.6%
Senior secured financing facility ⁽¹⁾	87,890	4.7%
Mortgage payable ⁽¹⁾	18,244	1.0%
5.75% Senior Unsecured Notes	147,507	7.9%
Unsecured junior subordinated debentures	51,548	2.8%
Total	<u>\$ 1,867,033</u>	<u>100.00%</u>

(1)Represents an asset-specific borrowing.

(2)Each of our CRE debt securitizations initially provided for a two-year reinvestment period that allowed us to reinvest CRE loan payoffs and principal paydown proceeds into the securitizations, pending certain eligibility criteria are met and rating agency approval is obtained. The reinvestment periods on both our securitizations ended in May 2023 and December 2023.

We reevaluate our current expected credit losses ("CECL") allowance quarterly, incorporating our current expectations of macroeconomic factors considered in the determination of our CECL reserves. 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 year ended 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 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 December 31, 2023 of \$28.8 million, or 1.5% 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% of the portfolio, at December 31, 2023, 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 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 79.6% at December 31, 2023.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

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 December 31, 2023 and 2022, we had unrealized losses in connection with the terminated hedges of \$5.0 million and \$6.6 million, respectively, which will be amortized into interest expense over the remaining life of the debt. During the years ended December 31, 2023 and 2022, we recognized amortization expense on these terminated contracts of \$1.7 million and \$1.8 million, respectively.

Common stock book value was \$26.65 per share at December 31, 2023, a \$2.11 per share, or 9%, increase from December 31, 2022.

Impact of Reference Rate Reform

Historically, we have used LIBOR as the benchmark 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, 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 December 31, 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 year ended December 31, 2023 was \$3.0 million, or \$0.35 per share-basic (\$0.35 per share-diluted), as compared to net loss allocable to common shares of \$8.8 million, or \$(1.00) per share-basic (\$(1.00) per share-diluted), for the year ended December 31, 2022.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

Net Interest Income

The following table analyzes the change in interest income and interest expense for the comparative years ended December 31, 2023 and 2022 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):

	Year Ended December 31, 2023 Compared to Year Ended December 31, 2022			
	Net Change	Percent Change ⁽¹⁾	Due to Changes in Volume	Rate
Increase (decrease) in interest income:				
CRE whole loans ⁽²⁾	\$ 59,286	47 %	\$ (3,859)	\$ 63,145
Legacy CRE loan	(29)	(100)%	(29)	—
CRE mezzanine loan	(462)	(97)%	—	(462)
Other	2,397	326 %	(32)	2,429
Total increase (decrease) in interest income	61,192	48 %	(3,920)	65,112
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	22,349	95 %	(592)	22,941
ACR 2021-FL2 Senior Notes	19,458	90 %	—	19,458
Senior secured financing facility	2,155	56 %	672	1,483
CRE - term warehouse financing facilities ⁽³⁾	7,972	56 %	(2,133)	10,105
4.50% Convertible Senior Notes ⁽³⁾	(2,690)	(100)%	(2,690)	—
5.75% Senior Unsecured Notes ⁽³⁾	39	0 %	39	—
12.00% Senior Unsecured Notes ⁽³⁾	(306)	(100)%	(306)	—
Unsecured junior subordinated debentures	1,794	59 %	—	1,794
Hedging ⁽³⁾	(140)	(8)%	(140)	—
Total increase (decrease) in interest expense	48,467	59 %	(7,314)	55,781
Net increase in net interest income	<u>\$ 12,725</u>		<u>\$ 3,394</u>	<u>\$ 9,331</u>

(1)Percent change is calculated as the net change divided by the respective interest income or interest expense for the year ended December 31, 2022.

(2)Includes a decrease in fee income of \$1.3 million recognized on our CRE whole loans that were due to changes in volume.

(3)Includes decreases in amortization expense of \$1.1 million, \$353,000, \$1.1 million, \$306,000 and \$140,000 on our securitized borrowings, CRE - term warehouse financing facilities, 4.50% Convertible Senior Notes, 12.00% Senior Unsecured Notes and terminated interest rate swap agreements, respectively, and increases in amortization expense of \$121,000 and \$39,000 on our senior 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 Years Ended December 31, 2023 and 2022:

Aggregate interest income increased by \$61.2 million for the comparative years ended December 31, 2023 and 2022. We attribute the change to the following:

CRE whole loans. The increase of \$59.3 million for the comparative years ended December 31, 2023 and 2022 was primarily attributable to an increase in benchmark rates over the comparative periods.

CRE mezzanine loan. The decrease of \$462,000 for the comparative years ended December 31, 2023 and 2022 was primarily attributable to the loan entering payment default in February 2023 and subsequently being placed on nonaccrual status.

Other. The increase of \$2.4 million for the comparative years ended December 31, 2023 and 2022 was primarily attributable to an increase in yields on our interest earning money market accounts and restricted cash in our CRE securitizations.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

Net Change in Interest Expense for the Comparative Years Ended December 31, 2023 and 2022:

Aggregate interest expense increased by \$48.5 million for the comparative years ended December 31, 2023 and 2022. We attribute the change to the following:

Securitized borrowings. The net increase of \$39.6 million for the comparative years ended December 31, 2023 and 2022 was primarily attributable to an increase in benchmark rates over the comparative periods. These increases were partially offset by the liquidations of XAN 2020-RSO8 and XAN 2020-RSO9.

Senior secured financing facility. The increase of \$2.2 million for the comparative years ended December 31, 2023 and 2022 was primarily attributable to increased rates over the comparative periods in connection with an amendment of the facility in December 2022, which modified the facility from its initial 5.75% fixed rate to a floating rate structure. The increase was also attributable to increased utilization of the senior secured financing facility.

CRE - term warehouse financing facilities. The increase of \$8.0 million for the comparative years ended December 31, 2023 and 2022 was primarily attributable to an increase in benchmark rates over the comparative periods.

4.5% Convertible Senior Notes. The decrease of \$2.7 million is primarily attributable to the redemption of the remaining \$88.0 million of these notes during the year ended December 31, 2022.

Unsecured junior subordinated debentures. The increase of \$1.8 million for the comparative years ended December 31, 2023 and 2022 was attributable to an increase in benchmark rates over the comparative periods.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

Average Net Yield and Average Cost of Funds:

The following table presents the average net yield and average cost of funds for the years ended December 31, 2023 and 2022 (dollars in thousands, except amounts in footnotes):

	Year Ended December 31, 2023			Year Ended December 31, 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⁾	\$ 1,956,221	\$ 184,321	9.42 %	\$ 2,000,737	\$ 125,035	6.25 %
Legacy CRE loan	—	—	— %	158	29	18.08 %
CRE mezzanine loan	4,700	13	0.27 %	4,700	475	9.96 %
Other	80,998	3,132	3.87 %	85,729	735	0.86 %
Total interest income/average net yield	2,041,919	187,466	9.18 %	2,091,324	126,274	6.04 %
Interest-bearing liabilities						
Collateralized by:						
CRE whole loans ⁽³⁾	1,545,875	(115,126)	(7.45) %	1,578,403	(65,356)	(4.09) %
General corporate debt:						
Unsecured junior subordinated debentures	51,548	(4,814)	(9.21) %	51,548	(3,020)	(5.78) %
4.50% Convertible Senior Notes ⁽⁴⁾	—	—	— %	34,252	(2,690)	(7.75) %
5.75% Senior Unsecured Notes ⁽⁵⁾	147,823	(9,258)	(6.26) %	147,209	(9,219)	(6.26) %
12.00% Senior Unsecured Notes ⁽⁶⁾⁽⁷⁾	—	—	— %	—	(306)	— %
Hedging ⁽⁸⁾	—	(1,593)	— %	—	(1,733)	— %
Total interest expense/average cost of funds	1,745,246	(130,791)	(7.40) %	1,811,412	(82,324)	(4.38) %
Total net interest income		\$ 56,675			\$ 43,950	

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

(2)Includes fee income of \$8.0 million and \$9.4 million recognized on our floating-rate CRE whole loans for the years ended December 31, 2023 and 2022, respectively.

(3)Includes amortization expense of \$5.3 million and \$6.6 million for the years ended December 31, 2023 and 2022, respectively.

(4)Includes aggregated amortization expense of \$1.1 million for the year ended December 31, 2022.

(5)Includes amortization expense of \$633,000 and \$594,000 for the years ended December 31, 2023 and 2022, respectively.

(6)Includes amortization expense of \$306,000 for the year ended December 31, 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 \$75.0 million of principal of additional notes. The interest expense incurred during the year ended December 31, 2022 was composed of amortization of deferred debt issuance costs on the remaining availability.

(8)Includes net amortization expense of \$1.6 million and \$1.7 million for the years ended December 31, 2023 and 2022, respectively, on 20 and 22 terminated interest rate 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, will be amortized as an expense over the remaining life of the debt.

Real Estate Income and Other Revenue

The following table sets forth information relating to our real estate income and other revenue for the comparative years ended December 31, 2023 and 2022 (dollars in thousands):

	Years Ended December 31,			
	2023	2022	Dollar Change	Percent Change
Real estate income and other revenue:				
Real estate income	\$ 34,311	\$ 31,129	\$ 3,182	10 %
Other revenue	145	91	54	59 %
Total	<u>\$ 34,456</u>	<u>\$ 31,220</u>	<u>\$ 3,236</u>	10 %

Aggregate real estate income and other revenue increased by \$3.2 million for the comparative years ended December 31, 2023 and 2022 and was primarily attributable to the acquisition of a hotel property in April 2022, a property acquired through a deed-in-lieu of foreclosure in June 2023 and an increase to 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 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.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

Operating Expenses

Year Ended December 31, 2023 as compared to the Year Ended December 31, 2022

The following table sets forth information relating to our operating expenses for the years presented (dollars in thousands):

	Years Ended December 31,			
	2023	2022	Dollar Change	Percent Change
Operating expenses:				
General and administrative	\$ 10,512	\$ 10,575	\$ (63)	(1)%
Real estate expenses	38,913	33,854	5,059	15%
Management fees - related party	7,462	7,035	427	6%
Equity compensation - related party	2,578	3,562	(984)	(28)%
Corporate depreciation and amortization	91	85	6	7%
Provision for credit losses, net	10,902	12,295	(1,393)	(11)%
Total	<u>\$ 70,458</u>	<u>\$ 67,406</u>	<u>\$ 3,052</u>	5%

Aggregate operating expenses increased by \$3.1 million for the comparative years ended December 31, 2023 and 2022. We attribute the changes to the following:

General and administrative. General and administrative expenses decreased by \$63,000 for the comparative years ended December 31, 2023 and 2022. The following table summarizes the information relating to our general and administrative expenses for the years presented (dollars in thousands):

	Years Ended December 31,			
	2023	2022	Dollar Change	Percent Change
General and administrative				
Professional services	\$ 5,007	\$ 5,464	\$ (457)	(8)%
D&O insurance	1,168	1,380	(212)	(15)%
Wages and benefits	1,486	1,227	259	21%
Operating expenses	1,069	867	202	23%
Director fees	825	825	-	(—)%
Dues and subscriptions	823	755	68	9%
Travel	53	49	4	8%
Tax penalties, interest & franchise tax	81	8	73	913%
Total	<u>\$ 10,512</u>	<u>\$ 10,575</u>	<u>\$ (63)</u>	(1)%

The decrease in general and administrative expenses for the comparative years ended December 31, 2023 and 2022 was primarily attributable to (i) a decrease in professional services in connection with legal expenses incurred during the year ended December 31, 2022 pertaining to the liquidation of 2020-RSO8 and 2020-RSO9 compounded by reimbursement from a borrower for legal costs during the year ended December 31, 2023, (ii) a decrease in marketing expenses over the comparative periods and (iii) the timing of CRE valuations for the year end audit.

Real estate expenses. The increase of \$5.1 million for the comparative years ended December 31, 2023 and 2022 was primarily attributable to the acquisition of a hotel in April 2022. The increase was also attributable 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.

Management fees - related party. The increase of \$427,000 was primarily attributed to an increase in incentive based management fees. Our Manager earned a higher fee due to certain hurdles being met per the management agreement.

Equity compensation - related party. The decrease of \$984,000 was primarily attributable to the full vesting of shares granted in the second quarter 2022 and the second quarter 2021 under our Manager Incentive Plan.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

Provision for credit losses, net. The provision for credit losses was \$10.9 million for the year ended December 31, 2023 compared to the provision for credit losses of \$12.3 million for the year ended December 31, 2022. The decrease of the provision year over year is primarily related to a decrease in size of the loan portfolio during 2023, offset partially by modeled increases in general portfolio credit risk compounded by ongoing uncertainty around the commercial real estate market's current macroeconomic outlook.

Other Income (Expense)

Year Ended December 31, 2023 as compared to Year Ended December 31, 2022

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

	Years Ended December 31,			
	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	527	1,588	(1,061)	(67)%
Total	\$ 1,272	\$ 2,998	\$ (1,726)	(58)%

Aggregate other income (expense) decreased \$1.7 million for the comparative years ended December 31, 2023 and 2022. We attribute the change to the following:

Loss on extinguishment of debt. There were no losses on extinguishment of debt in the year ended December 31, 2023. The loss of \$460,000 for the year ended December 31, 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 \$1.1 million during the year ended December 31, 2023 was primarily attributed to the sale of a hotel property in the Northeast region in February 2023 that generated non-recurring gains 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.

Other Income. The decrease of \$1.0 million during the comparative years ended December 31, 2023 and 2022 was primarily attributable to a loan recovery received during the year ended December 31, 2022 on a middle market loan that was previously charged off in a prior fiscal year.

Financial Condition

Summary

Our total assets were \$2.2 billion at December 31, 2023 as compared to \$2.4 billion at December 31, 2022.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

Investment Portfolio

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

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

(1) Net carrying amount includes an allowance for credit losses of \$28.8 million and \$18.8 million at December 31, 2023 and 2022, respectively.

(2) Includes real estate related right of use assets of \$19.2 million and \$19.5 million, intangible assets of \$7.9 million and \$8.9 million, lease liabilities of \$44.3 million and \$42.9 million, mortgages payable of \$41.8 million and \$18.2 million and other liabilities of \$27,000 and \$64,000 at December 31, 2023 and 2022, respectively.

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

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

CRE loans. During the year ended December 31, 2023, we originated \$68.2 million of floating-rate CRE whole loan commitments. Loan payoffs during the year ended December 31, 2023 were \$293.1 million and net funded commitments were \$40.5 million, producing a net decrease of \$184.4 million in the par balance of the portfolio.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

The following is a summary of our loans at December 31, 2023 and 2022 (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⁾
At December 31, 2023:								
CRE loans held for investment:								
Whole loans ⁽⁵⁾⁽⁶⁾⁽⁷⁾	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
Total CRE loans held for investment		<u>\$ 1,862,965</u>	<u>\$ (5,872)</u>	<u>\$ 1,857,093</u>	<u>\$ (28,757)</u>	<u>\$ 1,828,336</u>		
At December 31, 2022:								
CRE loans held for investment:								
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
Mezzanine loan ⁽⁵⁾	1	4,700	—	4,700	(4,700)	—	10.00%	June 2028
Total CRE loans held for investment		<u>\$ 2,070,204</u>	<u>\$ (12,614)</u>	<u>\$ 2,057,590</u>	<u>\$ (18,803)</u>	<u>\$ 2,038,787</u>		

(1) Amounts include unamortized loan origination fees of \$5.8 million and \$12.3 million and deferred amendment fees of \$110,000 and \$308,000 at December 31, 2023 and 2022, respectively.

(2) Benchmark rates ("BR") comprise one-month LIBOR or one-month Term SOFR. At December 31, 2023, all of our whole loans used one-month Term SOFR. Weighted-average one-month benchmark rates were 5.39% and 4.21% at December 31, 2023 and 2022, respectively. Additionally, weighted-average benchmark floors were 0.70% and 0.68% at December 31, 2023 and 2022, 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 three whole loans, with amortized costs of \$41.2 million, in maturity default at December 31, 2023 and three whole loans, with amortized costs of \$51.6 million, in maturity default at December 31, 2022.

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

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

(7) In December 2023, we sold at par four hotel loans with a par value of \$77.2 million.

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

Investments in unconsolidated entities. Our investments in unconsolidated entities at December 31, 2023 and 2022 comprised a 100% interest in the common shares 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. We record our 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 years ended December 31, 2023 and 2022, we recorded dividends from the investments in RCT I's and RCT II's common shares, reported in other revenue on the consolidated statements of operations, of \$145,000 and \$91,000, respectively.

Investments in real estate and property held for sale. At December 31, 2023, 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.

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

[\(Back to Index\)](#)

[\(Back to Index\)](#)

trade payables, resulting in a charge off of the loan against our allowance for credit losses of \$948,000. At December 31, 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 December 31, 2023 (in thousands, except amounts in the footnotes):

	Cost Basis	December 31, 2023 Accumulated Depreciation & Amortization	Carrying Value
Assets acquired:			
Investments in real estate, equity:			
Investments in real estate ⁽¹⁾	\$ 162,662	\$ (5,041)	\$ 157,621
Right of use assets ⁽²⁾⁽³⁾	19,664	(478)	19,186
Intangible assets ⁽⁴⁾	11,474	(3,592)	7,882
Subtotal	193,800	(9,111)	184,689
Investments in real estate from lending activities:			
Properties held for sale ⁽⁵⁾	62,605	—	62,605
Total	256,405	(9,111)	247,294
Liabilities assumed:			
Investments in real estate, equity:			
Mortgages payable	40,297	1,489	41,786
Other liabilities	247	(220)	27
Lease liabilities ⁽³⁾⁽⁶⁾	43,538	—	43,538
Subtotal	84,082	1,269	85,351
Investments in real estate from lending activities:			
Liabilities held for sale ⁽⁷⁾	3,025	—	3,025
Total	87,107	1,269	88,376
Total net investments in real estate and properties held for sale ⁽⁸⁾	<u>\$ 169,298</u>		<u>\$ 158,918</u>

(1)Includes \$38.4 million of land, which is not depreciable. Also includes \$44.9 million of construction in progress, which is also not depreciable until placed in service.

(2)Primarily comprises a \$19.2 million right of use asset, associated with an acquired ground lease of \$43.2 million (see below) accounted for as an operating lease. Amortization is booked to real estate expenses on the consolidated statements of operations.

(3)Refer to Note 9 in the Notes to the Consolidated Financial Statements for additional information on our remaining operating leases.

(4)Primarily comprises a franchise intangible of \$4.7 million, a management contract intangible of \$2.9 million, and a customer list intangible of \$223,000.

(5)Comprises one property acquired in November 2020 and one property acquired via deed-in-lieu of foreclosure in June 2023.

(6)Primarily comprises a \$43.2 million ground lease with a remaining term of 93 years. Lease expenses for the year ended December 31, 2023 were \$2.7 million.

(7)Comprises an operating lease 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.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

The following tables show the activity in the allowance for credit losses for the years ended December 31, 2023 and 2022 (in thousands):

	Years Ended December 31,	
	2023	2022
Allowance for credit losses at beginning of year	\$ 18,803	\$ 8,805
Provision for credit losses	10,902	12,295
Charge offs	(948)	(2,297)
Allowance for credit losses at end of year	<u>\$ 28,757</u>	<u>\$ 18,803</u>

During the year ended December 31, 2023, we recorded provisions for expected credit losses of \$10.9 million, primarily driven by increased modeled portfolio credit risk compounded by 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 year ended December 31, 2022, we recorded provisions for expected credit losses of \$12.3 million, primarily driven by macroeconomic factors, including expected increases in inflation, short-term interest rates that collateralize our loans, energy prices and continued global supply chain dislocation trending negative, compounded by an increase in portfolio credit risk indicated in property-level cash flows.

In addition to our general estimate of credit losses, we may also be required to individually evaluate collateral-dependent loans for credit losses if it has determined that foreclosure or sale of the loan or the underlying collateral is probable. At both December 31, 2023 and 2022, \$4.7 million of our allowance for credit losses resulted from collateral-dependent loans that were individually evaluated for credit losses, details of which follow:

At December 31, 2023 and 2022, we individually evaluated the following loans:

- One office mezzanine loan in the Northeast region with a principal balance of \$4.7 million at both December 31, 2023 and 2022. We fully reserved this loan in the fourth quarter of 2022, and it continues to be fully reserved at December 31, 2023. The 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 December 31, 2023 and 2022, 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 has been placed on nonaccrual status. During the year ended December 31, 2023, the borrower filed for bankruptcy and the third-party winning bidder from the auction sale is anticipated to close during fiscal year 2024 at a purchase price of \$8.3 million. As a requirement of the auction sale, the winning bidder posted a 10% non-refundable deposit. The sale price and an as-is appraised value are in excess of its principal, and, as such, the loan had no allowance for CECL at both December 31, 2023 and 2022.
- One office loan in the Southwest region with a principal balance of \$19.1 million and \$20.7 million at December 31, 2023 and 2022, respectively, for which foreclosure was determined 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. However, in exchange for payments, comprising principal paydowns, interest payments and the reimbursement of certain legal fees, received between October 2022 and January 2024, we have agreed to temporarily defer our right to foreclose on the property until April 2024. In February 2024, we had cash escrows of \$4.8 million available to support debt service payments for the loan. Additionally, at both December 31, 2023 and 2022, this loan had an as-is appraised value are in excess of its principal and interest balances, and, as such, the loan had no CECL allowance.

Also, at December 31, 2023, we individually evaluated one additional loan, which had not been evaluated in the prior year:

- 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 has been 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 December 31, 2023.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

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 the loans with the lowest credit quality. 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.

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	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> Property performance lags behind underwritten expectations. Occupancy is not stabilized and the property has some tenancy rollover.
4	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> 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. Historically, mezzanine loans and preferred equity investments may have experienced 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.

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

	Rating 1	Rating 2	Rating 3	Rating 4	Rating 5	Total ⁽¹⁾
At December 31, 2023:						
Whole loans, floating-rate	\$ —	\$ 973,424	581,032	\$ 256,785	\$ 41,152	\$1,852,393
Mezzanine loan	—	—	—	—	4,700	4,700
Total	<u>\$ —</u>	<u>\$ 973,424</u>	<u>\$ 581,032</u>	<u>\$ 256,785</u>	<u>\$ 45,852</u>	<u>\$1,857,093</u>
At December 31, 2022:						
Whole loans, floating-rate	\$ —	\$ 1,635,376	\$ 309,491	\$ 85,226	\$ 22,797	\$2,052,890
Mezzanine loan	—	—	—	—	4,700	4,700
Total	<u>\$ —</u>	<u>\$ 1,635,376</u>	<u>\$ 309,491</u>	<u>\$ 85,226</u>	<u>\$ 27,497</u>	<u>\$2,057,590</u>

[\(Back to Index\)](#)

[\(Back to Index\)](#)

(1)The total amortized cost of CRE loans excluded accrued interest receivable of \$11.8 million and \$11.9 million at December 31, 2023 and 2022, respectively.

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⁾
At December 31, 2023:							
Whole loans, floating-rate: ⁽²⁾							
Rating 2	\$ 63,634	\$ 212,175	\$ 636,487	\$ 22,556	\$ 38,572	\$ —	\$ 973,424
Rating 3	—	168,791	364,369	34,232	—	13,640	581,032
Rating 4	—	82,918	123,333	—	5,645	44,889	256,785
Rating 5	—	14,000	—	—	19,127	8,025	41,152
Total whole loans, floating-rate	63,634	477,884	1,124,189	56,788	63,344	66,554	1,852,393
Mezzanine loan (rating 5)	—	—	—	—	—	4,700	4,700
Total	<u>\$ 63,634</u>	<u>\$ 477,884</u>	<u>\$ 1,124,189</u>	<u>\$ 56,788</u>	<u>\$ 63,344</u>	<u>\$ 71,254</u>	<u>\$ 1,857,093</u>
Current Period Gross Write-Offs	\$ —	\$ —	\$ —	\$ —	\$ (948)	\$ —	\$ (948)

	2022	2021	2020	2019	2018	Prior	Total ⁽¹⁾
At December 31, 2022:							
Whole loans, floating-rate: ⁽²⁾							
Rating 2	\$ 526,606	\$ 1,003,060	\$ 64,944	\$ 26,977	\$ 13,789	\$ —	\$ 1,635,376
Rating 3	—	192,490	44,657	27,881	44,463	—	309,491
Rating 4	—	—	—	20,742	64,484	—	85,226
Rating 5	—	—	—	22,797	—	—	22,797
Total whole loans, floating-rate	526,606	1,195,550	109,601	98,397	122,736	—	2,052,890
Mezzanine loan (rating 4)	—	—	—	—	4,700	—	4,700
Total	<u>\$ 526,606</u>	<u>\$ 1,195,550</u>	<u>\$ 109,601</u>	<u>\$ 98,397</u>	<u>\$ 127,436</u>	<u>\$ —</u>	<u>\$ 2,057,590</u>
Current Period Gross Write-Offs	\$ —	\$ —	\$ —	\$ —	\$ —	\$ (2,297)	\$ (2,297)

(1)The total amortized cost of CRE loans excluded accrued interest receivable of \$11.8 million and \$11.9 million at December 31, 2023 and 2022, respectively.

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

We had one additional mezzanine loan that was included in assets held for sale, and that loan had no carrying value at December 31, 2023 and 2022.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

Loan Portfolios 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
At December 31, 2023:							
Whole loans, floating-rate					1,811,24	1,852,39	
	\$ —	\$ —	\$ 41,152	\$ 41,152	\$ 1	\$ 3	\$ 19,127
Mezzanine loan ⁽⁴⁾	—	—	4,700	4,700	—	4,700	—
					1,811,24	1,857,09	
Total	\$ —	\$ —	\$ 45,852	\$ 45,852	\$ 1	\$ 3	\$ 19,127
At December 31, 2022:							
Whole loans, floating-rate					2,024,12	2,052,89	
	\$ —	\$ —	\$ 28,767	\$ 28,767	\$ 3	\$ 0	\$ —
Mezzanine loan ⁽⁴⁾	—	—	—	—	4,700	4,700	—
					2,028,82	2,057,59	
Total	\$ —	\$ —	\$ 28,767	\$ 28,767	\$ 3	\$ 0	\$ —

(1) During the years ended December 31, 2023 and 2022, we recognized interest income of \$4.2 million and \$1.8 million, respectively, on three loans with principal payments past due greater than 90 days at December 31, 2023.

(2) Includes 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 \$11.8 million and \$11.9 million at December 31, 2023 and 2022, respectively.

(4) Fully reserved at both December 31, 2023 and 2022.

At December 31, 2023, we had three CRE whole loans, with total amortized costs of \$41.2 million, and one mezzanine loan, with a total amortized cost of \$4.7 million, in payment default. At December 31, 2022, we had three CRE whole loans, with total amortized costs of \$51.6 million, in payment default.

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 year ended December 31, 2023, we entered into one CRE whole loan modification that: (i) extended the maturity from December 2023 to December 2025, (ii) reduced its interest rate from BR+500 to BR+250, and (iii) modified its payment terms and will accrue to the lesser of net operating cash flow or BR+250. Any unpaid interest will be due at loan payoff. At December 31, 2023, this loan had an amortized cost of \$44.9 million, which represented 2.4% of the total amortized cost of the portfolio.

During the year ended December 31, 2022, we entered into three agreements that extended one CRE whole loan for a borrower experiencing financial difficulty. At December 31, 2022, this loan had an amortized cost of \$20.7 million, which represented 1.0% of the total amortized cost of the portfolio. At December 31, 2023, this loan was in payment default.

Restricted Cash

At December 31, 2023, we had restricted cash of \$8.4 million, which consisted of \$7.6 million held in reserve for a construction loan and \$800,000 held in escrow for deposits or tax payments at our real estate properties or pledged with minimum reserve balance requirements. At December 31, 2022, we had restricted cash of \$38.6 million, which consisted of \$38.2 million held within our five consolidated securitization entities and \$400,000 held in escrow for deposits or tax payments at our real estate properties or pledged with minimum reserve balance requirements.

The decrease of \$30.2 million was primarily attributable to reinvesting the proceeds in two of our securitizations prior to the end of their reinvestment periods partially offset by the reserve held for a construction loan on one of our real estate investments.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

Accrued Interest Receivable

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

	December 31,		
	2023	2022	Net Change
Accrued interest receivable from loans	\$ 11,750	\$ 11,936	\$ (186)
Accrued interest receivable from promissory note, escrow, sweep and reserve accounts	33	33	—
Total	<u>\$ 11,783</u>	<u>\$ 11,969</u>	<u>\$ (186)</u>

Other Assets

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

	December 31,		
	2023	2022	Net Change
Tax receivables and prepaid taxes	\$ 214	\$ 224	\$ (10)
Other receivables	565	1,086	(521)
Other prepaid expenses	1,913	2,181	(268)
Fixed assets - non real estate	281	326	(45)
Other assets, miscellaneous	617	547	70
Total	<u>\$ 3,590</u>	<u>\$ 4,364</u>	<u>\$ (774)</u>

The decrease of \$774,000 in other assets was primarily attributable to decreases in various receivable and prepaid accounts held at our real estate properties.

Deferred Tax Assets

At both December 31, 2023 and 2022, our net deferred tax asset was zero, resulting from a full valuation allowance of \$21.1 million and \$21.2 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 all of our 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 December 31, 2023 and 2022, we had losses of \$5.0 million and \$6.6 million, respectively, recorded in accumulated other comprehensive loss, which will be amortized into earnings over the remaining life of the debt. During the years ended December 31, 2023 and 2022, we recorded amortization expense, reported in interest expense on the consolidated statements of operations, of \$1.7 million and \$1.8 million, respectively.

At December 31, 2023 and 2022, we had unrealized gains of \$164,000 and \$256,000, 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 the years ended December 31, 2023 and 2022, we recorded accretion income, reported in interest expense on the consolidated statements of operations, of \$91,000 in each year.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

The following table presents the effect of derivative instruments on our consolidated statements of operations for the years presented (in thousands):

	Consolidated Statements of Operations Location	Realized and Unrealized Loss ⁽¹⁾	
		Year Ended December 31, 2023	Year Ended December 31, 2022
Interest rate swap contracts, hedging	Interest expense	\$ (1,593)	\$ (1,733)

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

Financing Arrangements

Borrowings under our financing arrangements are guaranteed by us or one or more of our subsidiaries. The following table sets forth certain information with respect to our borrowings (dollars in thousands, except amounts in footnotes):

	December 31, 2023				December 31, 2022			
	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⁾	\$ 61,568	\$ 157,722	7	9.14%	\$ 87,890	\$ 196,837	8	7.94%
CRE - Term Warehouse Financing Facilities								
JPMorgan Chase Bank, N.A. ⁽³⁾	74,694	125,044	4	7.82%	186,783	255,095	11	6.74%
Morgan Stanley Mortgage Capital Holdings LLC ⁽⁴⁾	93,894	129,037	7	8.07%	141,505	198,455	10	7.00%
Mortgages Payable								
ReadyCap Commercial, LLC ⁽⁵⁾	19,365	25,400	1	9.16%	18,244	25,400	1	8.08%
Oceanview Life and Annuity Company ⁽⁶⁾⁽⁷⁾	7,330	58,339	1	11.37%	—	—	—	—%
Florida Pace Funding Agency ⁽⁶⁾⁽⁸⁾	15,091	—	—	7.26%	—	—	—	—%
Total	<u>\$ 271,942</u>	<u>\$ 495,542</u>			<u>\$ 434,422</u>	<u>\$ 675,787</u>		

(1) Includes \$2.9 million and \$3.7 million of deferred debt issuance costs at December 31, 2023 and 2022, respectively.

(2) Outstanding borrowings includes accrued interest payable.

(3) Includes \$1.6 million and \$1.1 million of deferred debt issuance costs at December 31, 2023 and 2022, respectively.

(4) Includes \$647,000 and \$1.4 million of deferred debt issuance costs at December 31, 2023 and 2022, respectively.

(5) Includes \$259,000 and \$466,000 of deferred debt issuance costs at December 31, 2023 and 2022.

(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 \$1.3 million of deferred debt issuance costs at December 31, 2023. There were no deferred debt issuance costs at December 31, 2022.

(8) Includes \$419,000 of deferred debt issuance costs at December 31, 2023. There were no deferred debt issuance costs at December 31, 2022.

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

[\(Back to Index\)](#)

[\(Back to Index\)](#)

Senior Secured Financing Facility

On July 31, 2020, our indirect, wholly owned subsidiary ("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"). The asset-based revolving loan facility (the "MassMutual Facility") provided under the MassMutual Loan Agreement has been used to finance our core CRE lending business. The MassMutual Facility initially had an interest rate of 5.75% per annum payable monthly and matured on July 31, 2027. We paid a commitment fee as well as other reasonable closing costs. The loans under the MassMutual Facility were available for drawing during the first two years of the MassMutual Facility (the "Availability Period"). During the first two years, an unused commitment fee of 0.50% per annum (payable monthly) on unused commitments under the MassMutual Loan Agreement was payable for each day on which less than 75% of the total commitment was drawn.

In connection with the MassMutual Loan Agreement, we entered into a Guaranty (the "MassMutual Guaranty") among ourselves, Exantas Real Estate Funding 2018-RSO6 Investor, LLC ("RSO6"), Exantas Real Estate Funding 2019-RSO7 Investor, LLC ("RSO7") and Exantas Real Estate Funding 2020-RSO8 Investor, LLC ("RSO8"), each our indirect, wholly owned subsidiary, in favor of the secured parties under the MassMutual Loan Agreement. As of December 31, 2022, RSO6, RSO7 and RSO8 no longer exist. Pursuant to the MassMutual Guaranty, we fully guaranteed all payments and performance of Holdings and the Borrower under the MassMutual Loan Agreement. Additionally, we, and previously RSO6, RSO7 and RSO8, made certain representations and warranties and agreed to not incur debt or liens, each subject to certain exceptions, and agreed to provide the Lenders with certain information.

In September 2020, the MassMutual Loan Agreement was amended pursuant to which (i) the initial portfolio assets were revised and an agreed advance rate for each initial portfolio asset (each, an "Initial Portfolio Asset Advance Rate") was set, and (ii) the revolving loan facility under the MassMutual Loan Agreement was amended to require the initial lender (currently MassMutual) to provide a specific advance rate for any future eligible portfolio assets and to limit the aggregate total amount of advances outstanding at any time to both the total facility amount and, in lieu of a 55% LTV, a borrowing base as of any required date of determination equal to the sum of, in each case, the product of the advance rate for such eligible portfolio asset (including in respect of the initial portfolio assets, the applicable Initial Portfolio Asset Advance Rate therefor) and the then determined value of such eligible portfolio asset.

The MassMutual Loan Agreement was further amended in several instances pursuant to which (i) MassMutual consented to the formation of certain subsidiaries to hold real estate and (ii) such subsidiaries agreed to enter into guaranty agreements in favor of the secured parties under the MassMutual Loan Agreement.

In July 2022, Holdings, the Borrower and the Lenders entered into the Fifth Amendment to the MassMutual Loan Agreement (the "Amendment") to (i) extend the availability period from July 31, 2022 to August 31, 2022 and (ii) amend the interest rate on the outstanding principal amount of the borrowings, with respect to borrowings made in connection with eligible portfolio assets transferred to any borrower after the effective date of the Amendment to the rate per annum determined by the initial lender and otherwise, 5.75% per annum. In August 2022, Holdings, the Borrower and the Lenders entered into the Sixth Amendment to the MassMutual Loan Agreement to extend the availability period from August 31, 2022 to October 15, 2022.

In December 2022, Holdings, the Borrower and the Lenders entered into an Amended and Restated Loan and Servicing Agreement, which amends and restates the existing loan and servicing 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 end of the issuance date for the loan series unless an additional time is mutually agreed upon by Lenders and Borrower. The advance rate on portfolio assets will be mutually agreed upon by 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.

The Amended and Restated Loan and Servicing 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 and include declaring the final maturity date to have occurred and advances due and liquidation of the assets securing the series.

Pursuant to the Amended and Restated Loan Agreement, the Borrower's obligations under the MassMutual Loan Agreement are secured by the Borrower's assets and Holdings' equity interests in the Borrower, including all distributions, proceeds and profits from Holdings' interests in the Borrower

[\(Back to Index\)](#)

[\(Back to Index\)](#)

CRE - Term Warehouse Financing Facilities

In February 2012, an indirect wholly-owned subsidiary of ours entered into a master repurchase and securities agreement, which was subsequently replaced with an amended and restated master repurchase agreement in July 2018, (the "Wells Fargo Facility") with Wells Fargo Bank, N.A. ("Wells Fargo") to finance the origination of CRE loans. In October 2021, the Wells Fargo Facility matured.

In April 2018, an indirect wholly-owned subsidiary of ours entered into a master repurchase agreement (the "Barclays Facility") with Barclays to finance the origination of CRE loans. In connection with the Barclays Facility, we entered into a guaranty agreement (the "Barclays Guaranty") pursuant to which we fully guaranteed all payments and performance under the Barclays Facility. In March 2021, we amended the Barclays Facility to extend the revolving period through October 2021. In October 2021, we amended the revolving period of the Barclays Facility to October 2022 and modified the guaranty to limit financial covenants to be applicable when there are outstanding transactions. In February 2022, we 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 and Securities Contract Agreement (the "JPMorgan Chase Facility") with JPMorgan Chase to finance the origination of CRE loans. In connection with the JPMorgan Chase Facility, we entered into a guarantee agreement (the "JPMorgan Chase Guarantee") pursuant to which we fully guaranteed all payments and performance under the JPMorgan Chase Facility. The JPMorgan Chase Facility has a maximum facility amount of \$250.0 million, charges interest of one-month benchmark plus market spreads and had an initial maturity date of October 2024.

In May 2020, we entered into an amendment to the JPMorgan Chase Guarantee that revised its minimum equity financial covenant as of February 29, 2020. In October 2020, we entered into an amendment to the JPMorgan Chase Guarantee that revised a covenant definition so that credit losses are determined in accordance with a risk rating-based methodology. In September and October 2021, the JPMorgan Chase Facility was amended twice, resulting in (i) the extension of the JPMorgan Chase Facility's maturity date to October 2024, (ii) an update to our tangible net worth requirement and minimum liquidity covenant as set forth in the guarantee agreement and (iii) a modification of market terms regarding the replacement of LIBOR upon determination of a benchmark transition event. In November 2022, the JPMorgan Chase Facility was amended for the following (i) EBITDA to interest expense ratio, (ii) maximum ratio of total indebtedness to its total equity, and (iii) minimum unencumbered liquidity requirement, each through September 2023. In July 2023, the JPMorgan Chase Facility was amended to extend the maturity date to July 2026, as well as 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 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. Each repurchase transaction will specify its own terms, such as identification of the assets subject to the transaction, sale price, repurchase price and rate. In January 2022, such subsidiary entered into the First Amendment to Master Repurchase and Securities Contract Agreement (the "Morgan Stanley Amendment") with Morgan Stanley, which amended the Morgan Stanley Facility to add market terms regarding the replacement of LIBOR upon determination of a benchmark transition event. In November 2022, the Morgan Stanley Facility was amended for the following (i) EBITDA to interest expense ratio, (ii) maximum ratio of total indebtedness to its total equity, and (iii) minimum unencumbered liquidity requirement, each through March 2024. In November 2023, the Morgan Stanley 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. The Morgan Stanley Facility has a maximum facility amount of \$250.0 million, charges interest of one-month benchmark plus market spreads and matures in November 2024. We also have the right to request an extension for an additional one-year period.

Mortgages Payable

In April 2022, Chapel Drive West, LLC, a wholly owned subsidiary of Charles Street – ACRES FSU Student Venture, LLC (the "FSU Student Venture") 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. 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. 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.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

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"). 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, we 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 made by Chapel Drive East, LLC. 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 the 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.

Securitizations

XAN 2019-RSO7

In April 2019, we closed XAN 2019-RSO7, a \$687.2 million CRE securitization transaction that provided financing for transitional CRE loans. In May 2021, we exercised the optional redemption on XAN 2019-RSO7 in conjunction with the closing of ACR 2021-FL1 (see below).

XAN 2020-RSO8

In March 2020, we closed XAN 2020-RSO8, a \$522.6 million CRE debt securitization transaction that provided financing for CRE loans. In March 2022, we 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, we closed XAN 2020-RSO9, a \$297.0 million CRE debt securitization transaction that provided financing for CRE loans. In February 2022, we 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, we closed ACR 2021-FL1, a \$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. 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.

All of the 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.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

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 included a reinvestment period, which ended in December 2023, that allowed 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. 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.

All of the 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.

At December 31, 2023, we retain equity in the following securitizations (in thousands, except amounts in footnotes):

	Closing Date	Maturity Date	Reinvestment Period End (1)	Total Note Paydowns from Closing Date through December 31, 2023
ACR 2021-FL1	May 2021	June 2036	May 2023	\$ 32,183
ACR 2021-FL2	December 2021	January 2037	December 2023	\$ —

(1)The reinvestment period is the period in which principal proceeds received may be used to acquire new CRE loans or the funded commitments of existing collateral for reinvestment into the securitization.

Corporate Debt

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

The rights of holders of common securities of RCT I and RCT II are subordinate to the rights of the holders of capital securities only in the event of a default; otherwise, the common securities' economic and voting rights are pari passu with the capital securities. The capital and common securities of RCT I and RCT II are subject to mandatory redemption upon the maturity or call of the junior subordinated debentures held by each. Unless earlier dissolved, RCT I will dissolve in May 2041 and RCT II will dissolve in September 2041. The junior subordinated debentures are the sole assets of RCT I and RCT II, which mature in June 2036 and October 2036, respectively, and may currently be called at par.

4.50% Convertible Senior Notes

We issued \$143.8 million aggregate principal of our 4.50% convertible senior notes due 2022 ("4.50% Convertible Senior Notes") in August 2017.

During the year ended December 31, 2021, we repurchased \$55.7 million of our 4.50% Convertible Senior Notes, resulting in a charge to earnings of \$1.5 million, comprising an extinguishment of debt charge of \$1.2 million in connection with the acceleration of the market discount and interest expense of \$304,000 in connection with the acceleration of deferred debt issuance costs.

During the year ended December 31, 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 costs. In August 2022, the remaining \$48.2 million of outstanding 4.5% Convertible Senior Notes were paid off upon maturity at par.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

Senior Unsecured Notes

5.75% Senior Unsecured Notes Due 2026

On August 16, 2021, we issued \$150.0 million of our 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. On or after May 15, 2026, we may at our 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.

The Indenture contains restrictive covenants that, among other things, require us to maintain certain financial ratios. The foregoing limitations are subject to exceptions as set forth in the Supplemental Indenture. At December 31, 2023, we were in compliance with these covenants. The Indenture provides for customary events of default that include, among other things (subject in certain cases to customary grace and cure periods): (i) non-payment of principal or interest, (ii) breach of certain covenants contained in the Indenture or the 5.75% Senior Unsecured Notes, (iii) an event of default or acceleration of certain other indebtedness of ours or a subsidiary in which we have invested at least \$75 million in capital within the applicable grace period and (iv) certain events of bankruptcy or insolvency. Generally, if an event of default occurs (subject to certain exceptions), CTC or the holders of at least 25% in aggregate principal amount of the then outstanding 5.75% Senior Unsecured Notes may declare all of the notes to be due and payable.

12.00% Senior Unsecured Notes

On July 31, 2020, we entered into the Note and Warrant Purchase Agreement with Oaktree Capital Management, L.P. ("Oaktree") and MassMutual pursuant to which we could have issued to Oaktree and MassMutual from time to time up to \$125.0 million aggregate principal amount of 12.00% Senior Unsecured Notes. The 12.00% Senior Unsecured Notes had an annual interest rate of 12.00%, payable up to 3.25% (at our election) as pay-in-kind interest and the remainder as cash interest. On July 31, 2020, we issued to Oaktree \$42.0 million aggregate principal amount of the 12.00% Senior Unsecured Notes. In addition, on July 31, 2020, we issued to MassMutual \$8.0 million aggregate principal amount of the 12.00% Senior Unsecured Notes. At any time and from time to time prior to January 31, 2022, we could have elected to issue to Oaktree and MassMutual up to \$75.0 million aggregate principal amount of additional 12.00% Senior Unsecured Notes.

On August 18, 2021, we entered into an agreement with Oaktree and MassMutual that provided for the redemption in full of the 12.00% Senior Unsecured Notes, including a waiver of certain sections of the Note and Warrant Purchase Agreement. On August 20, 2021, the redemption was consummated and a payment to Oaktree and MassMutual was made for an aggregate \$55.3 million, which consisted of (i) principal in the amount of \$50.0 million, (ii) interest in the amount of \$329,000 and (iii) a make-whole amount of \$5.0 million. In connection with the redemption, we recorded a charge to earnings of \$8.0 million, comprising an extinguishment of debt charge of \$7.8 million in connection with (i) the \$5.0 million net make-whole amount and (ii) the \$2.8 million acceleration of the remaining market discount; and interest expense of \$218,000 in connection with the acceleration of deferred debt issuance costs.

In January 2022, we entered into an amendment of the Note and Warrant Purchase Agreement that extended the time to July 2022 that we could elect to issue to Oaktree and MassMutual up to \$75.0 million of principal of additional notes. We did not issue any additional notes under this agreement and it expired as of July 31, 2022.

Equity

Total equity at December 31, 2023 was \$446.2 million, comprising \$226.5 million of preferred equity and \$219.7 million of common equity, and gave effect to \$4.8 million of net unrealized losses on our terminated cash flow hedges, shown as a component of accumulated other comprehensive loss. Equity at December 31, 2022 was \$441.3 million, comprising \$226.5 million of preferred equity and \$214.8 million of common equity, and gave effect to \$6.4 million of net unrealized losses on our terminated cash flow hedges shown as a component of accumulated other comprehensive loss. The increase in equity during the year ended December 31, 2023 was primarily attributable to net income prior to preferred distributions, contributions from non-controlling interests and non-cash amortization of terminated cash flow hedges, partially offset by distributions on our preferred stock and common stock repurchases.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

Our preferred equity is composed of the following:

- 4.8 million shares of 8.625% fixed to 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 redeem them at any time. However, we may redeem them at our election, in whole or in part, 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 LIBOR 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.
- 4.6 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 them at any time. However, we may redeem them at our election, in whole or in part, 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 months and year ended December 31, 2023 (in thousands, except per share data and amounts in footnotes):

	Three Months Ended December 31, 2023		Year Ended December 31, 2023	
	Total Amount	Per Share Amount	Total Amount	Per Share Amount
Common stock book value at beginning of period ⁽¹⁾	\$ 211,213	\$ 25.07	\$ 208,976	\$ 24.54
Net income allocable to common shares ⁽²⁾	1,697	0.22	2,968	0.38
Change in other comprehensive income on derivatives	401	0.05	1,593	0.20
Repurchase of common stock ⁽³⁾	(4,725)	1.32	(7,408)	1.93
Impact to equity of share-based compensation	720	(0.01)	3,177	(0.40)
Total net (decrease) increase	(1,907)	1.58	330	2.11
Common stock book value at end of period ⁽⁴⁾	<u>\$ 209,306</u>	<u>\$ 26.65</u>	<u>\$ 209,306</u>	<u>\$ 26.65</u>

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

(2) The per share amounts are calculated with the denominator referenced in footnote (1) at December 31, 2023. We calculated net income per common share-diluted of \$0.20 and \$0.35 using the weighted average diluted shares outstanding during the three and twelve months ended December 31, 2023, respectively.

(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 2023, an additional \$10.0 million of outstanding shares of both common and preferred stock was authorized. We purchased 2.0 million shares for \$20.2 million through December 31, 2023. Because we repurchased our common stock at significant discounts to book value, these repurchases were accretive to per share book value since the inception of the program.

(4) We calculated common stock book value as total stockholders' equity of \$435.8 million less preferred stock equity of \$226.5 million at December 31, 2023.

Management Agreement Equity

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

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

	Amount
At December 31, 2023:	
Proceeds from capital stock issuances, net ⁽¹⁾	\$ 1,330,472
Retained earnings, net ⁽²⁾	(646,939)
Payments for repurchases of capital stock	(243,068)
Total	<u>\$ 440,465</u>

(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.

[\(Back to Index\)](#)

Earnings Available for Distribution

Commencing with our financial results for the quarter ended March 31, 2022, we replaced the term Core Earnings with the term Earnings Available for Distribution ("EAD"), and Core Earnings results from comparative reporting periods have been relabeled 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 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.

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.

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

	Years Ended December 31,			
	2023	Per Share Data	2022	Per Share Data
Net income (loss) allocable to common shares - GAAP	\$ 2,968	\$ 0.35	\$ (8,799)	\$ (1.00)
Realized gain on sale of investment in real estate	(745)	(0.09)	(1,870)	(0.21)
Net income (loss) allocable to common shares - GAAP, adjusted	\$ 2,223	\$ 0.26	\$ (10,669)	\$ (1.21)
Reconciling items from continuing operations:				
Non-cash equity compensation expense	2,578	0.30	3,562	0.40
Non-cash provision for CRE credit losses	10,902	1.27	12,295	1.39
Realized gain (loss) on sale of investment in real estate	745	0.09	(372)	(0.04)
Real estate depreciation and amortization	4,013	0.47	5,113	0.58
Non-cash amortization of discounts or premiums associated with borrowings	—	—	1,271	0.14
Net income (loss) from non-core assets ⁽¹⁾	104	0.01	(787)	(0.09)
Reconciling items from CRE assets:				
Net interest income on legacy CRE assets	—	—	(29)	—
Earnings Available for Distribution allocable to common shares	<u>\$ 20,565</u>	<u>\$ 2.40</u>	<u>\$ 10,384</u>	<u>\$ 1.17</u>
Weighted average common shares - diluted on Earnings Available for Distribution allocable to common shares	<u>8,566</u>		<u>8,877</u>	
Earnings Available for Distribution per common share - diluted	<u>\$ 2.40</u>		<u>\$ 1.17</u>	

(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 designated as held for sale and (v) other non-CRE assets included in assets held for sale.

For the year ended December 31, 2023, EAD in accordance with the Management Agreement, which excludes incentive compensation payable, was \$21.5 million, or \$2.51 per common share outstanding. We incurred incentive compensation payable of \$895,000 for the year ended December 31, 2023.

Incentive Compensation Hurdle

Prior to the 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 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").

With respect to each fiscal quarter commencing with the quarter ended December 31, 2022, an incentive 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 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 December 31, 2023 (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	26,782
Amount paid to repurchase common stock after October 1, 2022 ⁽¹⁾	(2,996)
Incentive Compensation paid after October 1, 2022 ⁽¹⁾	(556)
Book value equity at December 31, 2023	\$ 239,256
Incentive Compensation Hurdle ⁽²⁾	\$ 16,748
Average closing price of 30 day period ending three days prior to issuance date	\$ 9.87

(1) Calculated on a daily weighted average basis for the 12-month period ended December 31, 2023.

(2) Calculated as book value equity at December 31, 2023 multiplied by 1.75% (7% per annum).

The amount by which EAD (as defined in the Management Agreement) 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 \$45.6 million for the year ended December 31, 2023, and our ability to maintain and/or obtain additional debt financing and equity capital together with the funds referred to below.

[\(Back to Index\)](#)

At December 31, 2023, our liquidity consisted of \$83.4 million of unrestricted cash and cash equivalents and \$24.3 million of unlevered financeable CRE loans.

During the year ended December 31, 2023, our principal sources of liquidity were: (i) gross proceeds of \$124.0 million from CRE whole loan purchases by our managed CRE securitizations ACR 2021-FL1 and ACR 2021-FL2; (ii) net proceeds of \$38.0 million from repayments on our CRE loan portfolio; (iii) net proceeds of \$31.0 million from the sale of four CRE whole loan hotel assets; (iv) proceeds of \$17.9 million from the purchase of loan advances by our managed CRE securitizations ACR 2021-FL1 and ACR 2021-FL2; (v) proceeds of \$17.4 million of financing on our investments in real estate; (vi) gross proceeds of \$14.3 million from the sale of a real estate property; (vii) gross proceeds of \$13.5 million from an advance on our senior secured financing facility; and (viii) gross proceeds of \$12.1 million from our term warehouse financing facilities.

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 stock, distributions on our preferred stock and ongoing operating expenses and substantially resulted in the \$83.4 million of unrestricted cash we held at December 31, 2023.

The outstanding balance of our loan to ACRES Capital Corp., the parent of our Manager, was \$11.0 million and \$11.3 million at December 31, 2023 and 2022, 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 year ended December 31, 2023, our restricted and unrestricted cash and cash equivalents balance decreased \$12.9 million, to \$91.9 million. The cash movements can be summarized by the following:

Cash flows from operating activities. For the year ended December 31, 2023, operating activities increased our cash balances by \$45.6 million, primarily driven by net income after removing non-cash CECL provision, non-cash amortization and depreciation and net changes in other assets and liabilities.

Cash flows from investing activities. For the year ended December 31, 2023, investing activities increased our cash balances by \$161.3 million, primarily driven by repayments and sales of CRE loans, the sale of one hotel asset held for sale, partially offset by the origination of three CRE whole loans, funding of existing commitments on CRE whole loans and deployments in our investment in real estate.

Cash flows from financing activities. For the year ended December 31, 2023, financing activities decreased our cash balances by \$219.8 million, primarily driven by repayments on our term warehouse financing facilities, senior secured financing facility and CRE securitization notes and distributions on our preferred stock and repurchase of our common stock, partially offset by proceeds from financing on our investments in real estate, senior secured financing facility and term warehouse financing facilities.

Financing Availability

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 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.

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

At December 31, 2023, we had financing arrangements as summarized below (in thousands, except amounts in footnotes):

	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
CRE - Term Warehouse Financing Facilities ⁽²⁾					
JPMorgan Chase Bank, N.A.	October 2018	July 2026	250,000	76,056	173,944
Morgan Stanley Mortgage Capital Holdings LLC	November 2021	November 2024	250,000	94,266	155,734
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	8,645	39,355
Florida Pace Funding Agency ⁽⁵⁾	January 2023	January 2053	15,510	15,510	—
Total				<u>\$ 278,596</u>	

(1)Excludes deferred debt issuance costs of \$2.9 million. In December 2022, we amended the previously revolving fixed rate credit facility to a 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)Excludes accrued interest payable of \$539,000 and deferred debt issuance costs of \$2.3 million.

(3)Excludes deferred debt issuance costs of \$259,000.

(4)Excludes deferred debt issuance costs of \$1.3 million.

(5)Excludes deferred debt issuance costs of \$419,000.

[\(Back to Index\)](#)

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

Financing Arrangement	Three Months Ended December 31, 2023	December 31, 2023		Three Months Ended December 31, 2022	December 31, 2022	
	Average Principal Outstanding	Principal Outstanding		Average Principal Outstanding	Principal Outstanding	
Senior secured financing facility ⁽¹⁾	\$ 64,495	\$	64,495	\$ 88,795	\$	91,549
Term warehouse financing facilities - CRE loans ⁽²⁾	226,373		170,322	359,829		329,955
Total	\$ 290,868	\$	234,817	\$ 448,624	\$	421,504

(1)Principal outstanding excludes accrued interest payable of \$311,000 and \$202,000 and deferred debt issuance costs of \$2.9 million and \$3.7 million at December 31, 2023 and 2022, respectively.

(2)Principal outstanding excludes accrued interest payable of \$539,000 and \$894,000 and deferred debt issuance costs of \$2.3 million and \$2.6 million at December 31, 2023 and 2022, respectively.

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

Financing Arrangement	Maximum Month-End Principal Outstanding During the	
	Years Ended December 31,	
	2023	2022
Senior secured financing facility	\$ 64,495	\$ 94,549
Term warehouse financing facilities - CRE loans	333,834	392,716

Historically, we financed the acquisition of our investments through CDOs 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 would cease if the CDOs and securitizations fail to meet certain tests. Through December 31, 2023, we did not experience difficulty in maintaining our existing 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 at the periods presented (in thousands, except amounts in footnotes):

Name	Cash Distributions For the Year Ended		Overcollateralization Cushion ⁽¹⁾		Annualized Interest Coverage Cushion ⁽²⁾		Reinvestment Period End ⁽⁴⁾
	December 31, 2023	December 31, 2022	At December 31, 2023	At the Initial Measurement Date	At December 31, 2023		
ACR 2021-FL1	\$ 24,923	\$ 21,141	\$ 12,509	\$ 6,758	\$ 17,501		May 2023
ACR 2021-FL2	19,652	14,537	5,652	5,652	14,762		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 may be used to acquire CRE loans or the funded commitments of existing collateral for reinvestment into the securitization.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

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

Name	Cash Distributions For the Year Ended		Liquidation Date	Remaining Assets at the Liquidation Date ⁽¹⁾
	December 31, 2023	December 31, 2022		
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 for the year ended December 31, 2022 included a principal distribution on our preference share at liquidation of \$13.5 million for XAN 2020-RSO9.

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 December 31, 2023 and 2022, our leverage ratio under GAAP was 3.8 and 4.2 times, respectively. The leverage ratio decreased during the period due to the net decrease in borrowings in combination with a net increase to total equity.

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		TRS Tax Loss Carryforwards	
		Operating	Capital	Operating	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

At December 31, 2023, we had \$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 had cumulative total net capital losses of \$121.9 million, which are set to 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 December 31, 2023, our TRSs had \$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 had cumulative total net capital losses of \$1.0 million, which are set to expire at December 31, 2024.

Distributions

We did not pay distributions on our common shares during the year ended December 31, 2023 as we were focused on prudently retaining and managing sufficient excess liquidity in connection with the economic impact of the COVID-19 pandemic. 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 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.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

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.

Contractual Obligations and Commitments

	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
At December 31, 2023:					
CRE securitizations	\$ 1,210,040	\$ —	\$ —	\$ —	\$ 1,210,040
Senior secured financing facility ⁽¹⁾	64,495	—	—	64,495	—
CRE - term warehouse financing facilities ⁽²⁾	170,861	94,541	76,320	—	—
Mortgages payable ⁽³⁾	43,779	—	28,269	—	15,510
5.75% Senior Unsecured Notes ⁽⁴⁾	150,000	—	150,000	—	—
Unsecured junior subordinated debentures ⁽⁵⁾	51,548	—	—	—	51,548
Lease liabilities ⁽⁶⁾	853,936	1,630	5,491	6,179	840,636
Unfunded commitments on CRE loans ⁽⁷⁾	109,359	49,440	59,919	—	—
Base management fees ⁽⁸⁾	6,607	6,607	—	—	—
Total	\$ 2,660,625	\$ 152,218	\$ 319,999	\$ 70,674	\$ 2,117,734

(1)Excludes \$311,000 of accrued interest payable.

(2)Includes \$539,000 of accrued interest payable.

(3)Excludes \$105,000 of accrued interest payable.

(4)Excludes \$25.9 million of interest expense payable through maturity in August 2026.

(5)Excludes \$25.4 million and \$26.6 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 remaining term of 93 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 borrower meeting specified criteria. Upon completion of the improvements or construction, we would receive additional interest income on the advanced amount. At December 31, 2023, we had unfunded commitments on 53 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 compensation 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 December 31, 2023, 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 December 31, 2023, 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 \$109.4 million and \$158.2 million in unfunded loan commitments at December 31, 2023 and 2022, respectively. Unfunded commitments are not considered in the CECL reserve if they are unconditionally cancellable.

[\(Back to Index\)](#)

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.

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" guarantees 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.

Critical Accounting Policies and Estimates

Our consolidated financial statements are prepared by management in accordance with GAAP. The preparation of financial statements in conformity with GAAP requires that we make estimates and assumptions that may affect the value of our assets or liabilities and disclosure of contingent assets and liabilities at the date of our financial statements, and our financial results. We believe that certain of our policies are critical because they require us to make difficult, subjective and complex judgments about matters that are inherently uncertain. The critical policies summarized below relate to valuation of investment securities, accounting for derivative financial instruments and hedging activities, income taxes, allowance for credit losses and variable interest entities ("VIEs"). We have reviewed these accounting policies with our Board and believe that all of the decisions and assessments upon which our financial statements are based were reasonable at the time made based upon information available to us at the time.

Allowance for Credit Losses

We maintain an allowance for credit loss on our loans held for investment. CRE loans that are held for investment are carried at cost, net of unamortized acquisition premiums or discounts, loan fees and origination costs as applicable. Effective January 1, 2020, we determine our allowance for credit losses, consistent with GAAP, by measuring CECL on the loan portfolio on a quarterly basis. We utilize a probability of default and loss given default methodology over a reasonable and supportable forecast period after which we revert to the historical mean loss ratio, utilizing a blended approach sourced from our own historical losses and the market losses from an engaged third-party's database, to be applied for the remaining estimable period. The CECL model requires us to make significant judgments, including: (i) the selection of a reasonable and supportable forecast period, (ii) the selection and weighting of appropriate macroeconomic forecast scenarios, (iii) the determination of the risk characteristics in which to pool financial assets, and (iv) the appropriate historical loss data to use in the model. Unfunded commitments are not considered in the CECL reserve if they are unconditionally cancellable by us.

We measure the loan portfolio's credit losses by grouping loans based on similar risk characteristics under CECL, which is typically based on the loan's collateral type. We regularly evaluate the risk characteristics of our loan portfolio to determine whether a different pooling methodology is more accurate. Further, if we determine that foreclosure of a loan's collateral is probable or repayment of the loan is expected through sale or operation of the collateral and the borrower is experiencing financial difficulty, expected credit losses are measured as the difference between the current fair value of the collateral and the amortized cost of the loan. Fair value may be determined based on (i) the present value of estimated cash flows; (ii) the market price, if available; or (iii) the fair value of the collateral less estimated disposition costs.

While a loan exhibiting credit quality deterioration may remain on accrual status, the loan is placed on nonaccrual status at such time as (i) management believes that scheduled debt service payments will not be met within the coming 12 months; (ii) the loan becomes 90 days past due; (iii) management determines the borrower is incapable of, or has ceased efforts toward, curing the cause of the credit deterioration; or (iv) the net realizable value of the loan's underlying collateral approximates our carrying value for such loan. While on nonaccrual status, we recognize interest income only when an actual payment is received if a credit analysis supports the borrower's principal repayment capacity. When a loan is placed on nonaccrual, previously accrued interest is reversed from interest income.

We utilize the contractual life of our loans to estimate the period over which we measure expected credit losses. Estimates for prepayments and extensions are incorporated into the inputs for our CECL model. Modifications to loan terms, such as a modification in connection with a troubled debt restructuring ("TDR"), where a concession is granted to a borrower experiencing financial difficulty, may result in the extension of the loan's life and an increase in the allowance for credit losses. In March 2020, the Financial Accounting Standards Board ("FASB") concurred with a joint statement of federal and state banking regulators that eased the requirements to classify a modification as a TDR if the modification was granted in connection with the effects of the COVID-19 pandemic. The measurement of the impact of TDRs on the expected credit losses occurs when a TDR is reasonably expected. If the concession granted on a TDR can only be captured through a discounted cash flow analysis, then we will individually assess the loan for expected credit losses using the discounted cash flow method.

In order to calculate the historical mean loss ratio applied to the loan portfolio, we utilize historical losses from our full underwriting history, along with the market loss history of a selected population of loans from a third-party's database that are similar to our loan types, loan sizes, durations, interest rate structure and general LTV profiles. We may make adjustments to the historical loss history for qualitative or environmental factors if we believe there is evidence that the estimate for expected credit losses should be increased or decreased.

We record write-offs against the allowance for credit losses if we deem that all or a portion of a loan's balance is uncollectible. If we receive cash in excess of some or all of the amounts we previously wrote off, we record a recovery to increase the allowance for credit losses.

As part of the evaluation of the loan portfolio, we assess the performance of each loan and assign a risk rating 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 LTV ratios, risk inherent in the loan structure and exit plan. Loans are rated "1" through "5," from least risk to greatest risk, in connection with this review.

Investments in Real Estate

We acquire investments in real estate through direct equity investments and as a result of our lending activities (i.e. through foreclosure or the receipt of the deed-in-lieu of foreclosure on a property). Acquired investments in real estate assets are recorded initially at fair value in accordance with U.S. GAAP. We allocate the purchase price of our acquired assets and assumed liabilities based on the relative fair values of the assets acquired and liabilities assumed.

We evaluate whether property obtained as a result of our lending activities should be identified as held for sale. If a property is determined to be held for sale, all of the acquired assets and assumed liabilities will be recorded in property held for sale on the consolidated balance sheets and recorded at the lower of cost or fair value. Once a property is classified as held for sale, depreciation expense is no longer recorded.

Investments in real estate are carried net of accumulated depreciation. We depreciate real property, building and tenant improvements and furniture, fixtures, and equipment using the straight-line method over the estimated useful lives of the assets. We amortize any acquired intangible assets using the straight-line method over the estimated useful lives of the intangible assets. We amortize the value allocated to lease right of use assets and related in-place lease liabilities, when determined to be operating leases, using the straight-line method over the remaining lease term. The value allocated to any associated above or below market lease intangible asset or liability is amortized to lease expense over the remaining lease term.

Ordinary repairs and maintenance are expensed as incurred. Costs related to the improvement of the real property are capitalized and depreciated over their useful lives. Costs related to the development and construction of real property are capitalized to construction in progress during the period beginning with the commencement of development and ending with the completion of construction.

We depreciate investments in real estate and amortize intangible assets over the estimated useful lives of the assets as follows:

Category	Term
Building	35 to 40 years
Building improvements	5 to 39 years
Site improvements	10 years
Tenant improvements	Shorter of lease term or expected useful life
Furniture, fixtures and equipment	1 to 12 years
Right of use assets	7 to 94 years
Intangible assets	90 days to 18 years
Lease liabilities	7 to 94 years

Revenue Recognition

Interest income from our loan portfolio is recognized over the life of each loan using the effective interest method and is recorded on the accrual basis. Premiums and discounts are amortized or accreted into income using the effective yield method. If a loan with a premium or discount is prepaid, we immediately recognize the unamortized portion as a decrease or increase to interest income. In addition, we defer loan origination and extension fees and loan origination costs and recognize them over the life of the related loan with interest income using the straight-line method, which approximates the effective yield method. Income recognition is suspended for loans at the earlier of the date at which payments become 90 days past due or when, in our opinion, a full recovery of principal and income becomes doubtful. When the ultimate collectability of the principal is in doubt, all payments received are applied to principal under the cost recovery method. When the ultimate collectability of the principal is not in doubt, contractual interest is recorded as interest income when received, under the cash method, until an accrual is resumed when the loan becomes contractually current and performance is demonstrated to be resumed.

Through our investments in real estate, we earn revenue associated with rental operations and hospitality operations, which are presented in real estate income on the consolidated statements of operations.

Rental operating revenue consists of fixed contractual base rent arising from tenant leases at our office properties under operating leases. Revenue is recognized on a straight-line basis over the non-cancelable terms of the related leases. For leases that have fixed and measurable rent escalations, the difference between such rental income earned and the cash rent due under the provisions of the lease is recorded in our consolidated balance sheets. We move to cash basis operating lease income recognition in the period in which collectability of all lease payments is no longer considered probable. At such time, any uncollectible receivable balance will be written off.

Hospitality operating revenue consists of amounts derived from hotel operations, including room sales and other hotel revenues. We recognize hospitality operating revenue when guest rooms are occupied, services have been provided or fees have been earned. Revenues are recorded net of any sales, occupancy or other taxes collected from customers on behalf of third parties. The following provides additional detail on room revenue and other operating revenue:

- Room revenue is recognized when our hotel satisfies its performance obligation of providing a hotel room. The hotel reservation defines the terms of the agreement including an agreed-upon rate and length of stay. Payment is typically due and paid in full at the end of the stay with some customers prepaying for their rooms prior to the stay. Payments received from a customer prior to arrival are recorded as an advance deposit and are recognized as revenue at the time of occupancy.
- Other operating revenue is recognized at the time when the goods or services are provided to the customer or when the performance obligation is satisfied. Payment is due at the time that goods or services are rendered or billed.

Variable Interest Entities

We consolidate entities that are VIEs where we have determined that we are the primary beneficiary of such entities. Once it is determined that we hold a variable interest in a VIE, management performs a qualitative analysis to determine (i) if we have the power to direct the matters that most significantly impact the VIE's financial performance; and (ii) if we have the obligation to absorb the losses of the VIE that could potentially be significant to the VIE or the right to receive the benefits of the VIE that could potentially be significant to the VIE. If our variable interest possesses both of these characteristics, we are deemed to be the primary beneficiary and would be required to consolidate the VIE. This assessment must be done on an ongoing basis.

At December 31, 2023, we determined that we are the primary beneficiary of two VIEs that are consolidated.

Recent Accounting Pronouncements

Accounting Standards Adopted in 2023

In March 2022, the FASB issued an amendment eliminating certain previously issued accounting guidance for TDRs and enhancing disclosure requirements surrounding refinancings, restructurings, and write-offs. Current GAAP provides an exception to 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. We adopted this guidance during the year ended December 31, 2023 and the adoption did not have a material impact on our consolidated financial statements.

Accounting Standards to be Adopted in Future Periods

In November 2023, the 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. We are in the process of evaluating the impact of this guidance, however, we do not expect a material impact to our consolidated financial statements.

In December 2023, the FASB issued guidance to improve the transparency of income tax disclosures. This guidance is effective for fiscal years beginning after December 15, 2024 and is to be adopted on a prospective basis with the option to apply retrospectively. We are in the process of evaluating the impact of this guidance, however, we do not expect a material impact to our consolidated financial statements.

Inflation

Virtually all of our assets and liabilities are interest rate sensitive in nature. As a result, interest rates and other factors influence our performance far more than does inflation. Changes in interest rates do not necessarily correlate with inflation rates or changes in inflation rates. Our consolidated financial statements are prepared in accordance with GAAP and our distributions are determined by our Board based primarily on our maintaining our REIT qualification; in each case, our activities and balance sheet are measured with reference to historical cost and/or fair market value without considering inflation.

Subsequent Events

We have evaluated subsequent events through the filing of this report and determined that, except for the subsequent events referred to in Note 7, Note 13 and Note 17 of our consolidated financial statements, there have not been any events that have occurred that would require adjustments to or disclosures in our consolidated financial statements.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

At December 31, 2023, 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.

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.

[\(Back to Index\)](#)

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 December 31, 2023, 85.4% of the par value of our CRE loan portfolio had interest rate caps in place with a weighted-average maturity of 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 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, warehouse financing facilities, mortgage payable and construction loans. 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.

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 December 31, 2023, 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 0.3% 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 has a weighted-average benchmark floor of 0.70% at December 31, 2023.

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):

Year Ended December 31, 2023					
Net Assets Subject to Interest Rate Sensitivity ⁽¹⁾⁽²⁾⁽³⁾		100 Basis Point Decrease ⁽⁴⁾		100 Basis Point Increase	
		Increase (Decrease) to Net Interest Income	Increase (Decrease) to Net Interest Income Per Share	Increase (Decrease) to Net Interest Income	Increase (Decrease) to Net Interest Income Per Share
\$	361,860	\$ (3,644)	\$ (0.43)	\$ 3,669	\$ 0.43

(1)Includes our floating-rate CRE loans at December 31, 2023.

(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 rate 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 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

INDEX TO FINANCIAL STATEMENTS

	PAGE
Report of Independent Registered Public Accounting Firm (PCAOB ID: 248)	83
Consolidated Balance Sheets	85
Consolidated Statements of Operations	87
Consolidated Statements of Comprehensive Income (Loss)	88
Consolidated Statements of Changes in Equity	89
Consolidated Statements of Cash Flows	92
Notes to Consolidated Financial Statements	93

[\(Back to Index\)](#)

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Shareholders
ACRES Commercial Realty Corp.

Opinion on the financial statements

We have audited the accompanying consolidated balance sheets of ACRES Commercial Realty Corp. (a Maryland corporation) and subsidiaries (the "Company") as of December 31, 2023 and 2022, the related consolidated statements of operations, comprehensive income (loss), changes in equity, and cash flows for each of the three years in the period ended December 31, 2023, and the related notes and financial statement schedules included under Item 15(a) (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2023 and 2022, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2023, in conformity with accounting principles generally accepted in the United States of America.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), the Company's internal control over financial reporting as of December 31, 2023, based on criteria established in the 2013 *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"), and our report dated March 6, 2024 expressed an unqualified opinion.

Basis for opinion

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

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

Critical audit matter

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

Allowance for credit losses on CRE whole loans

As described in Note 2 and Note 7 to the financial statements, and in accordance with Accounting Standard Codification 326, Financial Instruments – Credit Losses, the Company utilizes a current expected credit loss methodology to determine the allowance for credit losses on its commercial real estate (CRE) whole loans. The Company measures lifetime expected credit losses on CRE whole loans on a pooled basis, based on shared risk characteristics or individually for collateral-dependent loans. To estimate the allowance for credit losses on pooled CRE whole loans, the Company utilizes a probability of default times loss given default methodology, which incorporates individual loan characteristics, historical loss experience and the weighting of forecasted economic scenarios. For loans determined to be collateral dependent that are individually evaluated, the reserve is calculated based on the difference between the current fair value of the collateral and the amortized cost of the loan. We identified the allowance for credit losses as a critical audit matter.

The principal considerations for our determination that the allowance for credit losses is a critical audit matter are that management is required to make significant judgments in determining the accuracy of loan level data input into the estimate, the weighing of the

[\(Back to Index\)](#)

forecasted economic scenarios, and in evaluating whether factors are present that indicate if an individual loan does not share risk characteristics of the pool. For loans that are determined to be collateral-dependent and individually evaluated, the assessment of fair value of the underlying collateral involves subjective assumptions. Evaluating these conclusions made by management required significant auditor judgment in obtaining sufficient and appropriate audit evidence related to these management determinations.

Our audit procedures related to the allowance for credit losses included the following, among others:

- We tested the design and operating effectiveness of controls over the calculation of the allowance for credit losses, which included controls related to the completeness and accuracy of loan specific data used on pooled CRE whole loans, identification of loans that no longer share risk characteristics of the portfolio and required individual evaluation, weighting of forecasted economic scenarios on pooled CRE whole loans, and for individually evaluated loans, review of the collateral valuation used in determining if the amortized cost of the loan exceeds the current fair value of the collateral.
- For a selection of pooled CRE whole loans, we evaluated the completeness and accuracy of loan specific data used in the calculation of the allowance for credit losses.
- We inspected a selection of pooled CRE whole loan files to analyze the completeness of management's identification and evaluation of collateral dependent loans.
- We assessed the weighting of the various economic scenarios selected by management that were applied to pooled CRE whole loans by inspecting the underlying assumptions of the various scenarios and considering other relevant and reliable third-party evidence.
- For individually evaluated CRE whole loans, with the assistance of our valuation specialists, we evaluated the reasonableness of the valuation methodology and significant assumptions made to value the collateral, to determine if the amortized cost exceeds current fair value of the collateral, thereby necessitating an allowance for credit loss.

/s/ GRANT THORNTON LLP

We have served as the Company's auditor since 2005.

San Francisco, California

March 6, 2024

[\(Back to Index\)](#)

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

	December 31, 2023	December 31, 2022
ASSETS ⁽¹⁾		
Cash and cash equivalents	\$ 83,449	\$ 66,232
Restricted cash	8,437	38,579
Accrued interest receivable	11,783	11,969
CRE loans	1,857,093	2,057,590
Less: allowance for credit losses	(28,757)	(18,803)
CRE loans, net	1,828,336	2,038,787
Loan receivable - related party	10,975	11,275
Investments in unconsolidated entities	1,548	1,548
Properties held for sale	62,605	53,769
Investments in real estate	157,621	120,968
Right of use assets	19,879	20,281
Intangible assets	7,882	8,880
Other assets	3,590	4,364
Total assets	<u>\$ 2,196,105</u>	<u>\$ 2,376,652</u>
LIABILITIES ⁽²⁾		
Accounts payable and other liabilities	\$ 13,963	\$ 10,391
Management fee payable - related party	584	898
Accrued interest payable	8,459	6,921
Borrowings	1,676,200	1,867,033
Lease liabilities	44,276	43,695
Distributions payable	3,262	3,262
Accrued tax liability	121	113
Liabilities held for sale	3,025	3,025
Total liabilities	1,749,890	1,935,338
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; 7,878,216 and 8,708,100 shares issued and outstanding (including 416,675 and 583,333 unvested restricted shares)	8	9
Additional paid-in capital	1,169,970	1,174,202
Accumulated other comprehensive loss	(4,801)	(6,394)
Distributions in excess of earnings	(729,391)	(732,359)
Total stockholders' equity	435,796	435,468
Non-controlling interests	10,419	5,846
Total equity	446,215	441,314
TOTAL LIABILITIES AND EQUITY	<u>\$ 2,196,105</u>	<u>\$ 2,376,652</u>

The accompanying notes are an integral part of these statements

[\(Back to Index\)](#)

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

	December 31, 2023	December 31, 2022
(1) Assets of consolidated variable interest entities ("VIEs") included in total assets above:		
Restricted cash	\$ 220	\$ 38,180
Accrued interest receivable	9,188	8,184
CRE loans, pledged as collateral ⁽³⁾	1,466,463	1,456,649
Other assets	71	119
Total assets of consolidated VIEs	<u>\$ 1,475,942</u>	<u>\$ 1,503,132</u>
(2) Liabilities of consolidated VIEs included in total liabilities above:		
Accounts payable and other liabilities	\$ 143	\$ 93
Accrued interest payable	3,828	3,083
Borrowings	1,204,569	1,233,556
Total liabilities of consolidated VIEs	<u>\$ 1,208,540</u>	<u>\$ 1,236,732</u>

(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)

	Years Ended December 31,		
	2023	2022	2021
REVENUES			
Interest income:			
CRE loans	\$ 184,334	\$ 125,539	\$ 100,774
Securities	—	—	161
Other	3,132	735	97
Total interest income	187,466	126,274	101,032
Interest expense	130,791	82,324	61,575
Net interest income	56,675	43,950	39,457
Real estate income	34,311	31,129	10,553
Other revenue	145	91	65
Total revenues	91,131	75,170	50,075
OPERATING EXPENSES			
General and administrative	10,512	10,575	11,602
Real estate expenses	38,913	33,854	10,601
Management fees - related party	7,462	7,035	6,089
Equity compensation - related party	2,578	3,562	1,722
Corporate depreciation and amortization	91	85	94
Provision for (reversal of) credit losses, net	10,902	12,295	(21,262)
Total operating expenses	70,458	67,406	8,846
	20,673	7,764	41,229
OTHER INCOME (EXPENSE)			
Net realized and unrealized gain on investment securities available-for-sale and loans and derivatives	—	—	878
Loss on extinguishment of debt	—	(460)	(9,006)
Gain on sale of real estate	745	1,870	—
Other income	527	1,588	822
Total other income (expense)	1,272	2,998	(7,306)
INCOME BEFORE TAXES	21,945	10,762	33,923
Income tax expense	(97)	(336)	—
NET INCOME	21,848	10,426	33,923
Net income allocated to preferred shares	(19,422)	(19,422)	(15,887)
Net loss allocable to non-controlling interest, net of taxes	542	197	—
NET INCOME (LOSS) ALLOCABLE TO COMMON SHARES	\$ 2,968	\$ (8,799)	\$ 18,036
NET INCOME (LOSS) PER COMMON SHARE - BASIC	\$ 0.35	\$ (1.00)	\$ 1.85
NET INCOME (LOSS) PER COMMON SHARE - DILUTED	\$ 0.35	\$ (1.00)	\$ 1.85
WEIGHTED AVERAGE NUMBER OF COMMON SHARES OUTSTANDING - BASIC	8,416,290	8,811,761	9,736,268
WEIGHTED AVERAGE NUMBER OF COMMON SHARES OUTSTANDING - DILUTED	8,566,058	8,811,761	9,763,217

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)

	Years Ended December 31,		
	2023	2022	2021
Net income	\$ 21,848	\$ 10,426	\$ 33,923
Other comprehensive income:			
Reclassification adjustments associated with net unrealized losses from interest rate swaps included in net income	1,593	1,733	1,851
Total other comprehensive income	1,593	1,733	1,851
Comprehensive income before allocation to preferred shares	23,441	12,159	35,774
Net loss allocated to non-controlling interests shares	542	197	—
Net income allocated to preferred shares	(19,422)	(19,422)	(15,887)
Comprehensive income (loss) allocable to common shares	<u>\$ 4,561</u>	<u>\$ (7,066)</u>	<u>\$ 19,887</u>

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
FOR THE YEARS ENDED DECEMBER 31, 2023, 2022 AND 2021
(in thousands, except share and per share data)

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, January 1, 2021	10,162,289	\$ 10	\$ 5	\$ —	\$ 1,085,941	\$ (9,978)	\$ (741,596)	\$ 334,382	\$ —	\$ 334,382
Proceeds from issuance of preferred stock	—	—	—	5	115,189	—	—	115,194	—	115,194
Offering costs	—	—	—	—	(4,589)	—	—	(4,589)	—	(4,589)
Purchase and retirement of common stock	(1,346,539)	(1)	—	—	(18,400)	—	—	(1)	—	(1)
Stock-based compensation	333,329	—	—	—	—	—	—	—	—	—
Amortization of stock-based compensation	—	—	—	—	1,722	—	—	1,722	—	1,722
Net income	—	—	—	—	—	—	33,923	33,923	3	33,923
Distributions and accrual of cumulative preferred stock dividends	—	—	—	—	—	—	(15,887)	(15,887)	—	(15,887)
Amortization of terminated derivatives	—	—	—	—	—	1,851	—	1,851	—	1,851
	9,149,079	\$ 9	\$ 5	\$ 5	\$ 1,179,863	\$ (8,127)	\$ (723,560)	\$ 448,195	\$ —	\$ 448,195
Balance, December 31, 2021	<u>9</u>	<u>\$ 9</u>	<u>\$ 5</u>	<u>\$ 5</u>	<u>\$ 63</u>	<u>\$ (8,127)</u>	<u>\$ (723,560)</u>	<u>\$ 95</u>	<u>\$ —</u>	<u>\$ 95</u>

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
FOR THE YEARS ENDED DECEMBER 31, 2023, 2022 AND 2021 - (Continued)
(in thousands, except share and per share data)

Common Stock						Accumul ated Other Compreh ensive Loss	Retained Earnings (Distributi ons in Excess of Earnings)	Total Stockh olders' Equity	Non- Contr olling Inter est	Total Equity
	Shares	Amount	Series C Preferred Stock	Series D Preferred Stock	Additiona l Paid-In Capital					
Balance, January 1, 2022	9,149,07		\$ 5	\$ 5	\$ 1,179,8	\$ (8,127)	\$ (723,560)	\$ 448,1		\$ 448,1
	9	\$ 9	\$ 5	\$ 5	\$ 63	\$ (8,127)	\$ (723,560)	\$ 95	\$ —	\$ 95
Offering costs	—	—	—	—	(101)	—	—	(101)	—	(101)
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	(848,978)	—	—	—	(9,128)	—	—	(9,128)	—	(9,128)
Stock-based compensation	333,333	—	—	—	—	—	—	—	—	—
Amortization of stock-based compensation	—	—	—	—	3,562	—	—	3,562	—	3,562
									6,04	
Contributions from non-controlling interests	—	—	—	—	—	—	—	—	3	6,043
									(19	
Net income	—	—	—	—	—	—	10,623	3	7)	10,42
Distributions and accrual of cumulative preferred stock dividends	—	—	—	—	—	—	(19,422)	(19,42	2)	(19,42
Amortization of terminated derivatives	—	—	—	—	—	1,733	—	1,733	—	1,733
	8,708,10				1,174,2			435,4	5,84	441,3
Balance, December 31, 2022	<u>0</u>	<u>\$ 9</u>	<u>\$ 5</u>	<u>\$ 5</u>	<u>\$ 02</u>	<u>\$ (6,394)</u>	<u>\$ (732,359)</u>	<u>\$ 68</u>	<u>\$ 6</u>	<u>\$ 14</u>

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
FOR THE YEARS ENDED DECEMBER 31, 2023, 2022 AND 2021 - (Continued)
(in thousands, except share and per share data)

	Common Stock					Accumul ated Other Compreh ensive Loss	Retained Earnings (Distributi ons in Excess of Earnings)	Total Stockh olders' Equity	Non- Contr olling Inter est	Total Equity
	Shares	Amount	Series C Preferred Stock	Series D Preferred Stock	Additiona l Paid-In Capital					
	8,708,10				1,174,2			435,4	5,84	441,3
Balance, January 1, 2023	0	\$ 9	\$ 5	\$ 5	\$ 02	\$ (6,394)	\$ (732,359)	\$ 68	\$ 6	\$ 14
Purchase and retirement of common stock	(899,085)	(1)	—	—	(7,409)	—	—	(7,410)	—	(7,410)
Stock-based compensation	69,201	—	—	—	599	—	—	599	—	599
Amortization of stock-based compensation	—	—	—	—	2,578	—	—	2,578	—	2,578
Contributions from non-controlling interests	—	—	—	—	—	—	—	—	5,11	5,115
Net income	—	—	—	—	—	—	22,390	22,390	(54	21,84
Distributions and accrual of cumulative preferred stock dividends	—	—	—	—	—	—	(19,422)	(19,422)	2)	(19,422)
Amortization of terminated derivatives	—	—	—	—	—	1,593	—	1,593	—	1,593
	7,878,21				1,169,9			435,7	10,4	446,2
Balance, December 31, 2023	<u>6</u>	<u>\$ 8</u>	<u>\$ 5</u>	<u>\$ 5</u>	<u>\$ 70</u>	<u>\$ (4,801)</u>	<u>\$ (729,391)</u>	<u>\$ 96</u>	<u>\$ 19</u>	<u>\$ 15</u>

The accompanying notes are an integral part of these statements

[\(Back to Index\)](#)

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Years Ended December 31,		
	2023	2022	2021
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net income	\$ 21,848	\$ 10,426	\$ 33,923
Adjustments to reconcile net income to net cash provided by operating activities:			
Provision for (reversal of) credit losses, net	10,902	12,295	(21,262)
Depreciation, amortization and accretion	5,191	7,491	13,988
Amortization of stock-based compensation	2,578	3,562	1,722
Loss on the extinguishment of debt	—	460	4,043
Net realized and unrealized gain on investment securities available-for-sale and loans and derivatives	—	—	(878)
Gain on sale of real estate	(745)	(1,870)	—
Changes in operating assets and liabilities:			
Decrease (increase) in accrued interest receivable, net of purchased interest	187	(6,138)	1,347
Increase in management fee payable	284	337	119
Increase in accounts payable and other liabilities	3,652	2,743	4,101
Decrease in lease liability	(151)	(94)	(39)
Increase (decrease) in accrued interest payable	885	985	(39)
Decrease in other assets	978	2,500	3,567
Net cash provided by operating activities	45,609	32,697	40,592
CASH FLOWS FROM INVESTING ACTIVITIES:			
Origination and purchase of loans	(108,260)	(583,543)	(1,381,660)
Principal payments received on loans and leases	215,955	414,450	1,008,967
Investments in real estate	(38,192)	(81,749)	(28,924)
Proceeds from sale of real estate	14,309	18,729	—
Proceeds from sale of loans	77,203	—	—
Proceeds from sale of loans or assets previously held for sale	—	—	7,915
Proceeds from sale of investment securities available-for-sale	—	—	2,958
Purchase of furniture and fixtures	—	(741)	(61)
Principal payments received on loan - related party	300	300	300
Net cash provided by (used in) investing activities	161,315	(232,554)	(390,505)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Repurchase of common stock	(7,410)	(9,128)	(18,401)
Proceeds from issuance of preferred shares (net of \$101 and \$4,589 of underwriting discounts and offering costs)	—	(101)	110,605
Proceeds from exercise of warrants	—	2	—
Proceeds from borrowings:			
Securitizations	—	—	1,242,223
Senior secured financing facility	13,500	101,699	173,087
Warehouse financing facilities and repurchase agreements	11,755	405,743	862,681
Senior unsecured notes	—	—	150,000
Mortgages payable	25,069	18,710	—
Payments on borrowings:			
Securitizations	(32,183)	(237,189)	(801,622)
Senior secured financing facility	(40,554)	(10,150)	(206,447)
Warehouse financing facilities and repurchase agreements	(171,742)	(145,972)	(805,119)
Convertible senior notes	—	(88,010)	(55,736)
Senior unsecured notes	—	—	(50,000)
Payment of debt issuance costs	(3,977)	(1,488)	(20,818)
Proceeds received from non-controlling interests	5,115	6,043	—
Distributions paid on preferred stock	(19,422)	(19,422)	(14,350)
Net cash (used in) provided by financing activities	(219,849)	20,737	566,103
NET (DECREASE) INCREASE IN CASH AND CASH EQUIVALENTS AND RESTRICTED CASH	(12,925)	(179,120)	216,190
CASH AND CASH EQUIVALENTS AND RESTRICTED CASH AT BEGINNING OF PERIOD	104,811	283,931	67,741
CASH AND CASH EQUIVALENTS AND RESTRICTED CASH AT END OF PERIOD	\$ 91,886	\$ 104,811	\$ 283,931

The accompanying notes are an integral part of these statements

[\(Back to Index\)](#)

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2023

NOTE 1 - ORGANIZATION

ACRES Commercial Realty Corp., a Maryland corporation, along with its subsidiaries (collectively, the "Company"), is a 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. On July 31, 2020, the Company's management contract was acquired from Exantas Capital Manager Inc. (the "Prior Manager"), a subsidiary of C-III Capital Partners LLC ("C-III"), by 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 "ACRES acquisition").

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, CRE-related securities and investments in CRE securitizations, which are consolidated as VIEs as discussed in Note 3, and special purpose entities.

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.

Variable Interest Entities

A VIE is defined as an entity in which equity investors (i) do not have a controlling financial interest and/or (ii) do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support from other parties. A VIE is required to be consolidated by its primary beneficiary, which is defined as the party that (a) has the power to control the activities that most significantly impact the VIE's economic performance and (b) has the obligation to absorb losses of the VIE that could potentially be significant to the VIE or the right to receive benefits from the VIE that could potentially be significant to the VIE.

The Company considers the following criteria in determining whether an entity is a VIE:

1. The equity investment at risk is not sufficient to permit the entity to finance its activities without additional subordinated financial support provided by any parties, including the equity holders.
2. The equity investors lack one or more of the following essential characteristics of a controlling financial interest.
 - a. The direct ability to make decisions about the entity's activities through voting rights or similar rights.
 - b. The obligation to absorb the expected losses of the entity.
 - c. The right to receive the expected residual returns of the entity. The equity investors have voting rights that are not proportionate to their economic interests, and the activities of the entity involve or are conducted on behalf of an investor with a disproportionately small voting interest.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

In determining whether the Company is the primary beneficiary of a VIE, the Company reviews governing contracts, formation documents and any other contractual arrangements for any relevant terms and determines the activities that have the most significant impact on the VIE and who has the power to direct those activities. The Company also looks for kick-out rights, protective rights and participating rights as well as any financial or other support provided to the VIE and the reason for that support, and the terms of any explicit or implicit arrangements that may require the Company to provide future support. The Company then makes a determination based on its power to direct the most significant activities of the VIE and/or a financial interest that is potentially significant. In instances when a VIE is owned by both the Company and related parties, the Company considers whether there is a single party in the related party group that meets both the power and losses or benefits criteria on its own as though no related party relationship existed. If one party within the related party group meets both these criteria, such reporting entity is the primary beneficiary of the VIE and no further analysis is needed. If no party within the related party group on its own meets both the power and losses or benefits criteria, but the related party group as a whole meets these two criteria, the determination of primary beneficiary within the related party group is based upon an analysis of the facts and circumstances with the objective of determining which party is most closely associated with the VIE. Determining the primary beneficiary requires significant judgment. The Company continuously analyzes entities in which it holds variable interests, including when there is a reconsideration event, to determine whether such entities are VIEs and whether such potential VIEs should be consolidated or deconsolidated.

Voting Interest Entities

A voting interest entity is an entity in which the total equity investment at risk is sufficient to enable it to finance its activities independently and the equity holders have the power to direct the activities of the entity that most significantly impact its economic performance, the obligation to absorb the losses of the entity and the right to receive the residual returns of the entity. The usual condition for a controlling financial interest in a voting interest entity is ownership of a majority voting interest. If the Company has a majority voting interest in a voting interest entity, the entity will generally be consolidated. The Company does not consolidate a voting interest entity if there are substantive participating rights by other parties and/or kick-out rights by a single party or through a simple majority vote.

The Company performs on-going reassessments of whether entities previously evaluated under the voting interest framework have become VIEs, based on certain events, and therefore subject to the VIE consolidation framework.

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, provisions for or reversals of 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 December 31, 2023 and 2022, \$81.1 million and \$63.3 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").

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

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):

	December 31,	
	2023	2022
Cash and cash equivalents	\$ 83,449	\$ 66,232
Restricted cash	8,437	38,579
Total cash, cash equivalents and restricted cash shown on the Company's consolidated statements of cash flows	<u>\$ 91,886</u>	<u>\$ 104,811</u>

Investments in Unconsolidated Entities

The Company's non-controlling investments in unconsolidated entities are included in investments in unconsolidated entities on the consolidated balance sheets and are accounted for under the cost method. Under the cost method, the Company records dividend income when declared to the extent it is not considered a return of capital, which is recorded as a reduction of the cost of the investment.

Loans

The Company acquires loans through direct origination and occasionally through purchases from third-parties and had historically acquired corporate leveraged loans in the secondary market and through syndications of newly originated loans. Loans are held for investment; therefore, the Company initially records loans at the amount funded for originated loans or at the acquisition price for loans purchased, and subsequently, accounts for them based on their outstanding principal plus or minus unamortized premiums or discounts. The Company may sell a loan held for investment where the credit fundamentals underlying a particular loan have changed in such a manner that the Company's expected return on investment may decrease. Once the determination has been made by the Company that it no longer will hold the loan for investment, the Company identifies these loans as loans held for sale. Any credit-related write-off considerations prior to the transfer of the loan to loans held for sale are accounted for through the allowance for credit losses on the Company's consolidated balance sheets.

The Company reports its loans held for sale at the lower of amortized cost or fair value. To determine fair value, the Company primarily uses appraisals of underlying collateral obtained from third-parties as a practical expedient. Key assumptions used in those appraisals are reviewed by the Company. If there is a material difference between the value provided by the appraiser and information used by the Company to validate the appraisal, the Company will evaluate the difference with the appraiser, which could result in an updated appraisal. The Company may also use the present value of estimated cash flows, market price, if available, or other determinants of the fair value of the collateral less estimated disposition costs. Any determined changes in the fair value of loans held for sale are recorded in fair value adjustments on financial assets held for sale on the Company's consolidated statements of operations. Based on a prioritization of inputs used in the valuation of each position, the Company categorizes these investments as either Level 2 or Level 3 in the fair value hierarchy.

Loan Interest Income Recognition

Interest income on loans includes interest at stated rates adjusted for amortization or accretion of premiums and discounts based on the contractual payment terms of the loan. Premiums and discounts are amortized or accreted into income using the effective yield method. If a loan with a premium or discount is prepaid, the Company immediately recognizes the unamortized portion as a decrease or increase to interest income. In addition, the Company defers loan origination and extension fees and loan origination costs and recognizes them over the life of the related loan against interest income using the straight line method, which approximates the effective yield method. Income recognition is suspended for loans at the earlier of the date at which payments become 90 days past due or when a full recovery of principal and income becomes doubtful. When the ultimate collectability of the principal is in doubt, all payments received are applied to principal under the cost recovery method. On the other hand, when the ultimate collectability of the principal is not in doubt, contractual interest is recorded as interest income when received, under the cash method, until an accrual is resumed when the loan becomes contractually current and performance is demonstrated to be resumed. A loan is written off when it is no longer realizable and/or legally discharged.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

The Company records interest receivable on its loans in accrued interest receivable on its consolidated balance sheets. The Company analyzes the interest receivable balances on a timely basis, or at least quarterly, to determine if they are uncollectible. If an interest receivable amount is deemed uncollectible, then the Company writes off that uncollectible amount of the interest receivable through a reversal of interest income.

Preferred Equity Investments

Historically, the Company invested in preferred equity investments. Preferred equity investments, which are subordinate to any loans but senior to common equity, depending on the investment's characteristics, could be accounted for as real estate, joint ventures or as mortgage loans. The Company's preferred equity investments were accounted for as CRE loans held for investment, were carried at cost, net of unamortized loan fees and origination costs, and were included within CRE loans on the Company's consolidated balance sheets. The Company accreted or amortized any discounts or premiums over the life of the related loan utilizing the effective interest method. Interest and fees were recognized as income subject to recoverability, which was substantiated by obtaining annual appraisals on the underlying property.

Allowance for Credit Losses

The Company maintains an allowance for credit loss on its loans held for investment. The Company determines its allowance for credit losses by measuring the current expected credit losses ("CECL") on the loan portfolio on a quarterly basis. The Company utilizes a probability of default and loss given default methodology together with collateral-specific data for each loan over a reasonable and supportable forecast period after which it reverts to its historical mean loss ratio, utilizing a blended approach sourced from its own historical losses and the market losses from an engaged third-party's database, to be applied for the remaining estimable period. The CECL model requires the Company to make significant judgments, including: (i) the selection of a reasonable and supportable forecast period, (ii) the selection and weighting of appropriate macroeconomic forecast scenarios, (iii) the determination of the risk characteristics in which to pool financial assets, and (iv) the appropriate historical loss data to use in the model. Unfunded commitments are not considered in the CECL reserve if they are unconditionally cancellable by the Company.

The Company measures the loan portfolio's credit losses by grouping loans based on similar risk characteristics under CECL, which is typically based on the loan's collateral type. The Company regularly evaluates the risk characteristics of its loan portfolio to determine whether a different pooling methodology is more accurate. Further, if the Company determines that foreclosure of a loan's collateral is probable or repayment of the loan is expected through sale or operation of the collateral and the borrower is experiencing financial difficulty, expected credit losses are measured as the difference between the current fair value of the collateral and the amortized cost of the loan. Fair value may be determined based on (i) the present value of estimated cash flows; (ii) the market price, if available; or (iii) the fair value of the collateral less estimated disposition costs.

While a loan exhibiting credit quality deterioration may remain on accrual status, the loan is placed on nonaccrual status at such time as (i) management believes that scheduled debt service payments will not be met within the coming 12 months; (ii) the loan becomes 90 days past due; (iii) management determines the borrower is incapable of, or has ceased efforts toward, curing the cause of the credit deterioration; or (iv) the net realizable value of the loan's underlying collateral approximates the Company's carrying value for such loan. While on nonaccrual status, the Company recognizes interest income only when an actual payment is received if a credit analysis supports the borrower's principal repayment capacity. When a loan is placed on nonaccrual, previously accrued and uncollected interest is reversed from interest income.

The Company utilizes the contractual life of its loans to estimate the period over which it measures expected credit losses. Estimates for prepayments and extensions are incorporated into the inputs for the Company's CECL model. Modifications to loan terms may result an increase in the allowance for credit losses.

In order to calculate the historical mean loss ratio applied to the loan portfolio, the Company utilizes historical losses from its full underwriting history, along with the market loss history of a selected population of loans from a third-party's database that are similar to the Company's loan types, loan sizes, durations, interest rate structure and general loan-to-collateral value ("LTV") profiles. The Company may make adjustments to the historical loss history for qualitative or environmental factors if it believes there is evidence that the estimate for expected credit losses should be increased or decreased.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

The Company records write-offs against the allowance for credit losses if it deems that all or a portion of a loan's balance is uncollectible. If the Company receives cash in excess of some or all of the amounts it previously wrote off, it records the recovery by increasing the allowance for credit losses.

As part of the evaluation of the loan portfolio, the Company assesses the performance of each loan and assigns a risk rating 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 LTV ratios, risk inherent in the loan structure and exit plan. Loans are rated "1" through "5," from the least risk to the greatest risk, in connection with this review.

Operating Revenue at Properties

Through its investments in real estate, the Company earns revenue associated with rental operations and hospitality operations, which are presented in real estate income on the consolidated statements of operations.

The Company's rental operating revenue consists of fixed contractual base rent arising from tenant leases at the Company's office and student housing properties under operating leases. Revenue is recognized on a straight-line basis over the non-cancelable terms of the related leases. For leases that have fixed and measurable rent escalations, the difference between such rental income earned and the cash rent due under the provisions of the lease is recorded in the Company's consolidated balance sheets. The Company moves to cash basis operating lease income recognition in the period in which collectability of all lease payments is no longer considered probable. At such time, any uncollectible receivable balance will be written off.

Hospitality operating revenue consists of amounts derived from hotel operations, including room sales and other hotel revenues. The Company recognizes hospitality operating revenue when guest rooms are occupied, services have been provided or fees have been earned. Revenues are recorded net of any sales, occupancy or other taxes collected from customers on behalf of third parties. The following provides additional detail on room revenue and other operating revenue:

- Room revenue is recognized when the Company's hotel satisfies its performance obligation of providing a hotel room. The hotel reservation defines the terms of the agreement including an agreed-upon rate and length of stay. Payment is typically due and paid in full at the end of the stay with some customers prepaying for their rooms prior to the stay. Payments received from a customer prior to arrival are recorded as an advance deposit and are recognized as revenue at the time of occupancy.
- Other operating revenue is recognized at the time when the goods or services are provided to the customer or when the performance obligation is satisfied. Payment is due at the time that goods or services are rendered or billed.

Investments in Real Estate

The Company acquires investments in real estate through direct equity investments and as a result of its lending activities (i.e. through foreclosure or the receipt of the deed-in-lieu of foreclosure on a property). Acquired investments in real estate assets are recorded initially at fair value in accordance with GAAP. The Company allocates the purchase price of its acquired assets and assumed liabilities based on the relative fair values of the assets acquired and liabilities assumed. The Company accounts for leases that it acquires as operating leases.

The Company evaluates whether property obtained as a result of its lending activities should be identified as held for sale. If a property is determined to be held for sale, all of the acquired assets and assumed liabilities will be recorded in property held for sale on the consolidation balance sheet and recorded at the lower of cost or fair value, see the "Assets and Liabilities Held for Sale" section below. Once a property is classified as held for sale, depreciation expense is no longer recorded.

Investments in real estate are carried net of accumulated depreciation. The Company depreciates real property, building and tenant improvements and furniture, fixtures, and equipment using the straight-line method over the estimated useful lives of the assets unless the asset is designated as held for sale. The Company amortizes any acquired intangible assets using the straight-line method over the estimated useful lives of the intangible assets. The Company amortizes the value allocated to lease right of use assets and related in-place lease liabilities, when determined to be operating leases, using the straight-line method over the remaining lease term. The value allocated to any associated above or below market lease intangible asset or liability is amortized to lease expense over the remaining lease term.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

Ordinary repairs and maintenance are expensed as incurred. Costs related to the improvement of the real property are capitalized and depreciated over their useful lives. Costs related to the development and construction of real property are capitalized to construction in progress during the period beginning with the commencement of development and ending with the completion of construction.

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	5 to 39 years
Site improvements	10 years
Tenant improvements	Shorter of lease term or expected useful life
Furniture, fixtures and equipment	1 to 12 years
Right of use assets	7 to 94 years
Intangible assets	90 days to 18 years
Lease liabilities	7 to 94 years

Leases

The value of the operating leases are determined through the discounted cash flow method and are recognized on the consolidated balance sheets as offsetting right of use assets and lease liabilities. The operating lease for the Company's office space is amortized over the lease term using the effective-interest method. The Company's operating lease for office equipment is amortized over the lease term using the straight-line method.

Assets and Liabilities Held for Sale

The Company classifies long-lived assets or a disposal group to be sold as held for sale in the period in which all of the following criteria are met:

- management, having the authority to approve the action, commits to a plan to sell the asset or the disposal group;
- the asset or disposal group is available for immediate sale in its present condition subject only to terms that are usual and customary for sales of such assets;
- an active program to locate a buyer and other actions required to complete the plan to sell the asset or disposal group have been initiated;
- the sale of the asset or disposal group is probable, and transfer of the asset or disposal group is expected to qualify for recognition as a completed sale within one year, except if events or circumstances beyond the Company's control extend the period of time required to sell the asset or disposal group beyond one year;
- the asset or disposal group is being actively marketed for sale at a price that is reasonable in relation to its current fair value; and
- actions required to complete the plan indicate that it is unlikely that significant changes to the plan will be made or that the plan will be withdrawn.

A long-lived asset or disposal group that is classified as held for sale is initially measured at the lower of its cost or fair value less any costs to sell. Any loss resulting from the transfer of long-lived assets or disposal groups to assets held for sale is recognized in the period in which the held for sale criteria are met.

The fair values of assets held for sale are assessed each reporting period and changes in such fair values are reported as an adjustment to the carrying value of the asset or disposal group with an offset to fair value adjustments on financial assets held for sale on the Company's consolidated statements of operations, to the extent that any subsequent changes in fair value do not exceed the cost basis of the asset or disposal group.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

Additionally, upon determining that a long-lived asset or disposal group meets the criteria to be classified as held for sale, the Company reports the assets and liabilities of the disposal group, if material, in the line items assets or liabilities held for sale, respectively, on the consolidated balance sheets.

Comprehensive Income (Loss)

Comprehensive income (loss) for the Company includes net income and the change in net unrealized gains (losses) on available-for-sale securities and derivative instruments that were used to hedge exposure to interest rate fluctuations.

Income Taxes

The Company operates in such a manner as to qualify as a REIT under the provisions of the Internal Revenue Code of 1986, as amended (the "Code"); therefore, applicable REIT taxable income is included in the taxable income of its shareholders, to the extent distributed by the Company. To maintain REIT status for federal income tax purposes, the Company is generally required to distribute at least 90% of its REIT taxable income to its shareholders as well as comply with certain other qualification requirements as defined under the Code. As a REIT, the Company is not subject to federal corporate income tax to the extent that it distributes 100% of its REIT taxable income each year.

Taxable income, from non-REIT activities managed through the Company's taxable REIT subsidiaries ("TRSs"), is subject to federal, state and local income taxes. The Company's TRS' income taxes are accounted for under the asset and liability method. Under the asset and liability method, deferred income taxes are recognized for the temporary differences between the financial reporting basis and tax basis of assets and liabilities. The Company evaluates the realizability of its deferred tax assets and liabilities and recognizes a valuation allowance if, based on available evidence, it is more likely than not that some or all of its deferred tax assets will not be realized. In evaluating the realizability of the deferred tax asset or liability, the Company will consider the expected future taxable income, existing and projected book to tax differences as well as tax planning strategies. This analysis is inherently subjective, as it is based on forecasted earning and business and economic activity. Changes in estimates of deferred tax asset realizability, if any, are included in income tax (expense) benefit on the consolidated statements of operations.

In addition, several of the Company's foreign TRSs, are organized as exempted companies incorporated with limited liability under the laws of the Cayman Islands. Despite their status as TRSs, they generally will not be subject to corporate tax on their earnings and no provision for income taxes is required. However, because they are either controlled foreign corporations or passive foreign investment companies (in which the Company has made a Qualified Electing Fund election), the Company will generally be required to include its share of current taxable income from the foreign TRSs in its calculation of REIT taxable income.

The Company accounts for taxes assessed by a governmental authority that is directly imposed on a revenue-producing transaction (e.g., sales, use, value added) on a net (excluded from revenue) basis.

The Company established a full valuation allowance against its net deferred tax asset that was tax effected at \$21.1 million and \$21.2 million, at December 31, 2023 and 2022, respectively, as the Company believed it was more likely than not that all of the deferred tax assets would 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 in its TRSs.

The Company evaluates and recognizes tax positions only if it is more likely than not that the position will be sustained upon examination by the appropriate taxing authority. A tax position that meets this threshold is measured as the largest amount of benefit that is greater than 50% likely of being realized upon ultimate settlement. The Company classifies any tax penalties as other operating expenses and any interest as interest expense. The Company does not have any unrecognized tax benefits that would affect the Company's financial position.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

Stock Based Compensation

Issuances of restricted stock and options are initially measured at fair value on the grant date and expensed monthly on a straight-line basis over the service period to equity compensation expense on the consolidated statements of operations, with a corresponding entry to additional paid-in capital on the consolidated balance sheets. In accordance with GAAP, the fair value of all unvested issuances of restricted stock and options is not remeasured after the initial grant date.

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.

Fair Value Measurements

In analyzing the fair value of its investments accounted for on a fair value basis, the Company uses the fair value hierarchy, which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The Company determines fair value based on quoted prices when available or, if quoted prices are not available, through the use of alternative approaches, such as discounting the expected cash flows using market interest rates commensurate with the credit quality and duration of the investment. The hierarchy defines three levels of inputs that may be used to measure fair value:

Level 1 - Quoted prices for identical instruments in active markets.

Level 2 - Quoted prices for similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations whose inputs are observable or whose significant value inputs are observable.

Level 3 - Prices are determined using significant unobservable inputs. In situations where quoted prices or observable inputs are unavailable, for example, when there is little or no market activity for an investment at the end of the period, unobservable inputs may be used.

The level in the fair value hierarchy within which a fair value measurement in its entirety falls is based on the lowest level input that is significant to the fair value measurement in its entirety. The determination of where an asset or liability falls in the hierarchy requires significant judgment. The Company evaluates its hierarchy disclosures each quarter; depending on various factors, it is possible that an asset or liability may be classified differently from quarter to quarter. Transfers between levels are determined by the Company at the end of the reporting period. However, the Company expects that changes in classifications between levels will be rare.

Reference Rate Reform

Historically, the Company has used LIBOR as the benchmark interest rate for its floating-rate whole loans and the Company has been exposed 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. financial institutions, identified 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 December 31, 2023, the Company's entire portfolio of floating rate whole loans and floating rate borrowings have transitioned to SOFR.

Recent Accounting Pronouncements

Accounting Standards Adopted in 2023

In March 2022, the FASB issued an amendment eliminating certain previously issued accounting guidance for TDRs and enhancing disclosure requirements surrounding refinancings, restructurings, and write-offs. Current GAAP provides an exception to the

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

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 year ended December 31, 2023 and the adoption did not have a material impact on the Company's consolidated financial statements.

Accounting Standards to be Adopted in Future Periods

In November 2023, the 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 does not expect a material impact to its consolidated financial statements.

In December 2023, the FASB issued guidance to improve the transparency of income tax disclosures. This guidance is effective for 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 does not expect a material impact to its 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 two and five VIEs at December 31, 2023 and 2022, respectively (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 loans and corporate bonds 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.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

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 11.

Creditors of the Company's Consolidated VIEs have no recourse to the general credit of the Company, nor to each other. During the years ended December 31, 2023, 2022 and 2021, 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.

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

ASSETS	
Restricted cash	\$ 220
Accrued interest receivable	9,188
CRE loans, pledged as collateral ⁽¹⁾	1,466,463
Other assets	71
Total assets ⁽²⁾	<u>\$ 1,475,942</u>
LIABILITIES	
Accounts payable and other liabilities	\$ 143
Accrued interest payable	3,828
Borrowings	1,204,569
Total liabilities	<u>\$ 1,208,540</u>

(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.

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 December 31, 2023. 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 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 December 31, 2023. 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.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

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.

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

	Unsecured Junior Subordinated Debentures	Maximum Exposure to Loss
ASSETS		
Accrued interest receivable	\$ 32	\$ —
Investments in unconsolidated entities	1,548	\$ 1,548
Total assets	1,580	
LIABILITIES		
Accrued interest payable	433	N/A
Borrowings	51,548	N/A
Total liabilities	51,981	
Net (liability) asset	<u>\$ (50,401)</u>	

At December 31, 2023, 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):

	2023	Years Ended December 31, 2022	2021
Supplemental cash flows:			
Interest expense paid in cash	\$ 124,047	\$ 70,025	\$ 42,345
Income taxes paid in cash	101	228	—
Non-cash operating activities include the following:			
Acquisition of other right of use assets	\$ —	\$ (299)	\$ (479)
Assumption of other operating lease liabilities	—	299	479
Non-cash investing activities include the following:			
Proceeds from the receipt of deed-in-lieu of foreclosure on loan	\$ 20,900	\$ 14,299	\$ 17,600
Properties held for sale assets related to the receipt of deed-in-lieu of foreclosure	(20,900)	(14,299)	(17,600)
Non-cash financing activities include the following:			
Incentive compensation paid in common stock	\$ 598	\$ —	\$ —
Distributions on preferred stock accrued but not paid	3,262	3,262	3,262
Capitalized amortization of deferred debt issuance costs	1,127	—	—
Capitalized interest	1,160	—	—

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

NOTE 5 - RESTRICTED CASH

The following table summarizes the Company's restricted cash (in thousands):

	December 31,	
	2023	2022
Restricted cash:		
Cash held in escrow for construction loan	\$ 7,620	\$ —
Cash held by consolidated CRE securitizations	220	38,180
Restricted cash held in various escrow accounts	269	274
Restricted cash held in deposit accounts	328	125
Total	<u>\$ 8,437</u>	<u>\$ 38,579</u>

[\(Back to Index\)](#)

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

NOTE 6 - LOANS

The following is a summary of the Company's 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⁾
At December 31, 2023:								
CRE loans held for investment:								
Whole loans ⁽⁵⁾⁽⁶⁾⁽⁷⁾	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
Total CRE loans held for investment		<u>\$ 1,862,965</u>	<u>\$ (5,872)</u>	<u>\$ 1,857,093</u>	<u>\$ (28,757)</u>	<u>\$ 1,828,336</u>		
At December 31, 2022:								
CRE loans held for investment:								
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
Mezzanine loan ⁽⁵⁾	1	4,700	—	4,700	(4,700)	—	10.00%	June 2028
Total CRE loans held for investment		<u>\$ 2,070,204</u>	<u>\$ (12,614)</u>	<u>\$ 2,057,590</u>	<u>\$ (18,803)</u>	<u>\$ 2,038,787</u>		

(1) Amounts include unamortized loan origination fees of \$5.8 million and \$12.3 million and deferred amendment fees of \$110,000 and \$308,000 at December 31, 2023 and 2022, respectively.

(2) Benchmark rates ("BR") comprise one-month LIBOR or one-month Term SOFR. At December 31, 2023, all of the Company's whole loans used one-month Term SOFR. Weighted-average one-month benchmark rates were 5.39% and 4.21% at December 31, 2023 and 2022, respectively. Additionally, weighted-average benchmark floors were 0.70% and 0.68% at December 31, 2023 and 2022, 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 three whole loans, with amortized costs of \$41.2 million, in maturity default at December 31, 2023 and three whole loans, with amortized costs of \$51.6 million, in maturity default at December 31, 2022.

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

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

(7) In December 2023, the Company sold at par four hotel loans with a par value of \$77.2 million.

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

Property Type	December 31, 2023		December 31, 2022	
	Carrying Value	% of Loan Portfolio	Carrying Value	% of Loan Portfolio
Multifamily	\$ 1,453,681	79.6%	\$ 1,531,697	75.2%
Office ⁽¹⁾⁽²⁾	247,410	13.5%	269,201	13.2%
Hotel	70,857	3.9%	178,160	8.7%
Self-Storage	48,363	2.6%	51,704	2.5%
Retail ⁽³⁾	8,025	0.4%	8,025	0.4%
Total	<u>\$ 1,828,336</u>	<u>100%</u>	<u>\$ 2,038,787</u>	<u>100%</u>

[\(Back to Index\)](#)

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

(1)Includes two whole loans in maturity default with carrying values of \$33.1 million at December 31, 2023 and two whole loans in maturity default with carrying values of \$42.5 million at December 31, 2022.

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

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

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

Geographic Location	December 31, 2023		December 31, 2022	
	Carrying Value	% of Loan Portfolio	Carrying Value	% of Loan Portfolio
Southwest ⁽¹⁾	\$ 484,902	26.6 %	\$ 472,327	23.2 %
Southeast	401,624	22.0 %	438,403	21.5 %
Mountain	275,120	15.0 %	329,828	16.2 %
Mid Atlantic	236,104	12.9 %	248,740	12.2 %
Pacific	169,789	9.3 %	191,706	9.4 %
Northeast ⁽²⁾	161,172	8.8 %	170,236	8.3 %
East North Central ⁽³⁾	60,401	3.3 %	125,211	6.1 %
West North Central	39,224	2.1 %	62,336	3.1 %
Total	<u>\$ 1,828,336</u>	<u>100 %</u>	<u>\$ 2,038,787</u>	<u>100 %</u>

(1)Includes one whole loan in maturity default with carrying values of \$19.1 million and \$20.7 million at December 31, 2023 and 2022, respectively.

(2)Includes one whole loan in maturity default with a carrying value of \$8.0 million at both December 31, 2023 and 2022. Also includes one mezzanine loan with a par value of \$4.7 million that is fully reserved at both December 31, 2023 and 2022.

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

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	2024	2025	2026 and Thereafter	Total
At December 31, 2023:				
Whole loans ⁽¹⁾	\$ 916,985	\$ 814,772	\$ 79,484	\$ 1,811,241
Mezzanine loan	—	—	4,700	4,700
Total CRE loans ⁽²⁾	<u>\$ 916,985</u>	<u>\$ 814,772</u>	<u>\$ 84,184</u>	<u>\$ 1,815,941</u>

Description	2023	2024	2025 and Thereafter	Total
At December 31, 2022:				
Whole loans ⁽¹⁾	\$ 268,120	\$ 882,175	\$ 851,031	\$ 2,001,326
Mezzanine loan	—	—	4,700	4,700
Total CRE loans ⁽²⁾	<u>\$ 268,120</u>	<u>\$ 882,175</u>	<u>\$ 855,731</u>	<u>\$ 2,006,026</u>

(1)Maturity dates exclude three whole loans with amortized costs of \$41.2 million in maturity default at December 31, 2023 and three whole loans with amortized costs of \$51.6 million in maturity default at December 31, 2022.

(2)At December 31, 2023, the amortized costs of the CRE whole loans, summarized by contractual maturity assuming full exercise of the extension options, were \$80.4 million, \$101.7 million and \$1.6 billion in 2024, 2025 and 2026 and thereafter, respectively. At December 31, 2022, the amortized costs of the CRE whole loans, summarized by contractual maturity assuming full exercise of the extension options, were \$113.8 million, \$68.6 million and \$1.8 billion in 2023, 2024 and 2025 and thereafter, respectively.

No single loan or investment represented more than 10% of the Company's total assets and no single investment group generated over 10% of its total 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 December 31, 2023 and 2022, the Company had no loan principal paydowns receivable.

[\(Back to Index\)](#)

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

NOTE 7 - FINANCING RECEIVABLES

The following tables show the activity in the allowance for credit losses for the years ended December 31, 2023 and 2022 (in thousands):

	Years Ended December 31,	
	2023	2022
Allowance for credit losses at beginning of year	\$ 18,803	\$ 8,805
Provision for credit losses	10,902	12,295
Charge offs	(948)	(2,297)
Allowance for credit losses at end of year	<u>\$ 28,757</u>	<u>\$ 18,803</u>

During the year ended December 31, 2023, the Company recorded provisions for expected credit losses of \$10.9 million, primarily driven by increased modeled portfolio credit risk compounded by 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 8).

During the year ended December 31, 2022, the Company recorded provisions for expected credit losses of \$12.3 million, primarily driven by macroeconomic factors, including expected increases in inflation, short-term interest rates that collateralize the Company's loans, energy prices and continued global supply chain dislocation trending negative, compounded by an increase in portfolio credit risk indicated in property-level cash flows.

In addition to the Company's general estimate of credit losses, the Company may also be required to individually evaluate collateral-dependent loans for credit losses if it has determined that foreclosure or sale of the loan or the underlying collateral is probable. At both December 31, 2023 and 2022, \$4.7 million of the Company's allowance for credit losses resulted from collateral-dependent loans that were individually evaluated for credit losses, details of which follow:

At both December 31, 2023 and 2022, the Company individually evaluated the following loans:

- One office mezzanine loan in the Northeast region, with a principal balance of \$4.7 million at both December 31, 2023 and 2022. The Company fully reserved this loan in the fourth quarter of 2022, and it continues to be fully reserved at December 31, 2023. The 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 December 31, 2023 and 2022, 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, the loan entered payment default and has been placed on nonaccrual status. During the year ended December 31, 2023, the borrower filed for bankruptcy and the third-party winning bidder from the auction sale is anticipated to close during fiscal year 2024 at a purchase price of \$8.3 million. As a requirement of the auction sale, the winning bidder posted a 10% non-refundable deposit. The sale price and an as-is appraised value are in excess of the loan's principal, and, as such, the loan had no allowance for CECL at both December 31, 2023 and 2022.
- One office loan in the Southwest region, with a principal balance of \$19.1 million and \$20.7 million at December 31, 2023 and 2022, respectively, for which foreclosure was determined 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. However, in exchange for payments, comprising principal paydowns, interest payments and the reimbursement of certain legal fees, received between October 2022 and January 2024, the Company has agreed to temporarily defer its right to foreclose on the property until April 2024 and continues to accrue interest on the loan. In February 2024, the Company had cash escrows of \$4.8 million available to support debt service payments for the loan. Additionally, at both December 31, 2023 and 2022, this loan had an as-is appraised value in excess of its principal and interest balances, and, as such, had no CECL allowance.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

Also, at December 31, 2023, the Company individually evaluated one additional loan, which had not been evaluated in the prior year:

- 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 has been 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 December 31, 2023.

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 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.

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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • Property performance lags behind underwritten expectations. • Occupancy is not stabilized and the property has some tenancy rollover.
4	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

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

	Rating 1	Rating 2	Rating 3	Rating 4	Rating 5	Total ⁽¹⁾
At December 31, 2023:						
Whole loans, floating-rate	\$ —	\$ 973,424	581,032	\$ 256,785	\$ 41,152	\$ 1,852,393
Mezzanine loan	—	—	—	—	4,700	4,700
Total	<u>\$ —</u>	<u>\$ 973,424</u>	<u>\$ 581,032</u>	<u>\$ 256,785</u>	<u>\$ 45,852</u>	<u>\$ 1,857,093</u>
At December 31, 2022:						
Whole loans, floating-rate	\$ —	\$ 1,635,376	\$ 309,491	\$ 85,226	\$ 22,797	\$ 2,052,890
Mezzanine loan	—	—	—	—	4,700	4,700
Total	<u>\$ —</u>	<u>\$ 1,635,376</u>	<u>\$ 309,491</u>	<u>\$ 85,226</u>	<u>\$ 27,497</u>	<u>\$ 2,057,590</u>

(1)The total amortized cost of CRE loans excluded accrued interest receivable of \$11.8 million and \$11.9 million at December 31, 2023 and 2022, respectively.

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⁾
At December 31, 2023:							
Whole loans, floating-rate: ⁽²⁾							
Rating 2	\$ 63,634	\$ 212,175	\$ 636,487	\$ 22,556	\$ 38,572	\$ —	\$ 973,424
Rating 3	—	168,791	364,369	34,232	—	13,640	581,032
Rating 4	—	82,918	123,333	—	5,645	44,889	256,785
Rating 5	—	14,000	—	—	19,127	8,025	41,152
Total whole loans, floating-rate	63,634	477,884	1,124,189	56,788	63,344	66,554	1,852,393
Mezzanine loan (rating 5)	—	—	—	—	—	4,700	4,700
Total	<u>\$ 63,634</u>	<u>\$ 477,884</u>	<u>\$ 1,124,189</u>	<u>\$ 56,788</u>	<u>\$ 63,344</u>	<u>\$ 71,254</u>	<u>\$ 1,857,093</u>
Current Period Gross Write-Offs	\$ —	\$ —	\$ —	\$ —	\$ (948)	\$ —	\$ (948)

	2022	2021	2020	2019	2018	Prior	Total ⁽¹⁾
At December 31, 2022:							
Whole loans, floating-rate: ⁽²⁾							
Rating 2	\$ 526,606	\$ 1,003,060	\$ 64,944	\$ 26,977	\$ 13,789	\$ —	\$ 1,635,376
Rating 3	—	192,490	44,657	27,881	44,463	—	309,491
Rating 4	—	—	—	20,742	64,484	—	85,226
Rating 5	—	—	—	22,797	—	—	22,797
Total whole loans, floating-rate	526,606	1,195,550	109,601	98,397	122,736	—	2,052,890
Mezzanine loan (rating 4)	—	—	—	—	4,700	—	4,700
Total	<u>\$ 526,606</u>	<u>\$ 1,195,550</u>	<u>\$ 109,601</u>	<u>\$ 98,397</u>	<u>\$ 127,436</u>	<u>\$ —</u>	<u>\$ 2,057,590</u>
Current Period Gross Write-Offs	\$ —	\$ —	\$ —	\$ —	\$ —	\$ (2,297)	\$ (2,297)

(1)The total amortized cost of CRE loans excluded accrued interest receivable of \$11.8 million and \$11.9 million at December 31, 2023 and 2022, respectively.

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

The Company had one additional mezzanine loan that was included in assets held for sale, and that loan had no carrying value at December 31, 2023 and 2022.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

Loan Portfolios 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
At December 31, 2023:							
Whole loans, floating-rate	\$ —	\$ —	\$ 41,152	\$ 41,152	\$ 1,811,241	\$ 1,852,393	\$ 19,127
Mezzanine loan ⁽⁴⁾	—	—	4,700	4,700	—	4,700	—
Total	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 45,852</u>	<u>\$ 45,852</u>	<u>\$ 1,811,241</u>	<u>\$ 1,857,093</u>	<u>\$ 19,127</u>
At December 31, 2022:							
Whole loans, floating-rate	\$ —	\$ —	\$ 28,767	\$ 28,767	\$ 2,024,123	\$ 2,052,890	\$ —
Mezzanine loan ⁽⁴⁾	—	—	—	—	4,700	4,700	—
Total	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 28,767</u>	<u>\$ 28,767</u>	<u>\$ 2,028,823</u>	<u>\$ 2,057,590</u>	<u>\$ —</u>

(1) During the years ended December 31, 2023, 2022 and 2021, the Company recognized interest income of \$4.3 million, \$1.8 million and \$2.0 million, respectively, on three CRE whole loans with principal payments past due greater than 90 days at December 31, 2023.

(2) Includes 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 \$11.8 million and \$11.9 million at December 31, 2023 and 2022, respectively.

(4) Fully reserved at both December 31, 2023 and 2022.

At December 31, 2023, the Company had three CRE whole loans, with total amortized costs of \$41.2 million, and one mezzanine loan, with a total amortized cost of \$4.7 million, in payment default. At December 31, 2022, the Company had three CRE whole loans, with total amortized costs of \$51.6 million, in payment default.

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 year ended December 31, 2023, the Company entered into one CRE whole loan modification that requires disclosure pursuant to guidance adopted during the year ended December 31, 2023. Terms of the modification are as follows: (i) extended the maturity from December 2023 to December 2025, (ii) reduced its interest rate from BR+500 to BR+250, and (iii) modified its payment terms and will accrue to the lesser of net operating cash flow or BR+250. Any unpaid interest will be due at loan payoff. At December 31, 2023, this loan had an amortized cost of \$44.9 million, which represented 2.4% of the total amortized cost of the portfolio.

During the year ended December 31, 2022, the Company entered into three agreements that extended one CRE whole loan for a borrower experiencing financial difficulty. At December 31, 2022, this loan had an amortized cost of \$20.7 million, which represented 1.0% of the total amortized cost of the portfolio. At December 31, 2023, this loan was in payment default.

NOTE 8 - INVESTMENTS IN REAL ESTATE AND OTHER ACQUIRED ASSETS AND ASSUMED LIABILITIES

At December 31, 2023, 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.

[\(Back to Index\)](#)

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

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 December 31, 2023, the property was reported as property held for sale on the consolidated balance sheets.

[\(Back to Index\)](#)

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

The following table summarizes the book value of the Company's acquired assets and assumed liabilities (in thousands, except amounts in the footnotes):

	December 31, 2023			December 31, 2022		
	Cost Basis	Accumulated Depreciation & Amortization	Carrying Value	Cost Basis	Accumulated Depreciation & Amortization	Carrying Value
Assets acquired:						
<i>Investments in real estate, equity:</i>						
Investments in real estate ⁽¹⁾	\$ 162,662	\$ (5,041)	\$ 157,621	\$ 123,219	\$ (2,251)	\$ 120,968
Right of use assets ⁽²⁾⁽³⁾	19,664	(478)	19,186	19,664	(205)	19,459
Intangible assets ⁽⁴⁾	11,474	(3,592)	7,882	11,474	(2,594)	8,880
Subtotal	193,800	(9,111)	184,689	154,357	(5,050)	149,307
<i>Investments in real estate from lending activities:</i>						
Properties held for sale ⁽⁵⁾	62,605	—	62,605	53,769	—	53,769
Total	256,405	(9,111)	247,294	208,126	(5,050)	203,076
Liabilities assumed:						
<i>Investments in real estate, equity:</i>						
Mortgages payable	40,297	1,489	41,786	18,089	155	18,244
Other liabilities	247	(220)	27	247	(183)	64
Lease liabilities ⁽³⁾⁽⁶⁾	43,538	—	43,538	43,260	(393)	42,867
Subtotal	84,082	1,269	85,351	61,596	(421)	61,175
<i>Investments in real estate from lending activities:</i>						
Liabilities held for sale ⁽⁷⁾	3,025	—	3,025	3,025	—	3,025
Total	87,107	1,269	88,376	64,621	(421)	64,200
Total net investments in real estate and properties held for sale ⁽⁸⁾	<u>\$ 169,298</u>		<u>\$ 158,918</u>	<u>\$ 143,505</u>		<u>\$ 138,876</u>

(1)Includes \$38.4 million, which is not depreciable, at both December 31, 2023 and 2022. Also includes \$44.9 million and \$9.9 million of construction in progress for the student housing construction project, which is also not depreciable until placed in service, at December 31, 2023 and 2022, respectively.

(2)Primarily comprises a \$19.2 million right of use asset, associated with an acquired ground lease of \$43.2 million (see below) accounted for as an operating lease at December 31, 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. Amortization is booked to real estate expenses on the consolidated statements of operations.

(3)Refer to Note 9 for additional information on the Company's remaining operating leases.

(4)Primarily comprises a franchise intangible of \$4.7 million and \$5.3 million, a management contract intangible of \$2.9 million and \$3.1 million, and a customer list intangible of \$223,000 and \$427,000 at December 31, 2023 and 2022, respectively.

(5)At December 31, 2022, properties held for sale includes two properties originally acquired in November 2020 and July 2022. At December 31, 2023, properties held for sale included the November 2020 acquisition, as well as the property acquired via deed-in-lieu of foreclosure in June 2023.

(6)Primarily comprises a \$43.2 million ground lease with a remaining term of 93 years. Lease expenses for the years ended December 31, 2023 and 2022 were \$2.7 million and \$1.1 million, respectively.

(7)Comprises an operating lease liability.

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

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 to 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. At December 31, 2023, 93 years remain in its term.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

For the years ended December 31, 2023 and 2022, the Company recorded lease payments of \$1.7 million and \$1.3 million, respectively, amortization related to the right of use asset of \$203,000 and \$153,000, respectively, and accretion related to its ground lease liability of \$2.5 million and \$341,000, respectively.

During the years ended December 31, 2023, 2022 and 2021, the Company recorded amortization expense of \$998,000, \$2.1 million and \$1.2 million, respectively, on its intangible assets. The Company expects to record amortization expense of \$961,000, \$793,000, \$748,000, \$748,000 and \$748,000 during the 2024, 2025, 2026, 2027 and 2028 fiscal years, respectively, on its intangible assets.

NOTE 9 - LEASES

In addition to the ground lease discussed in Note 8, the Company has operating leases for office space and office equipment. The leases have terms that expire between January 2024 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 include the Company's responsibility for a percentage of increases in the 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):

	December 31, 2023	December 31, 2022
Operating Leases:		
Right of use assets	\$ 693	\$ 822
Lease liabilities	\$ (738)	\$ (828)
Weighted average remaining lease term:	5.8 years	6.7 years
Weighted average discount rate ⁽¹⁾ :	8.70%	8.71%

(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 date is used.

[\(Back to Index\)](#)

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

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

	Year Ended December 31, 2023	Year Ended December 31, 2022
Lease Cost:		
Operating lease cost	\$ 194	\$ 68
Other Information:		
Cash paid for amounts included in the measurement of lease liabilities		
Operating cash flows from operating leases	\$ 151	\$ 94

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

	Operating Leases
2024	\$ 157
2025	161
2026	165
2027	167
2028	171
Thereafter	132
Subtotal	953
Less: impact of discount	(215)
Total	<u>\$ 738</u>

NOTE 10 - INVESTMENTS IN UNCONSOLIDATED ENTITIES

The Company's investments in unconsolidated entities at December 31, 2023 and 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 years ended December 31, 2023, 2022 and 2021, the Company recorded dividends from its investments in RCT I's and RCT II's common shares, reported in other revenue on the consolidated statements of operations, of \$145,000, \$91,000, and \$65,000, respectively.

[\(Back to Index\)](#)

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

NOTE 11 - 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 footnotes):

	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	\$ 643,040	\$ 2,243	\$ 640,797	6.98%	12.5 years	\$ 770,460
ACR 2021-FL2 Senior Notes	567,000	3,227	563,773	7.28%	13.1 years	700,000
Senior secured financing facility	64,495	2,927	61,568	9.14%	4.1 years	157,722
CRE - term warehouse financing facilities ⁽¹⁾	170,861	2,273	168,588	7.96%	1.6 years	254,081
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	9.60%	12.7 years	—
Total	\$ 1,690,723	\$ 14,523	\$ 1,676,200	7.28%	10.4 years	\$ 1,966,002

	Principal Outstanding	Unamortized Issuance Costs and Discounts	Outstanding Borrowings	Weighted Average Borrowing Rate	Weighted Average Remaining Maturity	Value of Collateral
At December 31, 2022:						
ACR 2021-FL1 Senior Notes	\$ 675,223	\$ 3,826	\$ 671,397	5.81%	13.5 years	\$ 802,643
ACR 2021-FL2 Senior Notes	567,000	4,841	562,159	6.13%	14.1 years	700,000
Senior secured financing facility	91,549	3,659	87,890	7.94%	5.0 years	196,837
CRE - term warehouse financing facilities ⁽¹⁾	330,849	2,561	328,288	6.85%	1.8 years	453,550
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	—
Unsecured junior subordinated debentures	51,548	—	51,548	8.52%	13.7 years	—
Total	\$ 1,884,879	\$ 17,846	\$ 1,867,033	6.29%	10.3 years	\$ 2,178,430

(1) Principal outstanding includes accrued interest payable of \$539,000 and \$894,000 at December 31, 2023 and 2022, respectively.

Securitizations

The following table sets forth certain information with respect to the Company's consolidated securitizations at December 31, 2023 (in thousands):

	Closing Date	Maturity Date	Reinvestment Period End	Total Note Paydowns from Closing Date through December 31, 2023
ACR 2021-FL1	May 2021	June 2036	May 2023	\$ 32,183
ACR 2021-FL2	December 2021	January 2037	December 2023	\$ —

(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 December 31, 2023 and 2022 were eliminated in consolidation.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

XAN 2019-RSO7

In April 2019, the Company closed Exantas Capital Corp. 2019-RSO7, Ltd. ("XAN 2019-RSO7"), a \$687.2 million CRE debt securitization transaction that provided financing for CRE loans. In May 2021, the Company exercised the optional redemption of XAN 2019-RSO7, and all of the outstanding senior notes were paid off from the sales proceeds of certain of the securitization's assets.

XAN 2020-RSO8

In March 2020, the Company closed 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 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.

At closing, the senior notes issued to investors consisted of the following classes: (i) \$431.4 million of Class A notes bearing interest at one-month LIBOR plus 1.20%; (ii) \$100.3 million of Class A-S notes bearing interest at one-month LIBOR plus 1.60%; (iii) \$37.1 million of Class B notes bearing interest at one-month LIBOR plus 1.80%; (iv) \$43.1 million of Class C notes bearing interest at one-month LIBOR plus 2.00%; (v) \$50.2 million of Class D notes bearing interest at one-month LIBOR plus 2.65%; and (vi) \$13.0 million of Class E notes bearing interest at one-month LIBOR plus 3.10%. The non-recourse, floating-rate notes initially charged one-month Term LIBOR but converted to one-month Term SOFR in June 2023.

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. During the year ended December 31, 2023, the Company did not exercise 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 included a reinvestment period, which ended in December 2023, that allowed it to acquire CRE loans for reinvestment into the securitization using uninvested principal proceeds.

At closing, the senior notes issued to investors consisted of the following classes: (i) \$385.0 million of Class A notes bearing interest at one-month LIBOR plus 1.40%; (ii) \$30.6 million of Class A-S notes bearing interest at one-month LIBOR plus 1.75%; (iii) \$38.5 million of Class B notes bearing interest at one-month LIBOR plus 2.25%; (iv) \$47.3 million of Class C notes bearing interest at one-month LIBOR plus 2.65%; (v) \$51.6 million of Class D notes bearing interest at one-month LIBOR plus 3.10%; and (vi) \$14.0 million of Class E notes bearing interest at one-month LIBOR plus 4.00%. The non-recourse, floating-rate notes initially charged one-month Term LIBOR but converted to one-month Term SOFR in June 2023.

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. During the year ended December 31, 2023, the Company did not exercise this right.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

Corporate Debt

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

The rights of holders of common securities of RCT I and RCT II are subordinate to the rights of the holders of capital securities only in the event of a default; otherwise, the common securities' economic and voting rights are pari passu with the capital securities. The capital and common securities of RCT I and RCT II are subject to mandatory redemption upon the maturity or call of the junior subordinated debentures held by each. Unless earlier dissolved, RCT I will dissolve in May 2041 and RCT II will dissolve in September 2041. The junior subordinated debentures are the sole assets of RCT I and RCT II, which mature in June 2036 and October 2036, respectively, and may currently be called at par.

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.

During the year ended December 31, 2021, the Company repurchased \$55.7 million of its 4.50% Convertible Senior Notes, resulting in a charge to earnings of \$1.5 million, comprising an extinguishment of debt charge of \$1.2 million in connection with the acceleration of the market discount and interest expense of \$304,000 in connection with the acceleration of deferred debt issuance costs.

In February 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 costs. In August 2022, the remaining \$48.2 million of the 4.50% Convertible Senior Notes were paid off upon maturity at par.

Senior Unsecured Notes

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, (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% 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.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

The Indenture contains restrictive covenants that, among other things, require the Company to maintain certain financial ratios. The foregoing limitations are subject to exceptions as set forth in the Supplemental Indenture. At December 31, 2023, the Company was in compliance with these covenants. The Indenture provides for customary events of default that include, among other things (subject in certain cases to customary grace and cure periods): (i) non-payment of principal or interest, (ii) breach of certain covenants contained in the Indenture or the 5.75% Senior Unsecured Notes, (iii) an event of default or acceleration of certain other indebtedness of the Company or a subsidiary in which the Company has invested at least \$75 million in capital within the applicable grace period and (iv) certain events of bankruptcy or insolvency. Generally, if an event of default occurs (subject to certain exceptions), CTC or the holders of at least 25% in aggregate principal amount of the then outstanding 5.75% Senior Unsecured Notes may declare all of the notes to be due and payable.

12.00% Senior Unsecured Notes

In July 2020, 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. The 12.00% Senior Unsecured Notes had an annual interest rate of 12.00%, payable up to 3.25% (at the election of the Company) as pay-in-kind interest and the remainder as cash interest. In July 2020, the Company issued \$50.0 million aggregate principal amount of the 12.00% Senior Unsecured Notes.

In August 2021, the Company entered into an agreement with that provided for the redemption in full of the outstanding balance of the 12.00% Senior Unsecured Notes with payment to Oaktree and MassMutual for an aggregate \$55.3 million, which consisted of (i) principal in the amount of \$50.0 million, (ii) interest in the amount of \$329,000 and (iii) a make-whole amount of \$5.0 million. In connection with the redemption, the Company recorded a charge to earnings of \$8.0 million, comprising an extinguishment of debt charge of \$7.8 million in connection with (i) the \$5.0 million net make-whole amount and (ii) the \$2.8 million acceleration of the remaining market discount; and interest expense of \$218,000 in connection with the acceleration of deferred debt issuance costs. The Company did not issue any additional notes under this agreement and it expired as of July 31, 2022.

Financing Arrangements

Borrowings under the Company's financing arrangements are guaranteed by the Company or one or more of its subsidiaries. The following table sets forth certain information with respect to these arrangements (dollars in thousands, except amounts in footnotes):

	December 31, 2023				December 31, 2022			
	Outstandi ng Borrowing s	Value of Collateral	Number of Positions as Collateral	Weighted Average Interest Rate	Outstandi ng Borrowing s	Value of Collateral	Number of Positions as Collateral	Weighted Average Interest Rate
Senior Secured Financing Facility								
Massachusetts Mutual Life Insurance Company ⁽¹⁾	\$ 61,568	\$ 157,722	7	9.14%	\$ 87,890	\$ 196,837	8	7.94%
CRE - Term Warehouse Financing Facilities								
JPMorgan Chase Bank, N.A. ⁽³⁾	74,694	125,044	4	7.82%	186,783	255,095	11	6.74%
Morgan Stanley Mortgage Capital Holdings LLC ⁽⁴⁾	93,894	129,037	7	8.07%	141,505	198,455	10	7.00%
Mortgages Payable								
ReadyCap Commercial, LLC ⁽⁵⁾	19,365	25,400	1	9.16%	18,244	25,400	1	8.08%
Oceanview Life and Annuity Company ⁽⁶⁾⁽⁷⁾	7,330	58,339	1	11.37%	—	—	—	—%
Florida Pace Funding Agency ⁽⁶⁾⁽⁸⁾	15,091	—	—	7.26%	—	—	—	—%
Total	<u>\$ 271,942</u>	<u>\$ 495,542</u>			<u>\$ 434,422</u>	<u>\$ 675,787</u>		

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

- (1)Includes \$2.9 million and \$3.7 million of deferred debt issuance costs at December 31, 2023 and 2022, respectively.
(2)Outstanding borrowings include accrued interest payable.
(3)Includes \$1.6 million and \$1.1 million of deferred debt issuance costs at December 31, 2023 and 2022, respectively.
(4)Includes \$647,000 and \$1.4 million of deferred debt issuance costs at December 31, 2023 and 2022, respectively.
(5)Includes \$259,000 and \$466,000 of deferred debt issuance costs at December 31, 2023 and 2022, 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 \$1.3 million of deferred debt issuance costs at December 31, 2023. There were no deferred debt issuance costs at December 31, 2022.
(8)Includes \$419,000 of deferred debt issuance costs at December 31, 2023. There were no deferred debt issuance costs at December 31, 2022.

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

	Amount at Risk	Weighted Average Remaining Maturity	Weighted Average Interest Rate
At December 31, 2023:			
Senior Secured Financing Facility ⁽¹⁾			
Massachusetts Mutual Life Insurance Company	\$ 93,518	4.1 years	9.14%
CRE - Term Warehouse Financing Facilities ⁽¹⁾⁽²⁾			
JPMorgan Chase Bank, N. A.	\$ 49,570	2.6 years	7.82%
Morgan Stanley Mortgage Capital Holdings LLC	\$ 35,471	0.8 years	8.07%
Mortgages Payable			
ReadyCap Commercial, LLC ⁽³⁾	\$ 5,672	1.3 years	9.16%
Oceanview Life and Annuity Company ⁽⁴⁾⁽⁵⁾	\$ 34,180	1.1 years	11.37%
Florida Pace Funding Agency ⁽⁴⁾⁽⁵⁾	—	29.6 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 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.
(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 related to Oceanview Life and Annuity Company also applies to Florida Pace Funding Agency.
(5)Outstanding borrowings are collateralized by a student housing construction project.

The Company was in compliance with all financial covenants in each agreement at 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 matured on July 31, 2027. The Company paid a commitment fee as well as other reasonable closing costs. During the first two years, an unused commitment fee of 0.50% per annum (payable monthly) on unused commitments under the MassMutual Loan Agreement was payable for each day on which less than 75% of the total commitment was drawn.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

In connection with the MassMutual Loan Agreement, the Company entered into a Guaranty (the "MassMutual Guaranty") among the Company, Exantas Real Estate Funding 2018-RSO6 Investor, LLC ("RSO6"), Exantas Real Estate Funding 2019-RSO7 Investor, LLC ("RSO7") and Exantas Real Estate Funding 2020-RSO8 Investor, LLC ("RSO8"), each an indirect, wholly owned subsidiary of the Company, in favor of the secured parties under the MassMutual Loan Agreement. RSO6, RSO7 and RSO8 no longer exist. Pursuant to the MassMutual Guaranty, the Company fully guaranteed all payments and performance of Holdings and the Borrower under the MassMutual Loan Agreement. Additionally, the Company, and previously RSO6, RSO7 and RSO8, made certain representations and warranties and agreed to not incur debt or liens, each subject to certain exceptions, and agreed to provide the Lenders with certain information.

In September 2020, the MassMutual Loan Agreement was amended pursuant to which (i) the initial portfolio assets were revised and an agreed advance rate for each initial portfolio asset (each, an "Initial Portfolio Asset Advance Rate") was set, and (ii) the revolving loan facility under the MassMutual Loan Agreement was amended to require the initial lender (currently MassMutual) to provide a specific advance rate for any future eligible portfolio assets and to limit the aggregate total amount of advances outstanding at any time to both the total facility amount and, in lieu of a 55% LTV, a borrowing base as of any required date of determination equal to the sum of, in each case, the product of the advance rate for such eligible portfolio asset (including in respect of the initial portfolio assets, the applicable Initial Portfolio Asset Advance Rate therefor) and the then determined value of such eligible portfolio asset.

The MassMutual Loan Agreement was further amended in several instances pursuant to which (i) MassMutual consented to the formation of certain subsidiaries to hold real estate and (ii) such subsidiaries agreed to enter into guaranty agreements in favor of the secured parties under the MassMutual Loan Agreement.

In July 2022, Holdings, the Borrower and the Lenders entered into the Fifth Amendment to the MassMutual Loan Agreement (the "July 2022 Amendment") to (i) extend the availability period from July 31, 2022 to August 31, 2022 and (ii) amend the interest rate on the outstanding principal amount of the borrowings, with respect to borrowings made in connection with eligible portfolio assets transferred to any borrower after the effective date of the July 2022 Amendment to the rate per annum determined by the initial lender or otherwise 5.75% per annum. In August 2022, Holdings, the Borrower and the Lenders entered into the Sixth Amendment to the MassMutual Loan Agreement to extend the availability period from August 31, 2022 to October 15, 2022.

In December 2022, Holdings, the Borrower and the Lenders entered into an Amended and Restated Loan and Servicing Agreement, which amends and restates the existing loan and servicing 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 Lenders and Borrower. The advance rate on portfolio assets will be mutually agreed upon by 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.

The Amended and Restated Loan and Servicing 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 and include declaring the final maturity date to have occurred and advances due and liquidation of the assets securing the series.

Pursuant to the Amended and Restated Loan and Servicing Agreement, the Borrower's obligations under the MassMutual Loan Agreement are secured by the Borrower's assets and Holdings' equity interests in the Borrower, including all distributions, proceeds and profits from Holdings' interests in the Borrower.

CRE - Term Warehouse Financing Facilities

In February 2012, a wholly-owned subsidiary entered into a master repurchase and securities agreement (the "2012 Facility") with Wells Fargo to finance the origination of CRE loans. In July 2018, the subsidiary entered into an amended and restated master repurchase agreement (the "2018 Facility"), in exchange for an extension fee and other reasonable costs, that maintained the \$250.0 million maximum facility amount and extended the term of the facility to July 2020 with three one-year extension options exercisable at the Company's discretion. In October 2021, the 2018 Facility matured.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

In April 2018, the Company's indirect wholly-owned subsidiary entered into a master repurchase agreement (the "Barclays Facility") with Barclays to finance the origination of CRE loans. In connection with the Barclays Facility, the Company entered into a guaranty agreement (the "Barclays Guaranty") pursuant to which the Company fully guaranteed all payments and performance under the Barclays Facility. In October 2021, the Barclays Facility and the Barclays Guaranty were amended to extend the revolving period of the facility to October 2022 and to modify the guaranty to limit financial covenants to be applicable when there are outstanding transactions. The Barclays Facility had a maximum facility amount of \$250.0 million and charged interest of one-month LIBOR plus market spreads. In February 2022, the Company 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 JPMorgan Chase to finance the origination of CRE loans. In connection with the JPMorgan Chase Facility, the Company entered into a guarantee agreement (the "JPMorgan Chase Guarantee") pursuant to which the Company fully guaranteed all payments and performance under the JPMorgan Chase Facility. The JPMorgan Chase Facility has a maximum facility amount of \$250.0 million, charges interest of one-month benchmark plus market spreads and had an initial maturity date of October 2024.

In May 2020, the Company entered into an amendment to the JPMorgan Chase Guarantee that revised its minimum equity financial covenant as of February 29, 2020. In October 2020, the Company entered into an amendment to the JPMorgan Chase Guarantee that revised a covenant definition so that credit losses are determined in accordance with a risk rating-based methodology. In September and October 2021, the JPMorgan Chase Facility was amended twice, resulting in (i) the extension of the JPMorgan Chase Facility's maturity date to October 2024, (ii) an update to the Company's tangible net worth requirement and minimum liquidity covenant as set forth in the guarantee agreement and (iii) a modification of market terms regarding the replacement of LIBOR upon determination of a benchmark transition event. In November 2022, the JPMorgan Chase Facility was amended for the following: (i) EBITDA to interest expense ratio, (ii) maximum ratio of total indebtedness to its total equity, and (iii) minimum unencumbered liquidity requirement, each through September 2023. In July 2023, the JPMorgan Chase Facility was amended to extend the maturity date to July 2026, as well as 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 December 2024.

The JPMorgan Chase Facility contains margin call provisions that provide JPMorgan Chase with certain rights if the value of purchased assets declines. Under these circumstances, JPMorgan Chase may require the Company to transfer cash in an amount necessary to eliminate such margin deficit or repurchase the asset(s) that resulted in the margin call.

In connection with the JPMorgan Chase Facility, the Company guaranteed the payment and performance under the JPMorgan Chase Facility pursuant to the JPMorgan Chase Guarantee subject to a limit of 25% of the then currently unpaid aggregate repurchase price of all purchased assets. The JPMorgan Chase Guarantee includes certain financial covenants required of the Company, including required liquidity, required capital, ratios of total indebtedness to equity and EBITDA requirements. Also, ACRES RF, the direct owner of the wholly-owned subsidiary borrower, executed a pledge agreement with JPMorgan Chase pursuant to which it pledged and granted to JPMorgan Chase a continuing security interest in any and all of its right, title and interest in and to the wholly-owned subsidiary, including all distributions, proceeds, payments, income and profits from its interests in the wholly-owned subsidiary.

The JPMorgan Chase Facility specifies 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 financing arrangement and include the acceleration of the principal amount outstanding under the JPMorgan Chase Facility and the liquidation by JPMorgan Chase of purchased assets then subject to the JPMorgan Chase Facility.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

In November 2021, an indirect, wholly-owned subsidiary of the Company entered into a \$250.0 million Master Repurchase and Securities Contract Agreement with Morgan Stanley, to be used to finance the Company's commercial real estate lending business (the "Morgan Stanley Facility"). Each repurchase transaction will specify its own terms, such as identification of the assets subject to the transaction, sale price, repurchase price and rate. In January 2022, the Morgan Stanley Facility was amended to add market terms regarding the replacement of LIBOR upon determination of a benchmark transition event. In November 2022, the Morgan Stanley Facility was amended for the following: (i) EBITDA to interest expense ratio, (ii) maximum ratio of total indebtedness to its total equity, and (iii) minimum unencumbered liquidity requirement, each through March 2024. 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. The Morgan Stanley Facility has a maximum facility amount of \$250.0 million, charges interest of one-month benchmark plus market spreads and matures in November 2024. The Company also has the right to request a one-year extension.

The Morgan Stanley Facility contains margin call provisions that provide Morgan Stanley with certain rights if the value of purchased assets declines. Under these circumstances, Morgan Stanley may require the subsidiary to transfer cash in an amount necessary to eliminate such margin deficit or repurchase the asset(s) that resulted in the margin call.

The Company guaranteed its subsidiary's payment and performance under the Morgan Stanley Facility pursuant to a guaranty agreement (the "Morgan Stanley Guaranty"), subject to a limit of 25% of the then currently unpaid aggregate repurchase price of all purchased assets. The Morgan Stanley Guaranty includes certain financial covenants required of the Company, including required liquidity, required capital, ratios of total indebtedness to equity and EBITDA requirements. Also, the subsidiary's direct parent, ACRES RF, executed a Pledge Agreement with Morgan Stanley pursuant to which ACRES RF pledged and granted to Morgan Stanley a continuing security interest in any and all of ACRES RF's right, title and interest in and to the subsidiary, including all distributions, proceeds, payments, income and profits from ACRES RF's interests in the subsidiary.

The Morgan Stanley Facility specifies 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 financing arrangement and include acceleration of the principal amount outstanding under the Morgan Stanley Facility and liquidation by Morgan Stanley of purchased assets then subject to the Morgan Stanley Facility.

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 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. 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.

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 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

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

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.

Contractual maturity dates of the Company's borrowings' principal outstanding by category and year are presented in the table below (in thousands, except amounts in footnotes):

	Total	2024	2025	2026	2027	2028 and Thereafter
At December 31, 2023:						
CRE securitizations	\$ 1,210,040	\$ —	\$ —	\$ —	\$ —	\$ 1,210,040
Senior Secured Financing Facility	64,495	—	—	—	50,995	13,500
CRE - term warehouse financing facilities ⁽¹⁾	170,861	94,541	—	76,320	—	—
Mortgages payable	43,779	—	28,269	—	—	15,510
5.75% Senior Unsecured Notes	150,000	—	—	150,000	—	—
Unsecured junior subordinated debentures	51,548	—	—	—	—	51,548
Total	<u>\$ 1,690,723</u>	<u>\$ 94,541</u>	<u>\$ 28,269</u>	<u>\$ 226,320</u>	<u>\$ 50,995</u>	<u>\$ 1,290,598</u>

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

NOTE 12 - SHARE ISSUANCE AND REPURCHASES

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 the years ended December 31, 2023 and 2022, the Company did not issue any Series D Preferred Stock through this agreement. During the year ended December 31, 2021, the Company received net proceeds of \$194,000 from the issuance of 7,857 shares of Series D Preferred Stock governed by the 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 distributions on the Series C Preferred Stock at a floating rate equal to three-month LIBOR 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.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

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

In November 2021, the Board authorized and approved the continued use of its existing share repurchase program to repurchase an additional \$20.0 million of the outstanding shares of the 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 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 years ended December 31, 2023 and 2022, the Company repurchased \$7.4 million and \$9.1 million of its common stock, representing 899,085 and 848,978 shares, respectively. At December 31, 2023, \$9.8 million of common and preferred stock remains available under this repurchase plan.

In connection with the Note and Warrant Purchase Agreement, the 12.00% Senior Unsecured Notes gave 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. In July 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 and expire seven years from the issuance date. The warrants can be exercised at with cash or as a net exercise. In July 2022, MassMutual exercised their warrants to purchase 74,666 shares. At December 31, 2023, the Oaktree warrants have not been exercised.

NOTE 13 - 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, will be 1,700,817 shares of common stock.

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 17 for a description of awards made under the Manager Plan.

The Company recognized stock-based compensation expense of \$2.6 million, \$3.6 million and \$1.7 million during the years ended December 31, 2023, 2022 and 2021, respectively, related to restricted stock.

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 is paid in cash and at least 25% is paid in the form of an award of common stock recorded in management fees on the consolidated statements of operations. During the year ended December 31, 2023, the Company incurred incentive compensation expense payable to the Manager of \$895,000, of which 50% was payable in cash and 50% was payable in common stock. At December 31, 2023, \$38,000 was included in Management fee payable - related party on the consolidated balance sheets. During the year ended December 31, 2022, the Company incurred incentive compensation expense payable to the Manager of \$340,000, of which 50% was payable in cash and 50% was payable in common stock. No incentive compensation was paid to the Manager for the year ended December 31, 2021.

The Company issued 69,201 shares of common stock to the Manager during the year ended December 31, 2023, pertaining to the portions of the fourth quarter 2022, first quarter 2023, second quarter 2023 and third quarter 2023 incentive compensation that was payable in shares. In January 2024, the Company issued 1,911 shares of common stock to the Manager pertaining to the portion of the fourth quarter 2023 incentive compensation that was payable at December 31, 2023. Shares of common stock issued under the Management Agreement for incentive compensation vest immediately upon issuance.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

The following table summarizes the Company's restricted common stock transactions under both the Plans and Management Agreement:

	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	69,201	—	69,201	8.45
Vested	(219,199)	(16,660)	(235,859)	12.81
Unvested shares at December 31, 2023	<u>375,001</u>	<u>41,674</u>	<u>416,675</u>	<u>\$ 14.07</u>

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

	Shares
2024	166,658
2025	166,671
2026	83,346
Total	<u>416,675</u>

At December 31, 2023, total unrecognized compensation costs relating to unvested restricted stock was \$1.9 million based on the grant date fair value of shares granted. The cost is expected to be recognized over a weighted average period of 2.0 years.

NOTE 14 - EARNINGS PER SHARE

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

	Years Ended December 31,		
	2023	2022	2021
Net income	\$ 21,848	\$ 10,426	\$ 33,923
Net income allocated to preferred shares	(19,422)	(19,422)	(15,887)
Net loss allocable to non-controlling interest, net of taxes	542	197	—
Net income (loss) allocable to common shares	<u>\$ 2,968</u>	<u>\$ (8,799)</u>	<u>\$ 18,036</u>
Weighted average number of common shares outstanding:			
Weighted average number of common shares outstanding - basic	8,024,295	8,380,490	9,269,607
Weighted average number of warrants outstanding ⁽¹⁾	391,995	431,271	466,661
Total weighted average number of common shares outstanding - basic	<u>8,416,290</u>	<u>8,811,761</u>	<u>9,736,268</u>
Effect of dilutive securities - unvested restricted stock	149,768	—	26,949
Weighted average number of common shares outstanding - diluted	<u>8,566,058</u>	<u>8,811,761</u>	<u>9,763,217</u>
Net income (loss) per common share - basic	\$ 0.35	\$ (1.00)	\$ 1.85
Net income (loss) per common share - diluted	\$ 0.35	\$ (1.00)	\$ 1.85

(1) See Note 12 for further details regarding the warrants.

NOTE 15 - 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.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

The Company's 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 years ended December 31, 2023, 2022 and 2021, the Company did not pay any common share distributions.

The following table presents distributions declared (on a per share basis) for the years ended December 31, 2023, 2022 and 2021 with respect to the Company's Series C Preferred Stock and 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	
		(in thousands)			(in thousands)		
2023							
December 31	January 30, 2024	\$ 2,588	\$ 0.5390625	January 30, 2024	\$ 2,268	\$ 0.4921875	
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	
September 30	October 31	2,587	0.5390625	October 31	2,268	0.4921875	
June 30	August 1	2,588	0.5390625	August 1	2,268	0.4921875	
March 31	May 2	2,588	0.5390625	May 2	2,268	0.4921875	
2021							
December 31	January 31, 2022	\$ 2,588	\$ 0.5390625	January 31, 2022	\$ 2,268	\$ 0.4921875	
September 30	November 1	2,588	0.5390625	November 1	2,264	0.4921875	
June 30	July 30	2,588	0.5390625	July 30	1,736	0.3773440	
March 31	April 30	2,588	0.5390625	N/A	N/A	N/A	

NOTE 16 - 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 year ended December 31, 2023 (in thousands):

	Accumulated Other Comprehensive Loss - Net Unrealized Gain on Derivatives
Balance at January 1, 2023	\$ (6,394)
Amounts reclassified from accumulated other comprehensive loss ⁽¹⁾	1,593
Balance at December 31, 2023	<u>\$ (4,801)</u>

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

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

NOTE 17 - RELATED PARTY TRANSACTIONS

Management Agreement

In March 2005, the Company entered into a Management Agreement, which was last amended on February 15, 2024, with the Manager pursuant to which the Manager provides the day-to-day management of the Company's operations. The Management Agreement requires the Manager to manage the Company's business affairs in conformity with the policies and investment guidelines established by the Company's Board. The Manager provides its services under the supervision and direction of the Company's Board. The Manager is responsible for the selection, purchase and sale of the Company's portfolio investments, its financing activities and providing investment advisory services. The Manager and its affiliates also provide the Company with a Chief Financial Officer and a sufficient number of additional accounting, finance, tax and investor relations professionals. The Manager receives fees and is reimbursed for its expenses as follows:

- A monthly base management fee equal to 1/12th of the amount of the Company's equity multiplied by 1.50%; provided, however, that for each calendar month through July 31, 2022, such fee was equal to a minimum of \$442,000. Under the Management Agreement, "equity" is equal to the net proceeds from issuances of shares of capital stock (or the value of common shares upon the conversion of convertible securities), after deducting any underwriting discounts and commissions and other expenses and costs relating to such issuance, plus or minus the Company's retained earnings (excluding non-cash equity compensation incurred in current or prior periods) less all amounts the Company has paid for common stock and preferred stock repurchases. The calculation is adjusted for one-time events due to changes in GAAP, as well as other non-cash charges, upon approval of the Company's independent directors.
- Incentive compensation, calculated quarterly until the quarter ended December 31, 2022 as follows: (A) 20% of the amount by which the Company's EAD (as defined in the Management Agreement) for a quarter exceeds the product of (i) the weighted average of (x) the book value divided by 10,293,783 and (y) the per share price (including the conversion price, if applicable) paid for the Company's common shares in each offering (or issuance, upon the conversion of convertible securities) by it subsequent to September 30, 2017, multiplied by (ii) the greater of (x) 1.75% and (y) 0.4375% plus one-fourth of the Ten Year Treasury Rate for such quarter; multiplied by (B) the weighted average number of common shares outstanding during such quarter; subject to adjustment (a) to exclude events pursuant to changes in GAAP or the application of GAAP as well as non-recurring or unusual transactions or events, after discussion between the Manager and the independent directors and approval by a majority of the independent directors in the case of non-recurring or unusual transactions or events, and (b) to deduct an amount equal to any fees paid directly by a TRS (or any subsidiary thereof) to employees, agents and/or affiliates of the Manager with respect to profits of such TRS (or subsidiary thereof) generated from the services of such employees, agents and/or affiliates, the fee structure of which shall have been approved by a majority of the independent directors and which fees may not exceed 20% of the net income (before such fees) of such TRS (or subsidiary thereof).

With respect to each fiscal quarter commencing with the quarter ended December 31, 2022, an incentive management fee calculated and payable in arrears in an amount, not less than zero, equal to:

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

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

• *for each calendar quarter thereafter*, the excess of (1) the product of (a) 20% and (b) the excess of (i) EAD of the Company for the previous 12-month period, over (ii) the product of (A) the Company's book value equity in the previous 12-month period, and (B) 7% per annum, over (2) the sum of any incentive compensation paid to the 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 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.

- Per loan underwriting and review fees in connection with valuations of and potential investments in certain subordinate commercial mortgage pass-through certificates, in amounts approved by a majority of the independent directors.
- Reimbursement of expenses for personnel of the Manager or its affiliates for their services in connection with the making of fixed-rate commercial real estate loans by the Company, in an amount equal to one percent of the principal amount of each such loan made.
- Reimbursement of out-of-pocket expenses and certain other costs incurred by the Manager and its affiliates that relate directly to the Company and its operations.
- Reimbursement of the Manager's and its affiliates' expenses for (A) wages, salaries and benefits of the Company's Chief Financial Officer, and (B) a portion of the wages, salaries and benefits of accounting, finance, tax and investor relations professionals, in proportion to such personnel's percentage of time allocated to its operations.

Incentive compensation is calculated and payable quarterly to the Manager to the extent it is earned. Up to 75% of the incentive compensation is payable in cash and at least 25% is payable in the form of an award of common stock. The Manager may elect to receive more than 25% of its incentive compensation in common stock. All shares are fully vested upon issuance, however, the Manager may not sell such shares for one year after the incentive compensation becomes due and payable unless the Management Agreement is terminated. Shares payable as incentive compensation are valued as follows:

- if such shares are traded on a securities exchange, at the average of the closing prices of the shares on such exchange over the 30-day period ending three days prior to the issuance of such shares;
- if such shares are actively traded over-the-counter, at the average of the closing bid or sales price as applicable over the 30-day period ending three days prior to the issuance of such shares; and
- if there is no active market for such shares, at the fair market value as reasonably determined in good faith by the Board of the Company.

The Management Agreement's current contract term ends on July 31, 2024 and the agreement provides for automatic one year renewals on such date and on each July 31 thereafter until terminated. The Company's Board reviews the Manager's performance annually. The Management Agreement may be terminated annually upon the affirmative vote of at least two-thirds of the Company's independent directors, or by the affirmative vote of the holders of at least a majority of the outstanding shares of its common stock, based upon unsatisfactory performance that is materially detrimental to the Company or a determination by its independent directors that the management fees payable to the Manager are not fair, subject to the Manager's right to prevent such a compensation termination by accepting a mutually acceptable reduction of management fees. The Company's Board must provide 180 days' prior notice of any such termination. If the Company terminates the Management Agreement, the Manager is entitled to a termination fee equal to four times the sum of the average annual base management fee and the average annual incentive compensation earned by the Manager during the two 12-month periods immediately preceding the date of termination, calculated as of the end of the most recently completed fiscal quarter before the date of termination.

The Company may also terminate the Management Agreement for cause with 30 days' prior written notice from its Board. No termination fee is payable in the event of a termination for cause. The Management Agreement defines cause as:

- the Manager's continued material breach of any provision of the Management Agreement following a period of 30 days after written notice thereof;

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

- the Manager's fraud, misappropriation of funds, or embezzlement against the Company;
- the Manager's gross negligence in the performance of its duties under the Management Agreement;
- the dissolution, bankruptcy or insolvency, or the filing of a voluntary bankruptcy petition, by the Manager; or
- a change of control (as defined in the Management Agreement) of the Manager if a majority of the Company's independent directors determines, at any point during the 18 months following the change of control, that the change of control was detrimental to the ability of the Manager to perform its duties in substantially the same manner conducted before the change of control.

Cause does not include unsatisfactory performance that is materially detrimental to the Company's business.

The Manager may terminate the Management Agreement at its option, (A) in the event that the Company defaults in the performance or observance of any material term, condition or covenant contained in the Management Agreement and such default continues for a period of 30 days after written notice thereof, or (B) without payment of a termination fee by the Company, if it becomes regulated as an investment company under the Investment Company Act of 1940, with such termination deemed to occur immediately before such event.

Relationship with ACRES Capital Corp. and certain of its Subsidiaries

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. For the years ended December 31, 2023, 2022 and 2021, the Manager earned base management fees of \$6.6 million, \$6.7 million and \$6.1 million, respectively. For the years ended December 31, 2023 and 2022, the Manager earned incentive management fees of \$895,000 and \$340,000, respectively, of which 50% was payable in cash and 50% was payable in common stock. At December 31, 2023 and 2022, \$546,000 and \$558,000, respectively, of base management fees were payable by the Company to the Manager. At December 31, 2023 and 2022, \$38,000 and \$340,000, respectively, of incentive management fees were payable by the Company to the Manager. No incentive compensation was earned or payable at year end for the year ended December 31, 2021.

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 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 years ended December 31, 2023, 2022 and 2021, the Company reimbursed the Manager \$3.8 million, \$5.1 million and \$4.7 million, respectively, for all such compensation and costs. At December 31, 2023 and 2022, the Company had payables to the Manager pursuant to the Management Agreement totaling \$686,000 and \$179,000, respectively, related to such compensation and costs. The Company's base management fee payable and expense reimbursements payable were recorded in management fee payable and 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.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

During the years ended December 31, 2023, 2022 and 2021, the Company recorded interest income of \$339,000, \$348,000 and \$357,000, respectively, on the ACRES Loan in other income on the consolidated statements of operations. At December 31, 2023 and 2022, the ACRES Loan had a principal balance of \$11.0 million and \$11.3 million recorded in loan receivable - related party on the consolidated balance sheets. At December 31, 2023 and 2022, the ACRES loan had no 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 years ended December 31, 2023 and 2021. 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. During the year ended December 31, 2021, the Company acquired 100% equity in one property for \$14.2 million, which previously served as collateral for a loan held by an affiliate of the Manager prior to the acquisition.

At December 31, 2023, 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 this transaction and was not separately compensated for managing the securitization entity and 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. During the year ended December 31, 2023, one loan, with a current par balance of \$26.2 million, was sold.

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 2019-RSO7, XAN 2020-RSO8, and XAN 2020-RSO9 and serves as special servicer of ACR 2021-FL1, and ACR 2021-FL2.

During the years ended December 31, 2023, 2022 and 2021, ACRES Capital Servicing received no portfolio servicing fees. During the years ended December 31, 2023, 2022 and 2021, ACRES Capital Servicing earned \$67,000, \$74,000 and \$14,000, respectively, in special servicing fees, of which \$19,000, \$51,000 and \$14,000 were recorded as a reduction to interest income in the consolidated statements of operations.

Relationship with ACRES Commercial Mortgage, LLC. During the year ended 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, 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").

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 years ended December 31, 2023 and 2022, \$464,000 and \$22,000, respectively, in fees were earned by DevCo for services rendered under the Development Agreements. No fees were incurred or paid to DevCo for services rendered under the Development Agreements during the year ended December 31, 2021.

Relationship with ACRES Share Holdings, LLC. During the year ended December 31, 2023, the Company issued 69,201 shares to ACRES Share Holdings, LLC, a subsidiary of the Manager, in connection with the incentive compensation payable to the Manager under the Management Agreement. In January 2024, the Company issued 1,911 shares to ACRES Share Holdings, LLC in connection with incentive compensation payable to the Manager at December 31, 2023. The shares vested fully upon issuance pursuant to the Management Agreement.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

During the year ended December 31, 2022, ACRES Share Holdings, LLC was granted 299,999 shares under the Manager Plan. These shares will vest 25% for four years, on each anniversary of the issuance date. See Note 13 for additional details.

Relationship with Resource Real Estate Opportunity REIT

In July 2020, ACRES and the Company entered into agreements with Resource America pursuant to which Resource America provided office space and other office-related services as well as performed an internal audit program. In September 2020, the sublease was assigned from Resource America to Resource Real Estate Opportunity REIT and the internal audit engagement letter was assigned from Resource America to Resource NewCo LLC, a subsidiary of Resource Real Estate Opportunity REIT. A former non-employee director of the Company was an executive at, and a director of, Resource Real Estate Opportunity REIT. During the year ended December 31, 2021, the Company incurred \$67,000 of expenses in connection with these agreements. These agreements were terminated as of March 31, 2021. Resource America and its subsidiaries ceased being related party as of June 2021.

NOTE 18 - FAIR VALUE OF FINANCIAL INSTRUMENTS

The Company had no financial instruments carried at fair value on a recurring basis at either December 31, 2023 or 2022.

The Company measures the fair value of certain assets on a non-recurring basis when events or changes in circumstances indicate that the carrying value of 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.

In June 2023, the Company received the deed-in-lieu of foreclosure on a property that formerly collateralized a CRE whole loan and upon acquisition was immediately classified as a property held for sale on the Company's consolidated balance sheets (See Note 8). The property was appraised and determined to have a fair value of \$20.9 million at the time of acquisition. Fair value was determined using a discounted cash flow valuation technique, with the significant unobservable inputs being an internal rate of return of 9.25% and a terminal cap rate of 7.50%. The valuation of this property held for sale fell under Level 3 of the fair value hierarchy as described in Note 2.

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:

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. The Company's floating-rate CRE loans had interest rates from 7.88% to 13.96% and 7.03% to 12.67% at December 31, 2023 and 2022, 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 December 31, 2023 or 2022.

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 and mortgages payable. These are variable rate debt instruments indexed to either LIBOR or Term SOFR that reset periodically and, as a result, their carrying value approximates their fair value, excluding deferred debt issuance costs. At December 31, 2023, all variable-rate debt instruments are indexed to SOFR.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

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

			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)
At December 31, 2023:					
Assets:					
CRE whole loans	\$ 1,828,336	\$ 1,858,265	\$ —	\$ —	\$ 1,858,265
Loan receivable - related party	10,975	8,598	—	—	8,598
Liabilities:					
Senior notes in CRE securitizations	1,204,570	1,163,048	—	—	1,163,048
Senior secured financing facility	61,568	64,495	—	—	64,495
Warehouse financing facilities	168,588	170,861	—	—	170,861
Mortgages payable	41,786	43,779	—	—	43,779
5.75% Senior Unsecured Notes	148,140	138,795	—	—	138,795
Junior subordinated notes	51,548	38,406	—	—	38,406
At December 31, 2022:					
Assets:					
CRE whole loans	\$ 2,038,787	\$ 2,065,504	\$ —	\$ —	\$ 2,065,504
Loan receivable - related party	11,275	9,672	—	—	9,672
Liabilities:					
Senior notes in CRE securitizations	1,233,556	1,179,313	—	—	1,179,313
Senior secured financing facility	87,890	91,549	—	—	91,549
Warehouse financing facilities	328,288	330,848	—	—	330,848
Mortgage payable	18,244	18,710	—	—	18,710
5.75% Senior Unsecured Notes	147,507	138,435	—	—	138,435
Junior subordinated notes	51,548	35,821	—	—	35,821

NOTE 19 - 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.

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 December 31, 2023 and 2022, the Company had losses of \$5.0 million and \$6.6 million, respectively, recorded in accumulated other comprehensive loss, which will be amortized into earnings over the remaining life of the debt. During the years ended December 31, 2023, 2022 and 2021, the Company recorded amortization expense, reported in interest expense on the consolidated statements of operations, of \$1.7 million, \$1.8 million and \$1.9 million, respectively.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

At December 31, 2023 and 2022, the Company had an unrealized gain of \$164,000 and \$256,000, 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 each of the three years ended December 31, 2023, 2022 and 2021, the Company recorded accretion income, reported in interest expense on the consolidated statements of operations, of \$91,000, 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 during the years ended December 31, 2023, 2022 and 2021:

		Realized and Unrealized Loss ⁽¹⁾		
		Year Ended December 31, 2023	Year Ended December 31, 2022	Year Ended December 31, 2021
Consolidated Statements of Operations Location				
Interest rate swap contracts, hedging	Interest expense	\$ (1,593)	\$ (1,733)	\$ (1,851)

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

NOTE 20 - 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		(v) = (iii) - (iv) Net Amount
				Financial Instruments ⁽¹⁾	Cash Collateral Pledged	
At December 31, 2023:						
Warehouse financing facilities ⁽²⁾	\$ 168,588	\$ —	\$ 168,588	\$ 168,588	\$ —	\$ —
At December 31, 2022:						
Warehouse financing facilities ⁽²⁾	\$ 328,288	\$ —	\$ 328,288	\$ 328,288	\$ —	\$ —

(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 value of securities and loans pledged against the Company's various warehouse financing facilities and repurchase agreements was \$254.1 million and \$453.6 million at December 31, 2023 and 2022, 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.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

NOTE 21 - INCOME TAXES

The following table details the components of income taxes at the Company's TRSs (in thousands):

	Years Ended December 31,		
	2023	2022	2021
Income tax expense:			
Current:			
Federal	\$ —	\$ —	\$ —
State	1	13	—
Total current	1	13	—
Deferred:			
Federal	—	—	—
State	—	—	—
Total deferred	—	—	—
Total	<u>\$ 1</u>	<u>\$ 13</u>	<u>\$ —</u>

A reconciliation of the income tax expense based upon the statutory tax rate to the effective income tax rate was as follows for the Company's TRSs for the years presented (in thousands):

	Years Ended December 31,		
	2023	2022	2021
Income tax (benefit) expense:			
Statutory tax	\$ (70)	\$ (178)	\$ (66)
State and local taxes, net of federal benefit	(42)	313	(59)
True-up of prior period tax expense	(6)	—	—
Valuation allowance	310	(64)	125
Discontinued operations adjustment	—	—	—
Other items	(191)	(58)	—
Total	<u>\$ 1</u>	<u>\$ 13</u>	<u>\$ —</u>

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

The components of deferred tax assets and liabilities were as follows for the Company's TRSs (in thousands):

	December 31,	
	2023	2022
Deferred tax assets related to:		
Federal, state and local loss carryforwards	\$ 13,924	\$ 14,018
Amortization of intangibles	35	—
Capital loss carryforward	288	309
Equity investments	5,874	6,657
Interest expense limitation 163(j)	1,035	527
Total deferred tax assets	21,156	21,511
Valuation allowance	(21,102)	(21,171)
Total deferred tax assets, net of valuation allowance	\$ 54	\$ 340
Deferred tax liabilities related to:		
Amortization of intangibles	\$ —	\$ (254)
Unrealized gains	(50)	(86)
Accrued expenses	(4)	—
Total deferred tax liabilities	\$ (54)	\$ (340)
Deferred tax assets, net	\$ —	\$ —

At December 31, 2023 and 2022, the Company had \$60.2 million and \$60.1 million, respectively, of gross federal and \$1.6 million and \$1.8 million, respectively, of gross state and local net operating loss ("NOL") carryforwards (a collective deferred tax asset of \$13.9 million and \$14.0 million, respectively) reported in other assets in the Company's consolidated balance sheets. At December 31, 2023, \$20.4 million of the NOL carryforwards have an indefinite carryforward period and \$39.8 million of the NOL carryforwards begin to expire in 2044.

The Company also generated a gross capital loss carryforward of \$1.0 million (tax effected expense of \$288,000 at December 31, 2023) in 2021 and 2020. Due to changes in management's focus regarding the non-core asset classes, the Company determined that it no longer expected to have sufficient forecasted taxable income to completely realize the tax benefits of the deferred tax assets at December 31, 2023 and 2022. Therefore, a full valuation allowance with a tax effected expense of \$21.1 million and \$21.2 million has been recorded against the deferred tax asset at December 31, 2023 and 2022, respectively. Management will continue to assess its estimate of the amount of deferred tax assets that the Company will be able to utilize.

The Company is subject to examination by the Internal Revenue Service for calendar years including and subsequent to 2020, and is subject to examination by state and local jurisdictions for calendar years including and subsequent to 2020.

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
DECEMBER 31, 2023

NOTE 22 - QUARTERLY RESULTS

The following is a presentation of the quarterly results of operations:

	March 31 (unaudited)	June 30 (unaudited) (in thousands, except per share data)	September 30 (unaudited)	December 31 (unaudited)
Year ended December 31, 2023:				
Interest income	\$ 45,329	\$ 47,148	\$ 48,208	\$ 46,781
Interest expense	31,375	32,442	33,555	33,419
Net interest income	\$ 13,954	\$ 14,706	\$ 14,653	\$ 13,362
Net income	\$ 2,293	\$ 5,558	\$ 7,567	\$ 6,430
Net income allocated to preferred shares	(4,855)	(4,856)	(4,855)	(4,856)
Net loss allocated to non-controlling interest, net of taxes	146	115	158	123
Net (loss) income allocable to common shares	\$ (2,416)	\$ 817	\$ 2,870	\$ 1,697
Net (loss) income per common share - basic	\$ (0.28)	\$ 0.10	\$ 0.34	\$ 0.21
Net (loss) income per common share - diluted	\$ (0.28)	\$ 0.10	\$ 0.33	\$ 0.20
	March 31 (unaudited)	June 30 (unaudited) (in thousands, except per share data)	September 30 (unaudited)	December 31 (unaudited)
Year ended December 31, 2022:				
Interest income	\$ 22,676	\$ 27,019	\$ 34,065	\$ 42,514
Interest expense	14,907	15,745	22,939	28,733
Net interest income	\$ 7,769	\$ 11,274	\$ 11,126	\$ 13,781
Net income (loss)	\$ 2,084	\$ 5,522	\$ 5,486	\$ (2,666)
Net income allocated to preferred shares	(4,855)	(4,856)	(4,855)	(4,856)
Net loss allocated to non-controlling interest, net of taxes	—	24	82	91
Net (loss) income allocable to common shares	\$ (2,771)	\$ 690	\$ 713	\$ (7,431)
Net (loss) income per common share - basic	\$ (0.30)	\$ 0.08	\$ 0.08	\$ (0.87)
Net (loss) income per common share - diluted	\$ (0.30)	\$ 0.08	\$ 0.08	\$ (0.87)

NOTE 23 - 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 December 31, 2023.

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 December 31, 2023 and 2022, 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 million and \$1.2 million at December 31, 2023 and 2022, respectively. The reserves for mortgage repurchases and indemnifications are included in accounts payable and other liabilities on the consolidated balance sheets. At December 31, 2023, the Company has substantially completed disposing of PCM's business.

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

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)
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 December 31, 2023 and 2022, 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 \$109.4 million and \$158.2 million in unfunded loan commitments at December 31, 2023 and 2022, respectively.

NOTE 24 - SUBSEQUENT EVENTS

The Company has evaluated subsequent events through the filing of this report and determined that, except for the subsequent events referred to in Note 7, Note 13 and Note 17, there have not been any events that have occurred that would require adjustments to or disclosures in the consolidated financial statements.

[\(Back to Index\)](#)

ITEM 9. CHANGES AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. 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, as amended, or the Exchange Act, 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.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risks that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management assessed the effectiveness of our internal control over financial reporting at December 31, 2023. In making this assessment, management used the criteria set forth in the 2013 version of the *Internal Control-Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based upon this assessment, management concluded that our internal control over financial reporting is effective at December 31, 2023.

Our independent registered public accounting firm, Grant Thornton LLP, audited our internal control over financial reporting at December 31, 2023. Their report, dated March 6, 2024, expressed an unqualified opinion on our internal control over financial reporting. This report is included in this Item 9A.

Changes in Internal Control over Financial Reporting

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

[\(Back to Index\)](#)

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Shareholders
ACRES Commercial Realty Corp.

Opinion on internal control over financial reporting

We have audited the internal control over financial reporting of ACRES Commercial Realty Corp. (a Maryland corporation) and subsidiaries (the "Company") as of December 31, 2023, based on criteria established in the 2013 *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2023, based on criteria established in the 2013 *Internal Control—Integrated Framework* issued by COSO.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), the consolidated financial statements of the Company as of and for the year ended December 31, 2023, and our report dated March 6, 2024 expressed an unqualified opinion on those financial statements.

Basis for opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and limitations of internal control over financial reporting

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

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

/s/ GRANT THORNTON LLP

San Francisco, California
March 6, 2024

[\(Back to Index\)](#)

ITEM 9B. OTHER INFORMATION

During the three months ended December 31, 2023, no director or officer of the Company adopted 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.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

Not applicable.

[\(Back to Index\)](#)

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information required by this item will be set forth in our definitive proxy statement with respect to our 2024 annual meeting of stockholders, to be filed on or before April 29, 2024 ("2024 Proxy Statement"), which is incorporated herein by this reference.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this item will be set forth in our 2024 Proxy Statement, which is incorporated herein by this reference.

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

The information required by this item will be set forth in our 2024 Proxy Statement, which is incorporated herein by this reference.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS AND DIRECTOR INDEPENDENCE

The information required by this item will be set forth in our 2024 Proxy Statement, which is incorporated herein by this reference.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by this item will be set forth in our 2024 Proxy Statement, which is incorporated herein by this reference.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) The following documents are filed as part of this Annual Report on Form 10-K:

1. Financial Statements

See Part II - Item 8 - "Financial Statements and Supplementary Data," filed herewith, for a list of financial statements.

2. Financial Statement Schedules

3. 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	Amended 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.
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)

[\(Back to Index\)](#)

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)
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 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 Philii 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 Philii 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)

[\(Back to Index\)](#)

[\(Back to Index\)](#)

21.1	List of Subsidiaries of ACRES Commercial Realty Corp.
23.1	Consent of Grant Thornton LLP.
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
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)
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	Federal Income Tax Consequences of our Qualification as a REIT.
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 With Embedded Linkbases Document.
104	Cover Page Interactive Data File.

- (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.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

- (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 4, 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.

ITEM 16. FORM 10-K SUMMARY

None.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

SIGNATURES

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

ACRES COMMERCIAL REALTY CORP.

March 6, 2024

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

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>/s/ Andrew Fentress</u> ANDREW FENTRESS	Chairman of the Board	March 6, 2024
<u>/s/ Mark Fogel</u> MARK FOGEL	President, Chief Executive Officer & Director (Principal Executive Officer)	March 6, 2024
<u>/s/ Karen Edwards</u> KAREN EDWARDS	Director	March 6, 2024
<u>/s/ William B. Hart</u> WILLIAM B. HART	Director	March 6, 2024
<u>/s/ Gary Ickowicz</u> GARY ICKOWICZ	Director	March 6, 2024
<u>/s/ Steven J. Kessler</u> STEVEN J. KESSLER	Director	March 6, 2024
<u>/s/ Murray S. Levin</u> MURRAY S. LEVIN	Director	March 6, 2024
<u>/s/ P. Sherrill Neff</u> P. SHERRILL NEFF	Director	March 6, 2024
<u>/s/ Dawanna Williams</u> DAWANNA WILLIAMS	Director	March 6, 2024
<u>/s/ David J. Bryant</u> DAVID J. BRYANT	Director	March 6, 2024
<u>/s/ Eldron C. Blackwell</u> ELDRON C. BLACKWELL	Senior Vice President Chief Financial Officer and Treasurer (Principal Financial Officer)	March 6, 2024
<u>/s/ Linda M. Kilpatrick</u> LINDA M. KILPATRICK	Vice President Chief Accounting Officer and Controller (Principal Accounting Officer)	March 6, 2024

[\(Back to Index\)](#)

[\(Back to Index\)](#)

SCHEDULE II
ACRES Commercial Realty Corp.
Valuation and Qualifying Accounts
(in thousands)

	Balance at Beginning of Period	Charge to Expense	Loans Charged off/Recovered	Balance at End of Period
Allowance for credit losses:				
Year Ended December 31, 2023	\$ 18,803	\$ 10,902	\$ (948)	\$ 28,757
Year Ended December 31, 2022	\$ 8,805	\$ 12,295	\$ (2,297)	\$ 18,803
Year Ended December 31, 2021	\$ 34,310	\$ (21,262)	\$ (4,243)	\$ 8,805

[\(Back to Index\)](#)

[\(Back to Index\)](#)

SCHEDULE III
ACRES Commercial Realty Corp.
Real Estate and Accumulated Depreciation
(in thousands)

	Initial Cost to Company				Gross Amount of Which Carried at Close of Period				Year of Construction	Date Acquired	Life on Which Depreciation in Latest Statements of Comprehensive Income is Computed
	Encumbrances	Land	Buildings and Improvements	Costs Capitalized Subsequent to Acquisition - Improvements	Land	Buildings and Improvements	Total	Accumulated Depreciation			
Hotel property, Northeast region (held for sale) ⁽¹⁾⁽²⁾⁽³⁾⁽⁴⁾	16,567	\$ —	\$ 30,944	\$ 5,437	\$ —	\$ 36,381	\$ 36,381	\$ (2,823)	2000	November 2020	34.8 years
Office property, Northeast region ⁽⁴⁾	N/A	8,189	4,706	220	8,189	4,926	13,115	(630)	1999	October 2021	38.6 years
Unimproved land, Northeast region	N/A	14,203	—	1,915	14,203	1,883	16,086	—	N/A	November 2021	N/A
Student housing property, Southeast region ⁽⁴⁾	43,779	15,976	19,114	42,922	15,976	62,036	78,012	(964)	2003	April 2022	38.4 years
Hotel property, East North Central region ⁽³⁾⁽⁴⁾	16,921	—	51,353	4,096	—	55,449	55,449	(3,448)	1982	April 2022	36.4 years
Office property, East North Central region (held for sale) ⁽¹⁾⁽²⁾	N/A	—	20,900	—	—	20,900	20,900	—	1896	June 2023	N/A
	77,267	38,368	\$ 127,017	\$ 54,590	38,368	\$ 181,575	\$ 219,943	\$ (7,865)			
Total	\$ 77,267	\$ 38,368	\$ 127,017	\$ 54,590	\$ 38,368	\$ 181,575	\$ 219,943	\$ (7,865)			

(1)The property is being held for sale and is evaluated at the lower of cost or fair value.

(2)The property was acquired through a deed in lieu of foreclosure transaction.

(3)The property is included as collateral on our senior secured financing facility.

(4)The life on which depreciation in latest statements of comprehensive income is computed was calculated as the weighted average of the useful lives of the building, site improvements and tenant improvements, which comprise the investments in the properties.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

SCHEDULE III
ACRES Commercial Realty Corp.
Real Estate and Accumulated Depreciation - (Continued)
(in thousands)

The following table rolls forward our gross investments in real estate and the related accumulated depreciation:

	Years Ended December 31,		
	2023	2022	2021
Investments in Real Estate:			
Balance at beginning of period	\$ 158,760	\$ 75,989	\$ 30,944
Additions during period:			
Acquisitions through deed-in-lieu of foreclosure	20,900	13,442	17,889
Other acquisitions	—	86,444	27,065
Improvements, etc.	53,761	731	134
Deductions during period:			
Other	(13,478)	(17,846)	(43)
Balance at close of period	<u>\$ 219,943</u>	<u>\$ 158,760</u>	<u>\$ 75,989</u>
Accumulated Depreciation:			
Balance at beginning of period	\$ (3,464)	\$ (1,204)	\$ (112)
Additions during period:			
Depreciation expense	(4,401)	(2,260)	(1,092)
Balance at close of period	<u>\$ (7,865)</u>	<u>\$ (3,464)</u>	<u>\$ (1,204)</u>

[\(Back to Index\)](#)

[\(Back to Index\)](#)

SCHEDULE IV
ACRES Commercial Realty Corp.
Mortgage Loans on Real Estate
At December 31, 2023
(in thousands, except amounts in footnotes)

Type of Loan/ Borrower	Description / Location	Interest Payment Rates ⁽¹⁾	Maturity Date ⁽²⁾	Periodic Payment Terms ⁽³⁾	Prior Liens	Face Amount of Loans	Net Carrying Amount of Loans ⁽⁴⁾	Principal Amount of Loans Subject to Delinquent Principal or Interest
CRE whole loans:								
<i>CRE whole loans in excess of 3% of the carrying amount of total loans</i>								
Borrower A	Multifamily/Rock Hill, SC	1M BR + 3.41% - FLOOR 0.10%	2025	I/O	—	\$ 70,256	\$ 70,021	\$ —
<i>CRE whole loans less than 3% of the carrying amount of total loans</i>								
CRE whole loan ⁽⁵⁾	Multifamily/ Diversified	1M BR + 2.86% - 4.36% FLOOR 0.05% - 4.00%	2024-2027	I/O & P/I	—	1,406,600	1,402,059	—
CRE whole loan ⁽⁵⁾⁽⁶⁾	Office/ Diversified	1M BR + 2.50% - 5.75% FLOOR 0.10% - 2.40%	2024-2026	I/O & P/I	—	252,892	252,093	33,127
CRE whole loan	Hotel/ Diversified	1M BR + 6.25% - 8.61% FLOOR 0.05% - 3.02%	2024	I/O	—	71,493	71,408	—
CRE whole loan	Self-Storage/ Diversified	1M BR + 3.96% - 5.50% FLOOR 0.10% - 4.50%	2024-2026	I/O	—	48,999	48,787	—
CRE whole loan ⁽⁶⁾	Retail/ Diversified	1M BR + 4.76% FLOOR 2.05%		I/O	—	8,025	8,025	8,025
Total CRE whole loans						1,858,265	1,852,393	41,152
Mezzanine loans:								
<i>Mezzanine loans less than 3% of the carrying amount of total loans</i>								
Mezzanine loans ⁽⁷⁾⁽⁸⁾	Various/Diversified	10.00%	2028			42,772	4,700	42,772
Total mezzanine loans						42,772	4,700	42,772
Total loans						1,901,037	1,857,093	83,924
Allowance for credit losses							(28,757)	
Total loans, net							<u>\$ 1,828,336</u>	

(1)The benchmark rate, "BR" comprises the Term Secured Overnight Financing Rate ("SOFR"), which is used as a benchmark on our CRE whole loans.

(2)Maturity dates exclude extension options that may be available to borrower.

(3)I/O = interest only, P/I = principal and interest.

(4)The net carrying amount of loans includes an individually determined allowance for credit losses of \$4.7 million and a general allowance for credit losses of \$24.1 million at December 31, 2023.

(5)Includes three office loans and two multifamily loans with total par of \$92.2 million that are amortizing loans.

(6)Maturity dates exclude two office loans and one retail loan in maturity default at December 31, 2023.

(7)Includes one mezzanine loan with a par of \$4.7 million that had an individually determined reserve of \$4.7 million.

(8)Includes one mezzanine loan with a par of \$38.1 million and a carrying value of zero in default at December 31, 2023.

[\(Back to Index\)](#)

[\(Back to Index\)](#)

SCHEDULE IV
ACRES Commercial Realty Corp.
Mortgage Loans on Real Estate - (Continued)
At December 31, 2023
(in thousands)

The following table reconciles our CRE loans carrying amounts for the periods indicated:

	Years Ended December 31,		
	2023	2022	2021
Balance at beginning of year	\$ 2,038,787	\$ 1,873,746	\$ 1,507,682
Additions during the period:			
New loans originated or acquired	62,968	523,259	1,367,157
Funding of existing loan commitments	45,749	66,296	29,855
Amortization of loan origination and extension fees and loan origination costs, net	7,539	8,189	8,337
(Provision for) reversal of credit losses, net	(10,902)	(12,295)	21,262
Loans charged-off	948	2,297	4,243
Capitalized interest and loan acquisition costs	—	—	228
Deductions during the period:			
Payoff, paydown and sale of loans	(293,158)	(399,550)	(1,028,916)
Deed in lieu of foreclosure	(22,797)	(14,000)	(19,900)
Capitalized origination and extension fees	(798)	(6,858)	(16,202)
Loss on discounted payoff	—	(2,297)	—
Balance at end of year	<u>\$ 1,828,336</u>	<u>\$ 2,038,787</u>	<u>\$ 1,873,746</u>

[\(Back to Index\)](#)

**THIRD AMENDMENT TO
FOURTH AMENDED AND RESTATED
MANAGEMENT AGREEMENT**

This Third Amendment to Fourth Amended and Restated Management Agreement, dated February 15, 2024 (this "Amendment"), effective as of December 31, 2023, is made by and among ACRES Commercial Realty Corp., a Maryland corporation (the "Company"), ACRES Capital, LLC, a New York limited liability company (together with its permitted assignees, the "Manager"), and ACRES Capital Corp., a Delaware corporation ("ACRES Capital").

W I T N E S S E T H:

WHEREAS, the Company is a party to that certain Fourth Amended and Restated Management Agreement, dated as of July 31, 2020 by and among the Company, Manager and ACRES Capital, as amended by the First Amendment to Fourth Amended and Restated Management Agreement, dated as of February 16, 2021 and the Second Amendment to the Fourth Amended and Restated Management Agreement, dated as of May 6, 2022 (collectively, the "Agreement");

WHEREAS, Section 21 of the Agreement provides that the Agreement may only be amended by an agreement in writing signed by the parties to the Agreement;

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto hereby agree as follows. Capitalized terms used herein and not otherwise defined shall have the respective meanings ascribed to them in the Agreement.

Section 1. Amendment to Section 1 of the Agreement

Section 1(g) of the Agreement is hereby amended and restated as following:

"(g) "Book Value Equity" means (a) the sum of (1) the total stockholders' equity of the Company calculated in accordance with GAAP, less the equity attributable to any outstanding preferred stock (based on the equity value attributable to such preferred stock included in such total stockholders' equity), at September 30, 2022, plus (2) the total amount of net proceeds (or the value of Common Shares issued upon the conversion of convertible securities, if applicable and without duplication) from any issuance of common stock of the Company after October 1, 2022, after deducting any underwriting discounts and commissions and other expenses and costs relating to such issuance, and plus (3) cumulative Core Earnings from and after October 1, 2022 to the end of the most recently completed calendar quarter, (b) less (1) any distributions to the Company's stockholders after October 1, 2022, (2) any amount that the Company has paid to repurchase the Company's Common Stock after October 1, 2022, and (3) any Incentive Compensation paid after October 1, 2022. With respect to that portion that is used in any calculation of Incentive Compensation or the Base Management Fee commencing with the fiscal quarter ending December 31, 2022, all items in the foregoing sentence (other than clause (a)(3)) shall be calculated on a daily weighted average basis. For the avoidance of doubt, Book Value Equity shall include any restricted shares of Common Stock or common equity of Subsidiaries

and any other shares of Common Stock or common equity of Subsidiaries underlying awards granted under one or more of the Company's or its subsidiary's equity incentive plans. The amount of net proceeds received shall be subject to the determination of the Board to the extent such proceeds are other than cash."

Section 2. Amendment to Section 8 of the Agreement

Section 8(e) of the Agreement is hereby amended and restated as following:

"(e) The Manager shall compute the amount of each installment of the Incentive Compensation within thirty (30) days after the end of each fiscal quarter with respect to which such installment is payable, with the exception of the fourth quarter which shall be computed within forty-five (45) days after the end of the fourth fiscal quarter with respect to which such installment is payable. A copy of the computations made by the Manager to calculate such installment amount shall thereafter, subject to Section 13(a) of this Agreement, promptly be delivered to the Board of Directors and payment of such Incentive Compensation, or such other amount as may be determined pursuant to the last sentence of this Section 8(e), shall be due and payable no later than the date which is five (5) business days after the date of delivery to the Board of Directors of such computations. The amount of Incentive Compensation may be increased or decreased, if the Manager agrees and if a majority of the Independent Directors determines in the exercise of reasonable discretion that the amount so calculated is not equitable based upon facts and circumstances that may include, without limitation, dividend payments, market conditions, managerial performance or other factors not reflected in Core Earnings."

Section 3. Execution in Counterparts

This Amendment may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first written above.

ACRES COMMERCIAL REALTY CORP.

By: /s/ Mark Fogel
Name: Mark Fogel
Title: President and Chief Executive Officer

ACRES CAPITAL, LLC

By: /s/ Mark Fogel
Name: Mark Fogel
Title: President and Chief Executive Officer

ACRES CAPITAL CORP.

By: /s/ Mark Fogel
Name: Mark Fogel
Title: President and Chief Executive Officer

**List of Subsidiaries of
ACRES Commercial Realty Corp.**

Subsidiaries	State of Incorporation
112-122 Broad Street Holdings, LLC	Delaware
2501-2901 Renaissance JV, LLC	Delaware
2901 Renaissance Holdings 1 LLC	Delaware
2901 Renaissance Holdings 2 LLC	Delaware
2901 Renaissance, LLC	Delaware
209 West Jackson Holdings, LLC	Delaware
ACRES 2100 Holdings, LLC	Delaware
ACRES Commercial Realty 2021-FL1 Holder, LLC	Delaware
ACRES Commercial Realty 2021-FL1 Issuer, Ltd.	Cayman Islands
ACRES Commercial Realty 2021-FL1 Co-Issuer, LLC	Delaware
ACRES Commercial Realty 2021-FL2 Holder, LLC	Delaware
ACRES Commercial Realty 2021-FL2 Issuer, Ltd.	Cayman Islands
ACRES Commercial Realty 2021-FL2 Co-Issuer, LLC	Delaware
ACRES FSU, LLC	Delaware
ACRES Real Estate TRS 9 LLC	Delaware
ACRES Real Estate SPE 10, LLC	Delaware
ACRES Realty Funding, Inc. (F/K/A RCC Real Estate, Inc.)	Delaware
ACRES Renaissance Holdings, LLC	Delaware
Apidos CDO I, Ltd. ("TRS")	Cayman Islands
Apidos CDO III, Ltd. ("TRS")	Cayman Islands
Apidos Cinco CDO, Ltd ("TRS")	Cayman Islands
Appleton Hotel Holdings, LLC	Delaware
Appleton Hotel Leasing, LLC ("TRS")	Delaware
Exantas Philii Holdings, LLC (F/K/A Exantas HGI Holdings, LLC)	Delaware
Exantas Real Estate TRS, Inc.	Delaware
Innovation 2100 LLC	Delaware
Innovation 2100 Senior LLC	Delaware
Primary Capital Mortgage, LLC (F/K/A Primary Capital Advisors, LLC)	Georgia
RCC Prospect Holdings, LLC	Delaware
RCC Real Estate Acquisitions SPE, LLC	Delaware
RCC Real Estate SPE 8, LLC	Delaware
RCC Real Estate SPE Holdings LLC	Delaware
RCC Real Estate SPE 9 LLC	Delaware
RCC TRS, LLC	Delaware
RCC Trust II	Delaware
Resource Capital Trust I	Delaware
Stonelake Holdings, LLC	Delaware

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our reports dated March 6, 2024, with respect to the consolidated financial statements and internal control over financial reporting included in the Annual Report of ACRES Commercial Realty Corp. on Form 10-K for the year ended December 31, 2023. We consent to the incorporation by reference of said reports in the Registration Statements of ACRES Commercial Realty Corp. on Form S-3 (File No. 333-254315, effective April 20, 2021, and File No. 333-255523, effective May 12, 2021) and Form S-8 (File No. 333-151622, effective June 12, 2008, File No. 333-176448, effective August 24, 2011, File No. 333-200133, effective November 12, 2014, File No. 333-232371, effective June 26, 2019 and File No. 333-257901, effective July 14, 2021).

/s/ GRANT THORNTON LLP

San Francisco, California

March 6, 2024

CERTIFICATION

I, Mark Fogel, certify that:

1. I have reviewed this annual report on Form 10-K for the year ended December 31, 2023 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.

March 6, 2024

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

CERTIFICATION

I, Eldron C. Blackwell, certify that:

1. I have reviewed this annual report on Form 10-K for the year ended December 31, 2023 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.

March 6, 2024

/s/ Eldron C. Blackwell
Eldron C. Blackwell
Chief Financial Officer and Treasurer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of ACRES Commercial Realty Corp. (the "Company") for the year ended December 31, 2023 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, to the best of my knowledge:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

March 6, 2024

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

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.

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of ACRES Commercial Realty Corp. (the "Company") for the year ended December 31, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, 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, to the best of my knowledge:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

March 6, 2024

/s/ Eldron C. Blackwell
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.

ACRES COMMERCIAL REALTY CORP.**POLICY FOR THE
RECOVERY OF ERRONEOUSLY AWARDED COMPENSATION****Overview**

In accordance with Section 10D of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), Rule 10D-1 promulgated under the Exchange Act ("**Rule 10D-1**") and Section 303A.14 of the New York Stock Exchange Listed Company Manual (the "**NYSE Rules**"), the Board of Directors (the "**Board**") of ACRES Commercial Realty Corp. (the "Company") has adopted this Policy for the Recovery of Erroneously Awarded Compensation (the "**Policy**") to provide for the recovery of erroneously awarded Incentive-based Compensation from Executive Officers and the Manager under the Management Agreement. All capitalized terms used and not otherwise defined herein shall have the meanings set forth in Section 2 below.

1. Administration

Except as specifically set forth herein, this Policy shall be administered by the Compensation Committee of the Board (the "**Committee**"). The Committee is authorized to interpret and construe this Policy and to make all determinations necessary, appropriate or advisable for the administration of this Policy and for the Company's compliance with NYSE Rules, Section 10D, Rule 10D-1 and any other applicable law, regulation, rule or interpretation of the Securities Exchange Commission ("**SEC**") or NYSE promulgated or issued in connection therewith. Any determinations made by the Committee shall be final and binding on all affected individuals and need not be uniform with respect to each individual covered by the Policy. In the administration of this Policy, the Committee is authorized and directed to consult with the full Board or such other committees of the Board, such as the Audit Committee, as may be necessary or appropriate as to matters within the scope of such other committee's responsibility and authority. Subject to any limitation at applicable law, the Committee may authorize and empower any officer or employee of the Company to take any and all actions necessary or appropriate to carry out the purpose and intent of this Policy (other than with respect to any recovery under this Policy involving such officer or employee).

2. Definitions

As used in this Policy, the following definitions apply:

- (a) "**Accounting Restatement**" means an accounting restatement of the Company's financial statements due to the Company's material noncompliance with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.
 - (b) "**Clawback Period**" means, with respect to any Accounting Restatement, the three completed fiscal years immediately preceding the date on which the Company is required to prepare an Accounting Restatement, as well as any transition period (that results from
-

a change in the Company's fiscal year) within or immediately following those three completed fiscal years (except that a transition period that comprises a period of at least nine months shall count as a completed fiscal year). The "date on which the Company is required to prepare an Accounting Restatement" is the earlier to occur of (a) the date the Board, a committee of the Board or the officers of the Company authorized to take such action if Board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare an Accounting Restatement, or (ii) the date a court, regulator or other legally authorized body directs the Company to prepare an Accounting Restatement.

(c) "**Covered Executives**" means the Company's current and former executive officers, as determined by the Committee in accordance with the definition of executive officer set forth in Rule 10D-1 and the NYSE Rules.

(d) "**Erroneously Awarded Compensation**" means the amount of Incentive-Based Compensation received by the Covered Executive or the Manager that exceeds the amount of Incentive-Based Compensation that otherwise would have been received had it been determined based on the restated amounts, computed without regard to any taxes paid.

(e) A "**Financial Reporting Measure**" is any measure that is determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, and any measure that is derived wholly or in part from such measure. Financial Reporting Measures include but are not limited to the following (and any measures derived from the following): Company stock price; total shareholder return ("**TSR**"); revenues; net income; operating income; profitability of one or more reportable segments; financial ratios; earnings before interest, taxes, depreciation and amortization ("**EBITDA**"); funds from operations and adjusted funds from operations; liquidity measures (e.g., working capital, operating cash flow); return measures (e.g., return on invested capital, return on assets); earnings measures (e.g., earnings per share); any of such financial reporting measures relative to a peer group, where the Company's financial reporting measure is subject to an Accounting Restatement; and tax basis income. A Financial Reporting Measure need not be presented within the Company's financial statements or included in a filing with the SEC.

(f) "**Incentive-Based Compensation**" means any compensation that is granted, earned or vested based wholly or in part upon the attainment of a Financial Reporting Measure. Incentive-Based Compensation is "received" for purposes of this Policy in the Company's fiscal period during which the Financial Reporting Measure specified in the Incentive-Based Compensation award is attained, even if the payment or grant of such Incentive-Based Compensation occurs after the end of that period. For purposes of the Manager, Incentive-Based Compensation means Incentive Compensation (as defined in the Management Agreement) that Manager receives under the terms of the Management Agreement.

3. Covered Executives and Manager; Incentive-Based Compensation

This Policy applies to Incentive-Based Compensation received by a Covered Executive (a) after beginning services as a Covered Executive; (b) if that person served as a Covered Executive at any time during the performance period for such Incentive-Based Compensation; (c) while the Company had a listed class of securities on a national securities exchange and (d) during the applicable Clawback Period. This Policy also applies to Incentive Compensation (as defined in the Company's Fourth Amended and Restated Management Agreement, dated July 31, 2020, as amended, by and among the Company, ACRES Capital, LLC (the Company's "**Manager**"), and ACRES Capital, Corp. (the "**Management Agreement**")) received by the Manager under the terms of the Management Agreement.

4. Recovery of Erroneously Awarded Compensation

A. In the event the Company is required to prepare an Accounting Restatement, the Company shall promptly recoup the amount of any Erroneously Awarded Compensation received by any Covered Executive or the Manager, in accordance with NYSE Rules and Rule 10D-1 as follows:

a. After an Accounting Restatement, the Committee shall determine the amount of any Erroneously Awarded Compensation received by each Covered Executive and the Manager and shall promptly notify each Covered Executive and the Manager with a written notice containing the amount of any Erroneously Awarded Compensation and a demand for repayment or return of such compensation, as applicable. Erroneously Awarded Compensation shall be computed by the Administrator without regard to any taxes paid by the Covered Executive or the Manager in respect of the Erroneously Awarded Compensation.

1. For Incentive-Based Compensation based on (or derived from) stock price or TSR where the amount of the Erroneously Awarded Compensation is not subject to mathematical recalculation directly from the information in the applicable Accounting Restatement: (a) the Committee shall determine the amount of Erroneously Awarded Compensation based on a reasonable estimate of the effect of the Accounting Restatement on the stock price or TSR upon which the Incentive-Based Compensation was received; and (b) the Company shall maintain documentation of the determination of that reasonable estimate and provide such documentation to the NYSE.

b. The Committee shall have discretion to determine the appropriate means of recovering Erroneously Awarded Compensation based on the particular facts and circumstances. Notwithstanding the foregoing, except as set forth in Section 4(B) below, in no event may the Company accept an amount that is less than the amount of Erroneously Awarded

Compensation in satisfaction of a Covered Executive's or the Manager's obligations hereunder.

c. To the extent that a Covered Executive or the Manager fails to repay all Erroneously Awarded Compensation to the Company when due, the Company shall take all actions reasonable and appropriate to recover such Erroneously Awarded Compensation from the applicable Covered Executive or the Manager. The applicable Covered Executive and the Manager shall be required to reimburse the Company for any and all expenses reasonably incurred (including legal fees) by the Company in recovering such Erroneously Awarded Compensation in accordance with the immediately preceding sentence.

B. Notwithstanding anything herein to the contrary, the Company shall not be required to take the actions contemplated by Section 4(A) above if the Committee determines that recovery would be impracticable and any of the following two conditions are met:

a. The Committee has determined that the direct expenses paid to a third party to assist in enforcing the Policy would exceed the amount to be recovered. Before making this determination, the Company must make a reasonable attempt to recover the Erroneously Awarded Compensation, document such attempt(s) and provide such documentation to the NYSE; or

b. Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the Company, to fail to meet the requirements of Section 401(a)(13) or Section 411(a) of the Internal Revenue Code of 1986, as amended, and regulations thereunder.

C. No Indemnification

Notwithstanding the terms of any indemnification or insurance policy or any contractual arrangement with any Covered Executive or the Manager that may be interpreted to the contrary, the Company shall not indemnify any Covered Executives or the Manager against the loss of any Erroneously Awarded Compensation, including any payment or reimbursement for the cost of third-party insurance purchased by any Covered Executives or the Manager to fund potential clawback obligations under this Policy.

D. Committee Indemnification

Any members of the Committee, and any other members of the Board who assist in the administration of this Policy, shall not be personally liable for any action, determination or interpretation made with respect to this Policy and shall be fully indemnified by the Company to the fullest extent under applicable law and Company policy with respect to any such action, determination or interpretation. The foregoing sentence shall not limit

any other rights to indemnification of the members of the Board under applicable law or Company policy.

E. Effective Date

This Policy shall be effective as of December 1, 2023 (the “**Effective Date**”). The terms of this Policy shall apply to any Incentive-Based Compensation that is received by Covered Executives or the Manager on or after the Effective Date, even if such Incentive-Based Compensation was approved, awarded, granted or paid to Covered Executives or the Manager prior to the Effective Date.

F. Amendment; Termination

The Board may amend, modify, supplement, rescind or replace all or any portion of this Policy at any time and from time to time in its discretion, and shall amend this Policy as it deems necessary to comply with applicable law or any rules or standards adopted by a national securities exchange on which the Company’s securities are listed.

G. Other Recoupment Rights

The Board intends that this Policy shall be applied to the fullest extent of the law. Any right of recoupment under this Policy is in addition to, and not in lieu of, any other remedies or rights of recoupment that may be available to the Company under applicable law or pursuant to the terms of any similar policy in any employment agreement, equity award agreement, or similar agreement and any other legal remedies available to the Company.

Nothing contained in this Policy, and no recoupment or recovery as contemplated by this Policy, shall limit any claims, damages or other legal remedies the Company or any of its affiliates may have against a Covered Executive or the Manager arising out of or resulting from any actions or omissions by the Covered Executive or the Manager.

H. Successors

This policy shall be enforceable against all Covered Executives and the Manager and their beneficiaries, heirs, executors, administrators or other legal representatives.

I. Disclosure

The Company shall file all disclosures with respect to this Policy required by applicable SEC filings and rules.

MATERIAL FEDERAL INCOME TAX CONSIDERATIONS

The following is a summary of the material federal income tax considerations relating to ACRES Commercial Realty Corp.'s qualification and taxation as a real estate investment trust, or REIT, and the acquisition, holding, and disposition of ACRES Commercial Realty Corp.'s capital stock. For purposes of this Exhibit, references to "we," "us," "our" and "company" refer to "ACRES Commercial Realty Corp." only and not its subsidiaries or other lower-tier entities, except as otherwise indicated.

This summary is based upon the Internal Revenue Code of 1986, as amended, or the Internal Revenue Code, the Treasury regulations, current administrative interpretations and practices of the Internal Revenue Service, or the IRS, (including administrative interpretations and practices expressed in private letter rulings that are binding on the IRS only with respect to the particular taxpayers who requested and received those rulings) and judicial decisions, all as currently in effect and all of which are subject to differing interpretations or to change, possibly with retroactive effect. No assurance can be given that the IRS would not assert, or that a court would not sustain, a position contrary to any of the tax consequences described below. No advance ruling has been or will be sought from the IRS regarding any matter discussed in this summary. The summary is also based upon the assumption that the operation of the company, and of its subsidiaries and other lower-tier and affiliated entities, will, in each case, be in accordance with its applicable organizational documents. This summary is for general information only, and does not purport to discuss all aspects of federal income taxation that may be important to a particular stockholder in light of its investment or tax circumstances or to stockholders subject to special tax rules, such as:

- U.S. expatriates;
- persons who mark-to-market shares of our capital stock;
- subchapter S corporations;
- U.S. stockholders (as defined below) whose functional currency is not the U.S. dollar;
- financial institutions;
- insurance companies;
- broker-dealers;
- regulated investment companies;
- trusts and estates;
- holders who receive shares of our capital stock through the exercise of employee shares options or otherwise as compensation;
- persons holding shares of our capital stock as part of a "straddle," "hedge," "conversion transaction," "synthetic security" or other integrated investment;
- persons subject to the alternative minimum tax provisions of the Internal Revenue Code;
- persons holding shares of our capital stock through a partnership or similar pass-through entity;
- persons holding a 10% or more (by vote or value) beneficial interest in the company; and, except to the extent discussed below:
- tax-exempt organizations; and
- non-U.S. stockholders (as defined below).

This summary assumes that stockholders will hold our shares of capital stock as capital assets, which generally means as property held for investment.

THE FEDERAL INCOME TAX TREATMENT OF HOLDERS OF SHARES OF OUR CAPITAL STOCK DEPENDS IN SOME INSTANCES ON DETERMINATIONS OF FACT AND INTERPRETATIONS OF COMPLEX PROVISIONS OF FEDERAL INCOME TAX LAW FOR WHICH NO CLEAR PRECEDENT OR AUTHORITY MAY BE AVAILABLE. IN ADDITION, THE TAX CONSEQUENCES OF HOLDING SHARES OF OUR CAPITAL STOCK FOR ANY PARTICULAR STOCKHOLDER WILL DEPEND ON THE STOCKHOLDER'S PARTICULAR TAX CIRCUMSTANCES. YOU ARE URGED TO CONSULT YOUR TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL, AND FOREIGN INCOME AND OTHER TAX CONSEQUENCES TO YOU, IN LIGHT OF YOUR PARTICULAR INVESTMENT OR TAX CIRCUMSTANCES, OF ACQUIRING, HOLDING, AND DISPOSING OF SHARES OF OUR CAPITAL STOCK.

Taxation of Our Company

We elected to be taxed as a REIT under the federal income tax laws effective for our initial taxable year ended on December 31, 2005. We believe that, commencing with such taxable year, we have been organized and operated in such a manner so as to qualify for taxation as a REIT under the federal income tax laws, and we intend to continue to operate in such a manner, but no assurances can be given that we have qualified or will continue to operate in a manner so as to qualify or remain qualified as a REIT. This section discusses the laws governing the federal income tax treatment of a REIT and its stockholders. These laws are highly technical and complex.

We believe that we have been organized and operated in a manner that will allow us to qualify for taxation as a REIT under the Internal Revenue Code, and we intend to continue to be organized and operated in such a manner. Qualification and taxation as a REIT depends on our ability to meet, on a continuing basis, through actual operating results, distribution levels, diversity of stock ownership, and various qualification requirements imposed upon REITs by the Internal Revenue Code and the Treasury regulations issued thereunder, including requirements relating to the nature and composition of our assets and income. Our ability to comply with the REIT asset requirements also depends, in part, upon the fair market values of assets that we own directly or indirectly. Such values may not be susceptible to a precise determination. For a discussion of the federal income tax consequences of our failure to qualify as a REIT, see "—Failure to Qualify."

If we qualify as a REIT, we generally will not be subject to federal income tax on our net taxable income that we distribute currently to our stockholders, but taxable income generated by all of our domestic "taxable REIT subsidiaries," or TRSs, will be subject to regular corporate income tax. However, our stockholders will generally be taxed on dividends that they receive at ordinary income rates unless such dividends are designated by us as capital gain dividends, return of capital or qualified dividend income. This differs from non-REIT C corporations, which generally are subject to federal corporate income taxes but whose individual and certain non-corporate trust and estate stockholders are generally taxed on dividends they receive at a preferential rate, and whose corporate stockholders generally receive the benefits of a dividends received deduction that substantially reduces the effective rate that they pay on such dividends. In general, income earned by a REIT and distributed to its stockholders will be subject to less federal income taxation than if such income were earned by a non-REIT C corporation, subjected to corporate income tax, and then distributed and taxed to stockholders.

While we generally are not subject to corporate income tax on income that we distribute currently to our stockholders, we will be subject to federal tax in the following circumstances:

- We will pay federal income tax on net taxable income, including net capital gain, that we do not distribute to our stockholders during, or within a specified time period after, the calendar year in which the income is earned.
- We may be subject to the "alternative minimum tax" on any items of tax preference that we do not distribute or allocate to our stockholders.
- We will pay income tax at the highest corporate rate on:
 - net income from the sale or other disposition of property acquired through foreclosure, or foreclosure property, that we hold primarily for sale to customers in the ordinary course of business, and
 - other non-qualifying income from foreclosure property.
- We will pay a 100% tax on net income earned on sales or other dispositions of property, other than foreclosure property, that we hold primarily for sale to customers in the ordinary course of business.
- If we fail to satisfy the 75% gross income test or the 95% gross income test due to reasonable cause and not willful neglect, as described below under "—Requirements for Qualification—Gross Income Tests," and nonetheless continue to qualify as a REIT, we will pay a 100% tax on the greater of the amount by which we fail the 75% gross income test or the 95% gross income test, multiplied, in either case, by a fraction intended to reflect our profitability.

- In the event of a failure of any of the asset tests (other than certain *de minimis* failures of the 5% and 10% asset tests), as described below under “—Requirements for Qualification—Asset Tests,” as long as the failure was due to reasonable cause and not to willful neglect, we dispose of the assets or otherwise comply with such asset tests within six months after the last day of the quarter in which we identify such failure, and we file a schedule with the IRS describing the assets that caused such failure, we will pay a tax equal to the greater of (i) \$50,000 or (ii) an amount determined by multiplying the highest federal income tax rate applicable to corporations by the net income from the nonqualifying assets during the period in which we failed to satisfy such asset tests.

- If we fail to satisfy one or more requirements for REIT qualification, other than the gross income tests and the asset tests, and the failure is due to reasonable cause and not willful neglect, we may retain our qualification as a REIT but will be required to pay a penalty of \$50,000 for each such failure.

- If we fail to distribute during a calendar year at least the sum of:

- 85% of our REIT ordinary income for the year,

- 95% of our REIT capital gain net income for the year,

- any undistributed taxable income from earlier periods, and

we will pay a 4% nondeductible excise tax on the excess of the required distribution over the amount we actually distributed, plus any retained amounts on which income tax has been paid at the corporate level.

- We may elect to retain and pay income tax on our net long-term capital gain. In that case, a U.S. stockholder (as defined below) would include its proportionate share of our undistributed long-term capital gain in its income (to the extent that we make a timely designation of such gain to the stockholder) and would receive a credit for its proportionate share of the tax we paid or receive a refund to the extent the tax paid by us exceeds the U.S. stockholder's tax liability on the undistributed capital gains.

- We will be subject to a 100% excise tax on amounts received by us from a TRS (or on certain expenses deducted by a TRS or income earned by a TRS) if certain arrangements between us and a TRS are not conducted on an arm's-length basis.

- If we acquire any asset from a C corporation, or a corporation that generally is subject to full corporate-level tax, in a merger or other transaction in which we acquire a basis in the asset that is determined by reference either to the C corporation's basis in the asset or to another asset, we will pay tax at the highest regular corporate rate applicable if we recognize gain on the sale or disposition of the asset during the five-year period after we acquire the asset. The amount of gain on which we will pay tax is the lesser of:

- the amount of gain that we recognize at the time of the sale or disposition, and

- the amount of gain that we would have recognized if we had sold the asset at the time we acquired it, assuming that the C corporation will not elect in lieu of this treatment to an immediate tax when the asset is acquired.

- If we own a residual interest in a real estate mortgage investment conduit, or REMIC, we will be taxable at the highest corporate rate on the portion of any excess inclusion income that we derive from the REMIC residual interests allocable to stockholders that are “disqualified organizations.” Similar rules will also apply if we own an equity interest in a taxable mortgage pool. To the extent that we own a REMIC residual interest or a taxable mortgage pool through a TRS, we will not be subject to this tax. For a discussion of “excess inclusion income,” see “—Requirements for Qualification—Taxable Mortgage Pools.” A “disqualified organization” includes:

- the United States;

- any state or political subdivision of the United States;

- any foreign government;

- any international organization;
- any agency or instrumentality of any of the foregoing;
- any other tax-exempt organization, other than a farmer's cooperative described in section 521 of the Internal Revenue Code, that is exempt both from income taxation and from taxation under the unrelated business taxable income provisions of the Internal Revenue Code; and
- any rural electrical or telephone cooperative.

We do not currently hold, or intend to hold, REMIC residual interests nor do we currently own residual interests in taxable mortgage pools.

In addition, notwithstanding our qualification as a REIT, we may also have to pay certain state and local income taxes, because not all states and localities treat REITs in the same manner that they are treated for federal income tax purposes. Moreover, as further described below, any domestic TRS in which we own an interest will be subject to federal corporate income tax on its taxable income. In addition, we may be subject to a variety of taxes other than income tax, including state and local franchise, property, and other taxes and foreign taxes. We could also be subject to tax in situations and on transactions not presently contemplated.

Requirements for Qualification

A REIT is a corporation, trust, or association that meets each of the following requirements:

- It is managed by one or more trustees or directors.
- Its beneficial ownership is evidenced by transferable shares, or by transferable certificates of beneficial interest.
- It would be taxable as a domestic corporation, but for the REIT provisions of the federal income tax laws.
- It is neither a financial institution nor an insurance company subject to special provisions of the federal income tax laws.
- At least 100 persons are beneficial owners of its shares or ownership certificates.
- Not more than 50% in value of its outstanding shares or ownership certificates is owned, directly or indirectly, by five or fewer individuals, which the federal income tax laws define to include certain entities, after applying certain attribution rules.
- It elects to be a REIT, or has made such an election for a previous taxable year, which has not been revoked or terminated, and satisfies all filing and other administrative requirements established by the IRS that must be met to elect and maintain REIT status.
- It meets certain other qualification tests, described below, regarding the nature of its income and assets.

We must meet the first four requirements during our entire taxable year and must meet the fifth requirement during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months. The sixth requirement must be met during the last half of each taxable year, but neither the fifth nor the sixth requirement applies to the first taxable year for which an election to become a REIT is made. If we comply with regulatory rules pursuant to which we are required to send annual letters to our stockholders requesting information regarding the actual ownership of our stock, and we do not know, or exercising reasonable diligence would not have known, whether we failed to meet the sixth requirement, we will be treated as having met the requirement. For purposes of determining share ownership under the sixth requirement, an "individual" generally includes a supplemental unemployment compensation benefits plan, a private foundation, or a portion of a trust permanently set aside or used exclusively for charitable purposes. An "individual," however, generally does not include a trust that is a qualified employee pension or profit sharing trust under the federal income tax laws, and beneficiaries of such a trust will be treated as holding our stock in proportion to their actuarial interests in the trust for purposes of the sixth requirement.

We believe that we have issued sufficient common stock with sufficient diversity of ownership to satisfy the fifth and sixth requirements. In addition, our charter contains restrictions regarding the ownership and transfer of our stock that are intended to assist us in continuing to satisfy these requirements. These restrictions, however, may not ensure that we will be able to satisfy these share ownership requirements. If we fail to do so, we will fail to qualify as a REIT.

To monitor compliance with the share ownership requirements, we generally are required to maintain records regarding the actual ownership of our stock. To do so, we must demand written statements each year from the recordholders of significant percentages of our stock pursuant to which the record holders must disclose the actual owners of the shares (*i.e.*, the persons required to include our dividends in their gross income). We must maintain a list of those persons failing or refusing to comply with this demand as part of our records. We could be subject to monetary penalties if we fail to comply with these record-keeping requirements. If you fail or refuse to comply with the demands, you will be required by Treasury regulations to submit a statement with your tax return disclosing your actual ownership of our shares and other information. In addition, we must satisfy all relevant filing and other administrative requirements established by the IRS that must be met to elect and maintain our REIT qualification, use a calendar year for federal income tax purposes, and comply with the record keeping requirements of the Internal Revenue Code and regulations promulgated thereunder which we have satisfied or intend to satisfy.

Qualified REIT Subsidiaries. A corporation that is a "qualified REIT subsidiary" is not treated as a corporation separate from its parent REIT. A "qualified REIT subsidiary" is a corporation, other than a TRS, all of the capital stock of which is owned by the REIT. All assets, liabilities, and items of income, deduction and credit of a "qualified REIT subsidiary" are treated as assets,

liabilities, and items of income, deduction and credit of the REIT. A qualified REIT subsidiary is not subject to federal corporate income taxation, although it may be subject to state and local taxation in some states.

In the event that a qualified REIT subsidiary or disregarded subsidiary ceases to be wholly owned by us (for example, if any equity interest in the subsidiary is acquired by a person other than us or another disregarded subsidiary of us), the subsidiary's separate existence would no longer be disregarded for federal income tax purposes. Instead, it would have multiple owners and would be treated as either a partnership or a taxable corporation. Such an event could, depending on the circumstances, adversely affect our ability to satisfy the various asset and gross income tests applicable to REITs, including the requirement that REITs generally may not own, directly or indirectly, more than 10% of the value or voting power of the outstanding securities of another corporation. See “—Asset Tests” and “—Gross Income Tests.”

Other Disregarded Entities and Partnerships. An unincorporated domestic entity, such as a partnership, limited liability company, or trust, that has a single owner generally is not treated as an entity separate from its parent for federal income tax purposes, including for purposes of the gross income and asset tests applicable to REITs. An unincorporated domestic entity with two or more owners generally is treated as a partnership for federal income tax purposes. In the case of a REIT that is a partner in an entity that is treated as a partnership for federal income tax purposes, the REIT is treated as owning its proportionate share of the assets of the partnership and as earning its proportionate share of the gross income of the partnership based on its pro rata share of capital interests in the partnership for purposes of the applicable REIT qualification tests, as described below. However, solely for purposes of the 10% value test (described in “—Asset Tests”), the determination of our interest in partnership assets is based on our proportionate interest in any securities issued by the partnership, excluding for these purposes certain excluded securities as described in the Internal Revenue Code. In addition, the assets and gross income of the partnership generally are deemed to retain the same character in the hands of a REIT. Thus, our proportionate share of the assets, liabilities and items of income of any partnership, joint venture, or limited liability company that is treated as a partnership for federal income tax purposes in which we acquire an interest, directly or indirectly, will be treated as our assets and gross income for purposes of applying the various REIT qualification requirements. Consequently, to the extent that we directly or indirectly hold a preferred or other equity interest in a partnership, joint venture, or limited liability company, the partnership's, joint venture's, or limited liability company's assets and operations may affect our ability to qualify as a REIT, even though we may have no control or only limited influence over the partnership.

Taxable REIT Subsidiaries. A REIT is permitted to own up to 100% of the stock of one or more TRSs. A TRS is generally a fully taxable corporation in which a REIT directly or indirectly owns stock that may earn income that would not be qualifying income if earned directly by the parent REIT. The subsidiary and the REIT must jointly elect to treat the subsidiary as a TRS. A corporation of which a TRS directly or indirectly owns more than 35% of the voting power or value of the stock will automatically be treated as a TRS. However, an entity will not qualify as a TRS if it directly or indirectly operates or manages a lodging or health care facility or, generally, provides to another person, under a franchise, license or otherwise, rights to any brand name under which any lodging facility or health care facility is operated. We generally may not own more than 10%, as measured by voting power or value, of the securities of a corporation that is not a qualified REIT subsidiary or a REIT unless we and such corporation elect to treat such corporation as a TRS. Overall, no more than 20% of the value of a REIT's assets may consist of stock or securities of one or more TRSs.

TRSs are subject to federal income tax, and state and local income tax where applicable, on their taxable income. To the extent that a TRS is required to pay taxes, it will have less cash available for distribution to us. If our TRSs pay dividends to us, then the dividends we pay to our stockholders who are taxed as individuals, up to the amount of dividends we receive from such TRSs, will generally be eligible to be taxed at the reduced rate applicable to qualified dividend income. See “—Taxation of Taxable U.S. Stockholders.” The decision as to whether our TRSs will distribute their after-tax income to us will be made on a periodic basis, subject to our compliance with the 20% asset test with respect to TRSs.

We have made TRS elections with respect to several foreign corporations involved in securitizations, and Exantas Real Estate TRS Inc., or XAN RE TRS, and we may in the future make TRS elections with respect to certain entities that issue equity interests to us pursuant to CDO securitizations. The Internal Revenue Code and the Treasury regulations promulgated thereunder provide a specific exemption from federal income tax to non-U.S. corporations that restrict their activities in the United States to trading in stock and securities (or any activity closely related thereto) for their own account, whether such trading (or such other activity) is conducted by the corporation or its employees through a resident broker, commission agent, custodian or other agent. Certain U.S. stockholders of such non-U.S. corporations are required to include in their income currently their proportionate share of the earnings of such a corporation, whether or not such earnings are distributed. Certain CDO vehicles in which we invested and may invest in the future and with which we will jointly make a TRS election, are or will be organized as Cayman Islands companies and either rely on such exemption or otherwise operate in a manner so that are not be subject to federal income tax on their net income. Therefore, despite such contemplated entities' anticipated status as TRSs, such entities generally are not subject to federal corporate income tax on their earnings. However, we are required to include in our income, on a current basis, the earnings of these TRSs. This could affect our ability to comply with the REIT income tests and distribution requirements. See “—Gross Income Tests” and “—Distribution Requirements.”

The TRS rules limit the deductibility of interest paid or accrued by a TRS to its parent REIT to assure that the TRS is subject to an appropriate level of corporate taxation. Further, the rules impose a 100% excise tax on transactions between a TRS and its parent REIT or the REIT's tenants that are not conducted on an arm's-length basis. We intend to scrutinize all of our

transactions with any of our subsidiaries that are treated as TRSs in an effort to ensure that we do not become subject to this penalty tax; however, we cannot assure that we will be successful in avoiding this penalty tax.

Taxable Mortgage Pools and REMICs. An entity, or a portion of an entity, that does not elect to be treated as a REMIC may be classified as a taxable mortgage pool under the Internal Revenue Code if:

- substantially all of its assets consist of debt obligations or interests in debt obligations;
- more than 50% of those debt obligations are real estate mortgage loans or interests in real estate mortgage loans as of specified testing dates;
- the entity has issued debt obligations that have two or more maturities; and
- the payments required to be made by the entity on its debt obligations "bear a relationship" to the payments to be received by the entity on the debt obligations that it holds as assets.

Under the Treasury regulations, if less than 80% of the assets of an entity (or a portion of an entity) consists of debt obligations, these debt obligations are considered not to comprise "substantially all" of its assets, and therefore the entity would not be treated as a taxable mortgage pool.

We have made and may continue in the future to make investments or enter into financing and securitization transactions that give rise to us being considered to own an interest in one or more taxable mortgage pools. Where an entity, or a portion of an entity, is classified as a taxable mortgage pool, it is generally treated as a taxable corporation for federal income tax purposes. However, special rules apply to a REIT, a portion of a REIT, or a qualified REIT subsidiary that is a taxable mortgage pool. The portion of the REIT's assets, held directly or through a qualified REIT subsidiary that qualifies as a taxable mortgage pool is treated as a qualified REIT subsidiary that is not subject to corporate income tax, and the taxable mortgage pool classification does not affect the tax qualification of the REIT. Rather, the consequences of the taxable mortgage pool classification are generally, except as described below, limited to the tax liability on the REIT and the REIT's stockholders. The Treasury Department has yet to issue regulations governing the tax treatment of the stockholders of a REIT that owns an interest in a taxable mortgage pool.

A portion of our income from a REMIC residual interest or taxable mortgage pool arrangement, which might be non-cash accrued income, or "phantom" taxable income, could be treated as "excess inclusion income" and allocated to our stockholders. Excess inclusion income is an amount, with respect to any calendar quarter, equal to the excess, if any, of (i) income allocable to the holder of a REMIC residual interest or taxable mortgage pool interest during such calendar quarter over (ii) the sum of an amount for each day in the calendar quarter equal to its ratable portion of the product of (a) the adjusted issue price of the interest at the beginning of the quarter multiplied by (b) 120% of the long-term federal rate (determined on the basis of compounding at the close of each calendar quarter and properly adjusted for the length of such quarter). This non-cash or "phantom" income would be subject to the distribution requirements that apply to us and could therefore adversely affect our liquidity. See "—Distribution Requirements."

Our excess inclusion income would be allocated among our stockholders in proportion to dividends paid. A stockholder's share of excess inclusion income (i) would not be allowed to be offset by any net operating losses otherwise available to the stockholder, (ii) would be subject to tax as unrelated business taxable income in the hands of most types of stockholders that are otherwise generally exempt from federal income tax, (iii) would result in the application of federal income tax withholding, without reduction for any otherwise applicable income tax treaty, to the extent allocable to most types of foreign stockholders and (iv) in the case of a stockholder that is a REIT, a regulated investment company or common trust fund, would be considered excess inclusion income of such entity. The manner in which excess inclusion income would be allocated to dividends attributable to a tax year that are not paid until a subsequent tax year or to dividends attributable to a portion of a tax year when no excess inclusion income-generating assets were held or how such income is to be reported to stockholders is not clear under current law.

Although the law is unclear, the IRS has taken the position that a REIT is taxable at the highest corporate tax rate on the portion of any excess inclusion income that it derives from an equity interest in a taxable mortgage pool equal to the percentage of its stock that is held in record name by disqualified organizations (as defined above under "—Taxation of Our Company"). Similar rules apply if we own a residual interest in a REMIC. Nominees who hold our shares on behalf of disqualified organizations are subject to this tax on the portion of our excess inclusion income allocable to the capital stock held on behalf of disqualified organizations. A regulated investment company or other pass-through entity owning our capital stock in record name will be subject to tax at the highest corporate tax rate on any excess inclusion income allocated to their owners that are disqualified organizations. In addition, we will withhold on dividends paid to non-U.S. stockholders (as defined below) with respect to the excess inclusion portion of dividends paid to such stockholders without regard to any treaty exception or reduction in tax rate.

The manner in which excess inclusion income would be allocated among shares of different classes of stock is not clear under current law. Tax-exempt investors, regulated investment company or REIT investors, foreign investors and taxpayers with net operating losses should consult their tax advisors with respect to excess inclusion income.

If we own less than 100% of the ownership interests in a subsidiary that is a taxable mortgage pool, or if we made a TRS election with respect to a subsidiary that is a taxable mortgage pool, the foregoing rules would not apply. Rather, the subsidiary

would be treated as a corporation for federal income tax purposes, and would potentially be subject to corporate income tax. In addition, this characterization would alter our REIT income and asset test calculations and could adversely affect our compliance with those requirements. We currently do not have any subsidiary in which we own some, but less than all, of the ownership interests that is or will become a taxable mortgage pool and for which we have not made a TRS election. We intend to monitor the structure of any taxable mortgage pools in which we have an interest to ensure that they will not adversely affect our qualification as a REIT.

Gross Income Tests

We must satisfy two gross income tests annually to maintain our qualification as a REIT. First, at least 75% of our gross income for each taxable year must consist of defined types of income that we derive, directly or indirectly, from investments relating to real property or mortgage loans on real property or qualified temporary investment income. Qualifying income for purposes of the 75% gross income test generally includes:

- rents from real property;
- interest on debt secured by a mortgage on real property or on interests in real property and interest on debt secured by a mortgage on real property and personal property if the fair market value of such personal property does not exceed 15% of the total fair market value of all such property, and interest on qualified mezzanine loans;
- dividends or other distributions on, and gain from the sale of, shares in other REITs;
- gain from the sale of real estate assets;
- abatements and refunds of taxes on real property;
- income and gain derived from foreclosure property (as described below);
- amounts (other than amounts the determination of which depends in whole or in part on the income or profits of any person) received or accrued as consideration for entering into agreements (i) to make loans secured by mortgages on real property or on interests in real property or (ii) to purchase or lease real property (including interests in real property and interests in mortgages on real property);
- income derived from a REMIC in proportion to the real estate assets held by the REMIC, unless at least 95% of the REMIC's assets are real estate assets, in which case all of the income derived from the REMIC; and
- interest or dividend income derived from the temporary investment in stock or debt instruments of new capital that is attributable to the issuance of our stock or a public offering of our debt with a maturity date of at least five years and that we receive during the one-year period beginning on the date on which we received such new capital.

Although a debt instrument issued by a "publicly offered REIT" (*i.e.*, a REIT that is required to file annual and periodic reports with the SEC under the Exchange Act) is treated as a "real estate asset" for the asset tests, the interest income and gain from the sale of such debt instruments is not treated as qualifying income for the 75% gross income test unless the debt instrument is secured by real property or an interest in real property.

Second, in general, at least 95% of our gross income for each taxable year must consist of income that is qualifying income for purposes of the 75% gross income test, other types of interest and dividends, gain from the sale or disposition of stock or securities or any combination of these. Cancellation of indebtedness income, certain foreign currency gains, and gross income from our sale of property that we hold primarily for sale to customers in the ordinary course of business are excluded from both the numerator and the denominator in both income tests. In addition, income and gain from certain "hedging transactions," as defined in "—Hedging Transactions," that we enter into in the normal course of our business to hedge indebtedness incurred or to be incurred to acquire or carry real estate assets or to manage risk of currency fluctuations with respect to certain items of income or gain and that are clearly and timely identified as such will be excluded from both the numerator and the denominator for purposes of the gross income tests. We will monitor the amount of our non-qualifying income and we will manage our investment portfolio to comply at all times with the gross income tests. The following paragraphs discuss some of the specific applications of the gross income tests to us.

Interest. The term "interest," as defined for purposes of both gross income tests, generally excludes any amount that is based in whole or in part on the income or profits of any person. However, interest generally includes the following:

- an amount that is based on a fixed percentage or percentages of receipts or sales; and
- an amount that is based on the income or profits of a debtor, as long as the debtor derives substantially all of its income from the real property securing the debt from leasing substantially all of its interest in the property, and only to the extent that the amounts received by the debtor would be qualifying, "rents from real property" if received directly by a REIT.

If a loan contains a provision that entitles a REIT to a percentage of the borrower's gain upon the sale of the real property securing the loan or a percentage of the appreciation in the property's value as of a specific date, income attributable to that loan provision will be treated as gain from the sale of the property securing the loan, which generally is qualifying income for purposes of both gross income tests, provided that the property is not held as inventory or dealer property in the hands of the borrower or the REIT.

Interest on debt secured by a mortgage on real property or on interests in real property, including, for this purpose, market discount, original issue discount, prepayment penalties, loan assumption fees, and late payment charges that are not compensation for services, generally is qualifying income for purposes of the 75% gross income test. However, if a loan is secured by real property and other property and the highest principal amount of a loan outstanding during a taxable year exceeds the fair market value of the real property (including, for loans secured by real property and personal property where the fair market value of the personal property is less than 15% of the total fair market value of all such property, such personal property) securing the loan as of the date (1) the REIT agreed to originate or acquire the loan or (2) as discussed further below, in the event of a "significant modification," the date we modified the loan, a portion of the interest income from such loan will not be qualifying income for purposes of the 75% gross income test, but will be qualifying income for purposes of the 95% gross income test. In the case of real estate mortgage loans secured by both real and personal property, if the fair market value of such personal property does not exceed 15% of the total fair market value of all property securing the loan, then the personal property securing the loan will be treated as real property for purposes of determining whether the mortgage is qualifying under the 75% asset test and interest income that qualifies for purposes of the 75% gross income test. If apportionment is required, the percentage of the interest income that will not be qualifying income for purposes of the 75% gross income test will be equal to the percentage of the principal amount of the loan that is not secured by real property—that is, the amount by which the loan exceeds the value of the real estate that is security for the loan.

The interest, original issue discount, and market discount income that we receive from our mortgage-related assets generally, including B notes, will be qualifying income for purposes of both gross income tests. We expect that some of our loans, which we have called mezzanine loans, will not be secured by a direct interest in real property. Instead, such loans will be secured by ownership interests in a non-corporate entity owning real property. In Revenue Procedure 2003-65, the IRS established a safe harbor under which interest from loans secured by a first priority security interest in ownership interests in a partnership or limited liability company owning real property will be treated as qualifying income for both the 75% and 95% gross income tests, and the loans will be treated as qualifying assets for the purposes of the 75% asset test described below, provided several requirements are satisfied. Although the Revenue Procedure provides a safe harbor on which taxpayers may rely, it does not prescribe rules of substantive law. In situations where a loan is secured by interests in non-corporate entities but not all of the requirements of the safe harbor are met, the interest income from the loan will be qualifying income for purposes of the 95% gross income test, but there is a risk that such interest income will not be qualifying income for purposes of the 75% gross income test. We have not limited ourselves to acquiring mezzanine loans that comply with all requirements of the safe harbor. Based on advice of counsel, we believe that substantially all of our mezzanine loans should be treated as qualifying assets notwithstanding the failures to comply with all of the requirements of the safe harbor and we will not treat any future mezzanine loans as qualifying assets absent such advice. Nevertheless, in light of the sparse guidance regarding mezzanine loans that do not meet with foregoing safe harbor, it is possible that the IRS could disagree and challenge the treatment of these loans as qualifying assets and/or our qualification as a REIT. In addition, certain investments characterized by us as debt for federal income tax purposes could, if successfully challenged and determined to represent equity for federal income tax purposes, result in us failing to meet the REIT gross income tests; the result of which could cause us to fail to qualify as a REIT or be subject to a penalty tax. Finally, some of our loans will not be secured by mortgages on real property or interests in real property. Our interest income from those loans will be qualifying income for purposes of the 95% gross income test, but not the 75% gross income test. Further, as discussed above, if the fair market value of the real estate securing any of our loans is less than the principal amount of the loan, a portion of the income from that loan will be qualifying income for purposes of the 95% gross income test but not the 75% gross income test.

We hold certain participation interests, including B Notes, in mortgage loans and mezzanine loans. Such interests in an underlying loan are created by virtue of a participation or similar agreement to which the originator of the loan is a party, along with one or more participants. The borrower on the underlying loan is typically not a party to the participation agreement. The performance of this investment depends upon the performance of the underlying loan, and if the underlying borrower defaults, the participant typically has no recourse against the originator of the loan. The originator often retains a senior position in the underlying loan, and grants junior participations that absorb losses first in the event of a default by the borrower. We believe that our participation interests qualify as real estate assets for purposes of the REIT asset tests described below, and that the interest that we derive from such investments will be treated as qualifying mortgage interest for purposes of the 75% income test. The appropriate treatment of participation interests for federal income tax purposes is not entirely certain, however, and no assurance can be given that the IRS will not challenge our treatment of our participation interests. In the event of a determination that such participation interests do not qualify as real estate assets, or that the income that we derive from such participation interests does not qualify as mortgage interest for purposes of the REIT asset and income tests, we could be subject to a penalty tax, or could fail to qualify as a REIT. See "—Taxation of Our Company," "—Requirements for Qualification," "—Asset Tests" and "—Failure to Qualify."

We have modified some of our loans by agreement with the borrowers and we may agree to additional loan modifications. If an amendment to an outstanding loan results in a "significant modification" under the applicable Treasury regulations, the modified debt is generally treated for federal income tax purposes as a new debt instrument issued in exchange for the original loan. IRS Revenue Procedure 2014-51 provides a safe harbor pursuant to which we will not be required to redetermine the fair market

value of the real property securing a loan for purposes of the gross income and asset tests in connection with a loan modification that is (i) occasioned by a borrower default or (ii) made at a time when we reasonably believe that the modification to the loan will substantially reduce a significant risk of default on the original loan. To the extent we significantly modify loans in a manner that does not qualify for that safe harbor, we will be required to redetermine the value of the real property securing the loan at the time it was significantly modified, which could result in a portion of the interest income on the loan being treated as nonqualifying income for purposes of the 75% gross income test. In determining the value of the real property securing such a loan, we may obtain third-party appraisals or rely on internal valuations.

Fee Income. We may receive various fees in connection with our operations. The fees generally will be qualifying income for purposes of both the 75% and 95% gross income tests if they are received in consideration for entering into an agreement to make a loan secured by mortgages on real property and the fees are not determined by income and profits. Other fees generally are not qualifying income for purposes of either gross income test, and thus cannot exceed 5% of our annual gross income. Any fees earned by XAN RE TRS and any other TRS will not be included in our gross income for purposes of the gross income tests.

Dividends. Our share of any dividends received from any corporation (including any TRS, but excluding any REIT) in which we own an equity interest will qualify for purposes of the 95% gross income test but not for purposes of the 75% gross income test. Our share of any dividends received from any other REIT in which we own an equity interest will be qualifying income for purposes of both gross income tests.

In prior years, we have treated certain income inclusions received with respect to our past equity investments in foreign TRSs as qualifying income for purposes of the 95% gross income test but not the 75% gross income test. The provisions that set forth what income is qualifying income for purposes of the 95% gross income test provide that gross income derived from dividends, interest and certain other enumerated classes of passive income qualify for purposes of the 95% gross income test. Income inclusions from equity investments in our foreign TRSs are technically neither dividends nor any of the other enumerated categories of income specified in the 95% gross income test for federal income tax purposes, and there is no clear precedent with respect to the qualification of such income for purposes of the REIT gross income tests. However, based on advice of counsel, we treated such income inclusions, to the extent distributed by a foreign TRS in the year accrued, as qualifying income for purposes of the 95% gross income test. In 2011, the IRS issued two private letter rulings considering situations in which a REIT had to include income from foreign corporations. The IRS ruled that such income would qualify for the 95% gross income test. Since private letter rulings may only be relied on by the taxpayer to whom they are issued, it is still possible that, because this income does not meet the literal requirements of the REIT provisions, the IRS could successfully take the position that such income is not qualifying income. In the event that such income was determined not to qualify for the 95% gross income test, we would be subject to a penalty tax with respect to such income to the extent it and other nonqualifying income exceeded 5% of our gross income and/or we could fail to qualify as a REIT.

Rents from Real Property. We have acquired real property through foreclosure, the receipt of the deed-in-lieu of foreclosure and direct investment and may acquire additional real property or an interest therein in the future. To the extent that we acquire real property or an interest therein, rents we receive will qualify as "rents from real property" in satisfying the gross income requirements for a REIT described above only if the following conditions are met:

- First, the amount of rent must not be based in whole or in part on the income or profits of any person. However, an amount received or accrued generally will not be excluded from rents from real property solely by reason of being based on fixed percentages of receipts or sales.
- Second, rents we receive from a "related party tenant" will not qualify as rents from real property in satisfying the gross income tests unless the tenant is a TRS, at least 90% of the property is leased to unrelated tenants, the rent paid by the TRS is substantially comparable to the rent paid by the unrelated tenants for comparable space and, if the tenant is a "controlled taxable REIT subsidiary" (*i.e.* , a TRS in which we own directly or indirectly more than 50% of the voting power or value of the stock), the rent is not attributable to an increase in rent due to a modification of a lease with a controlled taxable REIT subsidiary. A tenant is a related party tenant if the REIT, or an actual or constructive owner of 10% or more of the REIT, actually or constructively owns 10% or more of the tenant.
- Third, if rent attributable to personal property, leased in connection with a lease of real property, is greater than 15% of the total rent received under the lease, then the portion of rent attributable to the personal property will not qualify as rents from real property.
- Fourth, we generally must not operate or manage our real property or furnish or render services to our tenants, other than through an "independent contractor" who is adequately compensated and from whom we do not derive revenue. However, we may provide services directly to tenants if the services are "usually or customarily rendered" in connection with the rental of space for occupancy only and are not considered to be provided for the tenants' convenience. In addition, we may provide a minimal amount of "non-customary" services to the tenants of a property, other than through an independent contractor, as long as our income from the services does not exceed 1% of our income from the related property. Furthermore, we may own up to 100% of the stock of a TRS, which may provide customary and non-customary services to tenants without tainting our rental income from the related properties.

Hedging Transactions and Foreign Currency Gains. From time to time, we may enter into hedging transactions with respect to one or more of our assets or liabilities. Hedging transactions could take a variety of forms, including interest rate swap agreements, interest rate cap agreements, options, futures contracts, forward rate agreements, or similar financial instruments. Income and gain from a “hedging transaction” that is clearly identified as a hedging transaction as specified in the Internal Revenue Code will not constitute gross income and thus will be exempt from the 95% gross income test and the 75% gross income test. The term “hedging transaction” as used above generally means any transaction entered into in the normal course of business primarily to manage risk of (1) interest rate or price changes or currency fluctuations with respect to borrowings made or to be made, or ordinary obligations incurred or to be incurred, to acquire or carry real estate assets, including gain from the sale or disposition of such a transaction, or (2) currency fluctuations with respect to any item of income or gain that would be qualifying income under the 75% or 95% gross income test. In addition, if we entered into a hedging transaction (i) to manage the risk of interest rate, price changes or currency fluctuations with respect to borrowings made or to be made or (ii) to manage the risk of currency fluctuations, and a portion of the hedged indebtedness or property is disposed of and in connection with such extinguishment or disposition we enter into a new clearly identified hedging transaction (a “Counteracting Hedge”), income from the applicable hedge and income from the Counteracting Hedge (including gain from the disposition of such Counteracting Hedge) will not be treated as gross income for purposes of the 95% and 75% gross income tests. We are required to clearly identify any such hedging transaction before the close of the day on which it was acquired, originated, or entered into. To the extent that we do not properly identify such transactions as hedges or hedge with other types of financial instruments, the income from those transactions will likely be treated as nonqualifying income for purposes of the gross income tests. We intend to structure any hedging transactions in a manner that does not jeopardize our qualification as a REIT. In addition, certain foreign currency gains will be excluded from gross income for purposes of one or both of the gross income tests.

Prohibited Transactions. A REIT will incur a 100% tax on the net income derived from any sale or other disposition of property, other than foreclosure property, that the REIT holds primarily for sale to customers in the ordinary course of a trade or business. Any such income will be excluded from the application of the 75% and 95% gross income tests. We believe that none of our assets will be held primarily for sale to customers and that a sale of any of our assets will not be in the ordinary course of our business. Whether a REIT holds an asset “primarily for sale to customers in the ordinary course of a trade or business” depends, however, on the facts and circumstances in effect from time to time, including those related to a particular asset. Nevertheless, we will attempt to comply with the terms of safe-harbor provisions in the federal income tax laws prescribing when a sale of real property will not be characterized as a prohibited transaction. We cannot assure you however, that we can comply with the safe-harbor provisions or that we will avoid owning property that may be characterized as property that we hold “primarily for sale to customers in the ordinary course of a trade or business.” To the extent necessary to avoid the prohibited transactions tax, we will conduct sales of our assets through a TRS.

Foreclosure Property. We will be subject to tax at the maximum corporate rate on any income from foreclosure property, other than income that otherwise would be qualifying income for purposes of the 75% gross income test, less expenses directly connected with the production of that income. However, gross income from foreclosure property will qualify under the 75% and 95% gross income tests. Foreclosure property is any real property, including interests in real property, and any personal property incident to such real property:

- that is acquired by a REIT as the result of the REIT having bid on such property at foreclosure, or having otherwise reduced such property to ownership or possession by agreement or process of law, after there was default or default was imminent on a lease of such property or on indebtedness that such property secured;
- for which the related loan or lease was acquired by the REIT at a time when the default was not imminent or anticipated; and
- for which the REIT makes a proper election to treat the property as foreclosure property.

However, a REIT will not be considered to have foreclosed on a property where the REIT takes control of the property as a mortgagee-in-possession and cannot receive any profit or sustain any loss except as a creditor of the mortgagor. Property generally ceases to be foreclosure property at the end of the third taxable year following the taxable year in which the REIT acquired the property, or longer if an extension is granted by the Secretary of the Treasury. This grace period terminates and foreclosure property ceases to be foreclosure property on the first day:

- on which a lease is entered into for the property that, by its terms, will give rise to income that does not qualify for purposes of the 75% gross income test, or any amount is received or accrued, directly or indirectly, pursuant to a lease entered into on or after such day that will give rise to income that does not qualify for purposes of the 75% gross income test;
- on which any construction takes place on the property, other than completion of a building or any other improvement, where more than 10% of the construction was completed before default became imminent; or
- which is more than 90 days after the day on which the REIT acquired the property and the property is used in a trade or business that is conducted by the REIT, other than through an independent contractor from whom the REIT itself does not derive or receive any income.

Failure to Satisfy Gross Income Tests. If we fail to satisfy one or both of the gross income tests for any taxable year, we nevertheless may qualify as a REIT for that year if we qualify for relief under certain provisions of the federal income tax laws. Those relief provisions generally will be available if:

- our failure to meet such tests is due to reasonable cause and not due to willful neglect; and
- following such failure for any taxable year, a schedule of the sources of our income is filed in accordance with regulations prescribed by the Secretary of the Treasury.

It is not possible, however, to state whether in all circumstances we would be entitled to the benefit of these relief provisions. For example, if the IRS were to determine that we failed the 95% gross income test because income inclusions with respect to our equity investments in foreign TRSs that were distributed by the foreign TRSs during the year such income was accrued are not qualifying income for purposes of the 95% gross income test, or if such income caused us to fail the 75% gross income test, the IRS could conclude that our failure to satisfy the applicable gross income test was not due to reasonable cause. If these relief provisions are inapplicable to such failure, we will fail to qualify as a REIT. See “—Failure to Qualify.” In addition, as discussed above in “—Taxation of Our Company,” even if the relief provisions apply, we would incur a 100% tax on the gross income attributable to the amount by which we fail the 75% or 95% gross income test, multiplied, in either case, by a fraction intended to reflect our profitability.

Asset Tests

To qualify as a REIT, we also must satisfy the following asset tests at the end of each quarter of each taxable year. First, at least 75% of the value of our total assets (or, the 75% asset class) must consist of:

- cash or cash items, including certain receivables;
- government securities;
- interests in real property, including leaseholds and options to acquire real property and leaseholds, and personal property to the extent such personal property is leased in connection with real property and rents attributable to such personal property are treated as “rents from real property”;
- interests in mortgage loans secured by real property (including mortgages secured by both real and personal property if the value of such property does not exceed 15% of the total property securing the loan) ;
- stock in other REITs;
- debt instruments issued by “publicly offered REITs” (not to exceed 25% of our assets unless secured by real property or interests in real property);
- investments in stock or debt instruments during the one-year period following our receipt of new capital that we raise through equity offerings or public offerings of debt with at least a five-year term; and
- regular or residual interests in a REMIC.

However, if less than 95% of the assets of a REMIC consists of assets that are qualifying real estate-related assets under the federal income tax laws, determined as if we held such assets directly, we will be treated as holding directly our proportionate share of the assets of such REMIC.

Second, of our investments not included in the 75% asset class, the value of our interest in any one issuer’s securities may not exceed 5% of the value of our total assets.

Third, of our investments not included in the 75% asset class, we may not own more than 10% of the voting power or value of any one issuer’s outstanding securities.

Fourth, of our investments not included in the 75% asset class, no more than 20% of the value of our total assets may consist of the securities of one or more TRSs.

Fifth, of our investments not included in the 75% asset class, no more than 25% of the value of our total assets may consist of securities other than those in the 75% asset class.

For purposes of the second, third and fifth asset tests, the term “securities” does not include stock in another REIT, equity or debt securities of a qualified REIT subsidiary or TRS, mortgage loans that constitute real estate assets, or equity interests in a partnership. The term “securities”, however, generally includes debt securities issued by a partnership or another REIT (other than a “publicly offered REIT”), except that, for purposes of the 10% value test, the term “securities” does not include debt securities that meet the straight debt safe harbor described below.

For purposes of the 10% value test, the term “securities” does not include:

- “Straight debt” securities, which is defined as a written unconditional promise to pay on demand or on a specified date a sum certain in money if (i) the debt is not convertible, directly or indirectly, into stock, and (ii) the interest rate and interest payment dates are not contingent on profits, the borrower’s discretion, or similar factors. “Straight debt” securities do not include any securities issued by a partnership or a corporation in which we or any controlled TRS (i.e., a TRS in which we own directly or indirectly more than 50% of the voting power or value of the stock) hold non- “straight debt” securities that have an aggregate value of more than 1% of the issuer’s outstanding securities. However, “straight debt” securities include debt subject to the following contingencies:
 - a contingency relating to the time of payment of interest or principal, as long as either (i) there is no change to the effective yield of the debt obligation, other than a change to the annual yield that does not exceed the greater of 0.25% or 5% of the annual yield, or (ii) neither the aggregate issue price nor the aggregate face amount of the issuer’s debt obligations held by us exceeds \$1 million and no more than 12 months of unaccrued interest on the debt obligations can be required to be prepaid; and
 - a contingency relating to the time or amount of payment upon a default or prepayment of a debt obligation, as long as the contingency is consistent with customary commercial practice.
- Any loan to an individual or an estate.
- Any “section 467 rental agreement,” other than an agreement with a related party tenant.
- Any obligation to pay “rents from real property.”
- Certain securities issued by governmental entities that are not dependent in whole or in part on the profits of (or payments made by) a non-governmental entity.
- Any security (including debt securities) issued by a REIT.
- Any debt instrument issued by an entity treated as a partnership for federal income tax purposes in which we are a partner to the extent of our proportionate interest in the equity and certain debt securities issued by that partnership.
- Any debt instrument issued by an entity treated as a partnership for federal income tax purposes not described above if at least 75% of the partnership’s gross income, excluding income from prohibited transaction, is qualifying income for purposes of the 75% gross income test described above in “—Gross Income Tests.”

As discussed above under “—Gross Income Tests”, we hold and may make additional mezzanine loans that do not comply with the IRS safe harbor, but which we treat as qualifying assets. Although we believe substantially all of our mezzanine loans are qualifying assets, it is possible that the IRS could challenge our characterization of such loans and our qualification as a REIT. If any such IRS challenge was successful, the applicable mezzanine loan would be subject to the second, third and fifth asset tests described above.

We believe that most of the residential mortgage loans (including the B notes) and mortgage-backed securities, or MBS, that we have held and expect to hold have been and will be qualifying assets for purposes of the 75% asset test. For purposes of these rules, however, if the outstanding principal balance of a mortgage loan exceeds the fair market value of the real property securing the loan at the time we commit to acquire the loan, a portion of such loan likely will not be a qualifying real estate asset under the federal income tax laws. Furthermore, we may be required to retest modified loans that we hold to determine if the modified loan is adequately secured by real property if the modification results in a significant modification, as discussed above in “—Gross Income Tests—Interest.” Although the law on the matter is not entirely clear, it appears that the non-qualifying portion of that mortgage loan will be equal to the portion of the loan amount that exceeds the value of the associated real property that is security for that loan.

In the event that we invest in a mortgage loan that is secured by both real property and other property, Revenue Procedure 2014-51 may apply to determine what portion of the mortgage loan will be treated as a real estate asset for purposes of the 75% asset test. Pursuant to Revenue Procedure 2014-51, modifying and superseding Revenue Procedure 2011-16, the IRS will not challenge a REIT’s treatment of a loan as being, in part, a qualifying real estate asset in an amount equal to the lesser of (1) the fair market value of the loan on the date of the relevant quarterly REIT asset testing date or (2) the greater of (a) the fair market value of the real property securing the loan on the date of the relevant quarterly REIT asset testing date or (b) the fair market value of the real property securing the loan determined as of the date the REIT committed to acquire the loan. Our debt securities issued by other REITs or corporations that are not secured by mortgages on real property will not be qualifying assets for purposes of the 75% asset test. We believe that any stock that we will acquire in other REITs will be qualifying assets for purposes of the 75% asset test. However, if a REIT in which we own stock fails to qualify as a REIT in any year, the stock in such REIT will not be a qualifying asset for purposes of the 75% asset test. Instead, we would be subject to the second, third, and fifth assets tests described above with respect to our investment in such a disqualified REIT. We will also be subject to those assets tests with respect to our investments in any non-REIT C corporations for which we do not make a TRS election. We believe that the value of our investment in XAN RE

TRS, together with the value of our interest in the securities of our TRSs, including our TRS securitizations, has been and will continue to be less than 20% of the value of our total assets.

We will monitor the status of our assets for purposes of the various asset tests and will seek to manage our portfolio to comply at all times with such tests. There can be no assurances, however, that we will be successful in this effort. In this regard, to determine our compliance with these requirements, we will need to estimate the value of the real estate securing our mortgage loans at various times, including at the time of any modification that results in a significant modification to a debt instrument we hold. In addition, we will have to value our investment in our other assets to ensure compliance with the asset tests. Although we will seek to be prudent in making these estimates, there can be no assurances that the IRS might not disagree with these determinations and assert that a different value is applicable, in which case we might not satisfy the 75% and the other asset tests and would fail to qualify as a REIT. If we fail to satisfy the asset tests at the end of a calendar quarter, we will not lose our REIT qualification if:

- we satisfied the asset tests at the end of the preceding calendar quarter; and
- the discrepancy between the value of our assets and the asset test requirements arose from changes in the market values of our assets and was not wholly or partly caused by the acquisition of one or more non-qualifying assets

If we did not satisfy the condition described in the second item, above, we still could avoid disqualification by eliminating any discrepancy within 30 days after the close of the calendar quarter in which it arose.

In the event that we violate the second or third asset tests described above at the end of any calendar quarter, we will not lose our REIT qualification if the failure is *de minimis* (up to the lesser of 1% of the total value of our assets at the end of the quarter in which the failure occurs or \$10 million) and we dispose of assets or otherwise comply with the asset tests within six months after the last day of the quarter. In the event of a failure of any of the asset tests (other than a *de minimis* failure of the 5% and 10% asset tests described in the preceding sentence), as long as the failure was due to reasonable cause and not to willful neglect, we will not lose our REIT qualification if we identify the failure on a separate schedule, dispose of assets or otherwise comply with the asset tests within six months after the last day of the quarter in which our identification of the failure occurs and pay a tax equal to the greater of \$50,000 or an amount determined by multiplying the highest federal income tax rate applicable to corporations by the net income from the nonqualifying assets during the period in which we failed to satisfy the asset tests.

We currently believe that the mortgage-related assets, securities and other assets that we expect to hold will satisfy the foregoing asset test requirements. However, no independent appraisals will be obtained to support our conclusions as to the value of our assets and securities, or in many cases, the real estate collateral for the mortgage loans that we hold. Moreover, the values of some assets, such as the securities of some of our TRSs, may not be susceptible to a precise determination. As a result, there can be no assurance that the IRS will not contend that our ownership of securities and other assets violates one or more of the asset tests applicable to REITs.

We currently have financing arrangements that are structured as sale and repurchase agreements pursuant to which we sell certain of our assets to a counter party and simultaneously enter into an agreement to repurchase these assets at a later date in exchange for a purchase price. Economically, these agreements are financings that are secured by the assets sold pursuant thereto. We believe that we would be treated for REIT asset and income test purposes as the owner of the assets that are the subject of any such sale and repurchase agreement notwithstanding that such agreements may transfer record ownership of the assets to the counterparty during the term of the agreement. It is possible, however, that the IRS could assert that we did not own the assets during the term of the sale and repurchase agreement, in which case we could fail to qualify as a REIT.

Distribution Requirements

Each taxable year, we generally must distribute dividends, other than capital gain dividends and deemed distributions of retained capital gain, to our stockholders in an aggregate amount at least equal to:

- the sum of:
 - 90% of our "REIT taxable income," computed without regard to the dividends paid deduction and our net capital gain, and
 - 90% of our after-tax net income, if any, from foreclosure property, *minus*
 - the excess of the sum of specified items of non-cash income (including original issue discount on our senior and mezzanine loans) over 5% of our REIT taxable income, computed without regard to the dividends paid deduction and our net capital gain.

We generally must make such distributions in the taxable year to which they relate, or in the following taxable year if either (i) we declare the distribution before we timely file our federal income tax return for the year and pay the distribution on or before the first regular dividend payment date after such declaration or (ii) we declare the distribution in October, November or December of the taxable year, payable to stockholders of record on a specified day in any such month, and we actually make the distribution before the end of January of the following year. The distributions under clause (i) are taxable to the stockholders in the year in which

paid, and the distributions in clause (ii) are treated as paid on December 31 of the prior taxable year. In both instances, these distributions relate to our prior taxable year for purposes of the 90% distribution requirement.

If we cease to be a "publicly offered REIT," then, for distributions to be counted as satisfying the annual distribution requirements for REITs, and to provide us with a REIT-level tax deduction, the distributions must not have been "preferential dividends." A dividend is not a preferential dividend if the distribution is (i) pro-rata among all outstanding shares of stock within a particular class, and (ii) in accordance with the preferences among different classes of stock as set forth in our organizational documents.

We may satisfy the 90% distribution test with taxable distributions of our stock or debt securities. The IRS has issued a revenue procedure authorizing "publicly offered REITs" to treat certain distributions that are paid partly in cash and partly in stock as dividends that would satisfy the REIT annual distribution requirement and qualify for the dividends paid deduction for federal income tax purposes. As a "publicly offered REIT," as long as at least 20% of the total dividend is available in cash and certain other requirements are satisfied, the IRS will treat the stock distribution as a dividend (to the extent applicable rules treat such distribution as being made out of our earnings and profits). We have no current intention to make a taxable dividend payable in our stock.

We will pay federal income tax on taxable income, including net capital gain, that we do not distribute to stockholders at regular corporate rates. Furthermore, if we fail to distribute during a calendar year, or by the end of January following the calendar year in the case of distributions with declaration and record dates falling in the last three months of the calendar year, at least the sum of:

- 85% of our ordinary income for such year,
- 95% of our capital gain net income for such year, and
- any undistributed taxable income from prior periods.

we will incur a 4% nondeductible excise tax on the excess of such required distribution over the sum of (i) amounts we actually distribute (taking into account excess distributions from prior years) and (ii) the amounts of income retained on which we have paid corporate income tax. We may elect to retain rather than distribute and pay income tax on all or a portion of the net capital gain we receive in a taxable year. See "—Taxation of Taxable U.S. Stockholders." In that case, we may elect to have our stockholders include their proportionate share of the undistributed net capital gains in income as long-term capital gains and receive a credit for their share of the tax paid by us. We will also be treated as having distributed any such retained amount for purposes of the 4% nondeductible excise tax described above. We intend to make timely distributions sufficient to satisfy the annual distribution requirements and to avoid corporate income tax and the 4% nondeductible excise tax.

It is possible that, from time to time, we may experience timing differences between the actual receipt of income and actual payment of deductible expenses and the inclusion of that income and deduction of such expenses in arriving at our REIT taxable income. Possible examples of those timing differences include the following:

- Because we may deduct capital losses only to the extent of our capital gains, we may have taxable income that exceeds our economic income.
- We will recognize taxable income in advance of the related cash flow if any of our MBS are deemed to have original issue discount. We generally must accrue original issue discount based on a constant yield method that takes into account projected prepayments but that defers taking into account credit losses until they are actually incurred.
- We will include in our taxable income for federal income tax purposes, items of income from certain of our foreign CDO entities even in the absence of actual cash distributions.
- We may recognize taxable market discount income when we receive the proceeds from the disposition of, or principal payments on, loans that have a stated redemption price at maturity that is greater than our tax basis in those loans, although such proceeds often will be used to make non-deductible principal payments on related borrowings.
- We may recognize phantom taxable income from any residual interests in REMICs or equity interests in taxable mortgage pools not held through a TRS.

Although several types of non-cash income are excluded in determining the annual distribution requirement, we will incur corporate income tax and the 4% nondeductible excise tax with respect to those non-cash income items if we do not distribute those items on a current basis. As a result of the foregoing, we may have less cash than is necessary to distribute all of our taxable income and thereby avoid corporate income tax and the excise tax imposed on certain undistributed income. In such a situation, we may need to borrow funds or issue additional common or preferred stock.

Under certain circumstances, we may be able to correct a failure to meet the distribution requirement for a year by paying "deficiency dividends" to our stockholders in a later year. We may include such deficiency dividends in our deduction for dividends

paid for the earlier year. Although we may be able to avoid income tax on amounts distributed as deficiency dividends, we will be required to pay interest to the IRS based upon the amount of any deduction we take for deficiency dividends.

Failure to Qualify

If we fail to satisfy one or more requirements for REIT qualification, other than the gross income tests and the asset tests, we could avoid disqualification if our failure is due to reasonable cause and not to willful neglect and we pay a penalty of \$50,000 for each such failure. In addition, there are relief provisions for a failure of the gross income tests and asset tests, as described in “—Gross Income Tests” and “—Asset Tests.”

If we fail to qualify as a REIT in any taxable year, and no relief provision applies, we would be subject to federal income tax on our taxable income at regular corporate rates. In calculating our taxable income in a year in which we fail to qualify as a REIT, we would not be able to deduct amounts paid out to stockholders. In fact, we would not be required to distribute any amounts to stockholders in that year. In such event, to the extent of our current and accumulated earnings and profits, all distributions to stockholders would be taxable as dividend income, whether or not attributable to capital gains of ours. Subject to certain limitations of the federal income tax laws, corporate stockholders might be eligible for the dividends received deduction, and individual and certain non-corporate trust and estate stockholders may be eligible for the reduced federal income tax rate of 15% on such dividends. Unless we qualified for relief under specific statutory provisions, we also would be disqualified from electing to be taxed as a REIT for the four taxable years following the year during which we ceased to qualify as a REIT. We cannot predict whether in all circumstances we would qualify for such statutory relief.

Taxation of Taxable U.S. Stockholders

The term “U.S. stockholder” means a beneficial owner of our capital stock that, for federal income tax purposes, is:

- a citizen or resident (as defined in Section 7701(b) of the Internal Revenue Code) of the United States;
- a corporation (including an entity treated as a corporation for federal income tax purposes) created or organized under the laws of the United States, any of its States, or the District of Columbia;
- an estate whose income is subject to federal income taxation regardless of its source; or
- any trust if (i) a U.S. court is able to exercise primary supervision over the administration of such trust and one or more U.S. persons have the authority to control all substantial decisions of the trust or (ii) it has a valid election in place to be treated as a U.S. person.

If a partnership, entity or arrangement treated as a partnership for federal income tax purposes holds our capital stock, the federal income tax treatment of a partner in the partnership will generally depend on the status of the partner and the activities of the partnership. If you are a partner in a partnership holding our capital stock, you should consult your tax advisor regarding the consequences of the purchase, ownership and disposition of our capital stock by the partnership. A “non-U.S. stockholder” is a beneficial owner of our capital stock that is not a U.S. stockholder, a partnership or an entity classified as a partnership for U.S. federal income tax purposes.

As long as we qualify as a REIT, a taxable “U.S. stockholder” must generally take into account as ordinary income taxable at ordinary income tax rates distributions made out of our current or accumulated earnings and profits that we do not designate as capital gain dividends or retained long-term capital gain. For purposes of determining whether a distribution is made out of our current or accumulated earnings and profits, our earnings and profits will be allocated first to our preferred stock, then to our common stock. A U.S. stockholder will not qualify for the dividends received deduction generally available to corporations. In addition, dividends paid to a U.S. stockholder generally will not qualify as “qualified dividend income” and thus will not qualify for the reduced capital gains rates that currently generally apply to distributions by non-REIT C corporations to certain non-corporate U.S. stockholders. Because we are not generally subject to federal income tax on the portion of our REIT taxable income distributed to our stockholders (see “—Taxation of Our Company” above), our dividends generally will not be eligible for the preferential tax rate on qualified dividend income. However, the preferential tax rate for qualified dividend income will apply to our ordinary REIT dividends attributable to dividends received by us from non-REIT corporations, such as our domestic TRSs (but generally not from our TRSs organized as Cayman organizations), and to the extent attributable to income upon which we have paid corporate income tax (e.g., to the extent that we distribute less than 100% of our taxable income). In general, to qualify for the reduced tax rate on qualified dividend income, a stockholder must hold our capital stock for more than 60 days during the 121-day period beginning on the date that is 60 days before the date on which our capital stock became ex-dividend. U.S. stockholders other than corporations are also subject to a Medicare surtax on investment income (including both qualified and nonqualified dividends) if certain thresholds of modified adjusted gross income are exceeded.

A U.S. stockholder generally will recognize distributions that we designate as capital gain dividends as long-term capital gain without regard to the period for which the U.S. stockholder has held our capital stock. A corporate U.S. stockholder, however, may be required to treat up to 20% of certain capital gain dividends as ordinary income.

The aggregate amount of dividends that we may designate as “capital gain dividends” or “qualified dividend income” with respect to any taxable year may not exceed the dividends paid by us with respect to such year, including dividends that are paid in the following year (if they are declared before we timely file our tax return for the year and if made with or before the first regular dividend payment after such declaration) are treated as paid with respect to such year.

A U.S. stockholder will not incur tax on a distribution in excess of our current and accumulated earnings and profits if the distribution does not exceed the adjusted basis of the U.S. stockholder's capital stock. Instead, the distribution will reduce the adjusted basis of such capital stock. A U.S. stockholder will recognize a distribution in excess of both our current and accumulated earnings and profits and the U.S. stockholder's adjusted basis in his or her capital stock as long-term capital gain, or short-term capital gain if the shares of capital stock have been held for one year or less, assuming the shares of capital stock are a capital asset in the hands of the U.S. stockholder. In addition, if we declare a distribution in October, November, or December of any year that is payable to a U.S. stockholder of record on a specified date in any such month, such distribution will be treated as both paid by us and received by the U.S. stockholder on December 31 of such year, provided that we actually pay the distribution during January of the following calendar year.

Stockholders may not include in their individual income tax returns any of our net operating losses or capital losses. Instead, these losses generally are carried over by us for potential offset against our future income. Taxable distributions from us and gain from the disposition of our capital stock will not be treated as passive activity income and, therefore, stockholders generally will not be able to apply any “passive activity losses,” such as losses from certain types of limited partnerships in which the stockholder is a limited partner, against such income. In addition, taxable distributions from us and gain from the disposition of our capital stock generally will be treated as investment income for purposes of the investment interest limitations. We will notify stockholders after the close of our taxable year as to the portions of the distributions attributable to that year that constitute ordinary income, return of capital and capital gain.

Any excess inclusion income (see “—Requirements for Qualification-Taxable Mortgage Pools” for a definition of excess inclusion income) that we recognize generally will be allocated among our stockholders to the extent that it exceeds our undistributed REIT taxable income in a particular year. A stockholder's share of excess inclusion income would not be allowed to be offset by any net operating losses or other deductions otherwise available to the stockholder.

Taxation of U.S. Stockholders on the Disposition of Capital Stock

In general, a U.S. stockholder who is not a dealer in securities must treat any gain or loss realized upon a taxable disposition of our capital stock as long-term capital gain or loss if the U.S. stockholder has held the capital stock for more than one year and otherwise as short-term capital gain or loss. In general, a U.S. stockholder will realize gain or loss in an amount equal to the difference between (i) the sum of the fair market value of any property and the amount of cash received in such disposition, and (ii) the U.S. stockholder's adjusted basis in the shares for tax purposes. Such adjusted tax basis will equal the U.S. stockholder's acquisition cost, increased by the excess of net capital gains deemed distributed to the U.S. stockholder (discussed above) less tax deemed paid on it and reduced by any returns of capital. However, a U.S. stockholder must treat any loss upon a sale or exchange of capital stock held by such stockholder for six months or less as a long-term capital loss to the extent of capital gain dividends and any other actual or deemed distributions from us that such U.S. stockholder treats as long-term capital gain. All or a portion of any loss that a U.S. stockholder realizes upon a taxable disposition of our capital stock may be disallowed if the U.S. stockholder purchases other capital stock within 30 days before or after the disposition.

Taxation of U.S. Stockholders on Conversion of Preferred Stock

Except as provided below, (i) a U.S. stockholder generally will not recognize gain or loss upon a conversion of preferred stock into our common stock, and (ii) a U.S. stockholder's basis and holding period in our common stock received upon conversion generally will be the same as those of the converted preferred stock (but the basis will be reduced by the portion of adjusted tax basis allocated to any fractional share exchanged for cash). Any of our common stock received in a conversion that is attributable to accumulated and unpaid dividends on the converted preferred stock will be treated as a distribution that is potentially taxable as a dividend. Cash received upon conversion in lieu of a fractional share generally will be treated as a payment in a taxable exchange for such fractional share, and gain or loss will be recognized on the receipt of cash in an amount equal to the difference between the amount of cash received and the adjusted tax basis allocable to the fractional share deemed exchanged. This gain or loss will be long-term capital gain or loss if the U.S. stockholder has held the preferred stock for more than one year at the time of conversion. U.S. stockholders are urged to consult with their tax advisors regarding the federal income tax consequences of any transaction by which such holder exchanges common shares received on a conversion of preferred stock for cash or other property.

Taxation of U.S. Stockholders on Redemption of Preferred Stock

Redemption of preferred stock for cash will be treated under Section 302 of the Internal Revenue Code as a distribution taxable as a dividend (to the extent of our current and accumulated earnings and profits) at ordinary income rates, unless the redemption satisfies one of the tests set forth in Section 302(b) of the Internal Revenue Code for the sale or exchange of the redeemable shares. The redemption will be treated as a sale or exchange if it (i) is “substantially disproportionate” with respect to the U.S. stockholder's interest in our shares, (ii) results in a “complete termination” of the U.S. stockholder's interest in all of our

classes of shares, or (iii) is “not essentially equivalent to a dividend” with respect to the U.S. stockholder, all within the meaning of Section 302(b) of the Internal Revenue Code.

In determining whether any of these tests have been met, common stock, all series of preferred stock and any options to acquire the foregoing considered to be owned by the U.S. stockholder by reason of certain constructive ownership rules set forth in the Internal Revenue Code, as well as common stock, all series of preferred stock and any options to acquire the foregoing actually owned by such U.S. stockholder, must generally be taken into account. If a U.S. stockholder does not own (actually or constructively) any of our common stock, or a U.S. stockholder owns an insubstantial percentage of our outstanding common or preferred stock, based upon current law, a redemption of such stockholder's preferred stock is likely to qualify for sale or exchange treatment because the redemption would not be “essentially equivalent to a dividend.” However, because the determination as to whether any of the alternative tests of Section 302(b) of the Internal Revenue Code will be satisfied with respect to a U.S. stockholder's preferred stock depends upon the facts and circumstances at the time the determination must be made, prospective investors are advised to consult their tax advisor to determine such tax treatment.

If a redemption of preferred stock is not treated as a distribution taxable as a dividend, it will be treated as a taxable sale or exchange of the stock. As a result, a U.S. stockholder will recognize gain or loss for federal income tax purposes in an amount equal to the difference between (i) the amount of cash and the fair market value of any property received (less any portion thereof attributable to accumulated and declared but unpaid dividends, which will be taxable as a dividend to the extent of our current and accumulated earnings and profits), and (ii) such stockholder's adjusted basis in the preferred stock for tax purposes. Such gain or loss will be capital gain or loss if the preferred stock has been held as a capital asset, and will be long-term gain or loss if the preferred stock has been held for more than one year at the time of the redemption. If a redemption of preferred stock is treated as a distribution taxable as a dividend, the amount of the distribution will be measured by the amount of cash and the fair market value of any property received by the U.S. stockholder. In that case, a U.S. stockholder's adjusted basis in the redeemable preferred stock for tax purposes will be transferred to such U.S. stockholder's remaining shares in us. If the U.S. stockholder does not own any of our other shares, such basis may, under certain circumstances, be transferred to a related person or it may be lost entirely.

Capital Gains and Losses

A taxpayer generally must hold a capital asset for more than one year for gain or loss derived from its sale or exchange to be treated as long-term capital gain or loss, which generally entitles the taxpayer to a preferential rate on such gain. The rate on capital gain from the sale or exchange of “section 1250 property,” or depreciable real property, applies to the lesser of the total amount of the gain or the accumulated depreciation on the Section 1250 property. With respect to distributions that we designate as capital gain dividends and any retained capital gain that we are deemed to distribute, we generally may designate whether such a distribution is from the sale of “Section 1250 property” or of other capital assets in order to determine which individual tax rate applies. The tax rate differential between capital gain and ordinary income for those taxpayers may be significant. In addition, the characterization of income as capital gain or ordinary income may affect the deductibility of capital losses. A non-corporate taxpayer may deduct capital losses not offset by capital gains against its ordinary income only up to a maximum annual amount. A non-corporate taxpayer may carry forward unused capital losses indefinitely. A corporate taxpayer must pay tax on its net capital gain at ordinary corporate rates. A corporate taxpayer may deduct capital losses only to the extent of capital gains, with unused losses being carried back three years and forward five years. Capital gains (as well as other investment income taxed at ordinary rates) are also subject to the Medicare surtax in the case of certain taxpayers whose modified adjusted gross income exceeds certain thresholds depending on filing status.

Medicare Tax on Unearned Income

As noted above, U.S. stockholders that are individuals, estates or trusts to pay an additional tax on “net investment income” earned directly or indirectly by U.S. stockholders that are individuals, trusts and estates whose income exceeds certain thresholds. Among other items, net investment income generally includes interest on debt instruments and dividends on stock and net gain attributable to the disposition of such securities to the extent that such gain would be otherwise included in taxable income. U.S. stockholders should consult their tax advisors regarding the effect, if any, of this legislation on their ownership and disposition of our capital stock.

Taxation of Tax-Exempt Stockholders

Tax-exempt entities, including qualified employee pension and profit sharing trusts and individual retirement accounts, generally are exempt from federal income taxation. However, they are subject to taxation on their unrelated business taxable income, or UBTI. While many investments in real estate generate UBTI, the IRS has issued a ruling that dividend distributions from a REIT to an exempt employee pension trust do not constitute UBTI so long as the exempt employee pension trust does not otherwise use the shares of the REIT in an unrelated trade or business of the pension trust. Based on that ruling, amounts that we distribute to tax-exempt stockholders generally should not constitute UBTI. However, if a tax-exempt stockholder were to finance (or be deemed to finance) its acquisition of capital stock with debt, a portion of the income that it receives from us would constitute UBTI pursuant to the “debt-financed property” rules. Moreover, social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts and qualified group legal services plans that are exempt from taxation under special provisions of the federal income tax laws are subject to different UBTI rules, which generally will require them to characterize distributions that they receive from us as UBTI. Furthermore, a tax-exempt stockholder's share of any excess inclusion income that we recognize would be subject to

tax as UBTI. Finally, in certain circumstances, a qualified employee pension or profit sharing trust that owns more than 10% of our stock must treat a percentage of the dividends that it receives from us as UBTI. Such percentage is equal to the gross income we derive from an unrelated trade or business, determined as if we were a pension trust, divided by our total gross income for the year in which we pay the dividends. That rule applies to a pension trust holding more than 10% of our stock only if:

- the percentage of our dividends that the tax-exempt trust must treat as UBTI is at least 5%;
- we qualify as a REIT by reason of the modification of the rule requiring that no more than 50% of our stock be owned by five or fewer individuals that allows the beneficiaries of the pension trust to be treated as holding our stock in proportion to their actuarial interests in the pension trust; and
- either:
 - one pension trust owns more than 25% of the value of our stock; or
 - a group of pension trusts individually holding more than 10% of the value of our stock collectively owns more than 50% of the value of our stock.

Taxation of Non-U.S. Stockholders

The rules governing federal income taxation of nonresident alien individuals, foreign corporations, foreign partnerships, and other foreign stockholders are complex. This section is only a summary of such rules. **We urge non-U.S. stockholders to consult their own tax advisors to determine the impact of federal, state, and local income tax laws on ownership of our capital stock, including any reporting requirements.**

Ordinary Dividends. A non-U.S. stockholder that receives a distribution that is not attributable to gain from our sale or exchange of United States real property interests, as defined below, and that we do not designate as a capital gain dividend or retained capital gain will recognize ordinary income to the extent that we pay the distribution out of our current or accumulated earnings and profits. A withholding tax on the gross amount of the distribution ordinarily will apply unless an applicable tax treaty reduces or eliminates the tax. However, if a distribution is treated as effectively connected with the non-U.S. stockholder's conduct of a U.S. trade or business, the non-U.S. stockholder generally will be subject to federal income tax on the distribution at graduated rates, in the same manner as U.S. stockholders are taxed on distributions and also may be subject to the branch profits tax in the case of a corporate non-U.S. stockholder. We plan to withhold federal income tax at the applicable rate on the gross amount of any distribution paid to a non-U.S. stockholder unless either:

- a lower treaty rate applies and the non-U.S. stockholder files an IRS Form W-8BEN or W-8BEN-E evidencing eligibility for that reduced rate with us; or
- the non-U.S. stockholder files an IRS Form W-8ECI with us claiming that the distribution is effectively connected income.

However, reduced treaty rates are not available to the extent that the income allocated to the non-U.S. stockholder is excess inclusion income. Our excess inclusion income generally will be allocated among our stockholders to the extent that it exceeds our undistributed REIT taxable income in a particular year.

Non-Dividend Distributions. A non-U.S. stockholder will not incur tax on a distribution in excess of our current and accumulated earnings and profits if the excess portion of the distribution does not exceed the adjusted basis of its capital stock. Instead, the excess portion of the distribution will reduce the adjusted basis of that capital stock. A non-U.S. stockholder will be subject to tax on a distribution that exceeds both our current and accumulated earnings and profits and the adjusted basis of its capital stock if the non-U.S. stockholder otherwise would be subject to tax on gain from the sale or exchange of its capital stock, as described below. Because we generally cannot determine at the time we make a distribution whether the distribution will exceed our current and accumulated earnings and profits, we normally will withhold tax on the entire amount of any distribution at the same rate as we would withhold on a dividend. However, a non-U.S. stockholder may obtain a refund from the IRS of amounts that we withhold if we later determine that a distribution in fact exceeded our current and accumulated earnings and profits.

Capital Gain Dividends. A non-U.S. stockholder will incur tax on distributions that are attributable to gain from our sale or exchange of "United States real property interests" under the Foreign Investment in Real Property Act of 1980 ("FIRPTA"). The term "United States real property interests" includes interests in real property, other than interests in real property solely in a capacity as a creditor, and shares in corporations at least 50% of whose assets consist of United States real property interests. As a result, we do not anticipate that we will generate material amounts of gain that would be subject to FIRPTA. Nonetheless, we cannot exclude the possibility, for example, if we are able to resell a foreclosure property for an amount higher than the fair market value of such property at the time of foreclosure. Under the FIRPTA rules, a non-U.S. stockholder is taxed on distributions attributable to gain from sales of United States real property interests as if the gain were effectively connected with a U.S. business of the non-U.S. stockholder. A non-U.S. stockholder thus would be taxed on such a distribution at the normal capital gain rates applicable to U.S. stockholders, subject to a special alternative minimum tax in the case of nonresident alien individuals. A non-U.S. corporate stockholder not entitled to treaty relief or exemption also may be subject to the branch profits tax on such a distribution. We must

withhold on any such distribution that we could designate as a capital gain dividend. A non-U.S. stockholder may receive a credit against our tax liability for the amount we withhold. However, a non-U.S. stockholder that owns, actually or constructively, no more than 10% of our capital stock at all times during the one-year period ending on the date of the distribution will not be subject to the FIRPTA withholding tax with respect to distributions that are attributable to gain from our sale or exchange of United States real property interests, provided our capital stock is regularly traded on an established securities market. Instead, non-U.S. stockholders generally would be subject to withholding tax on such capital gain distributions in the same manner as they are subject to withholding tax on ordinary dividends.

Sale of Capital Stock. In the unlikely event that our capital stock constituted a United States real property interest (which generally requires that at least 50% of our assets consist of United States real property interests), gains from the sale of our capital stock by a non-U.S. stockholder could be subject to a FIRPTA tax. However, even if that event were to occur, a non-U.S. stockholder generally would not incur tax under FIRPTA on gain from the sale of our capital stock if we were a “domestically controlled qualified investment entity.” We will be a domestically controlled qualified investment entity if, at all times during a specified testing period, we are a REIT and less than 50% in value of our stock is held directly or indirectly by non-U.S. stockholders. Because our capital stock is publicly traded, no assurance can be given that we will be a domestically controlled qualified investment entity.

Even if we are a domestically controlled qualified investment entity, upon disposition of our capital stock, a non-U.S. stockholder may be treated as having gain from the sale or exchange of a United States real property interest if the non-U.S. stockholder disposes of an interest in our stock and directly or indirectly acquires, enters into a contract or option to acquire or is deemed to acquire, other shares of our stock within a specified period. This rule does not apply if the exception for distributions to 10% or smaller stockholder of regularly traded classes of stock is satisfied

Even if we do not qualify as a domestically controlled qualified investment entity at the time the non-U.S. stockholder sells or exchanges our capital stock, the gain from such a sale or exchange will not be subject to tax under FIRPTA as a sale of United States real property interests if our capital stock is regularly traded, as defined by the applicable Treasury regulations, on an established securities market, and such non-U.S. stockholder owned, actually or constructively, 10% or less of our capital stock at all times during a specified testing period.

If the gain on the sale of the capital stock were taxed under FIRPTA, a non-U.S. stockholder would be taxed on that gain in the same manner as a taxable U.S. stockholder, subject to applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals, and the purchaser of the stock could be required to withhold on the purchase price and remit such amount to the IRS. Furthermore, a non-U.S. stockholder generally will incur tax on gain not subject to FIRPTA if:

- the gain is effectively connected with the non-U.S. stockholder's U.S. trade or business, in which case the non-U.S. stockholder will be subject to the same treatment as U.S. stockholders with respect to such gain, or
- the non-U.S. stockholder is a nonresident alien individual who is present in the U.S. for 183 days or more during the taxable year and certain other conditions are met, in which case the non-U.S. stockholder will incur a tax on his or her capital gains.

Qualified Shareholders. Subject to the exception discussed below, any distribution to a “qualified shareholder” who holds REIT stock directly or indirectly (through one or more partnerships) will not be subject to FIRPTA, and thus will not be subject to special withholding rules under FIRPTA. While a “qualified shareholder” will not be subject to FIRPTA withholding on our distributions or dispositions of our capital stock, certain investors of a “qualified shareholder” (i.e., non-U.S. persons who hold interests in the “qualified shareholder” (other than interests solely as a creditor), and hold more than 10% of the applicable class of our stock (whether or not by reason of the investor's ownership in the “qualified shareholder”)) may be subject to FIRPTA withholding.

In addition, a sale of our stock by a “qualified shareholder” who holds such stock directly or indirectly (through one or more partnerships) will not be subject to U.S. federal income taxation under FIRPTA. As with distributions, certain investors of a “qualified shareholder” (i.e., non-U.S. persons who hold interests in the “qualified shareholder” (other than interests solely as a creditor), and hold more than 10% of the stock of such REIT (whether or not by reason of the investor's ownership in the “qualified shareholder”)) may be subject to FIRPTA withholding. REIT distributions received by a “qualified shareholder” that are exempt from FIRPTA withholding may still be subject to regular U.S. withholding tax.

A “qualified shareholder” is a foreign person that (i) either is eligible for the benefits of a comprehensive income tax treaty that includes an exchange of information program and whose principal class of interests is listed and regularly traded on one or more recognized stock exchanges (as defined in such comprehensive income tax treaty), or is a foreign partnership that is created or organized under foreign law as a limited partnership in a jurisdiction that has an agreement for the exchange of information with respect to taxes with the United States and has a class of limited partnership units representing greater than 50% of the value of all the partnership units that is regularly traded on the NYSE or NASDAQ markets, (ii) is a qualified collective investment vehicle (defined below), and (iii) maintains records on the identity of each person who, at any time during the foreign person's taxable year, is the direct owner of 5% or more of the class of interests or units (as applicable) described in (i), above.

A qualified collective investment vehicle is a foreign person that (i) would be eligible for a reduced rate of withholding under the comprehensive income tax treaty described above, even if such entity holds more than 10% of the applicable class of stock

of such REIT, (ii) is publicly traded, is treated as a partnership under the Internal Revenue Code, is a withholding foreign partnership, and would be treated as a "United States real property holding corporation" if it were a domestic corporation, or (iii) is designated as such by the Secretary of the Treasury and is either (a) fiscally transparent within the meaning of section 894 of the Internal Revenue Code, or (b) required to include dividends in its gross income, but is entitled to a deduction for distributions to its investors.

Qualified Foreign Pension Funds. Any distribution to a "qualified foreign pension fund" (or an entity all of the interests of which are held by a "qualified foreign pension fund") who holds our capital stock directly or indirectly (through one or more partnerships) will not be subject to U.S. federal income taxation under FIRPTA, and thus will not be subject to special withholding rules under FIRPTA. REIT distributions received by a "qualified foreign pension fund" that are exempt from FIRPTA withholding may still be subject to regular U.S. withholding tax. In addition, a sale of our stock by a "qualified foreign pension fund" that holds such stock directly or indirectly (through one or more partnerships) will not be subject to U.S. federal income taxation under FIRPTA.

A qualified foreign pension fund is any trust, corporation or other organization or arrangement (i) which is created or organized under the law of a country other than the United States, (ii) which is established to provide retirement or pension benefits to participants or beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, (iii) which does not have a single participant or beneficiary with a right to more than 5% of its assets or income, (iv) which is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in the country in which it is established or operates, and (v) with respect to which, under the laws of the country in which it is established or operates, (a) contributions to such organization or arrangement that would otherwise be subject to tax under such laws are deductible or excluded from the gross income of such entity or taxed at a reduced rate, or (b) taxation of any investment income of such organization or arrangement is deferred or such income is taxed at a reduced rate.

Taxation of Non-U.S. Stockholders on Conversion or Redemption of Preferred Stock

Conversion of Preferred Stock. The conversion of our preferred stock into our common stock may be a taxable exchange for a non-U.S. stockholder if our preferred stock constitutes a United States real property interest. Even if our preferred stock constitutes a United States real property interest, provided our common stock also constitutes a United States real property interest, a non-U.S. stockholder generally will not recognize gain or loss upon a conversion of preferred stock into our common stock so long as certain FIRPTA-related reporting requirements are satisfied. If our preferred stock constitutes a United States real property interest and such requirements are not satisfied, however, a conversion will be treated as a taxable exchange of preferred stock for our common stock. Such a deemed taxable exchange will be subject to tax under FIRPTA at the rate of tax, including any applicable capital gains rates, that would apply to a U.S. stockholder of the same type (e.g., a corporate or a non-corporate stockholder, as the case may be) on the excess, if any, of the fair market value of such non-U.S. stockholder's common stock received over such non-U.S. stockholder's adjusted basis in its preferred stock. Collection of such tax will be enforced by a refundable withholding tax on the value of the common stock.

Any shares of common stock received in a conversion that are attributable to accumulated and unpaid dividends on the converted preferred stock will be treated as a distribution that is potentially taxable as a dividend as described under "—Taxation of Taxable U.S. Stockholders" above. Cash received upon conversion in lieu of a fractional share of common stock generally will be treated as a payment in a taxable exchange for such fractional share as described under "—Taxation of Non-U.S. Stockholders" above.

Non-U.S. stockholders are urged to consult with their tax advisors regarding the U.S. federal income tax consequences of any transaction by which such non-U.S. stockholder exchanges shares of our common stock received on a conversion of preferred stock for cash or other property.

Redemption of Preferred Stock. As described under "—Taxation of U.S. Stockholders on Redemption of Preferred Stock" above, a redemption that satisfies certain tests set forth in Section 302(b) of the Internal Revenue Code will be treated as a taxable exchange and a redemption that does not satisfy certain tests under Section 302(b) of the Internal Revenue Code will be treated as a distribution that is taxable as dividend income (to the extent of our current or accumulated earnings and profits). For a more detailed discussion of the treatment of a redemption of preferred stock, see "—Taxation of U.S. Stockholders on Redemption of Preferred Stock."

Non-U.S. stockholders are urged to consult with their tax advisors regarding the U.S. federal income tax consequences of any transaction by which such non-U.S. stockholder redeems our preferred stock.

Additional Withholding Requirements

Under sections 1471 through 1474 of the Internal Revenue Code (such sections commonly referred to as "FATCA"), a U.S. federal withholding tax will apply to dividends that we pay to certain foreign entities if such entities do not satisfy disclosure requirements related to U.S. accounts or ownership. Foreign entities must provide documentation evidencing compliance with or an exemption from FATCA, typically provided on IRS Form W-8BEN-E, to avoid this withholding tax. If a payment is both subject to withholding under FATCA and subject to withholding tax discussed above, the withholding under FATCA may be credited

against, and therefore reduce, such other withholding tax. Non-U.S. stockholders and U.S. stockholders holding through foreign accounts or intermediaries should consult their tax advisors to determine the applicability of FATCA in light of their individual circumstances.

Information Reporting Requirements and Backup Withholding

We will report to our stockholders and to the IRS the amount of distributions we pay during each calendar year, and the amount of tax we withhold, if any. Under the backup withholding rules, a stockholder may be subject to backup withholding with respect to distributions unless the holder:

- is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact; or
- provides a taxpayer identification number, certifies as to no loss of exemption from backup withholding, and otherwise complies with the applicable requirements of the backup withholding rules.

A stockholder who does not provide us with its correct taxpayer identification number also may be subject to penalties imposed by the IRS. Any amount paid as backup withholding will be creditable against the stockholder's income tax liability. In addition, we may be required to withhold a portion of capital gain distributions to any stockholders who fail to certify their non-foreign status to us.

Backup withholding generally will not apply to payments of dividends made by us or our paying agents, in their capacities as such, to a non-U.S. stockholder provided that the non-U.S. stockholder furnishes to us or our paying agent the required certification as to its non-U.S. status, such as providing a valid IRS Form W-8BEN, W-8BEN-E, or Form W-8ECI, or certain other requirements are met. Notwithstanding the foregoing, backup withholding may apply if either we or our paying agent has actual knowledge, or reason to know, that the holder is a U.S. person that is not an exempt recipient. Payments of the net proceeds from a disposition or a redemption effected outside the U.S. by a non-U.S. stockholder made by or through a foreign office of a broker generally will not be subject to information reporting or backup withholding. However, information reporting (but not backup withholding) generally will apply to such a payment if the broker has certain connections with the U.S. unless the broker has documentary evidence in its records that the beneficial owner is a non-U.S. stockholder and specified conditions are met or an exemption is otherwise established. Payment of the net proceeds from a disposition by a non-U.S. stockholder of our shares made by or through the U.S. office of a broker generally is subject to information reporting and backup withholding unless the non-U.S. stockholder certifies under penalties of perjury that it is not a U.S. person and satisfies certain other requirements, or otherwise establishes an exemption from information reporting and backup withholding.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be refunded or credited against the stockholder's U.S. federal income tax liability if certain required information is furnished to the IRS. Stockholders are urged to consult their tax advisors regarding the application of backup withholding to them and the availability of, and procedure for obtaining an exemption from, backup withholding.

Legislative or Other Actions Affecting REITs

The present federal income tax treatment of REITs may be modified, possibly with retroactive effect, by legislative, judicial or administrative action at any time. The REIT rules are constantly under review by persons involved in the legislative process and by the IRS and the U.S. Treasury Department, which may result in statutory changes as well as revisions to regulations and interpretations. In addition, several proposals have been made that would make substantial changes to the federal income tax laws generally. We cannot predict whether any of these changes will become law. We cannot predict the long-term effect of any future law changes on REITs or their stockholders. Prospective investors are urged to consult their tax advisors regarding the effect of potential changes to the federal income tax laws on an investment in our capital stock.

State and Local Taxes

We and/or our stockholders may be subject to taxation by various states and localities, including those in which we or a stockholder transacts business, owns property or resides. The state and local tax treatment may differ from the federal income tax treatment described above. Consequently, stockholders should consult their own tax advisors regarding the effect of state and local tax laws upon an investment in our capital stock.

