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, 2021

or

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

For the transition period from ________ to __________

Commission file number 1-32733

ACRES COMMERCIAL REALTY CORP.
(Exact name of registrant as specified in its charter)

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

390 RXR Plaza, Uniondale, New York 11556
(Address of principal executive offices) (Zip Code)

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

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

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

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

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

Indicate by check mark whether the registrant 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. ☑

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, 2021) was approximately $143,419,028.

The number of outstanding shares of the registrant's common stock on March 7, 2022 was 8,890,045 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, 2021.

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

(Back to Index)

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;
- 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 outbreak of widespread contagious disease, such as 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 debt obligations ("CDOs") and/or 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;
- 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.

(Back to Index)

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, or 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, or 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, or our Manager, a subsidiary of ACRES Capital Corp., or 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, or 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;
- Mezzanine debt related to CRE that is senior to the borrower’s equity position but subordinated to other third-party debt;
- 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 assets and the cost to finance our ownership of those assets, including corporate debt.

In December 2019, a novel strain of coronavirus, or COVID-19, was identified. The resulting spread of COVID-19 throughout the globe led the World Health Organization to designate COVID-19 as a pandemic and numerous countries, including the U.S, to declare national emergencies. Many countries responded to the initial and ensuing outbreaks of COVID-19 by instituting quarantines and restrictions on travel and limiting operations of non-essential offices and retail centers, which resulted in the closure or remote operation of non-essential businesses and increased rates of unemployment and market disruption in connection with the economic uncertainty. While the U.S. and certain countries around the world have eased restrictions and financial markets and unemployment rates have stabilized to some degree, due in large part to the discovery and distribution of vaccines and other treatments, the pandemic, exacerbated by virus variants, continues to cause uncertainty in the U.S. and global economies, generally, and the CRE industry in particular.

The aforementioned quarantines and travel restrictions contributed significantly to economic disruptions across the country that directly impacted our borrowers and their ability to pay and to stay current with their debt obligations in 2019 and 2020, causing significant increases in our provisions for credit losses. During this height of the pandemic, we used a variety of legal and structural options to manage credit risk effectively, including through forbearance and extension provisions or agreements. As of December 31, 2021, we have substantially reversed those provisions due to significant improvements in our current and expected macroeconomic operating environments as well as due to improvements in collateral operating performance and market liquidity.

We continue to actively and responsibly manage corporate liquidity and operations in light of the market disruptions caused by COVID-19. However, it is inherently difficult to accurately assess the continuing impact of the pandemic as well as other domestic or global events on our revenues, profitability and financial position. In response, we are focused on maintaining sufficient liquidity while still growing our loan origination business. We continuously monitor the effects of domestic and global events on our operations and financial position to ensure that we remain responsive and adaptable to the dynamic changes in our operating environment.

(Back to Index)

The negative impact of COVID-19 on our commercial mortgage-backed securities, or CMBS, investments and 2020 results created a net operating loss, or NOL, carryforwards and net capital loss carryforwards, or CLCOs. Our 2020 tax return, completed in October 2021, resulted in NOL carryforwards of $47.7 million and net capital loss carryforwards of $136.9 million, including net capital loss carryforwards from prior years, at our qualified REIT subsidiaries, or QRSs. Additionally, we have NOL carryforwards of $60.2 million at our taxable REIT subsidiaries, or TRSs. We estimate that we will generate additional NOL carryforwards from legacy CMBS investments of approximately $14.8 million from activities in 2021 and expected activities in 2022. Therefore, we were not required to and have not paid distributions on our common shares in 2021 nor 2020. As of December 31, 2021, we have acquired, and expect to further acquire in 2022, equity investments in CRE properties to utilize CLCOs in our QRSs. These equity investments offer the opportunity for enhanced capital appreciation returns that may be reinvested into the loan origination pipeline when and if realized.

We typically target transitional floating-rate CRE loans between $10.0 million and $100.0 million. During the year ended December 31, 2021 we originated 56 CRE loans with total commitments of $1.5 billion. At December 31, 2021, our CRE loan portfolio comprised approximately $1.9 billion of floating-rate CRE whole loans with a weighted average spread of 3.67% over the one-month benchmark rates utilized, which has a weighted average floor of 0.75%. Additionally, our CRE loan portfolio comprised one $4.7 million mezzanine loan at December 31, 2021.

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 investments. Our goal is to allocate 90% to 100% of our equity to our CRE assets.

Managing our investment portfolio. At December 31, 2021, we managed $2.3 billion of assets, including $1.9 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.

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 maturity 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 maturity 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, 2021, our CRE securitizations and financing facilities with debt outstanding were as follows (in thousands, except amount in footnotes):

	Outstanding Borrowings (1)	Value of Collateral	Equity at Risk (2)
At December 31, 2021:			
CRE Securitizations			
XAN 2020-RSO8	$ 141,798	$ 229,263	$ 86,888
XAN 2020-RSO9	94,325	144,361	$ 49,547
ACR 2021-FL1	669,813	802,643	$ 127,420
ACR 2021-FL2	560,563	700,000	$ 133,000
Senior Secured Financing Facility			
Massachusetts Mutual Life Insurance Company (3)	(3,432)	170,791	$ 171,766
CRE -Term Warehouse Financing Facilities			
JPMorgan Chase Bank, N.A. (4)	18,875	37,167	$ 16,329
Morgan Stanley Mortgage Capital Holdings LLC	47,896	64,860	$ 14,871
Total	$ 1,529,838	$ 2,149,085	

(1) Securitizations and the senior secured financing facility include deferred debt issuance costs and 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.
(3) Outstanding borrowings represent deferred debt issuance costs that are amortized through the senior secured financing facility's maturity.
(4) Outstanding borrowings include $356,000 of deferred debt issuance costs at December 31, 2021 from other term warehouse financing facilities with no balance.

(Back to Index)

The CRE securitizations and term warehouse financing facilities charge a floating rate of interest. The senior secured financing facility charges a fixed rate of interest. For more information concerning our CRE securitizations, senior secured financing facility and term facilities, see “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources,” and Note 12 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, 2021.

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 and 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.

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 debt obligations and 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 general, our net income will increase in a rising interest rate environment and decrease in a declining interest rate environment. In order to protect yields on our floating-rate loans in a declining interest rate environment, substantially all of our loans are executed with benchmark rate floors. As of December 31, 2021, all but one of our floating-rate whole loans has a benchmark floor in place.

Despite the existence of these benchmark rate floors, a significant amount of CRE loan production activity during the year ended December 31, 2021 has shifted the loan portfolio mix to be predominantly made up of loans with lower floors, as recent loan originations with lower floors have replaced older loans with higher floors that have paid off. During the year ended December 31, 2021, the weighted average benchmark rate floor declined by 1.13% to 0.75%.

Historically, we have used the London Interbank Offered Rate, or LIBOR, as the benchmark rate for our floating-rate whole loans and we have been exposed to LIBOR through our floating-rate borrowings. Substantially all of our floating-rate whole loans, CRE securitizations and term warehouse financing facilities included one-month LIBOR as the original contractual benchmark rate. Our unsecured junior subordinated debentures use three-month LIBOR as the contractual benchmark rate. In March 2021, the United Kingdom’s, or U.K.’s, Financial Conduct Authority, or 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. Additionally, the U.S. Federal Reserve encouraged companies to cease using LIBOR as a benchmark rate by December 31, 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 the Secured Overnight Financing Rate, or SOFR, a new index calculated by short-term repurchase agreements backed by U.S. Treasury securities, as its preferred alternative rate for LIBOR.

(Back to Index)

All of our floating-rate whole loans contain provisions that provide for the transition of the contractual benchmark rate to an alternative rate. During the year ended December 31, 2021, we originated our first whole loan with SOFR as its contractual benchmark rate and two CRE debt securitizations, Exantas Capital Corp. 2020-RSO8, Ltd. and Exantas Capital Corp. 2020-RSO9, Ltd., transitioned to Compounded SOFR as the benchmark rates underlying the coupon interest rates. In September 2021, January 2022 and February 2022, the term warehouse financing facilities with JPMorgan Chase Bank, N.A. ("JPMorgan Chase"), Morgan Stanley Mortgage Capital Holdings LLC ("Morgan Stanley") and Barclays Bank PLC ("Barclays"), respectively, were amended to allow for the transition to alternative rates, including rates tied to SOFR, subject to benchmark transition events. Refer to "Part I. - Item 1A. Risk Factors - Changes in the method for determining the LIBOR or a replacement of LIBOR may adversely affect the value of our loans, investments and borrowings and could affect our results of operations" for additional detail about the transition away from LIBOR.

Investment Portfolio

The table below summarizes the amortized costs and net carrying amounts of our investments at December 31, 2021, classified by asset type (dollars in thousands, except amounts in footnotes):

At December 31, 2021	Amortized Cost	Net Carrying Amount	Percent of Portfolio	Weighted Average Coupon
Loans held for investment:				
CRE whole loans, floating-rate (1)(2)	$ 1,877,851	$ 1,869,301	95.44%	4.43%
CRE mezzanine loan (1)	4,700	4,445	0.23%	10.00%
	1,882,551	1,873,746	95.67%	
Other investments:				
Investments in unconsolidated entities	1,548	1,548	0.08%	N/A (4)
Investments in real estate (3)	65,465	65,465	3.34%	N/A (4)
Property held for sale	17,846	17,846	0.91%	
	84,859	84,859	4.33%	
Total investment portfolio	$ 1,967,410	$ 1,958,605	100.00%	

(1) Net carrying amount includes an allowance for credit losses of $8.8 million at December 31, 2021.
(2) Includes one legacy CRE loan, underwritten prior to 2010, with an amortized cost of $11.5 million that we intend to hold until payoff. The loan paid off in January 2022.
(3) Includes real estate-related right of use assets of $5.5 million, intangible assets of $3.9 million, a lease liability of $3.1 million and other liabilities of $169,000 at December 31, 2021 on properties that were acquired via direct equity investments in real estate or through our lending activities.
(4) There are no stated rates associated with these investments.

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, 2021, 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, 2021 were whole loans. We expect to hold our whole loans to maturity.

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, 2021.

(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, 2021.

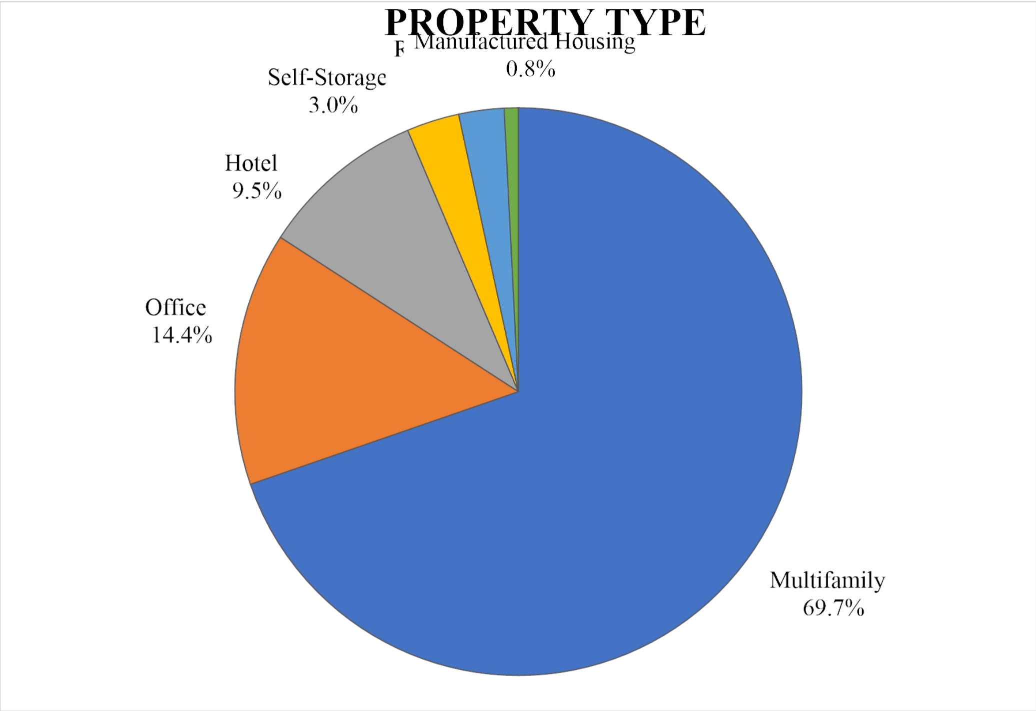
In addition to the accrued interest receivable on a B-note, we may earn fees charged to the borrower under the note or additional income by receiving principal payments in excess of the discounted price (below par value) we paid to acquire the note. Our ownership of a B-note with controlling class rights 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.

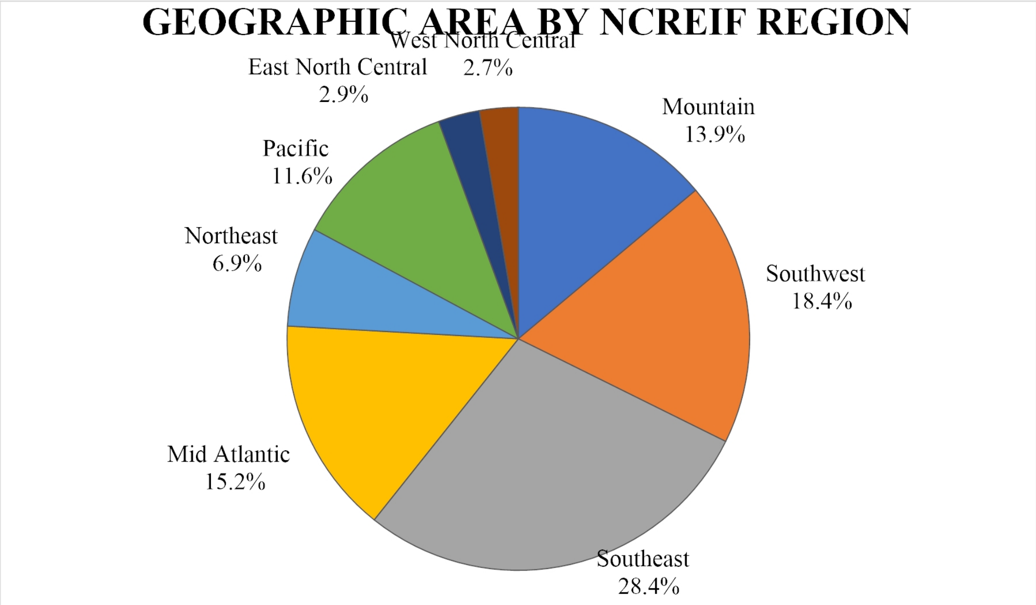
Mezzanine financing. We may invest in mezzanine loans that are senior to the borrower's equity in, and subordinate to the mortgage loan on, a property. A mezzanine loan is typically secured by a pledge of the ownership interests in the entity that directly owns the real property or by a second lien mortgage 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. We expect our mezzanine investments to have LTV ratios between 65% and 90% with stated maturities from three to five years. We expect to hold mezzanine loans to maturity. At December 31, 2021, our loan portfolio included one mezzanine loan.

Preferred equity investments. We may invest 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, 2021.

(Back to Index)

The following charts describe the property type and the geographic breakdown, by National Council of Real Estate Investment Fiduciaries, or NCREIF, region of our CRE loan portfolio at December 31, 2021 (based on carrying value):





The total CRE loan portfolio, at carrying value, was $1.9 billion at December 31, 2021.

The Southeast region constituted 28.4% of our portfolio, of which 79.8% was in Florida, and its collateral comprised 75.9% multifamily properties. The Southwest region constituted 18.4% of our portfolio, of which 100.0% was in Texas, and its collateral comprised 91.1% multifamily properties. The Mid-Atlantic region constituted 15.2% of our portfolio, of which 44.3% was in South Carolina, and its collateral comprised 95.5% multifamily properties. We view our investment and credit strategies as being adequately diversified across property types in the Southeast, Southwest and Mid-Atlantic regions.

(Back to Index)

(Back to Index)

CRE Investments

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, 2021, we held two 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). The following table summarizes the investments in real estate at December 31, 2021 (in thousands, except amounts in footnotes):

	December 31, 2021		
	Cost Basis	Accumulated Depreciation & Amortization	Carrying Value
Assets acquired:			
Investments in real estate, equity:			
Investments in real estate (1)	$ 27,065	$ (191)	$ 26,874
Intangible assets (2)	1,726	(806)	920
Subtotal	28,791	(997)	27,794
Investments in real estate from lending activities:			
Investment in real estate (3)	34,124	(1,689)	32,435
Property held for sale (4)	17,846	—	17,846
Right of use assets (5)(6)	5,603	(95)	5,508
Intangible assets	3,337	(380)	2,957
Subtotal	60,910	(2,164)	58,746
Total	89,701	(3,161)	86,540
Liabilities assumed:			
Investments in real estate, equity:			
Other liabilities	(247)	78	(169)
Investments in real estate from lending activities:			
Lease liabilities (6)	(3,113)	53	(3,060)
Total	(3,360)	131	(3,229)
	$ 86,341		$ 83,311

(1) Includes $22.4 million of land, which is not depreciable.
(2) Carrying value includes approximately $819,000 of an acquired lease assets and $101,000 of leasing commission assets.
(3) Includes $129,000 of building renovations assets at carrying value made subsequently to the date of acquisition of a property. Additionally, carrying value includes approximately $60,000 of furniture and fixtures purchased for a property subsequent to the date of acquisition.
(4) Includes a property acquired in October 2021 that is being marketed for sale.
(5) Right of use assets include a right of use asset associated with an acquired ground lease of $3.1 million accounted for as an operating lease and a below-market lease intangible asset of $2.4 million.
(6) Carrying value includes franchise agreement intangible assets of $2.6 million and a customer list intangible asset of $311,000.

Competition

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

Management Agreement

We have a management agreement, amended and restated on July 31, 2020 and further amended on February 16, 2021, 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.

(Back to Index)

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%; provided, however, that for each calendar month through July 31, 2022, such fee shall be equal to a minimum of $442,000. At December 31, 2021, the calculated fee was in excess of the minimum fee charged. 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 Core Earnings (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 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) core earnings 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) core earnings 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) core earnings 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 Core Earnings 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 our Manager or its affiliates for their services in connection with the making of fixed-rate commercial real estate loans by us, 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 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, 2023, 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.

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., or ACRES RF the subsidiary that at December 31, 2021 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, 2021 and 2020, 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.

Our other subsidiaries, RCC Commercial, Inc., or RCC Commercial, RCC Commercial II, Inc., or Commercial II, RCC Commercial III, Inc., or Commercial III, RCC TRS, LLC, or RCC TRS, Resource TRS, LLC, or Resource TRS, RSO EquityCo, LLC, or RSO Equity, RCC Residential Portfolio, Inc., or RCC Resi Portfolio and Exantas Real Estate LLC, or XAN RE, 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 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, or 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 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**.

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.
- The outbreak of widespread contagious disease, such as COVID-19, has caused, and may continue to cause, shocks to the United States 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.
- 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 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.
- Changes in the method for determining the LIBOR or a replacement of LIBOR may adversely affect the value of our loans, investments and borrowings and could affect our results of operations.
- Investing in mezzanine debt, preferred equity, mezzanine or other subordinated tranches of CMBS involves greater risks of loss than senior secured debt investments.
- 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.
- 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.
- 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.
- 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 be exposed to environmental liabilities with respect to properties that we own or take title to in the future.
- Our investments in preferred equity involve a greater risk of loss than traditional first mortgage debt investments we make.
- 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.

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.

The outbreak of widespread contagious disease, such as COVID-19, has caused, and may continue to cause, shocks 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.

In December 2019, COVID-19 was identified and the resulting global proliferation of the virus led the World Health Organization to designate COVID-19 as a pandemic and numerous countries, including the U.S., to declare national emergencies. Many countries have responded to the outbreak by instituting quarantines and restrictions on travel, which has resulted in the closure or remote operation of non-essential businesses. While the U.S. and certain countries around the world have begun to ease restrictions and financial markets and unemployment rates have stabilized to some degree, due in large part to the discovery and distribution of vaccines and other treatments, the pandemic, exacerbated by virus variants, continues to cause uncertainty on the U.S. and global economies, generally, and the CRE business in particular.

The COVID-19 pandemic has had, and may continue to 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 these impacts are likely to continue to some extent as the pandemic persists. Although many or all facets of our business have been or could be impacted by the COVID-19 pandemic, we currently believe the following impacts to be among the most material to us:

- COVID-19 could have a significant long-term impact on the broader economy and the CRE market generally, which would negatively impact the value of the properties collateralizing our loans. Our portfolio includes loans collateralized by hotel, retail, office, multifamily and other property types that are particularly negatively impacted by the pandemic. While we believe the principal amount of our loans is currently generally adequately protected by underlying value, there can be no assurance that as the pandemic continues these values will not be adversely affected, which could impact our ability to realize the entire principal value of some or all of our investments.

- We are actively engaged in discussions with our borrowers, some of whom we expect may face challenges in complying with the terms of their loans. In the past, we have executed extension and forbearance agreements of CRE loans in an effort to reduce the credit risk created as a result of financial difficulties related to the pandemic. We anticipate the future execution of modifications of our loans and potentially instances of default or foreclosure on assets underlying our loans, which may adversely affect the credit profile and realizable value of our assets, our results of operations and our financial condition.

- The shocks to global markets, particularly the real estate credit markets, adversely impacted the market pricing of our CRE securities. Depending on the magnitude and duration of the pandemic's impact, the assets underlying these securities may default on their terms, requiring that we incur credit losses on our portfolio that exceed the allowance for credit losses we have established.

- We have warehouse facilities with numerous lenders and, when utilized, continuously engage in discussions around the value of pledged assets as defined in our agreements with such lenders, potential deleveraging, the application of certain provisions of such agreements to these circumstances and other structural elements under the agreements. When utilized, if we do not have the funds available to make required payments, it would likely result in defaults under the particular facilities affected that, because of cross-default provisions, could result in defaults under other debt instruments as well as potential loss of our assets to the lenders unless we are able to raise the funds from alternative sources, including by selling or financing assets or raising capital, each of which we may be required to do under adverse market conditions or at an inopportune time or on unfavorable terms, or may be unable to do at all. The COVID-19 pandemic has made it very difficult for businesses generally, including us, to access liquidity sources at terms commensurate with those prior to this pandemic, or at all. Pledging additional collateral or otherwise paying down facilities to satisfy our lenders and avoid potential margin calls and loan defaults would reduce our cash available to meet subsequent margin calls and/or future funding requests as well as make other, higher yielding investments, thereby decreasing our liquidity, return on equity, available cash, net income and ability to implement our investment strategy. If we cannot meet lender requirements related to margin calls or other terms of our credit agreements, the lender or counterparty could accelerate our indebtedness, increase the interest rate on advanced funds and terminate our ability to borrow additional funds, which would materially and adversely affect our financial condition and ability to implement our investment strategy.

- The COVID-19 pandemic has in the past reduced, and may reduce, the availability of liquidity sources, but our requirements for liquidity, including future funding commitments and potential margin calls, likely will not be commensurately reduced. If we do not have funds available to meet our obligations, we would have to raise funds from alternative sources, which may be at unfavorable terms or may not be available to us due to the impacts of COVID-19. We expect that the adverse impact of the COVID-19 pandemic may adversely affect our liquidity position and could limit our ability to grow our business and fully execute our business strategy. We seek to preserve and build our liquidity to best position us to weather near-term market uncertainty, satisfy our loan future funding requests and to potentially make new investments, which will cause us to take some or all of the following actions: borrow additional capital, sell assets and /or change our dividend distributions consistent with REIT distribution requirements.

- Interest rates and credit spreads have been significantly impacted since the outbreak of COVID-19. This can result in volatile changes to the fair value of our floating rate loans, fixed-rate loans and CRE securities and also the interest obligations on our floating-rate borrowings, which could result in an increase to our interest expense.

We also have experienced and may continue to experience other negative impacts to our business as a result of the pandemic that could exacerbate other risks, including:

- lack of liquidity in our assets;

- greater risk of loss on our mezzanine loans;

- risk associated with loans that are in transition;

- the concentration of our loans and investments in certain geographies, property types or relationships in areas that may be disproportionately affected by the pandemic;
- risks associated with our securitizations that we use to finance our loans;
- downgrades in credit ratings assigned to our investments;
- the difficulty of estimating provisions for credit losses;
- borrower and counterparty risks;
- operational impacts on ourselves and our third-party advisors, service providers, vendors and counterparties;
- limitations on our ability to ensure business continuity in the event our, or our third-party advisors' and service providers', continuity of operations plan is not effective or improperly implemented or deployed during the disruption caused by the pandemic; and
- an inability to review potential investments in affected areas as a result of quarantines, restrictions on travel, "shelter in place" rules, restrictions on types of businesses that may continue to operate and restrictions on types of construction projects that may 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 the COVID-19 pandemic on the global economy or our business, including our financial condition and performance. The extent of the impact of COVID-19 will depend on future developments, including new information that may emerge about the severity of the pandemic, the extension of quarantines and restrictions on travel, the effectiveness of vaccines and other treatments on virus variants 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.

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 CLO 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 CLOs 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.

(Back to Index)

If our CRE debt securitization financings fail to meet their performance tests, including over-collateralization 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 CLOs 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, 2021, 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, 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 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 CLOs for an indefinite time.

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.

(Back to Index)

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 core earnings, a non-GAAP financial measure, is an appropriate measure of our operating performance; however, in certain instances core earnings may not be reflective of actual economic results.

We utilize core earnings as a measure of our operating performance and believe that it is useful to analysts, investors and other parties in the evaluations of REITs. We believe core earnings is a useful measure of our operating performance 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. Core earnings exclude (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. Core earnings 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 core earnings excluding incentive compensation payable to our Manager, we include incentive compensation payable to our Manager in core earnings for reporting purposes. Core earnings 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 core earnings may differ from methodologies used by other companies to calculate similar supplemental performance measures, and accordingly, our reported core earnings 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. 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.

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. 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 income (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.

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.

Changes in the method for determining the LIBOR or a replacement of LIBOR may adversely affect the value of our loans, investments and borrowings and could affect our results of operations.

We utilize LIBOR as a benchmark interest rate for the pricing of our CRE loans and, historically, have been exposed to LIBOR through our issuance of notes on our securitizations and the use of term facilities and repurchase agreements. In July 2017, the U.K. FCA announced that it would phase out LIBOR as a benchmark by the end of 2021. In March 2021, the FCA 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. Additionally, the U.S. Federal Reserve encouraged companies to cease using LIBOR as a benchmark rate by December 31, 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 SOFR, a new index calculated by short-term repurchase agreements backed by U.S. Treasury securities, as its preferred alternative rate for LIBOR. In June 2021, one-month LIBOR was replaced with Compounded SOFR as the benchmark rate of two of our securitizations' notes payable. In December 2021, we originated our first loan that was benchmarked to SOFR. All of our floating-rate loans contain terms that allow for the transition to alternative rates. In September 2021, January 2022 and February 2022, the term warehouse financing facilities with JPMorgan Chase, Morgan Stanley and Barclays, respectively, were amended to allow for the transition to alternative rates, including rates tied to SOFR, subject to benchmark transition events. When LIBOR ceases to exist, we may need to amend our remaining loan and borrowing agreements that utilize LIBOR as a factor in determining the interest rate or hedge against fluctuations in LIBOR based on a new standard that is established, if any. Any resulting differences in interest rate standards among our assets and our borrowings may result in interest rate mismatches between our assets and the borrowings used to fund such assets. The transition from LIBOR to SOFR or to another alternative rate may result in financial market disruptions and significant increases in benchmark rates, resulting in increased financing costs to us, any of which could have an adverse effect on our business, results of operations, financial condition, and the market price of our common stock.

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 and preferred equity. 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."

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 and CRE equity investments 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.

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.

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 tranches of CMBS 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, 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, 2021 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 reduced 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.

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.

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.

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%; provided, however, that for each calendar month through July 31, 2022, such fee shall be equal to a minimum of $442,000. 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, calculated quarterly until the quarter ended December 31, 2022, equal to 20% of the amount by which our Core Earnings, as defined in the Management Agreement, for a quarter exceeds the product of the weighted average of the book value divided by 10,293,783 and 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 the greater of 1.75% or 0.4375% plus one-fourth of the average ten-year U.S. Treasury rate for such quarter, multiplied by the weighted average number of common shares outstanding during the quarter, subject to certain adjustments. In evaluating investments and other management strategies, the opportunity to earn incentive compensation based on Core Earnings may lead our Manager to place undue emphasis on the maximization of Core Earnings 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.

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 applicable allocation committee established by ACRES, in accordance with its investment allocation policies and procedures, will offer the opportunity to the investment program or client for which the investment opportunity is most suitable based on the 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's 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.

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.

We treat our investments in mezzanine loans and, historically, 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.

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.

Tax Risks

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, or 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 CLO equity, we have relied and may rely on opinions or advice of counsel regarding the qualification of interests in the debt of such CLOs 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.

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 bore a relationship to the payments that we received 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
- 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. TRSs 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 recharacterized 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 specified types of income or hold specified 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., or 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 our U.S. 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.

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 qualifying and 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 Tax Cuts and Jobs Act, or TCJA, made significant changes to the U.S. federal income tax rules for taxation of individuals and corporations, generally effective for taxable years beginning after December 31, 2017. In addition to reducing corporate and individual tax rates, the TCJA eliminates or restricts various deductions. Most of the changes applicable to individuals are temporary and apply only to taxable years beginning after December 31, 2017 and before January 1, 2026. The TCJA makes numerous large and small changes to the tax rules that do not affect the REIT qualification rules directly but may otherwise affect us or our stockholders.

While the changes in the TCJA generally appear to be favorable with respect to REITs, the extensive changes to non-REIT provisions in the Code may have unanticipated effects on our stockholders or us. Moreover, Congressional leaders have recognized that the process of adopting extensive tax legislation in a short amount of time without hearings and substantial time for review is likely to have led to drafting errors, issues needing clarification and unintended consequences that will have to be revisited in subsequent tax legislation. It is not clear if or when Congress will address these issues or when the IRS will issue administrative guidance on the changes made in the TCJA.

We urge you to consult with your own tax advisor with respect to the status of the TCJA and other legislative, regulatory or administrative developments and proposals and their potential effect on an investment in shares of our common 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, under the TCJA, regular dividends from REITs are treated as income from a pass-through entity and are eligible for a 20% deduction. As a result, our regular dividends are taxed at 80% of an individual's marginal tax rate. The current maximum rate is 37% resulting in a maximum tax rate of 29.6%. 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 the IRS successfully challenges our characterization of income inclusions from our foreign TRSs.

We likely will be required to include in our income, even without the receipt of actual distributions, earnings from our foreign TRSs, including from our previous investments in CDOs, such as our investment in Apidos CDO I, Ltd., Apidos CDO III, Ltd. and Apidos Cinco CDO. We intend to treat certain of these income inclusions as qualifying income for purposes of the 95% gross income test applicable to REITs but not for purposes of the REIT 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 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 U.S. 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 intend to treat 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 addition, in 2011, the IRS issued a private letter ruling to a REIT reaching a result consistent with our treatment. Nevertheless, because this income does not meet the literal requirements of the REIT provisions, it is possible that the IRS could successfully take the position that it is not qualifying income. In the event that it was determined not to qualify for the 95% gross income test, we would be subject to a penalty tax with respect to the income to the extent it and other nonqualifying income exceeds 5% of our gross income and/or we could fail to qualify as a REIT. See "Federal Income Tax Consequences of Our Qualification as a REIT." In addition, if such income was determined not to qualify for the 95% gross income test, we would need to invest in sufficient qualifying assets, or sell some of our interests in our foreign TRSs to ensure that the income recognized by us from our foreign TRSs or such other corporations does not exceed 5% of our gross income, or cease to qualify as a REIT.

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.

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.

(Back to Index)

General Risks

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 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 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 “Item II - Item 8. Financial Statements and Supplementary Data – Note 24 - 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, or 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, or COVID-19 pandemic, we received significant net operating loss, or NOL, carryforwards and estimate additional losses from the termination of CLOs in 2021 and the expected termination of CLOs in 2022. We also recognized net capital loss carryforwards as finalized in our 2020 tax return. Therefore, we did not pay distributions on our common shares during the year ended December 31, 2021. As we continue to take steps necessary to stabilize our core earnings, our board of directors, or 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 thousands, except amount in footnotes):

	REIT (QRS) Tax Loss Carryforwards		TRS Tax Loss Carryforwards	
	Operating (1)(2)	Capital (3)	Operating (1)(4)	Capital (3)
As of December 31, 2021:				
Loss carryforwards received and estimated	$ 62,543	$ 136,942	$ 60,175	$ 969
Useful life	Unlimited	5 years	Various	5 years

(1) In general, NOL carryforwards can be used to offset both ordinary taxable income and capital gains in future years.
(2) Includes projected original issuance discount losses on senior note classes in CRE debt securitizations that are expected to be redeemed in 2022.
(3) Net capital loss carryforwards may be carried forward up to five years to offset future capital gains.
(4) Includes $39.9 million of NOL carryforwards realized prior to the effective date of the Tax Cuts and Jobs Act of 2017, some of which expire in 2044. The remaining NOL carryforwards have an unlimited useful life.

On February 16, 2021, we completed a one-for-three reverse stock split, which reduced the number of shares of our common stock that were issued and outstanding immediately prior to the effectiveness of the reverse stock split. At the date of the stock split, the number of shares of our authorized common stock was not affected by the reverse stock split and the par value of our common stock remained unchanged at $0.001 per share. The reverse stock split reduced the number of shares of our common stock that were outstanding at February 16, 2021 from 29,194,460 to 9,731,371 after the cancellation of all fractional shares. No fractional shares were issued in connection with the reverse stock split. Stockholders who otherwise held fractional shares of our common stock as a result of the reverse stock split received a cash payment in lieu of such fractional shares.

In May 2021, we filed an amendment to our charter to decrease the total number of authorized shares from 225,000,000 to 141,666,666 shares, consisting of 41,666,666 shares of common stock, $0.001 par value per share (decreased from 125,000,000 shares of common stock) and 100,000,000 shares of preferred stock, $0.001 par value per share. The reduction in authorized shares of common stock is in proportion to the 1-for-3 reverse split noted above.

At March 7, 2022, there were 8,890,045 shares of common stock outstanding held by 208 holders of record. The 208 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.

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, 2021:

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)	333,329	N/A	
Equity compensation plans not approved by security holders	N/A	N/A	
Total	333,329		1,367,488

(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 2022. No dividends are currently in arrears on the Series C Preferred Stock.

In May 2021, and subsequently in June 2021, we issued the 7.875% Series D Cumulative Redeemable Preferred Stock, or Series D Preferred Stock, which is listed on the NYSE and trades under the symbol “ACRPrD.” On October 4, 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. In December 2021, we issued additional Series D Preferred Stock pursuant to this agreement. We declared and paid a partial-period dividend per share of $0.377344 that was paid in July 2021, and subsequently have paid a quarterly dividend per share of $0.4921875 through January 2022. 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. At December 31, 2021, $16.3 million remains available under this repurchase plan.

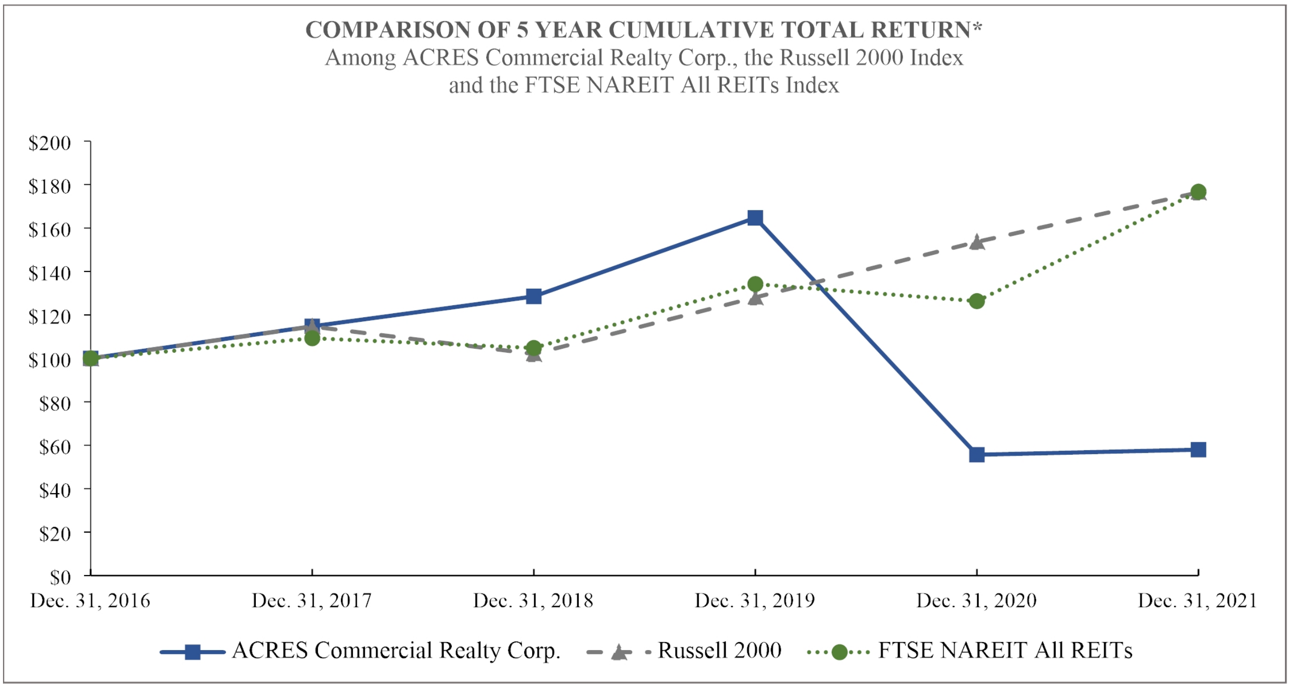
The following table presents information about our common stock repurchases made during the year ended December 31, 2021 in accordance with our repurchase program (dollars in thousands, except per share amounts):

	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 4, 2021 - January 29, 2021	283,374	$ 12.30	283,374	$ 11,210
February 1, 2021 - February 26, 2021	281,912	12.21	281,912	$ 7,784
March 1, 2021 - March 31, 2021	179,379	14.44	179,379	$ 5,199
April 1, 2021 - April 30, 2021	140,260	15.41	140,260	$ 3,042
May 3, 2021 - May 12, 2021	47,820	15.51	47,820	$ 2,301
June 2, 2021 - June 30, 2021	85,709	16.52	85,709	$ 888
July 1, 2021 - July 9, 2021	53,443	16.64	53,443	$ —
November 12, 2021 - November 30, 2021	62,712	14.76	62,712	$ 19,075
December 1, 2021 - December 31, 2021	211,817	12.99	211,817	$ 16,329
Total	1,346,426	$ 13.67	1,346,426	

(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, 2016 to December 31, 2021. 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, 2016, and that all dividends were reinvested. This data is furnished by the Research Data Group.



*$100 invested on December 31, 2016 in stock or index, including reinvestment of dividends.

ITEM 6. [RESERVED]

(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, 2020 filed with the Securities and Exchange Commission ("SEC") on March 11, 2021. You are encouraged to reference the discussion and analysis of our results of operations for the year ended December 31, 2019 compared to the year ended December 31, 2020 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 real estate investment trust ("REIT") that is primarily focused on originating, holding and managing commercial real estate ("CRE") mortgage loans and other commercial real estate-related debt investments. On July 31, 2020, our management contract was acquired from Exantas Capital Manager Inc., a subsidiary of C-III Capital Partners LLC, 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 in top United States ("U.S.") markets (the "ACRES acquisition"). 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 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.

In December 2019, a novel strain of coronavirus ("COVID-19") was identified. The resulting spread of COVID-19 throughout the globe led the World Health Organization to designate COVID-19 as a pandemic and numerous countries, including the U.S, to declare national emergencies. Many countries responded to the initial and ensuing outbreaks of COVID-19 by instituting quarantines and restrictions on travel and limiting operations of non-essential offices and retail centers, which resulted in the closure or remote operation of non-essential businesses, increased rates of unemployment and market disruption in connection with the economic uncertainty. While the U.S. and certain countries around the world have eased restrictions and financial markets and unemployment rates have stabilized to some degree, due in large part to the discovery and distribution of vaccines and other treatments, the pandemic, exacerbated by virus variants, continues to cause uncertainty in the U.S. and global economies, generally, and the commercial real estate industry in particular.

The aforementioned quarantines and travel restrictions contributed significantly to economic disruptions across the country that directly impacted our borrowers and their ability to pay and to stay current with their debt obligations in 2019 and 2020, causing significant increases in our provisions for credit losses. During this height of the pandemic, we used a variety of legal and structural options to manage credit risk effectively, including through forbearance and extension provisions or agreements. As of December 31, 2021, we have substantially reversed those provisions due to significant improvements in our current and expected macroeconomic operating environments as well as due to improvements in collateral operating performance and market liquidity.

We continue to actively and responsibly manage corporate liquidity and operations in light of the market disruptions caused by COVID-19. However, it is inherently difficult to accurately assess the continuing impact of the pandemic as well as other domestic or global events on our revenues, profitability and financial position. In response, we are focused on maintaining sufficient liquidity while still growing our loan origination business. We continuously monitor the effects of domestic and global events on our operations and financial position to ensure that we remain responsive and adaptable to the dynamic changes in our operating environment. For additional discussion with respect to the potential impact of COVID-19 on our liquidity and capital resources, see "Liquidity and Capital Resources."

An important aspect of the ACRES acquisition was that it delivered operational liquidity in order to mitigate additional potential margin call risk as a result of the market volatility that was created by the COVID-19 pandemic, which allowed us to focus on asset management within the portfolio in efforts to restart loan originations and underwriting. Our Manager has and expects to continue to leverage the complementary nature of our lending platforms, its experience and its network of relationships to enhance our new business loan pipeline. Additionally, our Manager continuously monitors for new capital opportunities and executes on agreements that enhance our returns.

During the year ended December 31, 2021, we issued 4,600,000 shares of new 7.875% Series D Cumulative Redeemable Preferred Stock ("Series D Preferred Stock") for net proceeds of $110.4 million, which includes the underwriting discounts and offering costs. In October 2021, we and our Manager entered into an Equity Distribution Agreement (the "Preferred ATM Agreement") with JonesTrading Institutional Services LLC, as placement agent ("JonesTrading"), pursuant to which we may issue and sell from time to time up to 2.2 million shares of the Series D Preferred Stock. During the year ended December 31, 2021, we received net proceeds of approximately $194,000 from the issuance of 7,857 shares of Series D Preferred Stock governed by the Preferred ATM Agreement.

(Back to Index)

During the year ended December 31, 2021, we issued $150.0 million of principal of new 5.75% senior unsecured notes due 2026 (“5.75% Senior Unsecured Notes”) for net proceeds of $146.7 million, which includes debt issuance costs. Using the proceeds, we fully redeemed our $50.0 million of principal of 12.00% senior unsecured notes (“12.00% Senior Unsecured Notes”) for $55.3 million, which included a $5.0 million make-whole amount, and partially repurchased $55.7 million of principal of 4.50% convertible senior notes due 2022 (“4.50% Convertible Senior Notes”) during the year ended December 31, 2021. We incurred a loss on extinguishment of $9.0 million, which comprised a $5.0 million make-whole amount on the 12.00% Senior Unsecured Notes and $4.0 million of acceleration of the unamortized market discounts. We also accelerated the amortization of debt issuance costs of $522,000, which are reflected in interest expense during the year ended December 31, 2021.

The remaining proceeds from each of these transactions are intended to be used for loan originations and for general corporate purposes in order to improve and grow book value and earnings.

In February 2022, we repurchased $39.8 million of 4.50% Convertible Senior Notes.

We target originating transitional floating-rate CRE loans between $10.0 million and $100.0 million. In March 2020, due to the market disruptions caused by the COVID-19 pandemic, we halted loan originations to manage our liquidity. In conjunction with the capital commitments secured through the ACRES acquisition, we resumed originating floating-rate CRE loans in November 2020. During the year ended December 31, 2021, we originated 56 floating-rate CRE whole loans with total commitments of $1.5 billion.

We anticipate that our CRE loan originations, CRE debt securitizations and other CRE-related investments during the year ended December 31, 2022 will be between $600.0 million and $1.0 billion.

Our CRE loan portfolio, which had a $1.9 billion and $1.5 billion carrying value at December 31, 2021 and 2020, 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, office, hotel, self-storage, retail, student housing, manufactured housing, industrial, healthcare and mixed-use. At December 31, 2021 and 2020, our whole loans had a carrying value of $1.9 billion and $1.5 billion, respectively, or 99.8% and 98.0%, respectively, of the CRE loan portfolio.

- 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 December 31, 2021 and 2020, our mezzanine loans had a carrying value of $4.4 million and $4.4 million, respectively, or 0.2% and 0.3%, respectively, of the CRE loan portfolio.

- Preferred equity investments that are subordinate to first mortgage loans and mezzanine debt. These investments may be subject to more credit risk than subordinated debt but provide the potential for higher returns upon a liquidation of the underlying property and are typically structured to provide some credit enhancement differentiating it from the common equity in such investments. At December 31, 2020, our preferred equity investments had a carrying value of $26.0 million, or 1.7% respectively, of the CRE loan portfolio. During the year ended December 31, 2021, our preferred equity investments paid off, generating $28.8 million of proceeds.

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 market rates including the London Interbank Offered Rate (“LIBOR”) and 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. At December 31, 2021, our par-value $1.9 billion floating-rate CRE loan portfolio, which includes one whole loan without a benchmark floor, had a weighted average benchmark floor of 0.75%. At December 31, 2020, our $1.5 billion CRE loan portfolio, at par, had a weighted average benchmark floor of 1.88%. The decrease in the weighted average benchmark floor was a result of older CRE floating-rate loans with higher floors paying off and being replaced with newer loans with lower floors. If financing rates were increased compared to the conditions at December 31, 2021, net interest margin would be negatively impacted. We expect that as the loan portfolio mix continues to shift toward lower floors, the direct relationship between rising rates and positive net interest margin sensitivity will return by late 2022 to early 2023.

Our portfolio comprised loans with a diverse array of collateral types and locations. At December 31, 2021 and 2020, 88.0% and 83.3%, respectively, of our CRE loans were collateralized by multifamily, office, self-storage, manufactured housing and industrial properties, with the remaining 12.0% and 16.7%, respectively, collateralized by hotel and retail properties. These properties are located throughout the U.S., with one National Council of Real Estate Investment Fiduciaries ("NCREIF") region in excess of 20% (Southeast at 28.4%) at December 31, 2021 and one NCREIF region in excess of 20% (Mountain at 21.4%) at December 31, 2020 of the total CRE loan portfolio.

Except for three loans, all of our loans were current on contractual payments at December 31, 2021, including one loan performing in accordance with a forbearance agreement. In January 2022, one loan that was delinquent and one loan performing in accordance with a forbearance agreement paid off. Additionally, we have provided relief in the form of term extensions on 14 loans, at a weighted average of 11 months, in exchange for $471,000 of fees during the year ended December 31, 2021.

Our CRE mezzanine loan earns interest at a fixed rate.

During the year ended December 31, 2021, we acquired properties with a total fair value of $46.4 million through direct equity investments and taking the deed-in-lieu of foreclosure on a property that formerly collateralized a non-performing CRE whole loan. The existence of net capital loss carryforwards allow for potential future capital gains on these investments to be shielded from income taxes. At December 31, 2021, the total carrying value of our net real estate-related assets and liabilities was $83.3 million on four properties owned.

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

Our asset-specific borrowings comprised term warehouse financing facilities, CRE debt securitizations and our senior secured financing facility. In May 2021, we closed ACRES Commercial Realty 2021-FL1 Issuer, Ltd. ("ACR 2021-FL1"), a new CRE debt securitization financing $802.6 million of CRE loans with $675.2 million of non-recourse, floating-rate notes at a weighted average cost of one-month LIBOR plus 1.49%. Simultaneously, we executed the optional redemption on Exantas Capital Corp. 2019-RSO7, Ltd. ("XAN 2019-RSO7") and paid off the remaining notes. In December 2021, we closed ACRES Commercial Realty 2021-FL2 Issuer, Ltd. ("ACR 2021-FL2"), a new CRE debt securitization financing $700.0 million of CRE loans with $567.0 million of non-recourse, floating-rate notes at a weighted average cost of one-month LIBOR plus 1.80%. Each of these 2021 CLOs provides for a two-year reinvestment period that allows 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 feature of the securitizations will allow us to extend the securitizations' financing lives at favorable interest rates through the reinvestment of loan proceeds into new loans.

At December 31, 2021 and 2020, we had outstanding balances on our CRE loan term warehouse financing facilities of $66.8 million and $12.3 million, respectively, or 3.7% and 0.9%, respectively, of total outstanding borrowings. At December 31, 2021 and 2020, we had outstanding balances of $1.5 billion and $1.0 billion, respectively, on CRE debt securitizations, or 80.8% and 78.8%, respectively, of total outstanding borrowings. At December 31, 2020, we had outstanding borrowings on our senior secured financing facility of $29.3 million, or 2.3% of total outstanding borrowings. At December 31, 2021, we had no outstanding borrowings on our senior secured financing facility.

In January 2020, we adopted updated accounting guidance that replaced the incurred loss approach with the current expected credit losses ("CECL") model for the determination of our allowance for loan losses. We reevaluate our CECL allowance quarterly, incorporating our current expectations of macroeconomic factors considered in the determination of our CECL reserves. At December 31, 2021, the CECL allowance on our CRE loan portfolio was $8.8 million or 0.5% of our $1.9 billion loan portfolio. At December 31, 2020, the CECL allowance on our CRE loan portfolio was $34.3 million, or 2.2% of our $1.5 billion of our loan portfolio. The CECL model projected significantly increased expected credit losses during the year ended December 31, 2020 in connection with the adverse market conditions caused by the COVID-19 pandemic. During the year ended December 31, 2021, we recorded a net reversal of credit losses, which reflected improvements in macroeconomic conditions, improved collateral operating performance and improvements in individually-evaluated loans.

During the year ended December 31, 2021, we recorded charge-offs of $4.2 million primarily attributable to: (i) the receipt of the deed-in-lieu of foreclosure of a property formerly-collateralizing a CRE loan with a $2.3 million allowance at the time of transaction in October 2021 and (ii) the November 2021 sale of a CRE loan note for $7.6 million of proceeds, net of costs, with a $1.7 million allowance at the time of sale, including $60,000 of reversing realized gains from the September 30, 2021 allowance.

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, 2021 and 2020, we had unrealized losses in connection with the terminated hedges of $8.5 million and $10.4 million, respectively, which will be amortized into interest expense over the remaining life of the debt. During the year ended December 31, 2021 and 2020, we recognized amortization expense on these terminated contracts of $1.9 million and $1.3 million, respectively.

Common stock book value was $23.87 per share at December 31, 2021, a $3.30 per share, or 16%, increase from December 31, 2020.

Impact of COVID-19

As discussed in the "Overview" above, the COVID-19 pandemic continues to plague countries throughout the globe as virus variants have emerged. While the U.S. and certain countries around the world have eased restrictions and financial markets and unemployment rates have stabilized to some degree, due in large part to the discovery and distribution of vaccines and other treatments, the pandemic continues to cause uncertainty on the U.S. and global economies, generally, and the CRE business in particular. The reinstatement of nationwide restrictions placed on businesses in response to COVID-19 may cause significant cash flow disruptions across the economy that may impact our borrowers and their ability to stay current with their debt obligations in the near term. Due to the fluidity of this situation, along with other world events, any prediction as to the ultimate adverse impact of the pandemic on economic and market conditions remains difficult to assess. The continuing impact of the pandemic has had, and we expect may continue to have, a long-term and material impact on our results of operations, financial condition and our liquidity and capital resources during the fiscal year 2022. Further discussion of the potential impacts on our business from the COVID-19 pandemic is provided below in the section entitled "Risk Factors" in Part I, Item 1A of this Annual Report on Form 10-K.

Impact of Reference Rate Reform

As discussed in the "Overview" section above, our CRE whole loans and our asset-specific borrowings are primarily benchmarked to one-month LIBOR. 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. Additionally, the U.S. Federal Reserve encouraged companies to cease using LIBOR as a benchmark rate by December 31, 2021.

While there is no consensus on what rate or rates may become accepted alternatives to LIBOR, the U.S. Federal Reserve, in conjunction with the Alternative Reference Rates Committee, a steering committee comprising large U.S. financial institutions, has identified SOFR, a new index calculated by short-term repurchase agreements backed by U.S. Treasury securities, as its preferred alternative rate for LIBOR. During the year ended December 31, 2021, we originated our first whole loan with SOFR as its contractual benchmark rate; and two CRE debt securitizations, Exantas Capital Corp. 2020-RSO8, Ltd. ("XAN 2020-RSO8") and Exantas Capital Corp. 2020-RSO9, Ltd. ("XAN 2020-RSO9") transitioned from one-month LIBOR to Compounded SOFR, plus a benchmark adjustment. All of our underwritten loans contain terms that allow for a change to an alternative benchmark rate upon the discontinuation of LIBOR. In September 2021, January 2022 and February 2022, the term warehouse financing facilities with JPMorgan Chase Bank, N.A. ("JPMorgan Chase"), Morgan Stanley Mortgage Capital Holdings LLC ("Morgan Stanley") and Barclays Bank PLC ("Barclays"), respectively, were amended to allow for the transition to alternative rates, including rates tied to SOFR, subject to benchmark transition events.

The transition from LIBOR to SOFR or to another alternative rate may result in financial market disruptions and significant increases in benchmark rates, resulting in increased financing costs to us, any of which could have an adverse effect on our business, results of operations, financial condition, and the market price of our common stock. See "Part II. Item 1A. Risk Factors - Changes in the method for determining the LIBOR or a replacement of LIBOR may adversely affect the value of our loans, investments and borrowings and could affect our results of operations" for additional discussion on the risk related to ongoing reference rate reform.

Results of Operations

Our net income allocable to common shares for the year ended December 31, 2021 was $18.0 million, or $1.85 per share-basic ($1.85 per share-diluted), as compared to net loss allocable to common shares of $208.1 million, or $(19.33) per share-basic ($(19.33) per share-diluted), for the year ended December 31, 2020.

Net Interest Income

The following table analyzes the change in interest income and interest expense for the comparative years ended December 31, 2021 and 2020 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, 2021 Compared to Year Ended December 31, 2020			
			Due to Changes in	
	Net Change	Percent Change (1)	Volume	Rate
Increase (decrease) in interest income:				
CRE whole loans, floating-rate (2)	$ 1,356	1%	$ 5,002	$ (3,646)
Legacy CRE loans (2)(3)	(33)	(5)%	20	(53)
CRE mezzanine loan	(1)	(0)%	(1)	—
CRE preferred equity investments (2)	(1,851)	(57)%	(1,851)	—
CMBS (4)	(6,556)	(98)%	(6,397)	(159)
Other	(126)	(57)%	(126)	—
Total decrease in interest income	(7,211)	(7)%	(3,353)	(3,858)
Increase (decrease) in interest expense:				
Securitized borrowings: (5)				
XAN 2018-RSO6 Senior Notes	(3,843)	(100)%	(3,843)	—
XAN 2019-RSO7 Senior Notes	(7,452)	(59)%	(5,690)	(1,762)
XAN 2020-RSO8 Senior Notes	728	10%	242	486
XAN 2020-RSO9 Senior Notes	6,641	256%	6,174	467
ACR 2021-FL1 Senior Notes	7,903	100%	7,903	—
ACR 2021-FL2 Senior Notes	348	100%	348	—
Senior secured financing facility (5)	2,025	102%	2,025	—
CRE - term warehouse financing facilities (5)	(4,305)	(43)%	(4,597)	292
CMBS - short term repurchase agreements	(2,491)	(100)%	(2,491)	—
Convertible senior notes: (5)				
4.50% Convertible Senior Notes	(823)	(8)%	(823)	—
8.00% Convertible Senior Notes	(80)	(100)%	(80)	—
5.75% Senior Unsecured Notes (5)	3,448	100%	3,448	—
12.00% Senior Unsecured Notes (5)	1,579	59%	1,579	—
Unsecured junior subordinated debentures	(400)	(16)%	—	(400)
Hedging	289	19%	289	—
Total increase (decrease) in interest expense	3,567	6%	4,484	(917)
Net decrease in net interest income	$ (10,778)		$ (7,837)	$ (2,941)

(1) Percent change is calculated as the net change divided by the respective interest income or interest expense for the year ended December 31, 2020.
(2) Includes increases in fee income of approximately $4.8 million and $19,000 recognized on our floating-rate CRE whole loans and legacy CRE loan, respectively, and a decrease in fee income of $216,000 on our CRE preferred equity investments, that were due to changes in volume.
(3) Includes the change in interest income recognized on one legacy CRE loan with an amortized cost of $11.5 million and $11.4 million at December 31, 2021 and 2020, respectively, classified as a CRE loan on the consolidated balance sheet.
(4) Includes a decrease in net accretion income of approximately $616,000 that was due to changes in volume.
(5) Includes increases of net amortization expense of approximately $5.5 million, $357,000, $33,000, $214,000 and $323,000 on our securitized borrowings, senior secured financing facility, convertible senior notes, 5.75% Senior Unsecured Notes and 12.00% Senior Unsecured Notes, respectively, and a decrease of approximately $683,000 on our CRE - term warehouse financing facilities, that were due to changes in volume. The increases in amortization expense of the 4.50% Convertible Senior Notes and 12.00% Senior Unsecured Notes included $304,000 and $218,000, respectively, of acceleration of deferred debt issuance costs in connection with the repurchase of $55.7 million principal amount of 4.50% Convertible Senior Notes and redemption of all $50.0 million principal amount of 12.00% Senior Unsecured Notes during the year ended December 31, 2021.

Net Change in Interest Income for the Comparative Years Ended December 31, 2021 and 2020:

Aggregate interest income decreased by $7.2 million for the comparative years ended December 31, 2021 and 2020. We attribute the change to the following:

CRE whole loans. The increase of $1.4 million for the comparative years ended December 31, 2021 and 2020 was primarily attributable to the increases in loan origination fee income of $2.9 million and exit fee income of $1.9 million over the comparative periods primarily related to loan payoffs and paydowns, offset by a decline in the LIBOR benchmark rates of our CRE whole loans, over the comparative periods, which resulted in lower one-month benchmark rate floors on new CRE loans originated.

CRE preferred equity investments. The decrease of $1.9 million for the comparative years ended December 31, 2021 and 2020 was attributable to the payoffs of the preferred equity investments in March 2021 and April 2021.

Securities. The decrease of $6.6 million for the comparative years ended December 31, 2021 and 2020 was primarily attributable to the disposition of our entire CMBS portfolio as of April 2020, except for two CMBS securities retained. In March 2021, the two remaining CMBS securities were sold.

Net Change in Interest Expense for the Comparative Years Ended December 31, 2021 and 2020:

Aggregate interest expense increased by $3.6 million for the comparative years ended December 31, 2021 and 2020. We attribute the change to the following:

Securitized borrowings. The total net increase of $4.3 million for the comparative years ended December 31, 2021 and 2020 was primarily attributable to the issuances of XAN 2020-RSO8, XAN 2020-RSO9, ACR 2021-FL1, and ACR 2021-FL2 and the acceleration of deferred debt issuance costs of $5.6 million for the year ended December 31, 2021, of which $1.9 million pertained to the liquidation of XAN 2019-RSO7 in May 2021 and $3.7 million pertained to paydowns of notes on the existing securitizations. The increases were offset by the liquidation of Exantas Capital Corp. 2018-RSO6, Ltd. ("XAN 2018-RSO6") and XAN 2019-RSO7.

Senior secured financing facility. The increase of $2.0 million for the comparative years ended December 31, 2021 and 2020 was attributable to the July 2020 execution and subsequent utilization of the senior secured financing facility.

CRE - term warehouse financing facilities. The decrease of $4.3 million for the comparative years ended December 31, 2021 and 2020 was primarily attributable net payoffs of our CRE term warehouse financing facilities. The net payoffs of our CRE term warehouse facilities were funded by the issuance of our XAN 2020-RSO8, XAN 2020-RSO9, ACR 2021-FL1 and ACR 2021-FL2 securitizations and the utilization of the senior secured financing facility.

CMBS - short-term repurchase agreements. The decrease of $2.5 million for the comparative years ended December 31, 2021 and 2020 was primarily attributable to our CMBS - short term agreements being settled in full as of April 2020 due to the impact of the COVID-19 pandemic on real estate securities markets in March 2020. See "Senior Secured Financing Facility, Term Warehouse Financing Facilities and Repurchase Agreements" for additional information.

Convertible senior notes. The decrease of $903,000 is primarily attributable to the repurchase of $55.7 million of our 4.50% Convertible Senior Notes during the year ended December 31, 2021.

5.75% Senior Unsecured Notes. The increase of $3.4 million for the comparative years ended December 31, 2021 and 2020 was attributable to the issuance of the 5.75% Senior Unsecured Notes in August 2021.

12.00% Senior Unsecured Notes. The increase of $1.6 million for the comparative years ended December 31, 2021 and 2020 was attributable to the execution and concurrent utilization of a portion of the 12.00% Senior Unsecured Notes in July 2020. In August 2021, the outstanding balance of the 12.00% Senior Unsecured Notes was redeemed in full.

Unsecured junior subordinated debentures. The net decrease $400,000 for the comparative years ended December 31, 2021 and 2020 was attributable to a decrease in three-month LIBOR, the benchmark interest rate for our unsecured junior subordinated debentures, over the comparative periods.

Hedging. The increase of $289,000 for the comparative years ended December 31, 2021 and 2020 was primarily attributable to amortization expense on terminated interest rate swaps during the year ended December 31, 2021. In April 2020, in conjunction with the disposition of our CMBS portfolio financed with short-term repurchase agreements, we terminated all interest rate swap contracts hedging that portfolio. During the years ended December 31, 2021 and 2020, we recorded net amortization expense, reported in interest expense on the consolidated statements of operations, of $1.9 million and $1.3 million, respectively.

(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, 2021 and 2020 (dollars in thousands, except amounts in footnotes):

	Year Ended December 31, 2021			Year Ended December 31, 2020		
	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)	$ 1,650,512	$ 98,284	5.95%	$ 1,702,761	$ 96,928	5.68%
Legacy CRE loans (2)	11,516	637	5.53%	11,516	670	5.81%
CRE mezzanine loan	4,700	475	9.96%	4,700	476	9.97%
CRE preferred equity investments (2)	8,202	1,378	16.80%	26,877	3,229	11.98%
CMBS (3)	4,196	161	3.90%	124,266	6,717	5.42%
Other	96,264	97	0.10%	17,478	223	0.44%
Total interest income/average net yield	1,775,390	101,032	5.69%	1,887,598	108,243	5.72%
Interest-bearing liabilities						
Collateralized by:						
CRE whole loans (4)	1,217,251	(40,596)	(3.24)%	1,278,755	(38,551)	(3.01)%
CMBS	—	—	—%	92,755	(2,491)	(2.68)%
General corporate debt:						
Unsecured junior subordinated debentures	51,548	(2,155)	(4.12)%	51,548	(2,555)	(4.88)%
4.50% Convertible Senior Notes (5)	120,276	(9,285)	(7.61)%	135,414	(10,108)	(7.34)%
8.00% Convertible Senior Notes (5)	—	—	—%	868	(80)	(9.07)%
5.75% Senior Unsecured Notes (6)	55,513	(3,448)	(6.21)%	—	—	—%
12.00% Senior Unsecured Notes (7)	29,551	(4,240)	(14.35)%	19,518	(2,661)	(13.59)%
Hedging (8)	—	(1,851)	—%	26,364	(1,562)	(5.91)%
Total interest expense/average cost of funds	1,474,139	(61,575)	(3.96)%	1,605,222	(58,008)	(3.60)%
Total net interest income		$ 39,457			$ 50,235	

(1) Average net yield includes net amortization/accretion and fee income and is computed based on average amortized cost.
(2) Includes fee income of approximately $11.4 million and $73,000 recognized on our floating-rate CRE whole loans and legacy CRE loan, respectively, for the year ended December 31, 2021 and approximately $6.6 million, $54,000 and $152,000 on our floating-rate CRE whole loans, legacy CRE loan and our CRE preferred equity investments, respectively, for the year ended December 31, 2020. During the year ended December 31, 2021, net amortization expense of $64,000 was recorded on the preferred equity investments in connection with their payoffs.
(3) Includes net accretion income of approximately $616,000 for the year ended December 31, 2020 on our CMBS securities.
(4) Includes amortization expense of approximately $13.1 million and $7.9 million for the years ended December 31, 2021 and 2020, respectively, on our interest-bearing liabilities collateralized by CRE whole loans.
(5) Includes aggregated amortization expense of approximately $3.7 million and $3.6 million for the years ended December 31, 2021 and 2020, respectively, on our convertible senior notes. The amortization expense for the year ended December 31, 2021 included $304,000 of acceleration of deferred debt issuance costs in connection with the repurchase of $55.7 million principal amount of 4.50% Convertible Senior Notes during the period.
(6) Includes amortization expense of approximately $214,000 for the year ended December 31, 2021 on our 5.75% Senior Unsecured Notes.
(7) Includes amortization expense of approximately $459,000 and $136,000 for the years ended December 31, 2021 and 2020, respectively, on our 12.00% Senior Unsecured Notes. The amortization expense for the year ended December 31, 2021 included $218,000 of acceleration of deferred debt issuance costs in connection with the redemption of all $50.0 million principal amount of 12.00% Senior Unsecured Notes during the period.
(8) Includes net amortization expense of approximately $1.9 million and $1.3 million for the years ended December 31, 2021 and 2020, respectively, on 22 terminated interest rate swap agreements that were in net loss positions at the time of termination. The remaining net losses, reported in accumulated other comprehensive (loss) income 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, 2021 and 2020 (dollars in thousands):

	Years Ended December 31,			
	2021	2020	Dollar Change	Percent Change
Real estate income and other revenue:				
Real estate income	$ 10,553	$ —	$ 10,553	100%
Other revenue	65	76	(11)	(14)%
Total	$ 10,618	$ 76	$ 10,542	13,871%

Aggregate real estate income and other revenue increased by $10.5 million for the comparative years ended December 31, 2021 and 2020. We attribute the changes to the following:

(Back to Index)

(Back to Index)

Real estate income. The increase of $10.6 million for the comparative years ended December 31, 2021 and 2020 was primarily attributable to revenue earned on a hotel property acquired in a deed in lieu of foreclosure transaction in November 2020. The property reopened during the first quarter of 2021 and initially earned a significant amount of its revenue from a contract with the U.S. federal government that provided lodging for a group of employees until May 2021. Late in the second quarter and into the third quarter, revenue was driven by increases in occupancy as the economy reopened following the distribution of COVID-19 vaccines. Total real estate income derived from this property was $9.4 million during the year ended December 31, 2021. To a lesser extent, the increase was attributable to rental income on two office properties, one acquired in a direct equity investment October 2021, which earned real estate income of $824,000 during the year ended December 31, 2021, and one acquired in a deed-in-lieu of foreclosure transaction in October 2021, which earned real estate income of $334,000 during the year ended December 31, 2021.

Operating Expenses

Year Ended December 31, 2021 as compared to the Year Ended December 31, 2020

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

	Years Ended December 31, 2021	Years Ended December 31, 2020	Dollar Change	Percent Change
Operating expenses:				
Management fees	$ 6,089	$ 6,054	$ 35	1%
Equity compensation	1,722	3,136	(1,414)	(45)%
Real estate operating expense	10,601	298	10,303	3,457%
General and administrative	11,602	14,335	(2,733)	(19)%
Depreciation and amortization	94	49	45	92%
(Reversal of) provision for credit losses, net	(21,262)	30,815	(52,077)	(169)%
Total	$ 8,846	$ 54,687	$ (45,841)	(84)%

Aggregate operating expenses decreased by $45.8 million for the comparative years ended December 31, 2021 and 2020. We attribute the changes to the following:

Equity compensation. The decrease of $1.4 million for the comparative years ended December 31, 2021 and 2020 was primarily attributable to the acceleration of all unvested stock awards at July 31, 2020 upon the close of the ACRES acquisition.

Real Estate operating expense. The increase of $10.3 million for the comparative years ended December 31, 2021 and 2020 was primarily attributable to a full year of operations as owner of a property acquired through the receipt of the deed-in-lieu of foreclosure in November 2020. The property, a hotel in the Northeast region, incurred operating expenses of $8.6 million expenses during the year ended December 31, 2021, as compared to $298,000 of operating expenses during the less than two months of ownership during the year ended December 31, 2020. To a lesser extent, the increase was attributable to the acquisition of two office properties in October 2021, one property that was acquired through a direct equity investment, which incurred operating expenses of $1.3 million during our time of ownership in the year ended December 31, 2021, and one property that was acquired through the receipt of the deed-in-lieu of foreclosure, which incurred operating expenses of $727,000 during our time of ownership in the year ended December 31, 2021.

General and administrative. General and administrative expenses decreased by $2.7 million for the comparative years ended December 31, 2021 and 2020. The following table summarizes the information relating to our general and administrative expenses for the years presented (dollars in thousands):

	Years Ended December 31, 2021	Years Ended December 31, 2020	Dollar Change	Percent Change
General and administrative				
Professional services	$ 5,872	$ 8,647	$ (2,775)	(32)%
Wages and benefits	1,598	1,351	247	18%
D&O insurance	1,395	1,173	222	19%
Operating expenses	1,049	1,247	(198)	(16)%
Dues and subscriptions	756	793	(37)	(5)%
Director fees	709	505	204	40%
Rent and utilities	123	510	(387)	(76)%
Tax penalties, interest & franchise tax	69	(33)	102	(309)%
Travel	31	142	(111)	(78)%
Total	$ 11,602	$ 14,335	$ (2,733)	(19)%

(Back to Index)

The decrease in general and administrative expenses for the comparative years ended December 31, 2021 and 2020 was primarily attributable to an increase in professional services during the year ended December 31, 2020 in connection with legal fees and advisory fees for services rendered as part of the ACRES acquisition. The decrease was also attributable to a decrease in rent and utilities as reimbursable expenses under our Fourth Amended and Restated Management Agreement, as amended ("Management Agreement") in conjunction with the ACRES acquisition.

(Reversal of) provision for credit losses, net. The reversal of credit losses of $21.3 million for the year ended December 31, 2021 as compared to the provision for credit losses of $30.8 million for the year ended December 31, 2020 were each attributable to the updated estimates of our CECL model. The CECL model, adopted on January 1, 2020, provides the framework for developing an estimate of the allowance for credit losses using an expected credit losses approach. The CECL model projected significantly increased expected credit losses during the year ended December 31, 2020 in connection with the adverse market conditions caused by the COVID-19 pandemic. During the year ended December 31, 2021, our estimated current expected credit losses improved as a result of improvements of macroeconomic conditions, improvements in property-level operations on loan collateral and improvements in individually-evaluated loans.

Other Income (Expense)

Year Ended December 31, 2021 as compared to Year Ended December 31, 2020

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

	Years Ended December 31,			
	2021	2020	Dollar Change	Percent Change
Other income (expense):				
Net realized and unrealized gain (loss) on investment securities available-for-sale and loans and derivatives	$ 878	$ (186,610)	$ 187,488	100%
Fair value and other adjustments on asset held for sale	—	(8,768)	8,768	100%
Loss on extinguishment of debt	(9,006)	—	(9,006)	(100)%
Gain on conversion of real estate	—	1,570	(1,570)	100%
Other income	822	471	351	75%
Total	$ (7,306)	$ (193,337)	$ 186,031	96%

Aggregate other expense decreased $186.0 million for the comparative years ended December 31, 2021 and 2020. We attribute the change to the following:

Net realized and unrealized (loss) gain on investment securities available-for-sale and loans and derivatives. The decrease in losses of $187.5 million for the comparative years ended December 31, 2021 and 2020 was primarily attributable to the disposition of our CMBS portfolio that was financed with CMBS short-term repurchase facilities during the year ended December 31, 2020, which resulted in a loss of $180.3 million. We recorded unrealized losses of $6.1 million on two retained securities during the year ended December 31, 2020. During the year ended December 31, 2021, we sold the remaining two securities for cash proceeds of $3.0 million and recorded gains of $878,000.

Fair value adjustments on financial assets held for sale. The decrease of $8.8 million for the comparative years ended December 31, 2021 and 2020 was attributable to charges of $8.8 million during the year ended December 31, 2020 incurred on the remaining legacy CRE asset held for sale, which included protective advances to cover borrower operating losses of $2.7 million. The remaining asset held for sale was sold in December 2020.

Loss on extinguishment of debt. The increase of $9.0 million for the comparative years ended December 31, 2021 and 2020 was attributable to the full redemption of our 12.00% Senior Unsecured Notes, which resulted in $7.8 million of losses, and the partial repurchase of our 4.50% Convertible Senior Notes, which resulted in $1.2 million of non-cash losses in connection with the acceleration of the ratable market discount, during the year ended December 31, 2021.

Gain on conversion of real estate. The decrease of $1.6 million for the comparative years ended December 31, 2021 and 2020 was attributable to the receipt of a deed in lieu of foreclosure on one CRE whole loan with an appraised value of $39.8 million, which was above our loan basis, in November 2020.

Financial Condition

Summary

Our total assets were $2.3 billion at December 31, 2021 as compared to $1.7 billion at December 31, 2020.

(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, 2021 and 2020 as follows (dollars in thousands, except amounts in footnotes):

At December 31, 2021	Amortized Cost	Net Carrying Amount	Percent of Portfolio	Weighted Average Coupon
Loans held for investment:				
CRE whole loans, floating-rate (1)(2)	$ 1,877,851	$ 1,869,301	95.44%	4.43%
CRE mezzanine loan (1)	4,700	4,445	0.23%	10.00%
	1,882,551	1,873,746	95.67%	
Other investments:				
Investments in unconsolidated entities	1,548	1,548	0.08%	N/A (4)
Investments in real estate (3)	65,465	65,465	3.34%	N/A (4)
Property held for sale	17,846	17,846	0.91%	
	84,859	84,859	4.33%	
Total investment portfolio	$ 1,967,410	$ 1,958,605	100.00%	

At December 31, 2020	Amortized Cost	Net Carrying Amount	Percent of Portfolio	Weighted Average Coupon
Loans held for investment:				
CRE whole loans, floating-rate (1)(2)	$ 1,509,578	$ 1,477,295	94.97%	5.44%
CRE mezzanine loan (1)	4,700	4,399	0.28%	10.00%
CRE preferred equity investments (1)	27,714	25,988	1.67%	11.38%
	1,541,992	1,507,682	96.92%	
Investments securities available-for-sale:				
CMBS, fixed-rate	2,080	2,080	0.13%	2.70%
Other investments:				
Investments in unconsolidated entities	1,548	1,548	0.10%	N/A (4)
Investment in real estate (3)	39,585	39,585	2.54%	N/A (4)
CRE whole loans, fixed-rate (5)	4,809	4,809	0.31%	4.44%
	45,942	45,942	2.95%	
Total investment portfolio	$ 1,590,014	$ 1,555,704	100.00%	

(1) Net carrying amount includes an allowance for credit losses of $8.8 million and $34.3 million at December 31, 2021 and 2020, respectively.
(2) Includes one legacy CRE loan, underwritten prior to 2010, with an amortized cost of $11.5 million and $11.4 million at December 31, 2021 and 2020, respectively, that we intend to hold until payoff. The loan paid off in January 2022.
(3) Includes real estate related right of use assets of $5.5 million and $5.6 million, intangible assets of $3.9 million and $3.3 million and a lease liability of $3.1 million at December 31, 2021 and 2020, respectively. Additionally, at December 31, 2021, includes $169,000 of other liabilities.
(4) There were no stated rates associated with these investments.
(5) Classified as other assets on the consolidated balance sheet.

CRE loans. During the twelve months ended December 31, 2021, we originated $1.5 billion of floating-rate CRE loan whole loan commitments (of which $162.7 million was unfunded loan commitments), funded $29.8 million of previously unfunded loan commitments and received $1.0 billion in proceeds from loan payoffs and paydowns. In January 2022, we received an additional $14.9 million of proceeds from the collection of our principal paydown receivable balance.

(Back to Index)

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

Description	Quantity	Principal	Unamortized (Discount) Premium, net (1)	Amortized Cost	Allowance for Credit Losses	Carrying Value	Contractual Interest Rates (2)	Maturity Dates (3)(4)
At December 31, 2021:								
CRE loans held for investment:								
Whole loans (5)(6)	93	$ 1,891,795	$ (13,944)	$ 1,877,851	$ (8,550)	$ 1,869,301	1M BR plus 2.70% to 1M BR plus 8.50%	January 2022 to September 2025
Mezzanine loan (5)	1	4,700	—	4,700	(255)	4,445	10.00%	June 2028
Total CRE loans held for investment		$ 1,896,495	$ (13,944)	$ 1,882,551	$ (8,805)	$ 1,873,746		
At December 31, 2020:								
CRE loans held for investment:								
Whole loans (5)(6)	95	$ 1,515,722	$ (6,144)	$ 1,509,578	$ (32,283)	$ 1,477,295	1M BR plus 2.70% to 1M BR plus 9.00%	January 2021 to January 2024
Mezzanine loan (5)	1	4,700	—	4,700	(301)	4,399	10.00%	June 2028
Preferred equity investments (7)	2	27,650	64	27,714	(1,726)	25,988	11.00% to 11.50%	June 2022 to April 2023
Total CRE loans held for investment		$ 1,548,072	$ (6,080)	$ 1,541,992	$ (34,310)	$ 1,507,682		

(1) Amounts include unamortized loan origination fees of $13.6 million and $5.7 million and deferred amendment fees of $307,000 and $495,000 at December 31, 2021 and 2020, respectively. Additionally, the amounts include unamortized loan acquisition costs of $7,300 and $118,000 at December 31, 2021 and 2020, respectively.

(2) Our whole loan portfolio of $1.9 billion and $1.5 billion had a weighted-average benchmark rate ("BR") floor of 0.75% and 1.88% at December 31, 2021 and 2020, respectively. Benchmark rates comprise one-month LIBOR or one-month Term SOFR. At December 31, 2021, all but one of our floating-rate whole loans had one-month benchmark floors. At December 31, 2020, all whole loans had one-month LIBOR floors.

(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 $27.9 million and $39.7 million, in maturity default at December 31, 2021 and 2020, respectively.

(5) Substantially all loans are pledged as collateral under various borrowings at December 31, 2021 and 2020.

(6) CRE whole loans had $157.6 million and $67.2 million in unfunded loan commitments at December 31, 2021 and 2020, respectively. These unfunded loan commitments are advanced as the borrowers formally request additional funding, as permitted under the loan agreement, and any necessary approvals have been obtained.

(7) The interest rate on our preferred equity investments paid at 8.00%. The remaining interest was deferred until payoff, which occurred in March 2021 and April 2021.

At December 31, 2021, approximately 28.4%, 18.4% and 15.2% of our CRE loan portfolio was concentrated in the Southeast, Southwest and Mid-Atlantic regions, respectively, based on carrying value, as defined by the NCREIF. At December 31, 2020, approximately 21.4%, 17.9% and 16.1% of our CRE loan portfolio was concentrated in the Mountain, Southwest and Southeast 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.

CMBS. Beginning in the first quarter of 2020, the COVID-19 pandemic produced material and previously unforeseeable liquidity shocks to credit markets. As a result of the receipt of default notices with respect to some of our CMBS and the uncertainty caused by the COVID-19 pandemic, we disposed of substantially all of our CMBS portfolio as of April 2020. In March 2021, we sold our remaining two CMBS securities with an amortized cost and fair value of $2.1 million for cash proceeds of $3.0 million.

Investments in unconsolidated entities. Our investments in unconsolidated entities at December 31, 2021 and 2020 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 years ended December 31, 2021 and 2020, we recorded dividends from the investments in RCT I's and RCT II's common shares, reported in other revenue on the consolidated statement of operations, of $65,000 and $76,000, respectively.

Financing Receivables

The following tables show the activity in the allowance for credit losses for the years ended December 31, 2021 and 2020 (in thousands):

	Years Ended December 31,	
	2021	2020
	CRE Loans	CRE Loans
Allowance for credit losses:		
Allowance for credit losses at beginning of year	$ 34,310	$ 1,460
Adoption of the new accounting guidance	—	3,032
(Reversal of) provision for credit losses	(21,262)	30,815
Charge offs	(4,243)	(997)
Allowance for credit losses at end of year	$ 8,805	$ 34,310

During the year ended December 31, 2020, higher expected unemployment and increased volatility in CRE asset pricing and liquidity as a result of the COVID-19 pandemic significantly impacted assumptions in our CECL estimates and resulted in a net provision for credit losses of $30.8 million. However, the discovery and distribution of vaccines and other treatments for COVID-19 led to a recovery of the global economy and markets worldwide during the year ended December 31, 2021. The ensuing improvements in expected unemployment and macroeconomic conditions, as well as improved collateral operating performance, resulted in a net reversal of expected credit losses of $21.3 million during the year ended December 31, 2021.

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 December 31, 2021 and 2020, $2.3 million and $1.9 million, respectively, of our allowance for credit losses resulted from collateral-dependent loans that were individually evaluated for credit losses, details of which follow:

During the year ended December 31, 2021, we individually evaluated the following loans:

- An office loan in the East North Central region with a $19.9 million principal balance. We recorded a $2.3 million CECL allowance in the third quarter of 2021 to reflect the as-is appraised value of the property of $17.6 million. Upon receipt of the property in full satisfaction of the loan in the fourth quarter of 2021, we charged off the $2.3 million CECL allowance and recorded the property as a property held for sale on our consolidated balance sheet at its fair value of $17.6 million.
- A hotel loan in the Northeast region with a $9.3 million principal balance. We recorded a $1.8 million CECL allowance in the third quarter of 2021 that reflected our estimate of fair value less costs of sale of $7.5 million at September 30, 2021. Upon sale of the loan in November 2021, we received proceeds of $7.6 million, net of costs of sale, and charged off the remaining $1.7 million CECL allowance.
- A retail loan in the Pacific region with an $11.5 million principal balance. At December 31, 2021, we had a recorded $2.3 million CECL allowance that reflected the loss taken on the loan as a result of a discounted payoff received on the loan in January 2022 in full satisfaction of the loan.
- A hotel loan in the East North Central region with an $8.4 million principal balance. We received payment in full on this loan in January 2022; and, as such, there was no CECL allowance recorded at December 31, 2021.
- A hotel in the Northeast region with a $14.0 million principal balance. The hotel has an as-is appraised value in excess of its principal balance, and, as such, had no CECL allowance at December 31, 2021.

During the year ended December 31, 2020, we individually evaluated a hotel loan in the Northeast region with a $37.9 million principal balance for which foreclosure was deemed probable. In November 2020, we received the deed-in-lieu of foreclosure on the property. In conjunction with the receipt of the deed, we obtained an updated appraisal that indicated an as-is appraised value of $39.8 million and consequently reversed the then-outstanding $8.0 million CECL allowance and recorded the property as an investment in real estate on the consolidated balance sheet at its appraised value.

Also at December 31, 2020, we individually evaluated a loan on an office property in the North East Central region with a $19.9 million principal balance and a hotel loan in the Northeast region with a $14.0 million par balance for which foreclosure was determined to be probable. We determined that these loans had CECL allowances of $1.9 million and $0, respectively, calculated as the difference between the as-is appraised values and the loans' amortized costs.

(Back to Index)

In June 2020, we sold one CRE whole loan note for $17.4 million, which resulted in a realized loss of $1.0 million recorded in the provision for credit losses during the year ended December 31, 2020.

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

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

For the purpose of calculating the quarterly provision for credit losses under CECL, we pool CRE loans based on the underlying collateral property type and utilize a probability of default and loss given default methodology for approximately one year after which we immediately revert to a historical mean loss ratio. In order to calculate the historical mean loss ratio, we utilize our full, 15 year underwriting history in the determination of historical losses, along with the market loss history from a selected population from an engaged third-party provider's database that were similar to our loan types, loan sizes, durations, interest rate structure and general LTV profiles.

(Back to Index)

(Back to Index)

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, 2021:						
Whole loans, floating-rate	$ —	$ 1,456,330	273,078	$ 123,762	$ 24,681	$ 1,877,851
Mezzanine loan	—	—	—	4,700	—	4,700
Total	$ —	$ 1,456,330	$ 273,078	$ 128,462	$ 24,681	$ 1,882,551
At December 31, 2020:						
Whole loans, floating-rate	$ —	$ 611,838	$ 599,208	$ 262,398	$ 36,134	$ 1,509,578
Mezzanine loan	—	—	4,700	—	—	4,700
Preferred equity investments	—	—	6,452	21,262	—	27,714
Total	$ —	$ 611,838	$ 610,360	$ 283,660	$ 36,134	$ 1,541,992

(1) The total amortized cost of CRE loans excluded accrued interest receivable of $6.1 million and $7.3 million at December 31, 2021 and 2020, respectively.

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

	2021	2020	2019	2018	2017	Prior	Total (1)
At December 31, 2021:							
Whole loans, floating-rate: (2)							
Rating 2	$ 1,230,810	$ 150,513	$ 55,510	$ 19,497	$ —	$ —	$ 1,456,330
Rating 3	33,781	24,604	136,305	60,888	—	17,500	273,078
Rating 4	—	—	28,446	86,096	—	9,220	123,762
Rating 5	—	—	22,385	—	—	2,296	24,681
Total whole loans, floating-rate	1,264,591	175,117	242,646	166,481	—	29,016	1,877,851
Mezzanine loan (rating 4)	—	—	—	4,700	—	—	4,700
Total	$ 1,264,591	$ 175,117	$ 242,646	$ 171,181	$ —	$ 29,016	$ 1,882,551

	2020	2019	2018	2017	2016	Prior	Total (1)
At December 31, 2020:							
Whole loans, floating-rate: (2)							
Rating 2	$ 221,364	$ 279,077	$ 111,397	$ —	$ —	$ —	$ 611,838
Rating 3	43,579	246,073	246,944	45,142	—	17,470	599,208
Rating 4	—	77,495	129,536	46,220	—	9,147	262,398
Rating 5	—	13,938	—	19,900	—	2,296	36,134
Total whole loans, floating-rate	264,943	616,583	487,877	111,262	—	28,913	1,509,578
Mezzanine loan (rating 3)	—	—	4,700	—	—	—	4,700
Preferred equity investments:							
Rating 3	—	6,452	—	—	—	—	6,452
Rating 4	—	—	21,262	—	—	—	21,262
Total preferred equity investments	—	6,452	21,262	—	—	—	27,714
Total	$ 264,943	$ 623,035	$ 513,839	$ 111,262	$ —	$ 28,913	$ 1,541,992

(1) The total amortized cost of CRE loans excluded accrued interest receivable of $6.1 million and $7.3 million at December 31, 2021 and 2020, respectively.
(2) Acquired CRE whole loans are grouped within each loan’s year of issuance.

At December 31, 2021 and 2020, we had one mezzanine loan included in assets held for sale that had no carrying value.

(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, 2021:							
Whole loans, floating-rate	$ —	$ —	$ 19,916	$ 19,916	$ 1,857,935	$ 1,877,851	$ 19,916
Mezzanine loan	—	—	—	—	4,700	4,700	—
Total	$ —	$ —	$ 19,916	$ 19,916	$ 1,862,635	$ 1,882,551	$ 19,916
At December 31, 2020:							
Whole loans, floating-rate	$ —	$ —	$ 11,443	$ 11,443	$ 1,498,135	$ 1,509,578	$ 11,443
Mezzanine loan	—	—	—	—	4,700	4,700	—
Preferred equity investments	—	—	—	—	27,714	27,714	—
Total	$ —	$ —	$ 11,443	$ 11,443	$ 1,530,549	$ 1,541,992	$ 11,443

(1) During the years ended December 31, 2021 and 2020, we recognized interest income of $1.2 million and $1.3 million, respectively, on two loans with principal payments past due greater than 90 days at December 31, 2021.
(2) Includes one whole loan and two whole loans with total amortized costs of $8.0 million and $28.3 million, respectively, in maturity default at December 31, 2021 and 2020, respectively.
(3) The total amortized cost of CRE loans excluded accrued interest receivable of $6.1 million and $7.3 million at December 31, 2021 and 2020, respectively.

At December 31, 2021 and 2020, we had three whole loans in maturity default, with total amortized costs of $27.9 million and $39.7 million, respectively. During the year ended December 31, 2021, we received the deed-in-lieu of foreclosure on a property that collateralized a whole loan that was in maturity default at December 31, 2020 with an amortized cost of $19.9 million.

At December 31, 2021, three whole loans, including two loans that had maturity defaults, with a total amortized cost of $30.4 million were past due on interest payments.

In January 2022, two whole loans in maturity default at December 31, 2021 and 2020, including one loan that was past due on interest payments at December 31, 2021, paid off principal of $17.6 million. The payoff on one loan was the result of a discounted payoff and resulted in a realized loss of $2.3 million for which a CECL allowance was established as of December 31, 2021.

Troubled-Debt Restructurings ("TDRs")

There were no TDRs during the year ended December 31, 2021. During the year ended December 31, 2020, two loans underwent TDRs. In November 2020 and October 2021, we received the properties collateralizing both loans that underwent TDRs during the year ended December 31, 2020 through the receipt of the deeds-in-lieu of foreclosure on the properties.

During the year ended December 31, 2021, we entered into 14 agreements that extended loans by a weighted average period of 11 months and, in certain cases, modified certain other loan terms. Two formerly forborne borrowers and one borrower performing in accordance with a forbearance agreement were in maturity default at December 31, 2021. No loan modifications during the year ended December 31, 2021 resulted in TDRs.

Restricted Cash

At December 31, 2021, we had restricted cash of $248.4 million, which consisted of $248.1 million held within our seven consolidated securitization entities and $360,000 held in various reserve accounts. At December 31, 2020, we had restricted cash of $38.4 million, which consisted of $38.4 million held within our six consolidated securitization entities and $33,000 held in various reserve accounts. The increase of $210.0 million was primarily attributable to the close of ACR 2021-FL1 and ACR 2021-FL2, executed in May and December 2021, respectively, which hold reinvestment capabilities at the securitization level. ACR 2021-FL1 and ACR 2021-FL2 held $138.1 million and $99.0 million, respectively, in restricted cash at December 31, 2021. We expect to utilize a significant portion of the restricted cash at ACR 2021-FL1 and ACR 2021-FL2 to acquire loans or future funding participations for the securitizations' portfolios, see "Liquidity and Capital Resources."

(Back to Index)

Accrued Interest Receivable

The following table summarizes our accrued interest receivable at December 31, 2021 and 2020 (in thousands):

	December 31, 2021	December 31, 2020	Net Change
Accrued interest receivable from loans	$ 6,106	$ 7,310	$ (1,204)
Accrued interest receivable from securities	—	56	(56)
Accrued interest receivable from promissory note, escrow, sweep and reserve accounts	6	6	—
Total	$ 6,112	$ 7,372	$ (1,260)

The $1.3 million decrease in accrued interest receivable was primarily attributable to the decrease of $1.2 million in accrued interest receivable from loans, which was primarily attributable to a decline in the weighted average benchmark floors on our CRE whole loans, and the decrease of $56,000 in accrued interest receivable from securities, which was attributable to the sale of our remaining CMBS during the first quarter of 2021. In January 2022, we collected substantially all of the accrued interest receivable from loans.

Other Assets

The following table summarizes our other assets at December 31, 2021 and 2020 (in thousands):

	December 31, 2021	December 31, 2020	Net Change
Tax receivables and prepaid taxes	$ 2,120	$ 2,244	$ (124)
Other receivables	1,573	804	769
Other prepaid expenses	1,367	568	799
Fixed assets - non real estate	401	177	224
Unsettled trades receivable	—	181	(181)
Other assets, miscellaneous	21	—	21
CRE fixed-rate whole loans, held for sale	—	4,809	(4,809)
Total	$ 5,482	$ 8,783	$ (3,301)

The decrease of $3.3 million in other assets was primarily attributable to the sale of two fixed-rate CRE whole loans during the year ended December 31, 2021 for cash proceeds of $4.8 million. The decrease in other assets was offset by a $769,000 increase in other receivables in connection with accounts receivable on the operations of a hotel property acquired in November 2020 and two office properties acquired in October 2021 and a $799,000 increase in other prepaid expenses, resulting from the prepayment of property taxes on the aforementioned properties.

Deferred Tax Assets

At December 31, 2021 and 2020, our net deferred tax asset was zero, resulting from a full valuation allowance of $21.4 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, a significant market risk to us was interest rate risk. We had sought to manage the extent to which net income changes as a result of fluctuation of changes in interest rates by matching adjustable-rate assets with variable-rate borrowings. 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, 2021 and 2020, we had a loss of $8.5 million and $10.4 million, respectively, recorded in accumulated other comprehensive (loss) income, which will be amortized into earnings over the remaining life of the debt. During the years ended December 31, 2021 and 2020, we recorded amortization expense, reported in interest expense on the consolidated statements of operations, of $1.9 million and $1.3 million, respectively.

(Back to Index)

At December 31, 2021 and 2020, we had an unrealized gain of $347,000 and $438,000, respectively, attributable to two terminated interest rate swaps, in accumulated other comprehensive (loss) income on the consolidated balance sheets, to be accreted into earnings over the remaining life of the debt. During years ended December 31, 2021 and 2020, we recorded accretion income, reported in interest expense on the consolidated statements of operations, of $91,000 and $92,000, respectively, to accrete the accumulated other comprehensive income on the terminated swap agreements.

We were exposed to market pricing risks in connection with our fixed-rate CRE whole loans. The increase or decrease of market interest rates caused the fair value of the fixed-rate CRE whole loans to decrease or increase. In order to mitigate this market price risk, we entered into interest rate swap contracts in which we paid a fixed rate of interest in exchange for a variable rate benchmark, usually three-month LIBOR. In December 2020, these interest rate swap contracts were terminated.

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

	Derivatives	
Year Ended December 31, 2021	Consolidated Statements of Operations Location	Realized and Unrealized Gain (Loss) (1)
Interest rate swap contracts, hedging	Interest expense	$ (1,851)

	Derivatives	
Year Ended December 31, 2020	Consolidated Statements of Operations Location	Realized and Unrealized Gain (Loss) (1)
Interest rate swap contracts	Other (expense) income	$ (10)
Interest rate swap contracts, hedging	Interest expense	$ (1,562)

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

Senior Secured Financing Facility, Term Warehouse Financing Facilities and Repurchase Agreements

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

	December 31, 2021				December 31, 2020			
	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)	$ (3,432)	$ 170,791	9	5.75%	$ 29,314	$ 239,385	17	5.75%
CRE - Term Warehouse Financing Facilities (2)								
JPMorgan Chase Bank, N.A. (3)	18,875	37,167	3	2.85%	12,258	20,000	1	2.66%
Morgan Stanley Mortgage Capital Holdings LLC (4)	47,896	64,860	3	2.03%	—	—	—	—%
Total	$ 63,339	$ 272,818			$ 41,572	$ 259,385		

(1) Includes $3.4 million and $4.0 million of deferred debt issuance costs at December 31, 2021 and 2020, respectively. There was no outstanding balance at December 31, 2021.
(2) Outstanding borrowings includes accrued interest payable.
(3) Includes $1.8 million and $1.3 million of deferred debt issuance costs at December 31, 2021 and 2020, respectively, which includes $356,000 and $678,000 of deferred debt issuance costs at December 31, 2020 from other term warehouse financing facilities with no balance.
(4) Includes $2.2 million of deferred debt issuance costs at December 31, 2021.

We were in compliance with all covenants in the respective agreements at December 31, 2021 and 2020.

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 will be used to finance our core CRE lending business. The MassMutual Facility has an interest rate of 5.75% per annum payable monthly and matures on July 31, 2027. We paid a commitment fee as well as other reasonable closing costs. The loans under the MassMutual Facility are available for drawing during the first two years of the MassMutual Facility (the "Availability Period"). During the Availability Period, an unused commitment fee of 0.50% per annum (payable monthly) on unused commitments under the MassMutual Loan Agreement is payable for each day on which less than 75% of the total commitment is drawn.

Pursuant to the MassMutual 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.

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.

In May 2021, the MassMutual Loan Agreement was amended pursuant to which (i) Mass Mutual consented to Borrower's formation of certain subsidiaries to hold real estate and (ii) such subsidiaries agreed to entered into guaranty agreements in favor of the secured parties under the Mass Mutual Loan Agreement.

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, 2021, RSO6 and RSO7 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, RSO8 and us, and previously RSO6 and RSO7, 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.

The MassMutual 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.

CRE - Term Warehouse Financing Facilities

In February 2012, our indirect wholly-owned subsidiary 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 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. As of December 31, 2021, there have been two amendments on the Barclays Facility, including the last amendment which extended the revolving period of the facility to October 2022 and modified the guaranty to limit financial covenants to be applicable when there are outstanding transactions. As of December 31, 2021, the Barclays Facility has a maximum facility amount of $250.0 million, charges interest of one-month LIBOR plus a spread between 2.00% and 2.50% and matures in October 2022.

In October 2018, an indirect wholly-owned subsidiary 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, 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. As of December 31, 2021, there have been three amendments on the JPMorgan Chase Facility. The JPMorgan Chase Facility has a maximum facility amount of $250.0 million, charges interest of one-month LIBOR plus a spread between 2.00% and 2.25% and matures in October 2024.

In November 2021, our indirect, wholly-owned subsidiary entered into a $250.0 million Master Repurchase and Securities Contract Agreement with Morgan Stanley, to be used to finance our 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. The financing provided by the Morgan Stanley Facility matures in November 2022, with two one-year automatic extensions unless notice of intent not to extend the facility is provided. We also have the right to request an extension for an additional one-year period after the second automatic extension to the extent it is utilized.

CMBS - Short-Term Repurchase Agreements

The COVID-19 pandemic produced material and previously unforeseeable liquidity shocks in credit markets causing significant declines in the pricing of our investment securities available-for-sale that were collateral for our CMBS short-term repurchase facilities. As a result, in March 2020, we received written notices from RBC Capital Markets, LLC, RBC (Barbados) Trading Bank Corporation and Deutsche Bank Securities Inc. alleging that events of default had occurred under our associated repurchase agreements as a result of not meeting certain margin calls. These notices were subsequently either withdrawn or rescinded. We had no outstanding balances on our CMBS - short-term repurchase agreements at December 31, 2021.

Securitizations

XAN 2018-RSO6

In June 2018, we closed XAN 2018-RSO6, a $514.2 million CRE securitization transaction that provided financing for transitional CRE loans. In September 2020, we executed the optional redemption of XAN 2018-RSO6, and all of the outstanding senior notes were paid off from the sales proceeds of certain of the securitization’s assets.

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. XAN 2020-RSO8 issued a total of $435.7 million of non-recourse, floating-rate notes at par, of which ACRES RF purchased 100% of the Class D and Class E notes. Our investments in the Class D and Class E notes were financed by CMBS short-term repurchase agreements and were sold in conjunction with the disposition of our CMBS portfolio in April 2020. Additionally, ACRES RF purchased 100% of the Class F and Class G notes and a subsidiary of ACRES RF purchased 100% of the outstanding preference shares. The notes purchased by ACRES RF are subordinated in right of payment to all other senior notes issued by XAN 2020-RSO8, but are senior in right of payment to the preference shares. The preference shares are subordinated in right of payment to all other securities issued by XAN 2020-RSO8. All of the notes issued mature in March 2035, although we have the right to call the notes beginning on the payment date in March 2022 and thereafter.

In June 2021, the benchmark rate on XAN 2020-RSO8’s senior notes, previously one-month LIBOR, was replaced with Compounded SOFR plus a benchmark adjustment.

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. XAN 2020-RSO9 issued a total of $245.8 million of non-recourse, floating-rate notes at par. Additionally, ACRES RF retained 100% of the Class E and Class F notes and a subsidiary of ACRES RF retained 100% of the outstanding preference shares. The notes purchased by ACRES RF are subordinated in right of payment to all other senior notes issued by XAN 2020-RSO9, but are senior in right of payment to the preference shares. The preference shares are subordinated in right of payment to all other securities issued by XAN 2020-RSO9. All of the notes issued mature in April 2037, although we have the right to call the notes beginning on the earlier of the payment date in September 2022 and thereafter or the payment date on which the aggregate outstanding amount of the Class A notes has been reduced to zero.

In June 2021, the benchmark rate on XAN 2020-RSO9's senior notes, previously one-month LIBOR, was replaced with Compounded SOFR plus a benchmark adjustment. 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 includes a reinvestment period, which ends in May 2023, that allows 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.

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%.

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.

ACR 2021-FL2

In December 2021, we closed ACR 2021-FL2, a CRE debt securitization transaction that can finance up to $700.0 million of CRE loans. ACR 2021-FL2 includes a reinvestment period, which ends in December 2023, that allows it to acquire CRE loans for reinvestment into the securitization using uninvested principal proceeds. The reinvestment period includes a 180-day ramp-up acquisition period during which CRE loans for reinvestment into the securitization can be acquired using proceeds from the issuance of the securitization. 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.

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%.

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, 2021, we retain equity in the following securitizations (in thousands, except amounts in footnotes):

	Closing Date	Maturity Date	Permitted Funded Companion Participation Acquisition Period End (1)	Reinvestment Period End (2)	Total Note Paydowns from Closing Date through December 31, 2021
XAN 2020-RSO8	March 2020	March 2035	March 2023	N/A	$ 293,368
XAN 2020-RSO9 (3)	September 2020	April 2037	N/A	N/A	$ 150,980
ACR 2021-FL1	May 2021	June 2036	N/A	May 2023	$ —
ACR 2021-FL2 (4)	December 2021	January 2037	N/A	December 2023	$ —

(1) The permitted funded companion participation period is the period in which principal repayments can be utilized to purchase loans held outside of the respective securitization that represent the funded commitments of existing collateral in the respective securitization that were not funded as of the date the respective securitization was closed.
(2) 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.
(3) A designated principal reinvestment period is excluded from the terms of XAN 2020-RSO9's indenture. XAN 2020-RSO9 includes a future advances reserve account of $7.4 million at December 31, 2021 to fund unfunded commitments, which is reported in restricted cash on the consolidated balance sheet.
(4) Includes a 180-day ramp up acquisition period that allows the securitization to acquire CRE loans using unused proceeds of $98.9 million at December 31, 2021 from the issuance of the non-recourse floating-rate notes.

Corporate Debt

4.50% Convertible Senior Notes and 8.00% Convertible Senior Notes

We issued $100.0 million aggregate principal of our 8.00% convertible senior notes due 2020 ("8.00% Convertible Senior Notes") and $143.8 million aggregate principal of our 4.50% Convertible Senior Notes in January 2015 and August 2017, respectively (together, the "Convertible Senior Notes"). In conjunction with the issuance of our 4.50% Convertible Senior Notes, we extinguished $78.8 million aggregate principal of our 8.00% Convertible Senior Notes. In January 2020, the remaining 8.00% Convertible Senior Notes were paid off upon maturity.

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. In February 2022, we repurchased $39.8 million of our 4.50% Convertible Senior Notes.

The following table summarizes the Convertible Senior Notes at December 31, 2021 (dollars in thousands, except the conversion prices and amounts in the footnotes):

	Principal Outstanding	Borrowing Rate	Effective Rate (1)(2)	Conversion Rate (3)(4)	Conversion Price (4)	Maturity Date
4.50% Convertible Senior Notes	$ 88,014	4.50%	7.43%	27.7222	$ 36.06	August 15, 2022

(1) Includes the amortization of the market discounts and deferred debt issuance costs, if any, for the 4.50% Convertible Senior Notes recorded in interest expense on the consolidated statements of operations.
(2) During the years ended December 31, 2021 and 2020 the effective interest rate for the 4.50% Convertible Senior Notes was 7.43%.
(3) Represents the number of shares of common stock per $1,000 principal amount of the 4.50% Convertible Senior Notes' principal outstanding, subject to adjustment as provided in the Third Supplemental Indenture (the "4.50% Convertible Senior Notes Indenture").
(4) The conversion rate and conversion price of the 4.50% Convertible Senior Notes at December 31, 2021 are adjusted to reflect quarterly cash dividends in excess of a $0.30 dividend threshold, as defined in the 4.50% Convertible Senior Notes Indenture.

The 4.50% Convertible Senior Notes are convertible at the option of the holder at any time up until one business day before the maturity date and may be settled in cash, our common stock or a combination of cash and our common stock, at our election. The closing price of our common stock was $12.47 on December 31, 2021, which did not exceed the conversion price of our 4.50% Convertible Senior Notes at December 31, 2021.

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, 2021 and 2020. The interest rates for RCT I and RCT II, at December 31, 2021, were 4.17% and 4.08%, respectively. The interest rates for RCT I and RCT II, at December 31, 2020, were 4.19% and 4.16%, 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.

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, 2021, 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 may 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 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 may elect 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 approximately $329,000 and (iii) a make-whole amount of approximately $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 may elect to issue to Oaktree and MassMutual up to $75.0 million of principal of additional notes. At any time and from time to time prior to July 31, 2022, we may elect to issue to Oaktree and MassMutual warrants to purchase an additional 699,992 shares of the common stock for a purchase price equal to the principal amount of the 12.00% Senior Unsecured Notes being issued. The warrants are immediately exercisable on issuance and expire seven years from the issuance date. The warrants can be exercised with cash or as a net exercise.

Stockholders' Equity

Total stockholders' equity at December 31, 2021 was $448.2 million and gave effect to $8.1 million of net unrealized losses on our terminated cash flow hedges, shown as a component of accumulated other comprehensive loss. Stockholders' equity at December 31, 2020 was $334.4 million and gave effect to $10.0 million of unrealized gains on our terminated cash flow hedges shown as a component of accumulated other comprehensive loss. The increase in stockholders' equity during the year ended December 31, 2021 was primarily attributable to proceeds of $110.4 million pertaining to the Series D Preferred Stock offering, net of offering costs of $4.6 million, as well as net proceeds of approximately $194,000 from the issuance of Series D Preferred Stock under the Preferred ATM Agreement with JonesTrading and an increase in retained earnings in connection with an increase in net income offset by common stock repurchases.

Balance Sheet - Book Value Reconciliation

The following table rolls forward our common stock book value for the three months and year ended December 31, 2021 (in thousands, except per share data and amounts in footnotes):

	Three Months Ended December 31, 2021		Year Ended December 31, 2021	
	Total Amount	Per Share Amount	Total Amount	Per Share Amount
Common stock book value at beginning of period (1)(2)	$ 216,765	$ 22.68	$ 218,427	$ 20.57
Net income (loss) allocable to common shares (3)	7,302	0.79	18,036	1.94
Change in other comprehensive income on derivatives	467	0.05	1,851	0.20
Repurchase of common stock (4)	(3,676)	0.27	(18,401)	1.00
Impact to equity of share-based compensation	738	0.08	1,683	0.16
Total net increase	4,831	1.19	3,169	3.30
Common stock book value at end of period (1)(5)	$ 221,596	$ 23.87	$ 221,596	$ 23.87

(1) Per share calculations and share amounts in the above table and the following tabular footnotes retrospectively reflect the three-for-one reverse stock split effective February 16, 2021.
(2) Per share calculations exclude unvested restricted stock, as disclosed on the consolidated balance sheet, of 333,329, 333,329 and 11,610 shares at December 31, 2021, September 30, 2021 and December 31, 2020, respectively, and include warrants to purchase up to 466,661 shares of common stock at December 31, 2021, September 30, 2021 and December 31, 2020. The denominators for the calculation were 9,282,411, 9,556,940 and 10,617,340 at December 31, 2021, September 30, 2021, and December 31, 2020, respectively.
(3) The per share amounts are calculated with the denominator referenced in footnote (2) at December 31, 2021. We calculated net income per common share-diluted of $0.76 and $1.85 using the weighted average diluted shares outstanding during the three and twelve months ended December 31, 2021, respectively.
(4) Our Board authorized and approved the continued use of the share repurchase program to repurchase up to $20.0 million of the currently outstanding common stock through June 30, 2021 or until the authorized $20.0 million is fully deployed. We completed the share repurchase program in July 2021. 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. We purchased 274,529 shares for $3.7 million through December 31, 2021.
(5) We calculated common stock book value as total stockholders' equity of $448.2 million less preferred stock equity of $226.6 million at December 31, 2021.

Management Agreement Equity

Our monthly base management fee, as defined in our Management Agreement, is equal to the greater of (i) 1/12th of the amount of our equity multiplied by 1.50% or (ii) $442,000 through July 31, 2022 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, 2021:	
Proceeds from capital stock issuances, net (1)	$ 1,330,411
Retained earnings, net (2)	(653,173)
Payments for repurchases of capital stock	(228,029)
Total	$ 449,209

(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.

Core Earnings

Core Earnings is a non-GAAP financial measure that we use to evaluate our operating performance.

Core Earnings exclude 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. Core Earnings exclude income (loss) from all non-core assets such as commercial finance, middle market lending, residential mortgage lending, certain legacy CRE assets and other non-CRE assets designated as assets held for sale at the initial measurement date of December 31, 2016.

(Back to Index)

Core Earnings, 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, [1] (viii) real estate depreciation and amortization, (ix) foreign currency gains or losses and (x) income or loss from discontinued operations. Core Earnings 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 Core Earnings that exclude incentive compensation payable to our Manager, we include incentive compensation payable to our Manager in calculating Core Earnings for reporting purposes.

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

	Years Ended December 31,			
	2021	Per Share Data	2020	Per Share Data
Net income (loss) allocable to common shares - GAAP	$ 18,036	$ 1.85	$ (208,063)	$ (19.33)
Reconciling items from continuing operations:				
Non-cash equity compensation expense	1,722	0.18	3,136	0.29
Non-cash (reversal of) provision for CRE credit losses	(21,262)	(2.18)	29,793	2.77
Realized loss on core activities (1)(2)	(6,988)	(0.72)	—	—
Unrealized (gain) loss on core activities (1)(3)	(878)	(0.09)	4,552	0.42
Real estate depreciation and amortization	2,860	0.29	169	0.02
Non-cash amortization of discounts or premiums associated with borrowings	6,937	0.71	3,039	0.28
Net income from non-core assets(4)(5)	(247)	(0.03)	(6)	—
Reconciling items from CRE assets:				
Net interest income on legacy CRE assets	(637)	(0.06)	(675)	(0.06)
Fair value and other adjustments on legacy CRE assets	—	—	8,768	0.81
Core Earnings allocable to common shares	$ (457)	$ (0.05)	$ (159,287)	$ (14.80)
Weighted average common shares - diluted on Core Earnings allocable to common shares	9,736		10,763	
Core Earnings per common share - diluted	$ (0.05)		$ (14.80)	

(1) In March 2021, the CMBS portfolio was sold for $3.0 million, representing a total realized loss of $5.2 million that was included in Core Earnings during the year ended December 31, 2021. Unrealized (gain) loss on core activities includes the unrealized gains and losses on the residual CMBS portfolio, which were previously excluded from Core Earnings.
(2) In November 2021, one CRE loan was sold for proceeds, net of costs, of $7.6 million, representing a total realized loss of $1.7 million that was included in Core Earnings during the year ended December 31, 2021.
(3) In November 2020, we received property through the receipt of the deed-in-lieu of foreclosure on one CRE whole loan. At the time of receipt, the property had an appraised value of $39.8 million, which was above our loan basis, resulting in a gain on conversion of $1.6 million.
(4) 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.
(5) Loss from discontinued operations, net of tax, reported during the year ended December 31, 2020 was reclassified into net income from non-core assets to conform to the 2021 presentation.

Core Earnings in accordance with the Management Agreement, which excludes incentive compensation payable, was $2.1 million, or $0.22 per common share outstanding, for the three months ended December 31, 2021. There was no incentive compensation payable for the three months ended December 31, 2021.

Incentive Compensation Hurdle

In accordance with the Management Agreement, incentive compensation is earned by our Manager when our Core Earnings per common share (as defined in the Management Agreement) for such quarter exceeds 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”).

(Back to Index)

For the three months ended December 31, 2021, our Core Earnings, as defined in the Management Agreement, did not exceed the Incentive Compensation Hurdle.

Commencing with the quarter ending December 31, 2022, incentive compensation will be calculated and payable in arrears in an amount, not less than zero, equal to:

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

(ii) *for each of the second, third and fourth full calendar quarters following the calendar quarter ending December 31, 2022*, the excess of (1) the product of (a) 20% and (b) the excess of (i) our Core Earnings (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 Core Earnings (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 Core Earnings (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.

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 and our ability to maintain and/or obtain additional debt financing and equity capital together with the funds referred to below.

During the year ended December 31, 2021, our principal sources of liquidity were: (i) gross proceeds of $862.2 million from our CRE - term warehouse financing facilities, (ii) proceeds of $326.8 million from CRE whole loan purchases by our managed CRE securitizations ACR 2021-FL1 and ACR 2021-FL2, (iii) net proceeds of $173.4 million from repayments on our CRE portfolio, (iv) net proceeds of $146.7 million from the issuance of the 5.75% Senior Unsecured Notes, (v) net proceeds of $110.6 million from the completion of the Series D Preferred Stock offering and issuances, (vi) net proceeds of $43.3 million at the close of ACR 2021-FL1, (vii) proceeds of $17.9 million from our CRE securitizations that used principal paydowns to purchase CRE loan future funding commitments, and (viii) combined proceeds of $15.4 million from the sale of a CRE whole loan, investment securities available-for-sale and fixed-rate CRE whole loans. These sources of liquidity were offset by our deployments in CRE whole loans and real estate investments, the partial repurchase and extinguishment of our 4.50% Convertible Senior Notes, the redemption of our 12.00% Senior Unsecured Notes, repurchases of common stock, distributions on our preferred stock and ongoing operating expenses and substantially resulted in the $35.5 million of unrestricted cash we held at December 31, 2021.

In October 2021, we entered into the Preferred ATM Agreement with our Manager and 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.

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 January 2022, we entered into an amendment with Oaktree and MassMutual whereby we can issue up to $75.0 million of principal on 12.00% Senior Unsecured Notes through July 2022.

The outstanding balance of our loan to ACRES Capital Corp., the parent of our Manager, was $11.6 million and $11.9 million at December 31, 2021 and 2020, 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.

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

1. *Senior Secured Financing Facility:* Our senior secured financing facility allows us to borrow against loans that we own. During an initial revolving period, additional loans may be financed on the senior secured financing facility. After the revolving period, the senior secured financing facility transitions to a term period over the remaining life of the facility. We pay a fixed rate of interest on the senior secured financing facility as well as an unfunded commitment fee when the facility has borrowings below a certain threshold as a percentage of the total commitment.

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.

The issuances of ACR 2021-FL1 and ACR 2021-FL2 include 24-month reinvestment periods ending in May 2023 and December 2023, respectively, that allow us to reinvest CRE loan payoffs and paydowns into the securitizations upon the satisfaction of certain eligibility and reinvestment criteria along with rating agency approval. The reinvestment feature of the securitizations will allow us to extend the securitizations' financing capability by increasing the useful lives of the senior notes through the reinvestment of loan proceeds into new loans. We are also able to acquire future funding participations of the collateral in the securitizations during the reinvestment period.

Additionally, ACR 2021-FL2 includes a 180-day ramp-up acquisition period during which unused proceeds at close can be used to acquire CRE loans that meet specified criteria for its portfolio. As of February 28, 2022, $180.7 million of the proceeds had been utilized to acquire additional loan collateral for the securitization.

We were in compliance with all of our covenants at December 31, 2021 in accordance with the terms provided in agreements with our lenders.

We are continuing to monitor the COVID-19 pandemic and its impact on us, the borrowers underlying our commercial real estate-related loans (and their tenants), our financing sources, and the economy as a whole. Because the severity, magnitude and duration of the COVID-19 pandemic and its economic consequences are uncertain, rapidly changing and difficult to predict, the pandemic's impact on our operations and liquidity remains uncertain and difficult to predict. Further discussion of the potential impacts on us from the COVID-19 pandemic is provided in the section entitled "Risk Factors-Impact of Current Economic Conditions" in Part I, Item 1A of this Annual Report on Form 10-K.

(Back to Index)

At December 31, 2021, we had a senior secured financing facility and term warehouse financing facilities 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	July 2027	$ 250,000	$ —	$ 250,000
CRE - Term Warehouse Financing Facilities (2)					
Barclays Bank PLC	April 2018	October 2022	$ 250,000	—	$ 250,000
JPMorgan Chase Bank, N.A.	October 2018	October 2024	$ 250,000	20,982	$ 229,018
Morgan Stanley Mortgage Capital Holdings LLC	November 2021	November 2024	$ 250,000	50,038	$ 199,962
Total				$ 71,020	

(1) Facility principal outstanding excludes deferred debt issuance costs of $3.4 million at December 31, 2021.
(2) Facilities principal outstanding excludes accrued interest payable of $58,000 and deferred debt issuance costs and discounts of $4.3 million at December 31, 2021.

The following table summarizes the average principal outstanding on our senior secured financing facility and term warehouse financing facilities during the three months ended December 31, 2021 and 2020 and the principal outstanding on our senior secured financing facility, term warehouse financing facilities and short-term repurchase agreements at December 31, 2021 and 2020 (in thousands, except amounts in footnotes):

	Three Months Ended December 31, 2021	December 31, 2021	Three Months Ended December 31, 2020	December 31, 2020
	Average Principal Outstanding	Principal Outstanding (1)(2)	Average Principal Outstanding	Principal Outstanding (1)(2)
Financing Arrangement				
Senior secured financing facility - CRE loans	$ 32,021	$ —	$ 68,403	$ 33,360
Term warehouse financing facilities - CRE loans	397,744	71,020	3,228	13,500
Total	$ 429,765	$ 71,020	$ 71,631	$ 46,860

(1) Excludes accrued interest payable on the senior secured financing facility collateralized by CRE loans of $26,000 and $75,000 and deferred debt issuance costs of $3.4 million and $4.0 million at December 31, 2021 and 2020, respectively.
(2) Excludes accrued interest payable on term warehouse financing facilities collateralized by CRE loans of $58,000 and $16,000 and deferred debt issuance costs and discounts of $4.3 million and $1.3 million at December 31, 2021 and 2020, respectively.

The following table summarizes the maximum month-end principal outstanding on our senior secured financing facility, term warehouse financing facilities and short-term repurchase agreements during the periods presented (in thousands, except amount in footnotes):

	Maximum Month-End Principal Outstanding During the	
	Years Ended December 31,	
	2021	2020 (1)
Financing Arrangement (2)		
Senior secured financing facility - CRE loans	$ 77,407	$ 128,495
Term warehouse financing facilities - CRE loans	$ 423,585	$ 598,635

(1) Excludes the maximum month-end principal outstanding for short-term repurchase agreements of CMBS of $365.9 million. All financed CMBS were sold during the year ended December 31, 2020.
(2) Increases in the maximum month-end outstanding principal balances for the periods presented resulted from the originations and acquisitions of CRE loans.

(Back to Index)

During the year ended December 31, 2020, our principal sources of liquidity were proceeds of: (i) proceeds of $128.5 million of financing sourced from our senior secured financing facility, (ii) net proceeds of $99.5 million from our CRE - term warehouse financing facilities, (iii) net proceeds of $89.1 million from repayments on our CRE loan portfolio, (iv) proceeds of $50.0 million from the issuance of the 12.00% Senior Unsecured Notes, (v) net proceeds of $47.3 million from the close of XAN 2020-RSO8 and XAN 2020-RSO9, (vi) net proceeds of $27.7 million from the sales of one CRE whole loan and one CRE asset held for sale, and (vii) proceeds of $21.4 million from our CRE securitizations that used principal paydowns to invest in CRE loan future funding commitments. These sources of liquidity, offset by the liquidation of XAN 2018-RSO6, paydowns on our CRE term warehouse facilities, elective paydowns on our senior secured financing facility, pay off of our 8.00% Convertible Senior Notes, margin calls received, net settlements on CMBS repurchase agreements, deployments in CRE debt investments, repurchases of common stock, distributions on our common and preferred stock and ongoing operating expenses, substantially resulted in the $29.4 million of unrestricted cash we held at December 31, 2020.

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 will cease if the CDOs and securitizations fail to meet certain tests. Through December 31, 2021, we did not experience difficulty in maintaining our existing CDO and securitization financing and passed all of the critical tests required by these financings.

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

Name	Cash Distributions For the Year Ended: December 31, 2021	Cash Distributions For the Year Ended: December 31, 2020	Overcollateralization Cushion (1): At December 31, 2021	Overcollateralization Cushion (1): At the Initial Measurement Date	Permitted Funded Companion Participation Acquisition Period End	Reinvestment Period End (2)
XAN 2020-RSO8 (3)	$ 13,830	$ 13,851	$ 67,041	$ 26,146	March 2023	N/A
XAN 2020-RSO9 (4)	$ 7,944	$ 1,469	$ 71,804	$ 11,887	N/A	N/A
ACR 2021-FL1 (3)	$ 17,727	$ —	$ 6,758	$ 6,758	N/A	May 2023
ACR 2021-FL2 (3)(5)	$ —	$ —	$ 5,652	$ 5,652	N/A	December 2023

(1) Overcollateralization cushion represents the amount by which the collateral held by the securitization issuer exceeds the minimum amount required.
(2) 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.
(3) The permitted funded companion participation period for XAN 2020-RSO8, ACR 2021-FL1 and ACR 2021-FL2 is the period in which principal repayments can be utilized to purchase loans held outside of the respective securitization that represent the funded commitments of existing collateral in the respective securitization that were not funded as of the date the respective securitization was closed. Additionally, the indenture for each securitization does not contain any interest coverage test provisions.
(4) XAN 2020-RSO9 includes a future advances reserve account, which had a balance of $7.4 million at December 31, 2021, to fund commitments that were not funded as of the closing date. Additionally, the indenture does not contain any interest coverage test provisions.
(5) Includes a 180-day ramp up acquisition period that allows the securitization to acquire CRE loans using unused proceeds of $98.9 million at December 31, 2021 from the issuance of the non-recourse floating-rate notes.

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: December 31, 2021	Cash Distributions For the Year Ended: December 31, 2020	Liquidation Details: Liquidation Date	Liquidation Details: Remaining Assets at the Liquidation Date (1)
XAN 2018-RSO6	$ —	$ 6,748	September 2020	$ 201,327
XAN 2019-RSO7	$ 9,339	$ 22,126	May 2021	$ 391,168

(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.

At February 28, 2022 our liquidity consisted of $77.4 million of unrestricted cash and cash equivalents, $65.2 million of unlevered financeable CRE loans and $75.0 million of availability under the Oaktree and MassMutual 12.00% Senior Unsecured Notes.

Our leverage ratio, defined as the ratio of borrowings to stockholders' equity, may vary as a result of the various funding strategies we use. At December 31, 2021 and 2020, our leverage ratio under GAAP was 4.0 and 3.9 times, respectively. The leverage ratio increase through December 31, 2021 was primarily attributable to the increase in CRE debt securitization borrowings in connection with net loan production during the year and an increase in corporate borrowings in connection with the issuance of the 5.75% Senior Unsecured Notes, the proceeds of which were partially used to pay off the 12.00% Senior Unsecured Notes and partially repurchase the 4.50% Convertible Senior Notes. The impact to our leverage ratio from the increase in borrowings was offset by the issuance of the Series D Preferred Stock during the year ended December 31, 2021, which was the primary driver of a net increase in our stockholders' equity of $113.8 million.

Net Operating Loss and Capital Loss Carryforwards

We generated approximately $47.7 million of net operating losses ("NOL") during the tax year ended December 31, 2020. This was reported on our tax return that was finalized and filed in October 2021. This amount can generally be carried forward to offset both ordinary taxable income and capital gains in future years. Additionally, we estimate that we will generate approximately $14.8 million of operating losses in 2021 and 2022. These amounts will offset taxable income in the year they occur, and any excess will be carried forward as additional NOL. The Tax Cuts and Jobs Act ("TCJA") along with revisions made by the Coronavirus Aid, Relief, and Economic Security Act ("CARES") reduced the deduction for NOLs to 80% of taxable income and granted an indefinite carryforward period.

In addition to NOLs, we generated approximately $136.9 million of net capital losses as of December 31, 2020. A net capital loss may be carried forward up to five years to offset future capital gains.

We also generate tax assets in our taxable REIT subsidiaries ("TRS"). These tax assets are analyzed and disclosed quarterly in our financial statements. As of December 31, 2020, our TRSs have approximately $39.9 million of pre-TCJA NOLs, some of which are set to expire beginning in 2044. The TRSs also have approximately $20.3 million of NOLs with an indefinite carryforward period and net capital losses of approximately $969,000.

We are exploring a range of assets and options in which to invest, including investments in commercial real estate equity, with the objective of creating capital gains to take advantage of all or a portion of our collective capital loss carryforwards.

Distributions

We did not pay distributions on our common shares during the year ended December 31, 2020 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 that year, we received significant NOL carryforwards, which are expected to grow in 2021 and 2022, and net capital loss carryforwards, as finalized in our 2020 tax return. Therefore, we did not pay, nor were we required to pay, distributions on our common shares during the year ended December 31, 2021.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 core earnings, 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.

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, 2021:					
CRE securitizations	$ 1,479,412	$ —	$ —	$ —	$ 1,479,412
Senior secured financing facility (1)	—	—	—	—	—
CRE - term warehouse financing facilities (2)	71,078	—	71,078	—	—
4.50% Convertible Senior Notes (3)	88,014	88,014	—	—	—
5.75% Senior Unsecured Notes (4)	150,000	—	—	150,000	—
Unsecured junior subordinated debentures (5)	51,548	—	—	—	51,548
Unfunded commitments on CRE loans (6)	157,554	15,955	141,599	—	—
Base management fees (7)	6,738	6,738	—	—	—
Total	$ 2,004,344	$ 110,707	$ 212,677	$ 150,000	$ 1,530,960

(1) Contractual commitments exclude $26,000 of accrued interest payable at December 31, 2021 on our senior secured financing facility.
(2) Contractual commitments include $58,000 of accrued interest payable at December 31, 2021 on our term warehouse financing facilities.
(3) Contractual commitments exclude $3.1 million of interest expense payable through maturity, in August 2022, on our 4.50% Convertible Senior Notes, which incorporates the impact of the repurchase of $39.8 million of principal on the 4.50% Convertible Senior Notes in February 2022.
(4) Contractual commitments exclude $43.1 million of interest expense payable through maturity, in August 2026, on our 5.75% Senior Unsecured Notes.
(5) Contractual commitments exclude $22.8 million and $23.6 million of estimated interest expense payable through maturity, in June 2036 and October 2036, respectively, on our trust preferred securities.
(6) Unfunded commitments on our originated CRE whole 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, 2021, we had unfunded commitments on 67 CRE whole loans. At December 31, 2021, XAN 2020-RSO9 includes a future advances reserve account of $7.4 million to fund unfunded commitments.
(7) 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.

We expect to fully redeem the 4.50% Convertible Senior Notes in cash upon maturity on August 15, 2022. At February 28, 2022, the outstanding principal balance was $48.2 million.

Off-Balance Sheet Arrangements

General

At December 31, 2021, 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, 2021, 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 CRE Loan 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 $157.6 million and $67.2 million in unfunded loan commitments at December 31, 2021 and 2020, respectively. Preferred equity investments had $2.5 million in unfunded investment commitments at December 31, 2020. The preferred equity investments paid off during the year ended December 31, 2021. Unfunded commitments are not considered in the CECL reserve if they are unconditionally cancellable.

Guarantees and Indemnifications

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

As part of our May 2017 sale of our equity interest in Pearlmark Mezz, we entered into an indemnification agreement whereby we indemnified the purchaser against realized losses of up to $4.3 million on one mezzanine loan until its final maturity date in 2020. As a result of the indemnified party's partial sale of the mezzanine loan, our maximum exposure was reduced to $536,000 in 2019. In October 2020, the mezzanine loan paid off its balance to the indemnified party, resulting in the extinguishment of our liability.

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 judgements, including: (i) the selection of a reasonable and supportable forecast period, (ii) the selection and weighting of appropriate macroeconomic forecast scenarios, (iii) projections for the amounts and timing of future fundings of committed balances and prepayments on CRE investments, (iv) the determination of the risk characteristics in which to pool financial assets, and (v) 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 non-accrual 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 non-accrual 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 non-accrual, 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 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.

Prior to the implementation of CECL, we calculated our allowance for credit losses through the calculation of general and specific reserves. The general reserve, established for loans not determined to be impaired individually, was based on our loan risk ratings. We recorded a general reserve equal to 1.5% of the aggregate face values of loans with a risk rating of "3," plus 5.0% of the aggregate face values of loans with a risk rating of "4." Loans with a risk rating of "5" were individually measured for impairment to be included in a specific reserve on a quarterly basis.

Historically, we considered a loan to be impaired if at least one of two conditions exists. The first condition was if, based on our evaluation as part of the loan risk rating process, management believed that a loss event had occurred that made it probable that we would be unable to collect all amounts due according to the contractual terms of the loan agreement. The second condition was that the loan was deemed to be a TDR. These TDRs may not have had an associated specific credit loss allowance if the principal and interest amount was considered recoverable based on market conditions, appraisals of the underlying collateral, expected collateral performance and/or guarantees made by the borrowers.

When a loan was impaired under either of these two conditions, the allowance for credit losses was increased by the amount of the excess of the amortized cost basis of the loan over its fair value. When a loan, or a portion thereof, was considered uncollectible and pursuit of collection was not warranted, we recorded a charge-off or write-down of the loan against the allowance for credit losses.

Investment in Real Estate

We acquire investments in real estate through direct equity investments and as a result of our lending activities (i.e. through 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 sheet 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.

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	10 years
Tenant improvements	180 days to 3 years
FF&E	5 years
Right of use assets	66.3 years
Intangible assets	180 days to 16.5 years
Lease liabilities	66.3 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 hotel 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 sheet. 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.

Hotel operating revenue consists of amounts derived from hotel operations, including room sales and other hotel revenues. We recognize hotel 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, 2021, we determined that we are the primary beneficiary of seven VIEs that are consolidated.

Recent Accounting Pronouncements

Accounting Standards Adopted in 2021

In March 2020, the FASB issued guidance that provides optional expedients and exceptions to GAAP requirements for modifications on debt instruments, leases, derivatives and other contracts, related to the expected market transition from the LIBOR, and certain other floating-rate benchmark indices to alternative reference rates. The guidance generally considers contract modifications related to reference rate reform to be an event that does not require contract remeasurement at the modification date nor a reassessment of a previous accounting determination.

In June 2021, XAN 2020-RSO8's and XAN 2020-RSO9's senior notes' benchmark rate, one-month LIBOR, was replaced with the Compounded SOFR plus a benchmark adjustment. As each securitizations' indentures included terms referencing a benchmark rate replacement, no amendments to the indentures were required. Additionally, in September 2021, January 2022 and February 2022, the term warehouse financing facilities with JPMorgan Chase, Morgan Stanley and Barclays, respectively, were amended to allow for the transition to alternative rates, including rates tied to SOFR, subject to benchmark transition events. We will apply the replacement of the benchmark rate prospectively by adjusting the effective interest rate. All of our underwritten loans contain terms that allow for a change to an alternative benchmark rate upon the discontinuation of LIBOR. During the year ended December 31, 2021, we originated our first CRE loan benchmarked to Term SOFR. For our remaining financial instruments utilizing LIBOR as a benchmark rate, the guidance is optional and may be elected over time, through December 31, 2022, as reference rate reform activities occur.

Accounting Standards to be Adopted in Future Periods

In August 2020, the FASB issued guidance that removes certain separation models for convertible debt instruments and convertible preferred stock that require the separation into a debt component and an equity or derivative component. Consequently, a convertible debt instrument will be accounted for as a single liability measured at its amortized cost, as long as no other features require bifurcation and recognition as derivatives and the convertible instrument are not issued with substantial premiums accounted for as paid-in capital. By removing those separation models, the interest rate of convertible debt instruments typically will be closer to the coupon interest rate. The guidance also revises the derivative scope exception for contracts in an entity's own equity and improves the consistency of EPS calculations. The guidance is effective for larger public business entities' annual periods, and interim periods therein, beginning after December 15, 2021 and for smaller reporting entities after December 15, 2023. Early application is permitted for fiscal years beginning after December 15, 2020. We are in the process of evaluating the impact of this guidance.

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.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

At December 31, 2021, 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.

The coronavirus ("COVID-19") pandemic has significantly impacted the CRE markets, historically causing reduced occupancy, requests from tenants for rent deferral or abatement, and delays in construction and development projects currently planned or underway. Our portfolio includes loans collateralized by multifamily, office, hotel, retail and other property types that have historically been negatively impacted by the pandemic. While restrictions on businesses put in place as a result of the COVID-19 pandemic have largely been removed, the discovery of virus variants and the changes of consumer habits and workplace arrangements may have a negative impact on the liquidity, financial condition and results of operations for our borrowers.

These negative conditions may return in the future and impair our borrowers' ability to comply with the terms under our loan agreements. We maintain a robust asset management relationship with our borrowers and have utilized these relationships to address the potential impacts of the COVID-19 pandemic 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 and short-term repurchase agreements. 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, such as through the impact of the COVID-19 pandemic, 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. As of December 31, 2021, 99.8% 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 approximate 0.2% of our CRE loan portfolio by par value earned a fixed rate of interest and may be financed with liabilities that pay interest at fixed rates. 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 one-month LIBOR floor of 0.75% at December 31, 2021. Additionally, all interest rate floors on our CRE loan portfolio were in the money at December 31, 2021.

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, 2021			
	100 Basis Point Decrease (4)		100 Basis Point Increase	
Net Assets Subject to Interest Rate Sensitivity (1) (2)(3)	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
$ 289,815	$ 1,600	$ 0.16	$ (4,009)	$ (0.41)

(1) Includes our floating-rate CRE loans at December 31, 2021.
(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; and
- attempting to structure our borrowing agreements for our commercial mortgage-backed securities to have a range of different maturities, terms, amortizations and interest rate adjustment periods.

(Back to Index)

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

INDEX TO FINANCING STATEMENTS

(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, 2021 and 2020, 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, 2021, 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, 2021 and 2020, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2021, in conformity with 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, 2021, 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 8, 2022 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 matters

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

Allowance for credit losses on loans

As described in Note 2 and Note 7 to the financial statements, and in accordance with Accounting Standard Codification (ASC) 326, Financial Instruments – Credit Losses, the Company utilizes a current expected credit loss approach to determine the allowance for credit losses. The Company measures expected credit losses on loans on a pooled basis based on shared risk characteristics. To estimate the allowance for credit losses on pooled loans, the Company utilizes a probability of default and loss given default methodology, which incorporates individual loan characteristics, historical loss experience and the selection and weighting of forecasted economic scenarios. 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 selecting and weighing appropriate macroeconomic forecast scenarios and in evaluating whether, for individual commercial real estate (CRE) loans, factors are present that require the adjustment of loan specific characteristics used in the allowance for credit losses. These conclusions require 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 management's review controls over the allowance for credit losses, which included controls related to the selection and weighing of various economic scenarios, and the identification and evaluation of loans where property performance lagged behind underwritten plans.
- We assessed the reasonableness and appropriateness and weighting of the various economic scenarios selected by management by inspecting the underlying assumptions of the various scenarios and considering publicly available corroborative and contradictory evidence.
- We inspected a selection of CRE loan files to test management's processes for identifying individual CRE loans where property performance lagged behind underwritten plans and, for each such loan identified, evaluated whether factors were present that required adjustment to loan specific characteristics used in the allowance for credit losses.
- For CRE loans which required an update to loan specific characteristics used in the allowance for credit losses, we assessed the reasonableness and appropriateness of loan-specific or collateral-specific characteristics, which involved the assistance of professionals with specialized skill and knowledge.

Estimation of fair value of assets received in satisfaction of CRE whole loan

As described further in Note 8 to the financial statements, in October 2021, the Company received the deed in lieu of foreclosure for an office property in full satisfaction of an outstanding $19.9 million CRE whole loan. The Company recorded the property at its estimated fair value, $17.6 million, upon receipt of the deed. The fair value was determined by the Company with the assistance of a third-party appraiser, which utilized an income approach that involved projections of expected cash flows and the application of certain subjective inputs including the discount rate and overall capitalization rate. The property is classified as an asset held for sale due to the plan to sell the property in 2022. We identified the fair value estimate of the office property as a critical audit matter.

The principal consideration for our determination that the fair value estimate of the office property is a critical audit matter is that management, with the assistance of a third-party appraiser, made significant judgments about the valuation methodology, cash flow projections and the discount rate and overall capitalization rate, which are subjective inputs into the fair value estimate of the office property. Significant management judgments and estimates utilized to determine the fair value of the office property are subject to estimation uncertainty and require significant auditor subjectivity in evaluating the reasonableness of those judgments and estimates.

Our audit procedures related to the fair value estimate of the real estate investment acquired included the following, among others:

- We tested the design and operating effectiveness of management's review control over the estimation of the fair value of the assets acquired, which included the appropriateness of the valuation method, cash flow projections, discount rate and overall capitalization rate utilized by the third-party appraiser to determine the fair value of the office property.
- We tested management's process to evaluate the reasonableness and appropriateness of the valuation method, cash flow projections, discount rate and overall capitalization rate utilized by the appraiser, which involved the assistance of professionals with specialized skill and knowledge.

/s/ GRANT THORNTON LLP
We have served as the Company's auditor since 2005.

Philadelphia, Pennsylvania
March 8, 2022

(Back to Index)

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

	December 31, 2021	December 31, 2020
ASSETS (1)		
Cash and cash equivalents	$ 35,500	$ 29,355
Restricted cash	248,431	38,386
Accrued interest receivable	6,112	7,372
CRE loans	1,882,551	1,541,992
Less: allowance for credit losses	(8,805)	(34,310)
CRE loans, net	1,873,746	1,507,682
Investment securities available-for-sale	—	2,080
Principal paydowns receivable	14,899	4,250
Loan receivable - related party	11,575	11,875
Investments in unconsolidated entities	1,548	1,548
Property held for sale	17,846	—
Investment in real estate	59,308	33,806
Right of use assets	5,951	5,592
Intangible assets	3,877	3,294
Other assets	5,482	8,783
Assets held for sale	—	61
Total assets	$ 2,284,275	$ 1,654,084
LIABILITIES (2)		
Accounts payable and other liabilities	$ 7,025	$ 2,068
Management fee payable - related party	561	442
Accrued interest payable	5,937	6,036
Borrowings	1,814,424	1,304,727
Lease liabilities	3,537	3,107
Distributions payable	3,262	1,725
Accrued tax liability	1	57
Liabilities held for sale	1,333	1,540
Total liabilities	1,836,080	1,319,702
STOCKHOLDERS' 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 0 shares issued and outstanding	5	—
Common stock, par value $0.001: 41,666,666 and 125,000,000 shares authorized; 9,149,079 and 10,162,289 shares issued and outstanding (including 333,329 and 11,610 unvested restricted shares)	9	10
Additional paid-in capital	1,179,863	1,085,941
Accumulated other comprehensive loss	(8,127)	(9,978)
Distributions in excess of earnings	(723,560)	(741,596)
Total stockholders' equity	448,195	334,382
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	$ 2,284,275	$ 1,654,084

The accompanying notes are an integral part of these statements

(Back to Index)

(Back to Index)

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

	December 31,	
	2021	**2020**
(1) Assets of consolidated variable interest entities (“VIEs”) included in total assets above:		
Restricted cash	$ 248,371	$ 38,353
Accrued interest receivable	3,826	5,398
CRE loans, pledged as collateral	1,601,482	1,231,184
Principal paydowns receivable	14,899	4,250
Other assets	36	114
Total assets of consolidated VIEs	$ 1,868,614	$ 1,279,299
(2) Liabilities of consolidated VIEs included in total liabilities above:		
Accounts payable and other liabilities	$ 315	$ 136
Accrued interest payable	997	806
Borrowings	1,466,499	1,027,929
Total liabilities of consolidated VIEs	$ 1,467,811	$ 1,028,871

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, 2021	2020	2019
REVENUES			
Interest income:			
CRE loans	$ 100,774	$ 101,303	$ 118,060
Securities	161	6,717	26,190
Other	97	223	636
Total interest income	101,032	108,243	144,886
Interest expense	61,575	58,008	83,837
Net interest income	39,457	50,235	61,049
Real estate income	10,553	—	—
Other revenue	65	76	101
Total revenues	50,075	50,311	61,150
OPERATING EXPENSES			
Management fees - related party	6,089	6,054	8,954
Equity compensation - related party	1,722	3,136	2,212
Real estate operating expense	10,601	298	—
General and administrative	11,602	14,335	10,392
Depreciation and amortization	94	49	47
(Reversal of) provision for credit losses, net	(21,262)	30,815	58
Total operating expenses	8,846	54,687	21,663
	41,229	(4,376)	39,487
OTHER INCOME (EXPENSE)			
Net realized and unrealized gain (loss) on investment securities available-for-sale and loans and derivatives	878	(186,610)	4
Fair value adjustments on financial assets held for sale	—	(8,768)	(4,682)
Gain on conversion of real estate	—	1,570	—
Loss on extinguishment of debt	(9,006)	—	—
Other income	822	471	1,408
Total other expense	(7,306)	(193,337)	(3,270)
INCOME (LOSS) FROM CONTINUING OPERATIONS BEFORE TAXES	33,923	(197,713)	36,217
Income tax benefit	—	—	—
NET INCOME (LOSS) FROM CONTINUING OPERATIONS	33,923	(197,713)	36,217
NET LOSS FROM DISCONTINUED OPERATIONS, NET OF TAX	—	—	(251)
NET INCOME (LOSS)	33,923	(197,713)	35,966
Net income allocated to preferred shares	(15,887)	(10,350)	(10,350)
NET INCOME (LOSS) ALLOCABLE TO COMMON SHARES	$ 18,036	$ (208,063)	$ 25,616
NET INCOME (LOSS) PER COMMON SHARE - BASIC:			
CONTINUING OPERATIONS	$ 1.85	$ (19.33)	$ 2.47
DISCONTINUED OPERATIONS	—	—	(0.02)
TOTAL NET INCOME (LOSS) PER COMMON SHARE - BASIC	$ 1.85	$ (19.33)	$ 2.45
NET INCOME (LOSS) PER COMMON SHARE - DILUTED:			
CONTINUING OPERATIONS	$ 1.85	$ (19.33)	$ 2.45
DISCONTINUED OPERATIONS	—	—	(0.02)
TOTAL NET INCOME (LOSS) PER COMMON SHARE - DILUTED	$ 1.85	$ (19.33)	$ 2.43
WEIGHTED AVERAGE NUMBER OF COMMON SHARES OUTSTANDING - BASIC	9,736,268	10,763,261	10,476,704
WEIGHTED AVERAGE NUMBER OF COMMON SHARES OUTSTANDING - DILUTED	9,763,217	10,763,261	10,556,785

The accompanying notes are an integral part of these statements

(Back to Index)

(Back to Index)

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

	Years Ended December 31,		
	2021	2020	2019
Net income (loss)	$ 33,923	$ (197,713)	$ 35,966
Other comprehensive income (loss):			
Reclassification adjustments for realized losses (gains) on investment securities available-for-sale included in net income (loss)	—	185,463	(4)
Unrealized (losses) gains on investment securities available-for-sale, net	—	(191,283)	9,444
Reclassification adjustments associated with net unrealized losses (gains) from interest rate swaps included in net income (loss)	1,851	1,254	(91)
Unrealized losses on derivatives, net	—	(7,233)	(4,471)
Total other comprehensive income (loss)	1,851	(11,799)	4,878
Comprehensive income (loss) before allocation to preferred shares	35,774	(209,512)	40,844
Net income allocated to preferred shares	(15,887)	(10,350)	(10,350)
Comprehensive income (loss) allocable to common shares	$ 19,887	$ (219,862)	$ 30,494

The accompanying notes are an integral part of these statements

(Back to Index)

(Back to Index)

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
CONSOLIDATED STATEMENT OF CHANGES IN EQUITY
FOR THE YEARS ENDED DECEMBER 31, 2021, 2020 AND 2019
(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 Income (Loss)	Retained Earnings (Distributions in Excess of Earnings)	Total Stockholders' Equity
Balance, January 1, 2019	10,552,499	$ 11	$ 5	$ —	$ 1,082,698	$ (3,057)	$ (525,838)	$ 553,819
Stock-based compensation	79,077	—	—	—	152	—	—	152
Amortization of stock-based compensation	—	—	—	—	2,212	—	—	2,212
Forfeiture of unvested stock	(4,712)	—	—	—	—	—	—	—
Net income	—	—	—	—	—	—	35,966	35,966
Distributions and accrual of cumulative on preferred stock dividends	—	—	—	—	—	—	(10,350)	(10,350)
Securities available-for-sale without an allowance for credit losses, fair value adjustment, net	—	—	—	—	—	9,440	—	9,440
Designated derivatives, fair value adjustment	—	—	—	—	—	(4,562)	—	(4,562)
Distributions on common stock	—	—	—	—	—	—	(30,279)	(30,279)
Balance, December 31, 2019	10,626,864	$ 11	$ 5	$ —	$ 1,085,062	$ 1,821	$ (530,501)	$ 556,398

The accompanying notes are an integral part of these statements

(Back to Index)

(Back to Index)

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
CONSOLIDATED STATEMENT OF CHANGES IN EQUITY
FOR THE YEARS ENDED DECEMBER 31, 2021, 2020 AND 2019 - (Continued)
(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 Income (Loss)	Retained Earnings (Distributions in Excess of Earnings)	Total Stockholders' Equity
Balance, December 31, 2019	10,626,864	$ 11	$ 5	$ —	$ 1,085,062	$ 1,821	$ (530,501)	$ 556,398
Cumulative effect of accounting change for adoption of credit loss guidance	—	—	—	—	—	—	(3,032)	(3,032)
Balance, January 1, 2020	10,626,864	11	5	—	1,085,062	1,821	(533,533)	553,366
Equity component of 12% Senior Unsecured Notes	—	—	—	—	3,108	—	—	3,108
Purchase and retirement of common stock	(535,485)	(1)	—	—	(5,364)	—	—	(5,365)
Stock-based compensation	80,906	—	—	—	(1)	—	—	(1)
Amortization of stock-based compensation	—	—	—	—	3,136	—	—	3,136
Forfeiture of unvested stock	(9,996)	—	—	—	—	—	—	—
Net loss	—	—	—	—	—	—	(197,713)	(197,713)
Distributions and accrual of cumulative on preferred stock dividends	—	—	—	—	—	—	(10,350)	(10,350)
Securities available-for-sale without an allowance for credit losses, fair value adjustment, net	—	—	—	—	—	(5,820)	—	(5,820)
Designated derivatives, fair value adjustment	—	—	—	—	—	(5,979)	—	(5,979)
Balance, December 31, 2020	10,162,289	$ 10	$ 5	$ —	$ 1,085,941	$ (9,978)	$ (741,596)	$ 334,382

The accompanying notes are an integral part of these statements

(Back to Index)

(Back to Index)

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
CONSOLIDATED STATEMENT OF CHANGES IN EQUITY
FOR THE YEARS ENDED DECEMBER 31, 2021, 2020 AND 2019 - (Continued)
(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 Income (Loss)**	**Retained Earnings (Distributions in Excess of Earnings)**	**Total Stockholders' Equity**
Balance, January 1, 2021	10,162,289	$ 10	$ 5	$ —	$ 1,085,941	$ (9,978)	$ (741,596)	$ 334,382
Proceeds from issuance of preferred stock	—	—	—	5	115,189	—	—	115,194
Offering costs	—	—	—	—	(4,589)	—	—	(4,589)
Purchase and retirement of common stock	(1,346,539)	(1)	—	—	(18,400)	—	—	(18,401)
Stock-based compensation	333,329	—	—	—	—	—	—	—
Amortization of stock-based compensation	—	—	—	—	1,722	—	—	1,722
Net income	—	—	—	—	—	—	33,923	33,923
Distributions and accrual of cumulative on preferred stock dividends	—	—	—	—	—	—	(15,887)	(15,887)
Amortization of terminated derivatives	—	—	—	—	—	1,851	—	1,851
Balance, December 31, 2021	9,149,079	$ 9	$ 5	$ 5	$ 1,179,863	$ (8,127)	$ (723,560)	$ 448,195

The accompanying notes are an integral part of these statements

(Back to Index)

(Back to Index)

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

	Years Ended December 31,		
	2021	2020	2019
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net income (loss)	$ 33,923	$ (197,713)	$ 35,966
Net loss from discontinued operations, net of tax	—	—	251
Net income (loss) from continuing operations	33,923	(197,713)	36,217
Adjustments to reconcile net income (loss) from continuing operations to net cash provided by continuing operating activities:			
(Reversal of) provision for credit losses, net	(21,262)	30,815	58
Depreciation, amortization and accretion	13,988	6,524	3,399
Amortization of stock-based compensation	1,722	3,136	2,212
Sale of and principal payments on syndicated corporate loans held for sale	—	—	43
Loss on the extinguishment of debt	4,043	—	—
Net realized and unrealized (gain) loss on investment securities available-for-sale and loans and derivatives	(878)	186,545	(4)
Net gain on conversion to real estate	—	(1,794)	—
Fair value and other adjustments on asset held for sale	—	8,768	4,682
Changes in operating assets and liabilities:			
Decrease (increase) in accrued interest receivable, net of purchased interest	1,347	(322)	353
Increase in interest receivable - related party	—	(39)	—
Increase (decrease) in management fee payable	119	(259)	(85)
Increase (decrease) in accounts payable and other liabilities	4,101	(559)	(4,160)
Decrease in lease liability	(39)	—	—
(Decrease) increase in accrued interest payable	(39)	1,536	185
Decrease (increase) in other assets	3,567	(4,828)	492
Net cash provided by continuing operating activities	40,592	31,810	43,392
Net cash used in discontinued operating activities	—	—	(59)
Net cash provided by operating activities	40,592	31,810	43,333
CASH FLOWS FROM INVESTING ACTIVITIES:			
Origination and purchase of loans	(1,381,660)	(298,094)	(918,917)
Principal payments received on loans and leases	1,008,967	509,236	695,409
Investments in real estate	(28,924)	—	—
Proceeds from sale of loans or assets previously held for sale	7,915	27,745	—
Purchase of investment securities available-for-sale	—	(24,610)	(146,627)
Principal payments on investment securities available-for-sale	—	4,733	56,295
Proceeds from sale of investment securities available-for-sale	2,958	37,764	638
Purchase of furniture and fixtures	(61)	(5)	—
Investment in loan - related party	—	(12,000)	—
Principal payments received on loan - related party	300	125	—
Net cash (used in) provided by continuing investing activities	(390,505)	244,894	(313,202)
Net cash provided by discontinued investing activities	—	—	135
Net cash (used in) provided by investing activities	(390,505)	244,894	(313,067)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Proceeds from issuance of preferred shares (net of offering costs of $4,589)	110,605	—	—
Repurchase of common stock	(18,401)	(5,365)	—

The accompanying notes are an integral part of these statements

(Back to Index)

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

	Years Ended December 31,		
	2021	2020	2019
CASH FLOWS FROM FINANCING ACTIVITIES - (Continued):			
Proceeds from borrowings:			
Securitizations	1,242,223	639,074	575,811
Senior secured financing facility	173,087	128,495	—
Warehouse financing facilities and repurchase agreements	862,681	288,555	913,865
Senior unsecured notes	150,000	50,000	—
Payments on borrowings:			
Securitizations	(801,622)	(413,023)	(329,717)
Senior secured financing facility	(206,447)	(95,135)	—
Warehouse financing facilities and repurchase agreements	(805,119)	(827,684)	(847,334)
Convertible senior notes	(55,736)	(21,182)	—
Senior unsecured notes	(50,000)	—	—
Payment of debt issuance costs	(20,818)	(16,253)	(6,529)
Settlement of derivative instruments	—	(11,762)	—
Distributions paid on preferred stock	(14,350)	(10,350)	(10,350)
Distributions paid on common stock	—	(8,767)	(27,052)
Net cash provided by (used in) continuing financing activities	566,103	(303,397)	268,694
Net cash provided by discontinued financing activities	—	—	—
Net cash provided by (used in) financing activities	566,103	(303,397)	268,694
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS AND RESTRICTED CASH	216,190	(26,693)	(1,040)
CASH AND CASH EQUIVALENTS AND RESTRICTED CASH AT BEGINNING OF YEAR	67,741	94,434	95,474
CASH AND CASH EQUIVALENTS AND RESTRICTED CASH AT END OF YEAR	$ 283,931	$ 67,741	$ 94,434

The accompanying notes are an integral part of these statements

ACRES COMMERCIAL REALTY CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2021

NOTE 1 - ORGANIZATION

ACRES Commercial Realty Corp., a Maryland corporation, along with its subsidiaries (collectively, the "Company"), is a real estate investment trust ("REIT") that is primarily focused on originating, holding and managing commercial real estate ("CRE") mortgage loans and other commercial real estate-related debt investments. 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.

Reverse Stock Split

Effective February 16, 2021, the Company completed a one-for-three reverse stock split of its outstanding common stock. The accompanying financial statements and notes to the financial statements give retroactive effect to the reverse stock split for all periods presented. In addition, the Company adopted articles of amendment to its charter, which provided that the par value of the Company's common stock remained $0.001 immediately after effect was given for the reverse stock split. No fractional shares were issued in connection with the reverse stock split. Stockholders who otherwise held fractional shares of the Company's common stock as a result of the reverse stock split received a cash payment in lieu of such fractional shares. In May 2021, the Company adopted articles of amendment to its charter to decrease its authorized shares of capital stock from 225,000,000 shares, consisting of 125,000,000 shares of common stock and 100,000,000 shares of preferred stock to 141,666,666 shares consisting of 41,666,666 shares of common stock and 100,000,000 shares of preferred stock.

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.

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.

Use of Estimates

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

The coronavirus ("COVID-19") pandemic continues to plague countries throughout the globe as virus variants have emerged, which, when recognized, led numerous countries, including the U.S., to declare national emergencies. Many countries responded to the initial outbreak beginning in late 2019 by instituting quarantines and restrictions on travel and limiting operations of non-essential offices and retail centers, which resulted in the closure or remote operation of non-essential businesses, increased rates of unemployment and market disruption in connection with the economic uncertainty. While the U.S. and certain countries around the world have eased restrictions and financial markets have stabilized to some degree in connection with the discovery and distribution of vaccines and other treatments, the pandemic, exacerbated by virus variants, continues to cause uncertainty on the U.S. and global economies, generally, and the CRE business in particular, which make estimates and assumptions as of December 31, 2021 inherently less certain than they would be absent the current and potential impacts of COVID-19, particularly the reinstatement of restrictions placed on businesses. The Company believes the estimates and assumptions underlying the consolidated financial statements are reasonable and supportable based on the information available at December 31, 2021. Actual results may ultimately differ from those estimates.

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, 2021 and 2020, approximately $33.3 million and $27.3 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.

(Back to Index)

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

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,	
	2021	2020
Cash and cash equivalents	$ 35,500	$ 29,355
Restricted cash	248,431	38,386
Total cash, cash equivalents and restricted cash shown on the Company’s consolidated statements of cash flows	$ 283,931	$ 67,741

Investment in Unconsolidated Entities

The Company’s non-controlling investments in unconsolidated entities are included in investments in unconsolidated entities on the consolidated balance sheets 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.

Investment Securities

The Company classified its investment securities portfolio as available-for-sale. The Company, from time to time, historically sold its investments due to changes in market conditions or in accordance with its investment strategy.

The Company historically reported its investment securities available-for-sale at fair value. To determine fair value, the Company used an independent third-party valuation firm utilizing data available in the market as well as appropriate prepayment, default and recovery rates. The Company evaluated the reasonableness of the valuation it received by using a dealer quote, bid, or internal model. If there was a material difference between the value indicated by the third-party valuation firm and the dealer quote, bid or internal model, the Company evaluated the difference, which could have resulted in an updated valuation from the third-party or a revised dealer quote. Based on a prioritization of inputs used in the valuation of each position, the Company categorized these investments as either Level 2 or Level 3 in the fair value hierarchy. Historically, any changes in fair value of the Company’s investment securities available-for-sale were recorded on the Company’s consolidated balance sheets as a component of accumulated other comprehensive income (loss) in stockholders’ equity.

On a quarterly basis, the Company evaluated available-for-sale securities with fair values below their amortized cost bases to determine the estimate of expected credit losses. Evidence of the need for an allowance for credit losses was based on consideration of several factors, including (i) if the Company intended to sell the security, (ii) if it was more likely than not that the Company would be required to sell the security before recovering its cost, or (iii) whether a portion of the unrealized loss was a result of credit losses or other market factors. A credit loss will have occurred if the present value of cash flows expected to be collected from the debt security is less than the amortized cost basis. If the Company intended to sell a debt security with a fair value below the amortized cost basis or it was more likely than not that it will be required to sell the security before recovery of its amortized cost basis less any current period credit loss, a write-off was recognized in earnings through a charge to the amortized cost of the security and equal to the entire difference between fair value and amortized cost. If a credit loss exists, but the Company did not intend nor was it more likely than not that it would be required to sell before recovery, the loss would be separated into (i) the estimated amount relating to the credit loss and (ii) the amount relating to all other factors. Only the estimated credit loss amount is recognized in earnings through an increase to the allowance for credit losses, with the remainder of the loss recognized in other comprehensive income. If the Company used a discounted cash flow approach to estimate expected credit losses, changes in the present value attributable to the passage of time were recorded in the provision for credit losses. Estimating cash flows and determining whether there were credit losses required management to exercise judgment and to make significant assumptions, including, but not limited to, assumptions regarding estimated prepayments, loss assumptions and assumptions regarding changes in interest rates. As a result, actual losses, and the timing of income recognized on these securities, could have differed from reported amounts.

Historically, investment security transactions were recorded on the trade date. Realized gains and losses on investment securities were determined on the specific identification method.

(Back to Index)

Investment Security Interest Income Recognition

Historically, interest income on the Company's mortgage-backed securities ("MBS") was accrued using the effective yield method based on the actual coupon rate and the outstanding principal amount of the underlying mortgages or other assets. Premiums and discounts were amortized or accreted into interest income over the expected lives of the securities also using the effective yield method, adjusted for the effects of estimated prepayments. For an investment purchased at par, the effective yield was the contractual interest rate on the investment. If the investment was purchased at a discount or at a premium, the effective yield was computed based on the contractual interest rate increased for the accretion of a purchase discount or decreased for the amortization of a purchase premium. The effective yield method required the Company to make estimates of future prepayment rates for its investments that could be contractually prepaid before the contractual maturity date so that the purchase discount could be accreted, or the purchase premium could be amortized, over the estimated remaining life of the investment. The prepayment estimates that the Company used directly impacted the estimated remaining lives of its investments. Actual prepayment estimates were reviewed at each quarter end or more frequently if the Company became aware of any material information that would lead it to believe that an adjustment was necessary. For MBS that was not of high credit quality or that could be prepaid in such a way that the Company would not recover substantially all of its initial investment, changes in the original or most recent cash flow projections may have resulted in a prospective change in interest income recognized. For MBS that was of high credit quality, changes in the original or most recent cash flow projections may have resulted in an immediate cumulative adjustment in interest income recognized.

The Company recorded interest receivable on its available-for-sale debt securities in accrued interest receivable on its consolidated balance sheet. The Company analyzed the interest receivable balances on a timely basis, or at least quarterly, to determine if they were uncollectible. If an interest receivable balance was deemed uncollectible, then the Company wrote off the balance of the interest receivable through a reversal of interest income.

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 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, in the opinion of management, 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.

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 balance is deemed uncollectible, then the Company writes off the balance of the interest receivable through a reversal of interest income.

Preferred Equity Investment

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. Effective January 1, 2020, 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 judgements, including: (i) the selection of a reasonable and supportable forecast period, (ii) the selection and weighting of appropriate macroeconomic forecast scenarios, (iii) projections for the amounts and timing of future fundings of committed balances and prepayments on CRE investments, (iv) the determination of the risk characteristics in which to pool financial assets, and (v) 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 non-accrual 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 non-accrual 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 non-accrual, previously accrued 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, 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. If the concession granted on a TDR can only be captured through a discounted cash flow analysis, then the Company 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, 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.

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.

Prior to the implementation of CECL, the Company calculated its allowance for credit losses through the calculation of general and specific reserves. The general reserve, established for loans not determined to be impaired individually, was based on the Company's loan risk ratings. The Company recorded a general reserve equal to 1.5% of the aggregate face values of loans with a risk rating of "3," plus 5.0% of the aggregate face values of loans with a risk rating of "4." Loans with a risk rating of "5" were individually measured for impairment to be included in a specific reserve on a quarterly basis.

The Company considered a loan to be impaired if at least one of two conditions exists. The first condition was if, based on the Company's evaluation as part of the loan risk rating process, management believed that a loss event had occurred that made it probable that the Company would be unable to collect all amounts due according to the contractual terms of the loan agreement. The second condition was that the loan was deemed to be a TDR. These TDRs may not have had an associated specific credit loss allowance if the principal and interest amount was considered recoverable based on market conditions, appraisals of the underlying collateral, expected collateral performance and/or guarantees made by the borrowers.

When a loan was impaired under either of these two conditions, the allowance for credit losses was increased by the amount of the excess of the amortized cost basis of the loan over its fair value. When a loan, or a portion thereof, was considered uncollectible and pursuit of collection was not warranted, the Company recorded a charge-off or write-down of the loan against the allowance for credit losses.

Operating Revenue at Properties

Through its investments in real estate, the Company earns revenue associated with rental operations and hotel 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 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 sheet. 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.

Hotel operating revenue consists of amounts derived from hotel operations, including room sales and other hotel revenues. The Company recognizes hotel 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.

Investment 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 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. 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. 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.

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.

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

Category	Term
Building	35 to 40 years
Building improvements	10 years
Tenant improvements	180 days to 3 years
FF&E	5 years
Right of use assets	66.3 years
Intangible assets	180 days to 16.5 years
Lease liabilities	66.3 years

Leases

The value of the operating leases are determined through the discounted cash flow method and are recognized on the consolidated balance sheet as offsetting right of use assets and lease liabilities. The operating lease for the Company’s office space is amortized over the lease term, or 7.3 years, using the effective-interest method. The Company’s operating lease for office equipment is amortized over the lease term, or three years, 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;

(Back to Index)

- 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.

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.

Discontinued Operations

The results of operations of a component or a group of components of the Company that either has been disposed of or is classified as held for sale is reported in discontinued operations if the disposal represents a strategic shift that has or will have a major effect on the Company’s operations and financial results.

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.

(Back to Index)

The Company established a full valuation allowance against its net deferred tax asset that was tax effected at $21.4 million and $21.2 million, at December 31, 2021 and 2020, 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.

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.

Recent Accounting Standards

Accounting Standards Adopted in 2021

In March 2020, the FASB issued guidance that provides optional expedients and exceptions to GAAP requirements for modifications on debt instruments, leases, derivatives and other contracts, related to the expected market transition from the London Interbank Offered Rate ("LIBOR"), and certain other floating-rate benchmark indices to alternative reference rates. The guidance generally considers contract modifications related to reference rate reform to be an event that does not require contract remeasurement at the modification date nor a reassessment of a previous accounting determination.

In June 2021, Exantas Capital Corp. 2020-RSO8, Ltd.'s ("XAN 2020-RSO8") and Exantas Capital Corp. 2020-RSO9, Ltd.'s ("XAN 2020-RSO9") senior notes' benchmark rate, one-month LIBOR, was replaced with the compounded Secured Overnight Financing Rate ("SOFR") plus a benchmark adjustment. As each securitizations' indentures included terms referencing a benchmark rate replacement, no amendments to the indentures were required. Additionally, in September 2021, January 2022 and February 2022, the term warehouse financing facilities with JPMorgan Chase Bank, N.A. ("JPMorgan Chase"), Morgan Stanley Mortgage Capital Holdings LLC ("Morgan Stanley") and Barclays Bank PLC ("Barclays"), respectively, were amended to allow for the transition to alternative rates, including rates tied to SOFR, subject to benchmark transition events. The Company will apply the replacement of the benchmark rate prospectively by adjusting the effective interest rate. All of the Company's underwritten loans contain terms that allow for a change to an alternative benchmark rate upon the discontinuation of LIBOR. During the year ended December 31, 2021, the Company originated its first CRE loan benchmarked to the Term Secured Overnight Finance Rate. For the Company's remaining financial instruments utilizing LIBOR as a benchmark rate, the guidance is optional and may be elected over time, through December 31, 2022, as reference rate reform activities occur.

Accounting Standards to be Adopted in Future Periods

In August 2020, the FASB issued guidance that removes certain separation models for convertible debt instruments and convertible preferred stock that require the separation into a debt component and an equity or derivative component. Consequently, a convertible debt instrument will be accounted for as a single liability measured at its amortized cost, as long as no other features require bifurcation and recognition as derivatives and the convertible instrument are not issued with substantial premiums accounted for as paid-in capital. By removing those separation models, the interest rate of convertible debt instruments typically will be closer to the coupon interest rate. The guidance also revises the derivative scope exception for contracts in an entity's own equity and improves the consistency of EPS calculations. The guidance is effective for larger public business entities' annual periods, and interim periods therein, beginning after December 15, 2021 and for smaller reporting entities after December 15, 2023. Early application is permitted for fiscal years beginning after December 15, 2020. The Company is in the process of evaluating the impact of this guidance.

Reclassifications

Certain reclassifications have been made to the 2020 and 2019 consolidated financial statements, including the consolidated statement of cash flows, to conform to the 2021 presentation. These reclassifications had no effect on net income (loss) reported nor the total change in cash flows for each type of cash flow activity on the consolidated statement of cash flows.

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 seven and six VIEs at December 31, 2021 and 2020, 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, corporate bonds and ABS, and 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.

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 12.

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, 2021, 2020 and 2019, 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, 2021 (in thousands):

	CRE Securitizations	Other	Total
ASSETS			
Restricted cash	$ 247,966	$ 405	$ 248,371
Accrued interest receivable	3,826	—	3,826
CRE loans, pledged as collateral (1)	1,601,482	—	1,601,482
Principal paydowns receivable	14,899	—	14,899
Other assets	36	—	36
Total assets (2)	$ 1,868,209	$ 405	$ 1,868,614
LIABILITIES			
Accounts payable and other liabilities	$ 315	$ —	$ 315
Accrued interest payable	997	—	997
Borrowings	1,466,499	—	1,466,499
Total liabilities	$ 1,467,811	$ —	$ 1,467,811

(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, 2021. 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, 2021. RCT I and RCT II were formed for the purposes of providing debt financing to the Company. The Company completed a qualitative analysis to determine whether it is the primary beneficiary of each of the trusts and determined that it was not the primary beneficiary of either trust because it does not have the power to direct the activities most significant to the trusts, which include the collection of principal and interest through servicing rights. Accordingly, neither trust is consolidated into the Company's consolidated financial statements.

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

(Back to Index)

The following table shows the classification, carrying value and maximum exposure to loss with respect to the Company's unconsolidated VIEs at December 31, 2021 (in thousands):

	Unsecured Junior Subordinated Debentures	Maximum Exposure to Loss
ASSETS		
Accrued interest receivable	$ 6	$ —
Investments in unconsolidated entities	1,548	$ 1,548
Total assets	1,554	
LIABILITIES		
Accrued interest payable	184	N/A
Borrowings	51,548	N/A
Total liabilities	51,732	N/A
Net (liability) asset	$ (50,178)	N/A

At December 31, 2021, 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):

	Years Ended December 31, 2021	2020	2019
Supplemental cash flows:			
Interest expense paid in cash	$ 42,345	$ 44,677	$ 73,963
Income taxes paid in cash	$ —	$ —	$ —
Non-cash continuing operating activities include the following:			
Acquisition of below-market lease intangible related to the receipt of deed in lieu of foreclosure	$ —	$ (2,490)	$ —
Acquisition of right of use asset related to the receipt of deed in lieu of foreclosure	$ —	$ (3,113)	$ —
Assumption of operating lease related to the receipt of deed in lieu of foreclosure	$ —	$ 3,113	$ —
Acquisition of other right of use assets	$ (479)	$ —	$ —
Assumption of other operating lease liabilities	$ 479	$ —	$ —
Non-cash continuing investing activities include the following:			
Investment in property held for sale related to the receipt of deed in lieu of foreclosure	$ (17,600)	$ —	$ —
Proceeds from the relinquishment of investment securities available-for-sale	$ —	$ 369,873	$ —
Proceeds from the receipt of deed in lieu of foreclosure on loan	$ 17,600	$ 39,750	$ —
Investment in real estate assets related to the receipt of deed in lieu of foreclosure	$ —	$ (33,924)	$ —
Investment in intangible assets related to the receipt of deed in lieu of foreclosure	$ —	$ (3,336)	$ —
Non-cash continuing financing activities include the following:			
Repayment of repurchase agreements from the relinquishment of investment securities available-for-sale	$ —	$ (369,873)	$ —
Distributions on common stock accrued but not paid	$ —	$ —	$ 8,767
Distributions on preferred stock accrued but not paid	$ 3,262	$ 1,725	$ 1,725

(Back to Index)

NOTE 5 - RESTRICTED CASH

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

	December 31, 2021	December 31, 2020
Restricted cash:		
Cash held by consolidated CRE securitizations, CDOs and CLOs	$ 248,071	$ 38,353
Restricted cash pledged with minimum reserve balance requirements	360	33
Total	$ 248,431	$ 38,386

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, 2021:								
CRE loans held for investment:								
Whole loans (5)(6)	93	$ 1,891,795	$ (13,944)	$ 1,877,851	$ (8,550)	$ 1,869,301	1M BR plus 2.70% to 1M BR plus 8.50%	January 2022 to September 2025
Mezzanine loan (5)	1	4,700	—	4,700	(255)	4,445	10.00%	June 2028
Total CRE loans held for investment		$ 1,896,495	$ (13,944)	$ 1,882,551	$ (8,805)	$ 1,873,746		
At December 31, 2020:								
CRE loans held for investment:								
Whole loans (5)(6)	95	$ 1,515,722	$ (6,144)	$ 1,509,578	$ (32,283)	$ 1,477,295	1M BR plus 2.70% to 1M BR plus 9.00%	January 2021 to January 2024
Mezzanine loan (5)	1	4,700	—	4,700	(301)	4,399	10.00%	June 2028
Preferred equity investments (7)	2	27,650	64	27,714	(1,726)	25,988	11.00% to 11.50%	June 2022 to April 2023
Total CRE loans held for investment		$ 1,548,072	$ (6,080)	$ 1,541,992	$ (34,310)	$ 1,507,682		

(1) Amounts include unamortized loan origination fees of $13.6 million and $5.7 million and deferred amendment fees of $307,000 and $495,000 at December 31, 2021 and 2020, respectively. Additionally, the amounts include unamortized loan acquisition costs of $7,300 and $118,000 at December 31, 2021 and 2020, respectively.

(2) The Company's whole loan portfolio of $1.9 billion and $1.5 billion had a weighted-average one-month benchmark rate ("BR") floor of 0.75% and 1.88% at December 31, 2021 and 2020, respectively. Benchmark rates comprise one-month LIBOR or one-month Term SOFR. At December 31, 2021, all but one of the Company's floating-rate whole loans had one-month benchmark floors. At December 31, 2020, all whole loans had one-month LIBOR floors.

(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 $27.9 million and $39.7 million, in maturity default at December 31, 2021 and 2020, respectively.

(5) Substantially all loans are pledged as collateral under various borrowings at December 31, 2021 and 2020.

(6) CRE whole loans had $157.6 million and $67.2 million in unfunded loan commitments at December 31, 2021 and 2020, respectively. These unfunded loan commitments are advanced as the borrowers formally request additional funding and meet certain benchmarks, as permitted under the loan agreement, and any necessary approvals have been obtained.

(7) The interest rate on the Company's preferred equity investments paid at 8.00%. The remaining interest was deferred until payoff, which occurred in March 2021 and April 2021.

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	2022	2023	2024 and Thereafter	Total
At December 31, 2021:				
Whole loans (1)	$ 377,024	$ 230,872	$ 1,242,013	$ 1,849,909
Mezzanine loan	—	—	4,700	4,700
Total CRE loans (2)	$ 377,024	$ 230,872	$ 1,246,713	$ 1,854,609

Description	2021	2022	2023 and Thereafter	Total
At December 31, 2020:				
Whole loans (1)	$ 599,053	$ 540,639	$ 330,143	$ 1,469,835
Mezzanine loan	—	—	4,700	4,700
Preferred equity investment	—	6,452	21,262	27,714
Total CRE loans (2)	$ 599,053	$ 547,091	$ 356,105	$ 1,502,249

(1) Maturity dates exclude three whole loans with amortized costs of $27.9 million, and three whole loans with an amortized cost of $39.7 million in maturity default at December 31, 2021 and 2020, respectively.

(2) At December 31, 2021, the amortized costs of the CRE whole loans, summarized by contractual maturity assuming full exercise of the extension options, were $52.0 million, $127.6 million and $1.7 billion in 2022, 2023 and 2024 and thereafter, respectively. At December 31, 2020, the amortized costs of the CRE whole loans, summarized by contractual maturity assuming full exercise of the extension options, were $112.4 million, $125.1 million and $1.3 billion in 2021, 2022 and 2023 and thereafter, respectively.

At December 31, 2021, approximately 28.4%, 18.4% and 15.2% of the Company's CRE loan portfolio was concentrated in the Southeast, Southwest and Mid-Atlantic regions, respectively, based on carrying value, as defined by the National Council of Real Estate Investment Fiduciaries. At December 31, 2020, approximately 21.4%, 17.9% and 16.1% of the Company's CRE loan portfolio was concentrated in the Mountain, Southwest and Southeast regions, respectively, based on carrying value. 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 December 31, 2021, the Company had $14.9 million of loan principal paydowns receivable, all of which was received in cash by the Company during January 2022. At December 31, 2020, the Company had $4.3 million of loan principal paydowns receivable, all of which was received by the Company during January 2021.

NOTE 7 - FINANCING RECEIVABLES

The following tables show the activity in the allowance for credit losses for the years ended December 31, 2021 and 2020 (in thousands):

	Years Ended December 31,	
	2021	2020
	CRE Loans	CRE Loans
Allowance for credit losses:		
Allowance for credit losses at beginning of year	$ 34,310	$ 1,460
Adoption of the new accounting guidance	—	3,032
(Reversal of) provision for credit losses	(21,262)	30,815
Charge offs	(4,243)	(997)
Allowance for credit losses at end of year	$ 8,805	$ 34,310

During the year ended December 31, 2020, higher expected unemployment and increased volatility in CRE asset pricing and liquidity as a result of the COVID-19 pandemic significantly impacted assumptions in the Company's CECL estimates and resulted in a net provision for credit losses of $30.8 million. However, the discovery and distribution of vaccines and other treatments for COVID-19 led to a recovery of the global economy and markets worldwide during the year ended December 31, 2021. The ensuing improvements in expected unemployment and macroeconomic conditions, as well as improved collateral operating performance, resulted in a net reversal of expected credit losses of $21.3 million during the year ended December 31, 2021.

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 December 31, 2021 and 2020, $2.3 million and $1.9 million, respectively, of the Company's allowance for credit losses resulted from collateral-dependent loans that were individually evaluated for credit losses, details of which follow:

During the year ended December 31, 2021, the Company individually evaluated the following loans:

- An office loan in the East North Central region with a $19.9 million principal balance. The Company recorded a $2.3 million CECL allowance in the third quarter of 2021 to reflect the as-is appraised value of the property of $17.6 million. Upon receipt of the property in full satisfaction of the loan in the fourth quarter of 2021, the Company charged off the $2.3 million CECL allowance and recorded the property as a property held for sale on its consolidated balance sheet at its fair value of $17.6 million (see Note 8).
- A hotel loan in the Northeast region with a $9.3 million principal balance. The Company recorded a $1.8 million CECL allowance in the third quarter of 2021 that reflected the Company's estimate of fair value less costs of sale of $7.5 million at September 30, 2021. Upon sale of the loan in November 2021, the Company received proceeds of $7.6 million, net of costs of sale, and charged off the remaining $1.7 million CECL allowance.
- A retail loan in the Pacific region with an $11.5 million principal balance. At December 31, 2021, the Company had a recorded $2.3 million CECL allowance that reflected the loss taken on the loan as a result of a discounted payoff received on the loan in January 2022 in full satisfaction of the loan.
- A hotel loan in the East North Central region with an $8.4 million principal balance. The Company received payment in full on this loan in January 2022; and, as such, there was no CECL allowance recorded at December 31, 2021.
- A hotel in the Northeast region with a $14.0 million principal balance. The hotel has an as-is appraised value in excess of its principal balance, and, as such, had no CECL allowance at December 31, 2021.

During the year ended December 31, 2020, the Company individually evaluated a hotel loan in the Northeast region with a $37.9 million principal balance for which foreclosure was deemed probable. In November 2020, the Company received the deed-in-lieu of foreclosure on the property. In conjunction with the receipt of the deed, the Company obtained an updated appraisal that indicated an as-is appraised value of $39.8 million (see Note 8) and consequently reversed the then-outstanding $8.0 million CECL allowance and recorded the property as an investment in real estate on the consolidated balance sheet at its appraised value.

Also at December 31, 2020, the Company individually evaluated a loan on an office property in the North East Central region with a $19.9 million principal balance and a hotel loan in the Northeast region with a $14.0 million par balance for which foreclosure was determined to be probable. The Company determined that these loans had CECL allowances of $1.9 million and $0, respectively, calculated as the difference between the as-is appraised values and the loans' amortized costs.

In June 2020, the Company sold one CRE whole loan note for $17.4 million, which resulted in a realized loss of $1.0 million recorded in the provision for credit losses during the year ended December 31, 2020.

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.

(Back to Index)

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

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

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

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

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

	Rating 1	Rating 2	Rating 3	Rating 4	Rating 5	Total (1)
At December 31, 2021:						
Whole loans, floating-rate	$ —	$ 1,456,330	273,078	$ 123,762	$ 24,681	$ 1,877,851
Mezzanine loan	—	—	—	4,700	—	4,700
Total	$ —	$ 1,456,330	$ 273,078	$ 128,462	$ 24,681	$ 1,882,551
At December 31, 2020:						
Whole loans, floating-rate	$ —	$ 611,838	$ 599,208	$ 262,398	$ 36,134	$ 1,509,578
Mezzanine loan	—	—	4,700	—	—	4,700
Preferred equity investments	—	—	6,452	21,262	—	27,714
Total	$ —	$ 611,838	$ 610,360	$ 283,660	$ 36,134	$ 1,541,992

(1) The total amortized cost of CRE loans excluded accrued interest receivable of $6.1 million and $7.3 million at December 31, 2021 and 2020, respectively.

(Back to Index)

(Back to Index)

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

	2021	2020	2019	2018	2017	Prior	Total (1)
At December 31, 2021:							
Whole loans, floating-rate: (2)							
Rating 2	$ 1,230,810	$ 150,513	$ 55,510	$ 19,497	$ —	$ —	$ 1,456,330
Rating 3	33,781	24,604	136,305	60,888	—	17,500	273,078
Rating 4	—	—	28,446	86,096	—	9,220	123,762
Rating 5	—	—	22,385	—	—	2,296	24,681
Total whole loans, floating-rate	1,264,591	175,117	242,646	166,481	—	29,016	1,877,851
Mezzanine loan (rating 4)	—	—	—	4,700	—	—	4,700
Total	$ 1,264,591	$ 175,117	$ 242,646	$ 171,181	$ —	$ 29,016	$ 1,882,551

	2020	2019	2018	2017	2016	Prior	Total (1)
At December 31, 2020:							
Whole loans, floating-rate: (2)							
Rating 2	$ 221,364	$ 279,077	$ 111,397	$ —	$ —	$ —	$ 611,838
Rating 3	43,579	246,073	246,944	45,142	—	17,470	599,208
Rating 4	—	77,495	129,536	46,220	—	9,147	262,398
Rating 5	—	13,938	—	19,900	—	2,296	36,134
Total whole loans, floating-rate	264,943	616,583	487,877	111,262	—	28,913	1,509,578
Mezzanine loan (rating 3)	—	—	4,700	—	—	—	4,700
Preferred equity investments:							
Rating 3	—	6,452	—	—	—	—	6,452
Rating 4	—	—	21,262	—	—	—	21,262
Total preferred equity investments	—	6,452	21,262	—	—	—	27,714
Total	$ 264,943	$ 623,035	$ 513,839	$ 111,262	$ —	$ 28,913	$ 1,541,992

(1) The total amortized cost of CRE loans excluded accrued interest receivable of $6.1 million and $7.3 million at December 31, 2021 and 2020, respectively.
(2) Acquired CRE whole loans are grouped within each loan's year of issuance.

At December 31, 2021 and 2020, the Company had one mezzanine loan included in assets held for sale that had no carrying value.

(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, 2021:							
Whole loans, floating-rate	$ —	$ —	$ 19,916	$ 19,916	$ 1,857,935	$ 1,877,851	$ 19,916
Mezzanine loan	—	—	—	—	4,700	4,700	—
Total	$ —	$ —	$ 19,916	$ 19,916	$ 1,862,635	$ 1,882,551	$ 19,916
At December 31, 2020:							
Whole loans, floating-rate	$ —	$ —	$ 11,443	$ 11,443	$ 1,498,135	$ 1,509,578	$ 11,443
Mezzanine loan	—	—	—	—	4,700	4,700	—
Preferred equity investments	—	—	—	—	27,714	27,714	—
Total	$ —	$ —	$ 11,443	$ 11,443	$ 1,530,549	$ 1,541,992	$ 11,443

(1) During the years ended December 31, 2021, 2020 and 2019, the Company recognized interest income of $1.2 million, $1.3 million and $1.1 million, respectively, on two loans with principal payments past due greater than 90 days at December 31, 2021.
(2) Includes one whole loan and two whole loans with total amortized costs of $8.0 million and $28.3 million, respectively, in maturity default at December 31, 2021 and 2020, respectively.
(3) The total amortized cost of CRE loans excluded accrued interest receivable of $6.1 million and $7.3 million at December 31, 2021 and 2020, respectively.

At December 31, 2021 and 2020, the Company had three whole loans in maturity default with total amortized costs of $27.9 million and $39.7 million, respectively. During the year ended December 31, 2021, the Company received the deed-in-lieu of foreclosure on a property that collateralized a whole loan that was in maturity default at December 31, 2020 with an amortized cost of $19.9 million.

At December 31, 2021, three whole loans, including two loans that had maturity defaults, with a total amortized cost of $30.4 million were past due on interest payments.

In January 2022, two whole loans in maturity default at December 31, 2021 and 2020, including one loan that was past due on interest payments at December 31, 2021, paid off principal of $17.6 million. The payoff on one loan was the result of a discounted payoff and resulted in a realized loss of $2.3 million for which a CECL allowance was established as of December 31, 2021.

Troubled-Debt Restructurings

There were no TDRs during the year ended December 31, 2021. During the year ended December 31, 2020, two loans underwent TDRs. In November 2020 and October 2021, the Company received the properties collateralizing both loans that underwent TDRs during the year ended December 31, 2020 through the receipt of the deeds-in-lieu of foreclosure on the properties.

During the year ended December 31, 2021 the Company entered into 14 agreements that extended loans by a weighted average period of 11 months and, in certain cases, modified certain other loan terms. Two formerly forborne borrowers and one borrower performing in accordance with a forbearance agreement were in maturity default at December 31, 2021. No loan modifications during the year ended December 31, 2021 resulted in TDRs.

NOTE 8 - INVESTMENTS IN REAL ESTATE AND OTHER ACQUIRED ASSETS AND ASSUMED LIABILITIES

During the year ended December 31, 2021, the Company acquired investments in real estate through direct equity investments and as a result of its lending activities (primarily through foreclosure or deed-in-lieu of foreclosure in full or partial satisfaction of non-performing loans). The following table summarizes the acquisition date values of the acquired assets and assumed liabilities during the year ended December 31, 2021 (in thousands):

Investments in real estate, equity:	
Assets acquired:	
Land	$ 22,359
Building	4,211
Building and tenant improvements	495
Investments in real estate	27,065
Intangible assets	1,726
Total	28,791
Liabilities assumed:	
Other liabilities	(247)
Fair value of net assets acquired	28,544
Investments in real estate from lending activities:	
Assets acquired:	
Property held for sale	17,889
Total fair value at acquisition of net assets acquired	$ 46,433

(Back to Index)

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, 2021			December 31, 2020		
	Cost Basis	Accumulated Depreciation & Amortization	Carrying Value	Cost Basis	Accumulated Depreciation & Amortization	Carrying Value
Assets acquired:						
Investments in real estate, equity:						
Investments in real estate (1)	$ 27,065	$ (191)	$ 26,874	$ —	$ —	$ —
Intangible assets (2)	1,726	(806)	920	—	—	—
Subtotal	28,791	(997)	27,794	—	—	—
Investments in real estate from lending activities:						
Investment in real estate (3)	34,124	(1,689)	32,435	33,929	(123)	33,806
Property held for sale (4)	17,846	—	17,846	—	—	—
Right of use assets (5)(6)	5,603	(95)	5,508	5,603	(11)	5,592
Intangible assets (7)	3,337	(380)	2,957	3,336	(42)	3,294
Subtotal	60,910	(2,164)	58,746	42,868	(176)	42,692
Total	89,701	(3,161)	86,540	42,868	(176)	42,692
Liabilities assumed:						
Investments in real estate, equity:						
Other liabilities	(247)	78	(169)	—	—	—
Investments in real estate from lending activities:						
Lease liabilities (6)	(3,113)	53	(3,060)	(3,113)	6	(3,107)
Total	(3,360)	131	(3,229)	(3,113)	6	(3,107)
	$ 86,341		$ 83,311	$ 39,755		$ 39,585

(1) Includes $22.4 million of land, which is not depreciable, at December 31, 2021.
(2) Carrying value includes approximately $819,000 of an acquired in-place lease intangible asset and $101,000 of an acquired leasing commission intangible asset at December 31, 2021.
(3) Includes $129,000 of building renovations assets at carrying value at December 31, 2021 made subsequent to the date of acquisition of a property. Additionally, carrying value includes approximately $60,000 and $5,000 of furniture and fixtures purchased for a property subsequent to the date of acquisition, at December 31, 2021 and 2020, respectively.
(4) Includes a property acquired in October 2021 that is being marketed for sale.
(5) Right of use assets include a right of use asset associated with an acquired ground lease of $3.1 million accounted for as an operating lease and a below-market lease intangible asset of $2.4 million and $2.5 million at December 31, 2021 and 2020, respectively.
(6) Refer to Note 9 for additional information on the Company's remaining operating leases.
(7) Carrying value includes franchise agreement intangible assets of $2.6 million and $2.8 million and a customer list intangible asset of $311,000 and $477,000 at December 31, 2021 and 2020, respectively.

The right of use assets and lease liabilities comprised a ground lease acquired, determined to be an operating lease. The lease payments consist of air rights rent, retail rent and parking rent, the amounts of which are specifically determined in the executed lease agreement and subsequently increased based on the increase of the consumer price index over a specified amount of periods. The Company recorded approximately $47,000 and $6,000 of offsetting amortization and accretion on its right of use assets and lease liabilities during the years ended December 31, 2021 and 2020, respectively. There were no leases outstanding during the year ended December 31, 2019.

(Back to Index)

During the years ended December 31, 2021 and 2020, the Company recorded amortization expense of approximately $1.2 million and $47,000, respectively, on its intangible assets. There were no intangible assets held during the year ended December 31, 2019. The Company expects to record amortization expense of $1.2 million, $401,000, $244,000, $210,000 and $210,000 during the 2022, 2023, 2024, 2025 and 2026 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 July 2028. 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, 2021
Operating Leases:	
Right of use assets	$ 443
Lease liabilities	$ (477)
Weighted average remaining lease term:	6.6 years
Weighted average discount rate:	10.65%

The following table summarizes the Company’s operating lease costs and cash payments during the period (in thousands):

	Year Ended December 31, 2021
Lease Cost:	
Operating lease cost	$ 75

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

	Operating Leases
2022	$ 97
2023	99
2024	99
2025	102
2026	104
Thereafter	170
Subtotal	671
Less: impact of discount	(194)
Total	$ 477

NOTE 10 - INVESTMENT SECURITIES AVAILABLE-FOR-SALE

The following table summarizes the Company’s investment securities available-for-sale, including those pledged as collateral (in thousands, except amounts in the footnote):

	Amortized Cost (1)	Unrealized Gains	Unrealized Losses	Fair Value
At December 31, 2020:				
CMBS, fixed-rate	$ 2,080	$ —	$ —	$ 2,080

(1) The amortized cost of CMBS excluded accrued interest receivable of $56,000 at December 31, 2020.

Beginning in the first quarter of 2020, the COVID-19 pandemic produced material and previously unforeseeable liquidity shocks to credit markets, resulting in significant declines in the pricing of the Company's investment securities available-for-sale. This triggered substantial margin calls by the Company's counterparties and, in certain cases, formal notices of events of default, all of which were withdrawn or rescinded as of April 19, 2020 (see Note 12). As a result of these circumstances and the uncertainty caused by the COVID-19 pandemic, substantially all the Company's remaining CMBS available-for-sale were sold as of April 2020.

During the year ended December 31, 2020, the Company incurred losses of $186.4 million on its CMBS portfolio, including realized losses of $180.3 million primarily attributable to the sale of 67 CMBS as of April 2020. The remaining unrealized losses of $6.1 million were recorded on two securities that previously had fair values below the amortized cost bases and which were expected to be sold prior to their recoveries, with an offsetting charge directly to their amortized cost bases. In March 2021, the Company sold these two positions, resulting in cash proceeds of $3.0 million and gains of $878,000 during the year ended December 31, 2021.

During the year ended December 31, 2019, the Company sold one CMBS position resulting in proceeds of $638,000 and a realized gain of $4,000.

NOTE 11 - INVESTMENTS IN UNCONSOLIDATED ENTITIES

The Company's investments in unconsolidated entities at December 31, 2021 and December 31, 2020 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, 2021, 2020 and 2019 the Company recorded dividends from its investments in RCT I's and RCT II's common shares, reported in other revenue on the consolidated statement of operations, of $65,000, $76,000, and $101,000, respectively.

NOTE 12 - BORROWINGS

The Company historically has financed the acquisition of its investments, including investment securities and loans, through the use of secured and unsecured borrowings in the form of securitized notes, repurchase agreements, secured term warehouse financing facilities, a senior secured financing facility, senior unsecured notes, convertible senior notes and trust preferred securities issuances. 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, 2021:						
XAN 2020-RSO8 Senior Notes	$ 142,375	$ 577	$ 141,798	2.18%	13.2 years	$ 229,263
XAN 2020-RSO9 Senior Notes	94,814	489	94,325	4.25%	15.3 years	144,361
ACR 2021-FL1 Senior Notes (1)	675,223	5,410	669,813	1.60%	14.5 years	802,643
ACR 2021-FL2 Senior Notes	567,000	6,437	560,563	1.90%	15.1 years	700,000
Senior secured financing facility	—	3,432	(3,432)	5.75%	6.2 years	170,791
CRE - term warehouse financing facilities (2)(3)	71,078	4,307	66,771	2.27%	2.8 years	102,027
4.50% Convertible Senior Notes	88,014	1,583	86,431	4.50%	227 days	—
5.75% Senior Unsecured Notes (4)	150,000	3,393	146,607	5.75%	4.6 years	—
Unsecured junior subordinated debentures	51,548	—	51,548	4.12%	14.7 years	—
Total	$ 1,840,052	$ 25,628	$ 1,814,424	2.44%	12.7 years	$ 2,149,085

	Principal Outstanding	Unamortized Issuance Costs and Discounts	Outstanding Borrowings	Weighted Average Borrowing Rate	Weighted Average Remaining Maturity	Value of Collateral
At December 31, 2020:						
XAN 2019-RSO7 Senior Notes	$ 415,621	$ 2,861	$ 412,760	1.60%	15.3 years	$ 516,979
XAN 2020-RSO8 Senior Notes	388,459	4,164	384,295	1.62%	14.2 years	475,347
XAN 2020-RSO9 Senior Notes	234,731	3,857	230,874	3.31%	16.3 years	285,862
Senior secured financing facility	33,360	4,046	29,314	5.75%	6.6 years	239,385
CRE - term warehouse financing facilities (2)	13,516	1,258	12,258	2.66%	299 days	20,000
4.50% Convertible Senior Notes	143,750	6,498	137,252	4.50%	1.6 years	—
12.00% Senior Unsecured Notes	50,000	3,574	46,426	12.00%	6.6 years	—
Unsecured junior subordinated debentures	51,548	—	51,548	4.18%	15.7 years	—
Total	$ 1,330,985	$ 26,258	$ 1,304,727	2.83%	13.0 years	$ 1,537,573

(1) Value of collateral excludes interest income of $730,000 and exit fees of $228,000 received as of December 31, 2021.
(2) Principal outstanding includes accrued interest payable of $58,000 and $16,000 at December 31, 2021 and 2020, respectively.
(3) In October 2021, the Company extended the maturity of its Barclays and JPMorgan Chase CRE - term warehouse financing facilities to October 2022 and October 2024, respectively, and allowed the Wells Fargo Bank, N.A. ("Wells Fargo") CRE - term warehouse financing facility to mature.
(4) Includes deferred debt issuance costs of $306,000 at December 31, 2021 from the unused 12.00% senior unsecured notes ("12.00% Senior Unsecured Notes").

(Back to Index)

Securitizations

The following table sets forth certain information with respect to the Company's consolidated securitizations at December 31, 2021 (in thousands):

	Closing Date	Maturity Date	Permitted Funded Companion Participation Acquisition Period End (1)	Reinvestment Period End (2)	Total Note Paydowns from Closing Date through December 31, 2021
XAN 2020-RSO8	March 2020	March 2035	March 2023	N/A	$ 293,368
XAN 2020-RSO9 (3)	September 2020	April 2037	N/A	N/A	$ 150,980
ACR 2021-FL1	May 2021	June 2036	N/A	May 2023	$ —
ACR 2021-FL2 (4)	December 2021	January 2037	N/A	December 2023	$ —

(1) The permitted funded companion participation period is the period in which principal repayments can be utilized to purchase loans held outside of the respective securitization that represent the funded commitments of existing collateral in the respective securitization that were not funded as of the date the respective securitization was closed.
(2) The reinvestment period is the period in which principal proceeds received may be used to acquire CRE loans for reinvestment into the securitization.
(3) XAN 2020-RSO9 includes a future advances reserve account of $7.4 million at December 31, 2021 to fund unfunded commitments, which is reported in restricted cash on the consolidated balance sheet.
(4) Includes a 180-day ramp up acquisition period that allows the securitization to acquire CRE loans using unused proceeds of $98.9 million at December 31, 2021 from the issuance of the non-recourse floating-rate notes.

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 December 31, 2021 and 2020 were eliminated in consolidation.

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. XAN 2020-RSO8 issued a total of $435.7 million of non-recourse, floating-rate notes at par, of which ACRES RF purchased 100% of the Class D and Class E notes. The Company's investments in the Class D and Class E notes were financed by CMBS short-term repurchase agreements and were sold in conjunction with the disposition of the Company's CMBS portfolio in April 2020 (See Note 10). Additionally, ACRES RF purchased 100% of the Class F and Class G notes and a subsidiary of ACRES RF purchased 100% of the outstanding preference shares. The notes purchased by ACRES RF are subordinated in right of payment to all other senior notes issued by XAN 2020-RSO8, but are senior in right of payment to the preference shares. The preference shares are subordinated in right of payment to all other securities issued by XAN 2020-RSO8.

At closing, the senior notes issued to investors consisted of the following classes: (i) $295.3 million of Class A notes bearing interest at one-month LIBOR plus 1.15%, increasing to 1.40% in November 2024; (ii) $39.2 million of Class A-S notes bearing interest at one-month LIBOR plus 1.45%, increasing to 1.70% in December 2024; (iii) $26.1 million of Class B notes bearing interest at one-month LIBOR plus 1.75%, increasing to 2.25% in January 2025; (iv) $32.7 million of Class C notes bearing interest at one-month LIBOR plus 2.15%, increasing to 2.65% in January 2025; (v) $26.1 million of Class D notes bearing interest at one-month LIBOR plus 2.50%, increasing to 3.00% in February 2025; and (vi) $16.3 million of Class E notes bearing interest at one-month LIBOR plus 2.80%, increasing to 3.30% in February 2025.

All of the notes issued mature in March 2035, although the Company has the right to call the notes beginning on the payment date in March 2022 and thereafter. Principal repayments received, after closing and ending in March 2023, may be used to purchase funding participations with respect to existing collateral held outside of the securitization.

In June 2021, the benchmark rate on XAN 2020-RSO8's senior notes, previously one-month LIBOR, was replaced with Compounded SOFR plus a benchmark adjustment.

(Back to Index)

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. XAN 2020-RSO9 issued a total of $245.8 million of non-recourse, floating-rate notes to third parties at par. Additionally, ACRES RF retained 100% of the Class E and Class F notes and a subsidiary of ACRES RF retained 100% of the outstanding preference shares. The notes purchased by ACRES RF are subordinated in right of payment to all other senior notes issued by XAN 2020-RSO9, but are senior in right of payment to the preference shares. The preference shares are subordinated in right of payment to all other securities issued by XAN 2020-RSO9.

At closing, the senior notes issued to investors consisted of the following classes: (i) $158.9 million of Class A notes bearing interest at one-month LIBOR plus 2.50%, increasing to 2.75% in June 2024; (ii) $26.7 million of Class A-S notes bearing interest at one-month LIBOR plus 3.50%, increasing to 3.75% in July 2025; (iii) $16.7 million of Class B notes bearing interest at one-month LIBOR plus 3.90%, increasing to 4.40% in July 2025; (iv) $20.8 million of Class C notes bearing interest at one-month LIBOR plus 4.25%, increasing to 4.75% in August 2025; and (v) $22.7 million of Class D notes bearing interest at one-month LIBOR plus 5.50%, increasing to 6.00% in August 2025.

All of the notes issued mature in April 2037, although the Company has the right to call the notes beginning on the earlier of the payment date in September 2022 and thereafter or the payment date on which the aggregate outstanding amount of the Class A notes has been reduced to zero.

In June 2021, the benchmark rate on XAN 2020-RSO9's senior notes, previously one-month LIBOR, was replaced with Compounded SOFR plus a benchmark adjustment. 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-F1 includes a reinvestment period, which ends in May 2023, that allows 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%.

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.

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. ACR 2021-FL2 includes a 180-day ramp up acquisition period that allows it to acquire CRE loans using unused proceeds from the issuance of the non-recourse floating-rate notes. Additionally, ACR 2021-FL2 includes a reinvestment period, which ends in December 2023, that allows it to acquire CRE loans for reinvestment into the securitization using uninvested principal proceeds.

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%;

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.

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, 2021 and 2020. The interest rates for RCT I and RCT II, at December 31, 2021, were 4.17% and 4.08%, respectively. The interest rates for RCT I and RCT II, at December 31, 2020, were 4.19% and 4.16%, 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 and 8.00% Convertible Senior Notes

The Company issued $100.0 million aggregate principal of its 8.00% convertible senior notes due 2020 ("8.00% Convertible Senior Notes") and $143.8 million aggregate principal of its 4.50% convertible senior notes due 2022 ("4.50% Convertible Senior Notes") in January 2015 and August 2017, respectively. In conjunction with the issuance of the 4.50% Convertible Senior Notes, the Company extinguished $78.8 million aggregate principal of its 8.00% Convertible Senior Notes. In January 2020, the outstanding 8.00% Convertible Senior Notes were paid off upon maturity.

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.

The following table summarizes the 4.50% Convertible Senior Notes at December 31, 2021 (dollars in thousands, except the conversion price and amounts in the footnotes):

	Principal Outstanding	Borrowing Rate	Effective Rate (1)(2)	Conversion Rate (3)(4)	Conversion Price (4)	Maturity Date
4.50% Convertible Senior Notes	$ 88,014	4.50%	7.43%	27.7222	$ 36.06	August 15, 2022

(1) Includes the amortization of the market discounts and deferred debt issuance costs, if any, for the 4.50% Convertible Senior Notes recorded in interest expense on the consolidated statements of operations.
(2) During the years ended December 31, 2021 and 2020 the effective interest rate for the 4.50% Convertible Senior Notes was 7.43%.
(3) Represents the number of shares of common stock per $1,000 principal amount of the 4.50% Convertible Senior Notes' principal outstanding, subject to adjustment as provided in the Third Supplemental Indenture (the "4.50% Convertible Senior Notes Indenture").
(4) The conversion rate and conversion price of the 4.50% Convertible Senior Notes at December 31, 2021 are adjusted to reflect quarterly cash dividends in excess of a $0.30 dividend threshold, as defined in the 4.50% Convertible Senior Notes Indenture.

The 4.50% Convertible Senior Notes are convertible at the option of the holder at any time up until one business day before the maturity date and may be settled in cash, the Company's common stock or a combination of cash and the Company's common stock, at the Company's election. The Company may not redeem the 4.50% Convertible Senior Notes prior to maturity. The closing price of the Company's common stock was $12.47 on December 31, 2021, which did not exceed the conversion price of its 4.50% Convertible Senior Notes at December 31, 2021.

(Back to Index)

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.

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, 2021, 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

On July 31, 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 may 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. On July 31, 2020, the Company issued to Oaktree $42.0 million aggregate principal amount of the 12.00% Senior Unsecured Notes. In addition, on July 31, 2020, the Company issued to MassMutual $8.0 million aggregate principal amount of the 12.00% Senior Unsecured Notes.

At December 31, 2020, the Company had a discount of $3.1 million (the offset of which was recorded in additional paid-in capital) on the 12.00% Senior Unsecured Notes.

On August 18, 2021, the Company entered into an agreement with Oaktree and MassMutual that provided for the redemption in full of the outstanding balance 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 approximately $329,000 and (iii) a make-whole amount of approximately $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.

In January 2022, the Company entered into an amendment of the Note and Warrant Purchase Agreement that extended the time to July 2022 that the Company may elect to issue to Oaktree and MassMutual up to $75.0 million of principal of additional notes. At any time and from time to time prior to July 31, 2022, the Company may elect to issue to Oaktree and MassMutual warrants to purchase an additional 699,992 shares of the common stock for a purchase price equal to the principal amount of the 12.00% Senior Unsecured Notes being issued. The warrants are immediately exercisable on issuance and expire seven years from the issuance date. The warrants can be exercised with cash or as a net exercise.

(Back to Index)

Senior Secured Financing Facility, Term Warehouse Financing Facilities and Repurchase Agreements

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

	December 31, 2021				December 31, 2020			
	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)	$ (3,432)	$ 170,791	9	5.75%	$ 29,314	$ 239,385	17	5.75%
CRE - Term Warehouse Financing Facilities (2)								
JPMorgan Chase Bank, N.A. (3)	18,875	37,167	3	2.85%	12,258	20,000	1	2.66%
Morgan Stanley Mortgage Capital Holdings LLC (4)	47,896	64,860	3	2.03%	—	—	—	—%
Total	$ 63,339	$ 272,818			$ 41,572	$ 259,385		

(1) Includes $3.4 million and $4.0 million of deferred debt issuance costs at December 31, 2021 and December 31, 2020, respectively. There was no outstanding balance at December 31, 2021.
(2) Outstanding borrowings include accrued interest payable.
(3) Includes $1.8 million and $1.3 million of deferred debt issuance costs at December 31, 2021 and 2020, respectively, which includes 356,000 and $678,000 of deferred debt issuance costs at December 31, 2021 and 2020 from other term warehouse financing facilities with no balance.
(4) Includes $2.2 million of deferred debt issuance costs at December 31, 2021.

The following table shows information about the amount at risk under the warehouse financing facilities (dollars in thousands):

	Amount at Risk (1)	Weighted Average Remaining Maturity	Weighted Average Interest Rate
At December 31, 2021:			
CRE - Term Warehouse Financing Facilities			
JPMorgan Chase Bank, N. A.	$ 16,329	2.8 years	2.85%
Morgan Stanley Mortgage Capital Holdings LLC	$ 14,871	2.8 years	2.03%

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

The Company was in compliance with all financial covenants in each agreement at December 31, 2021.

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 will be used to finance the Company's core CRE lending business. The MassMutual Facility has an interest rate of 5.75% per annum payable monthly. The MassMutual Facility matures on July 31, 2027. The Company paid a commitment fee as well as other reasonable closing costs. The loans under the MassMutual Facility are available for drawing during the first two years of the MassMutual Facility (the "Availability Period"). During the Availability Period, an unused commitment fee of 0.50% per annum (payable monthly) on unused commitments under the MassMutual Loan Agreement is payable for each day on which less than 75% of the total commitment is drawn.

Pursuant to the MassMutual 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.

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.

In May 2021, the MassMutual Loan Agreement was amended pursuant to which (i) Mass Mutual consented to Borrower's formation of certain subsidiaries to hold real estate and (ii) such subsidiaries agreed to entered into guaranty agreements in favor of the secured parties under the Mass Mutual Loan Agreement.

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. As of December 31, 2021, RSO6 and RSO7 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 RSO8, and previously RSO6 and RSO7, 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.

The MassMutual 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.

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.

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. As of December 31, 2021, there have been two amendments on the Barclays Facility and three amendments of the Barclays Guaranty. In May 2020, the Company entered into an amendment to the Barclays Guaranty that revised its minimum equity financial covenant as of March 1, 2020. Barclays also provided a framework to avoid credit-based markdowns for approximately four months, ending August 31, 2020. In October 2020, the Company entered into an amendment to the Barclays Guaranty that revised a covenant definition so that credit losses are determined in accordance with a risk rating-based methodology. In March 2021, the Company amended the Barclays Facility to extend the revolving period through October 2021. 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 has a maximum facility amount of $250.0 million, charges interest of one-month LIBOR plus a spread between 2.00% and 2.50% and matures in October 2022.

The Barclays Facility contains margin call provisions that provide Barclays with certain rights when there has been a decline in the value of purchased assets. Under these circumstances, Barclays may require the Company to transfer cash in an amount necessary to eliminate such margin deficit or repurchase the asset that resulted in the margin call.

In connection with the Barclays Facility, the Company fully guaranteed all payments and performance under the Barclays Facility pursuant to the Barclays Guaranty. The Barclays Guaranty 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 and security agreement with Barclays whereby it agreed to pledge and grant to Barclays 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 Barclays Facility 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 the acceleration of the principal amount outstanding under the Barclay Facility and the liquidation by Barclays of purchased assets then subject to the Barclays Facility.

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. 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. The JPMorgan Chase Facility has a maximum facility amount of $250.0 million, generally charges interest of one-month LIBOR plus a spread between 2.00% and 2.25% and had an initial maturity date of October 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.

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. The financing provided by the Morgan Stanley Facility matures in November 2022, with two one-year automatic extensions unless the subsidiary provides notice of its intent not to extend the facility. The Company also has the right to request an extension for an additional one-year period after the second automatic extension to the extent it is utilized.

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 intendedness 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.

CMBS - Short-Term Repurchase Agreements

The COVID-19 pandemic produced material and previously unforeseeable liquidity shocks in credit markets causing significant declines in the pricing of the Company's investment securities available-for-sale that were collateral for the Company's CMBS short-term repurchase facilities (See Note 10). As a result, in March 2020, the Company received written notices from RBC Capital Markets, LLC, RBC (Barbados) Trading Bank Corporation and Deutsche Bank Securities Inc. alleging that events of default had occurred under the Company's associated repurchase agreements as a result of not meeting certain margin calls. These notices were subsequently either withdrawn or rescinded. The Company had no outstanding balances on its CMBS - short-term repurchase agreements at December 31, 2021 or 2020.

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	2022	2023	2024	2025	2026 and Thereafter
At December 31, 2021:						
CRE securitizations (1)	$ 1,479,412	$ —	$ —	$ —	$ —	$ 1,479,412
Unsecured junior subordinated debentures	51,548	—	—	—	—	51,548
4.50% Convertible Senior Notes (2)	88,014	88,014	—	—	—	—
5.75% Senior Unsecured Notes	150,000	—	—	—	—	150,000
CRE - term warehouse financing facilities (3)	71,078	—	—	71,078	—	—
Total	$ 1,840,052	$ 88,014	$ —	$ 71,078	$ —	$ 1,680,960

(1) In February 2022, XAN 2020-RSO9's non-recourse floating rate notes, which had a balance of $94.8 million at December 31, 2021, were redeemed.
(2) In February 2022, the Company repurchased $39.8 million of its outstanding 4.50% Convertible Senior Notes.
(3) Includes accrued interest payable in the balances of principal outstanding.

NOTE 13 - SHARE ISSUANCE AND REPURCHASE

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

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

At December 31, 2021, 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 March 2016, the board of directors (the "Board") approved a securities repurchase plan and in November 2020, the Board reauthorized and approved the continued use of this plan to repurchase up to $20.0 million of the outstanding shares of the Company's common stock. Additionally, the Board authorized the Company to enter into written trading plans under Rule 10b5-1 of the Securities Exchange Act of 1934 ("the Exchange Act"). In July 2021, the authorized amount was fully utilized.

In November 2021, the Board authorized and approved the continued use of its existing share repurchase 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.

During the years ended December 31, 2021 and 2020, the Company repurchased $18.4 million and $5.4 million of its common stock, representing approximately 1,346,424 and 535,485 shares, respectively. At December 31, 2021, $16.3 million remains available under this repurchase plan.

In connection with the Note and Warrant Purchase Agreement, the 12.00% Senior Unsecured Notes give Oaktree and MassMutual warrants to purchase an aggregate of up to 1,166,653 shares of common stock at an exercise price of $0.03 per share, subject to certain potential adjustments. On July 31, 2020, concurrently with the issuance of the 12.00% Senior Unsecured Notes, the Company issued to Oaktree warrants to purchase 391,995 shares of common stock for an aggregate purchase price of $42.0 million and issued to MassMutual warrants to purchase 74,666 shares of common stock for an aggregate purchase price of $8.0 million. The warrants are recorded in additional paid-in capital on the consolidated balance sheet at their fair value of $3.1 million at issuance. At any time and from time to time prior to July 31, 2022, the Company may elect to issue to Oaktree and MassMutual warrants to purchase an additional 699,992 shares of the common stock for a purchase price equal to the principal amount of the 12.00% Senior Unsecured Notes being issued. The warrants are immediately exercisable on issuance and expire seven years from the issuance date. The warrants can be exercised with cash or as a net exercise.

NOTE 14 - 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 (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 Omnibus Plan and the Manager Plan, determined on a combined basis, will be 1,700,817 shares of common stock.

The Company recognized stock-based compensation expense of $1.7 million, $3.1 million and $2.2 million during the years ended December 31, 2021, 2020 and 2019, respectively, related to restricted stock.

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

	Number of Shares	Weighted-Average Grant-Date Fair Value
Unvested shares at January 1, 2021	11,610	$ 6.46
Issued	333,329	17.39
Vested	(11,610)	6.46
Forfeited	—	—
Unvested shares at December 31, 2021	333,329	$ 17.39

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

Year	Shares
2022	83,331
2023	83,331
2024	83,331
2025	83,336
Total	333,329

(Back to Index)

The shares issued during the year ended December 31, 2021 will vest in installments over a four-year period, pursuant to the terms of the respective award agreements. At December 31, 2021, total unrecognized compensation costs relating to unvested restricted stock was $4.1 million based on the grant date fair value of shares granted. The cost is expected to be recognized over a weighted average period of 3.5 years.

The following table summarizes the status of the Company's vested stock options at December 31, 2021:

Vested Options	Number of Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Vested at January 1, 2021	3,333	$ 76.80		
Vested	—	—		
Exercised	—	—		
Forfeited	—	—		
Expired	(3,333)	76.80		
Vested at December 31, 2021	—	$ —	—	$ —

There were no options granted during the years ended December 31, 2021 or 2020. The outstanding stock options had contractual terms of ten years and expired in May 2021.

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. No incentive compensation was paid to the Manager for the years ended December 31, 2021 and 2020. During the year ended December 31, 2019, the Company incurred incentive compensation payable to the Prior Manager of $606,000 of which $455,000 was paid in cash and $151,000, representing 4,435 shares, was paid in common stock.

The Omnibus Plan and the Manager Plan are administered by the compensation committee of our 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 18 for a description of awards made under the Manager Plan.

(Back to Index)

NOTE 15 - EARNINGS PER SHARE

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

	Years Ended December 31,		
	2021	2020	2019
Net income (loss) from continuing operations	$ 33,923	$ (197,713)	$ 36,217
Net income allocated to preferred shares	(15,887)	(10,350)	(10,350)
Net income (loss) from continuing operations allocable to common shares	18,036	(208,063)	25,867
Net loss from discontinued operations, net of tax	—	—	(251)
Net income (loss) allocable to common shares	$ 18,036	$ (208,063)	$ 25,616
Weighted average number of common shares outstanding:			
Weighted average number of common shares outstanding - basic	9,269,607	10,566,904	10,476,704
Weighted average number of warrants outstanding (1)	466,661	196,357	—
Total weighted average number of common shares outstanding - basic	9,736,268	10,763,261	10,476,704
Effect of dilutive securities - unvested restricted stock	26,949	—	80,081
Weighted average number of common shares outstanding - diluted	9,763,217	10,763,261	10,556,785
Net income (loss) per common share - basic:			
Continuing operations	$ 1.85	$ (19.33)	$ 2.47
Discontinued operations	—	—	(0.02)
Net income (loss) per common share - basic	$ 1.85	$ (19.33)	$ 2.45
Net income (loss) per common share - diluted:			
Continuing operations	$ 1.85	$ (19.33)	$ 2.45
Discontinued operations	—	—	(0.02)
Net income (loss) per common share - diluted	$ 1.85	$ (19.33)	$ 2.43

(1) See Note 13 for further details regarding the warrants.

For the 4.50% Convertible Senior Notes, the Company has the intent and ability to settle the principal amount in cash and intends to settle the conversion feature for the amount above the conversion price, or the conversion spread, if any, in common stock. The Company uses the treasury stock method for calculating any potential dilutive effect of the conversion spread on diluted EPS, if applicable. The conversion spread will have a dilutive impact on diluted EPS when the average market price of the Company’s common stock for a given period exceeds the conversion price of the 4.50% Convertible Senior Notes. For the years ended December 31, 2021, 2020 and 2019, the average market price of the Company’s common stock did not exceed the conversion price of the 4.50% Convertible Senior Notes. Additionally, during the year ended December 31, 2019, the average market price of the Company’s common stock did not exceed the conversion price of the 8.00% Convertible Senior Notes. As such the Convertible Senior Notes have been excluded from the computation of diluted earnings per share. The conversion rate and conversion price for the 4.50% Convertible Senior Notes are described further in Note 12.

NOTE 16 - 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), in certain circumstances the Company may generate operating cash flow in excess of its distributions or, alternatively, may be required to borrow funds to make sufficient distribution payments.

The Company’s 2022 dividends will be determined by the Company’s Board, which will also consider the composition of any dividends 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, 2021 and 2020, the Company did not pay any common share distributions. For the year ended December 31, 2019, the Company declared and subsequently paid dividends of $2.85 per common share.

(Back to Index)

The following tables present dividends declared (on a per share basis) for the years ended December 31, 2021, 2020 and 2019 with respect to the Company's common stock, Series C Preferred Stock and Series D Preferred Stock:

	Common Stock				
	Date Paid	Total Dividend Paid (in thousands)		Dividend Per Share	
2019					
December 31	January 28, 2020	$	8,767	$	0.825
September 30	October 25	$	7,967	$	0.75
June 30	July 26	$	7,172	$	0.675
March 31	April 26	$	6,373	$	0.60

	Series C Preferred Stock					Series D Preferred Stock				
	Date Paid	Total Dividend Paid (in thousands)		Dividend Per Share		Date Paid	Total Dividend Paid (in thousands)		Dividend Per Share	
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
2020										
December 31	February 1, 2021	$	2,587	$	0.5390625	N/A		N/A		N/A
March 31, June 30, and September 30	October 25	$	7,763	$	1.6171875	N/A		N/A		N/A
2019										
December 31	January 30, 2020	$	2,587	$	0.5390625	N/A		N/A		N/A
September 30	October 30	$	2,588	$	0.5390625	N/A		N/A		N/A
June 30	July 30	$	2,587	$	0.5390625	N/A		N/A		N/A
March 31	April 30	$	2,588	$	0.5390625	N/A		N/A		N/A

NOTE 17 - ACCUMULATED OTHER COMPREHENSIVE INCOME (LOSS)

The following table presents the changes in each component of accumulated other comprehensive income (loss) for the year ended December 31, 2021 (in thousands):

	Accumulated Other Comprehensive Loss - Net Unrealized Gain on Derivatives	
Balance at January 1, 2021	$	(9,978)
Amounts reclassified from accumulated other comprehensive loss (1)		1,851
Balance at December 31, 2021	$	(8,127)

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

(Back to Index)

NOTE 18 - RELATED PARTY TRANSACTIONS

Management Agreement

In March 2005, the Company entered into a Management Agreement, which was last amended on February 16, 2021, 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 is 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 core earnings (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 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) core earnings 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) core earnings 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) core earnings 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 Core Earnings 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% in 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, 2023 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;

- 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

(Back to Index)

- 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, 2021 and 2020, the Manager earned base management fees of approximately $6.1 million and $2.2 million. No incentive compensation was earned for the years ended December 31, 2021 and 2020. At December 31, 2021 and 2020, $561,000 and $442,000 of base management fees were payable by the Company to the Manager. There was no incentive compensation payable at December 31, 2021 and 2020. 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, 2021 and 2020, the Company reimbursed the Manager $4.7 million and $1.8 million for all such compensation and costs. At December 31, 2021 and 2020, the Company had payables to the Manager pursuant to the Management Agreement totaling approximately $1.2 million and $380,000, 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 sheet, respectively.

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

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

During the years ended December 31, 2021 and 2020, the Company recorded interest income of $357,000 and $153,000 on the ACRES Loan in other income on the consolidated statements of operations. At December 31, 2021 and 2020, the ACRES Loan had a principal balance of $11.6 million and $11.9 million recorded in loan receivable - related party on the consolidated balance sheet. At December 31, 2021 and 2020, the ACRES loan had no interest receivable.

The Company did not originate any loans that were refinanced from loans originated by affiliates of the Manager during the year ended December 31, 2021. During the year ended December 31, 2020, the Company originated two CRE whole loans with a total par value of $24.0 million that were refinanced from loans originated by affiliates of the Manager. During the year ended December 31, 2021, the Company acquired 100% equity in one property, which previously served as collateral for a loan held by an affiliate of the Manager prior to the acquisition. The Company did not acquire properties with any relation to the Manager or its affiliates during the year ended December 31, 2020.

At December 31, 2021, the Company retained equity in three 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.

(Back to Index)

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 and serves as special servicer of XAN 2020-RSO8, XAN 2020-RSO9, ACR 2021-FL1, and ACR 2021-FL2. During the year ended December 31, 2021, ACRES Capital Servicing received no portfolio servicing fees. During the year ended December 31, 2021, ACRES Capital Servicing received $14,000 in special servicing fees recorded as a reduction to interest income in the consolidated statements of operations. During the year ended December 31, 2020, ACRES Capital Servicing received no portfolio servicing fees or special servicing fees.

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, 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 and December 2021, the joint venture entities of the two 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. 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. In June 2021, the Company's Manager Incentive Plan was approved by its shareholders, which authorized up to 1,100,000 shares of common stock for issuance to the Manager (less shares of common stock issued or subject to awards under the Omnibus Plan). ACRES Share Holdings, LLC, an affiliate of ACRES Capital Corp. and the Manager, was granted 299,999 shares during the year ended December 31, 2021, which will vest 25% for four years, on each anniversary of the issuance date. See Note 14 for additional details.

Relationship with C-III and certain of its Subsidiaries

Relationship with C-III and certain of its Subsidiaries. The Prior Manager was a wholly-owned subsidiary of Resource America, Inc. ("Resource America"), which is a wholly-owned subsidiary of C-III. C-III is indirectly controlled and partially owned by Island Capital Group LLC ("Island Capital"). Effective July 31, 2020, in connection with the ACRES acquisition, Andrew L. Farkas, the managing member of Island Capital and the chairman and chief executive officer of C-III, resigned his position as the Company's Chairman. In addition, Robert C. Lieber and Matthew J. Stern, each executive managing directors of both C-III and Island Capital, resigned their positions as the Company's Chief Executive Officer and President, respectively. Lastly, Jeffrey P. Cohen, president of C-III and Island Capital, resigned his position as a member of the Board. Those officers and the Company's other executive officers were also officers of the Company's Prior Manager, Resource America, C-III and/or affiliates of those companies. Prior to September 8, 2020, a non-employee director of the Company held the position of Executive Vice President at Resource America.

Prior to July 31, 2020, the Company had a management agreement with the Prior Manager pursuant to which the Prior Manager provided the day-to-day management of the Company's operations and received substantial fees. For the years ended 2020 and 2019, the Prior Manager earned base management fees of $3.8 million and $8.3 million, respectively. The Prior Manager did not earn incentive compensation for the year ended December 31, 2020. For the year ended December 31, 2019, the Prior Manager earned incentive compensation of $606,000, of which $455,000 was paid in cash and $151,000 was paid in common stock. At December 31, 2020, there were no base management fees payable by the Company to the Prior Manager. There was no incentive compensation payable at December 31, 2020. The Prior 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 Prior Manager's and its affiliates' expenses for (a) the wages, salaries and benefits of the Chief Financial Officer, (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, and (c) personnel principally devoted to the Company's ancillary operating subsidiaries. The Company reimbursed out-of-pocket expenses and certain other costs incurred by the Prior Manager and its affiliates that related directly to the Company's operations. For the years ended December 31, 2020 and 2019, the Company reimbursed the Prior Manager $4.1 million and $4.2 million, respectively, for all such compensation and costs. The Company had no payables to Resource America and its subsidiaries at December 31, 2020. 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.

At December 31, 2021, the Company retained equity in four securitization entities, respectively, that were structured for the Company by the Prior Manager, although three of the securitization entities were substantially liquidated as of December 31, 2021. Under the Management Agreement, the Prior Manager was not separately compensated by the Company for executing these transactions and was not separately compensated for managing the securitizations entities and their assets.

Relationship with Resource Real Estate, LLC. Resource Real Estate, LLC ("Resource Real Estate"), an indirect wholly-owned subsidiary of Resource America and C-III, originated, financed and managed the Company's CRE loan portfolio until the ACRES acquisition on July 31, 2020. The Company reimbursed Resource Real Estate for loan origination costs associated with all loans originated.

Resource Real Estate served as special servicer for the following liquidated real estate securitization transactions, which provided financing for CRE loans: (i) Resource Capital Corp. 2014-CRE2, Ltd., a $353.9 million securitization that closed in July 2014 and liquidated in August 2017; (ii) Resource Capital Corp. 2015-CRE3, Ltd., a $346.2 million securitization that closed in February 2015 and liquidated in August 2018; (iii) Resource Capital Corp. 2015-CRE4, Ltd., a $312.9 million securitization that closed in August 2015 and liquidated in July 2018; and (iv) Resource Capital Corp. 2017-CRE5, Ltd. ("RCC 2017-CRE5"), a $376.7 million securitization that closed in July 2017 and liquidated in July 2019. Resource Real Estate also served as special servicer for XAN 2020-RSO8, a $522.6 million securitization that closed in March 2020. Resource Real Estate did not earn any special servicing fees during the years ended December 31, 2020 and 2019.

Relationship with C-III Commercial Mortgage LLC and C3AM. In May 2019, ACRES RF entered into a Mortgage Loan Sale and Purchase Agreement (the "May 2019 Loan Acquisition Agreement") with C-III Commercial Mortgage LLC ("C-III Commercial Mortgage"), a wholly-owned subsidiary of C-III, that provided for the acquisition by ACRES RF of certain CRE loans on a servicing-released basis at par, plus accrued and unpaid interest on each loan for an aggregate purchase price of $197.6 million. In accordance with the terms of the May 2019 Loan Acquisition Agreement, C-III Commercial Mortgage retains its title to all exit fees in excess of 0.50% of the outstanding principal balance. During the years ended December 31, 2021, *2020, and 2019*, C-III Commercial Mortgage earned approximately $361,000, $74,000 and $108,000, respectively, in exit fees. The Company had no outstanding payables to C-III Commercial Mortgage of at December 31, 2021 and outstanding payables of $48,000 at December 31, 2020.

C-III Asset Management LLC ("C3AM") served as the primary servicer for the CRE loans acquired in the May 2019 Loan Acquisition Agreement and for the CRE loans collateralizing RCC 2017-CRE5, XAN 2018-RSO6, a $514.2 million securitization that closed in June 2018 and liquidated in September 2020, and XAN 2019-RSO7, a $687.2 million securitization that closed in April 2019 and liquidated in May 2021. C3AM received servicing fees, payable monthly on an asset-by-asset basis. C3AM served as special servicer for C40, XAN 2018-RSO6 and XAN 2019-RSO7, under which it received a base special servicing fee. During the year ended December 31, 2019, C3AM earned approximately $565,000.

On December 31, 2019, C3AM was sold by C-III to an unaffiliated third party. As such, C3AM ceased being a related party under common control effective January 1, 2020.

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 is an executive at, and a director of, Resource Real Estate Opportunity REIT. During the years ended December 31, 2021 and 2020, the Company incurred $67,000 and $45,000 of expenses in connection with these agreements. The Company had no payables to Resource Real Estate Opportunity REIT at December 31, 2021 or 2020. These agreements were terminated as of March 31, 2021.

NOTE 19 - FAIR VALUE OF FINANCIAL INSTRUMENTS

The following table presents the Company's financial instruments carried at fair value on a recurring basis based upon the fair value hierarchy (in thousands):

	Level 1	Level 2	Level 3	Total
At December 31, 2020:				
Assets:				
Investment securities available-for-sale	$ —	$ —	$ 2,080	$ 2,080

In accordance with guidance on fair value measurements and disclosures, the Company is not required to disclose quantitative information with respect to unobservable inputs contained in fair value measurements that are not developed by the Company. As a consequence, the Company has not disclosed such information associated with fair values obtained for investment securities available-for-sale and derivatives from third-party pricing sources.

The following table presents additional information about the Company's assets that are measured at fair value on a recurring basis for which the Company has utilized Level 3 inputs (in thousands):

		CMBS
Balance, January 1, 2021	$	2,080
Included in earnings		878
Sales		(2,958)
Balance, December 31, 2021	$	—

In November 2020, the Company received the deed-in-lieu of foreclosure on a property that formerly collateralized a CRE whole loan. The property was appraised and determined to have a total fair value of $39.8 million, comprising a building, building improvements, site improvements, furniture and fixtures, a below market lease intangible asset, a franchise intangible asset and value relating to the existing customer list, at the time of acquisition.

In October 2021, the Company received the deed in lieu of foreclosure on a property that formerly collateralized a CRE whole loan. The property was appraised and determined to have a fair value of $17.6 million at the time of acquisition.

In November 2019, the Company foreclosed on its remaining legacy CRE loan held for sale, and obtained ownership of the underlying property, which remained classified as an asset held for sale on the consolidated balance sheets, recorded at the lower of cost or fair market value. The property was sold in December 2020 for proceeds of $10.3 million. During the years ended December 31, 2020 and 2019, the Company recorded losses of $8.8 million and $4.7 million, respectively, on the remaining CRE asset held for sale, which included protective advances to cover borrower operating losses of $2.7 million and $1.2 million, respectively. During the year ended December 31, 2020, the loss was primarily attributable to fair value charges of $6.2 million in connection with the offers received on the property adjusted for the estimated costs to sell.

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 value of the Company's investment securities available-for-sale are reported in Note 10. The fair values of the Company's derivative instruments are reported in Note 20.

The fair values of the Company's loans held for investment are measured by discounting the expected future cash flows using the current interest rates at which similar loans would be made to borrowers with similar credit ratings and for the same remaining maturities. Par values of loans with variable interest rates are expected to approximate fair value unless evidence of credit deterioration exists, in which case the fair value approximates the par value less the loan's allowance estimated through individual evaluation. Fair values of loans with fixed rates are calculated using the net present values of future cash flows, discounted at market rates. The Company's floating-rate CRE loans had interest rates from 3.01% to 9.00% and 4.10% to 9.75% at December 31, 2021 and 2020, respectively.

The fair value of the Company's mezzanine loan is measured by discounting the remaining contractual cash flows using the current interest rates at which similar instruments would be originated for the same remaining maturity. The Company's mezzanine loan is discounted at a rate of 10.00%.

The fair values of the Company's preferred equity investments were measured by discounting the instruments' remaining contractual cash flows using current interest rates at which similar instruments would be originated for the same remaining maturities. The Company's preferred equity investments were discounted at a rate of 12.08% and 11.54% at December 31, 2020. The Company's two preferred equity investments paid off in March 2021 and April 2021, respectively.

The Company's fixed-rate CRE loans were valued using third-party pricing sources. In March 2021, the fixed-rate CRE loans were sold at par for cash proceeds of $4.8 million.

The Company's loan receivable - related party is estimated using a discounted cash flow model.

(Back to Index)

Senior notes in CRE securitizations are estimated using a discounted cash flow model with implied yields based on trades for similar securities.

The fair value of the senior secured financing facility is measured by discounting the facility's remaining contractual cash flows using the current interest rate at which a similar debt instrument would be issued for the same remaining maturity. The fair value of the senior secured financing facility is estimated using a discounted cash flow model that discounts the expected future cash flows at a rate of 5.75%. At December 31, 2021, there were no borrowings outstanding on the senior secured financing facility.

Warehouse financing facilities are variable rate debt instruments indexed to LIBOR that reset periodically and, as a result, their carrying value approximates their fair value, excluding deferred debt issuance costs.

The fair value of the 4.50% Convertible Senior Notes is determined using a discounted cash flow model that discounts the issuance's contractual future cash flows using the current interest rate on similar debt issuances with similar terms and similar remaining maturities that do not have a conversion option.

The Company's 5.75% Senior Unsecured Notes are estimated and 12.00% Senior Unsecured Notes were estimated by using a discounted cash flow model.

The fair values of the junior unsubordinated notes RCT I and RCT II are estimated by using a discounted cash flow model.

The fair values of the Company's remaining 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, 2021:					
Assets:					
CRE whole loans	$ 1,869,301	$ 1,889,499	$ —	$ —	$ 1,889,499
CRE mezzanine loan	$ 4,445	$ 4,700	$ —	$ —	$ 4,700
Loan receivable - related party	$ 11,575	$ 10,407	$ —	$ —	$ 10,407
Liabilities:					
Senior notes in CRE securitizations	$ 1,466,499	$ 1,473,893	$ —	$ —	$ 1,473,893
Warehouse financing facilities	$ 66,771	$ 68,905	$ —	$ —	$ 68,905
4.50% Convertible Senior Notes	$ 86,431	$ 87,873	$ —	$ —	$ 87,873
5.75% Senior Unsecured Notes (1)	$ 146,607	$ 148,125	$ —	$ —	$ 148,125
Junior subordinated notes	$ 51,548	$ 41,424	$ —	$ —	$ 41,424
At December 31, 2020:					
Assets:					
CRE whole loans	$ 1,477,295	$ 1,513,822	$ —	$ —	$ 1,513,822
CRE mezzanine loan	$ 4,399	$ 4,700	$ —	$ —	$ 4,700
CRE preferred equity investments	$ 25,988	$ 27,650	$ —	$ —	$ 27,650
CRE whole loans, fixed-rate(2)	$ 4,809	$ 4,809	$ —	$ —	$ 4,809
Loan receivable - related party	$ 11,875	$ 10,184	$ —	$ —	$ 10,184
Liabilities:					
Senior notes in CRE securitizations	$ 1,027,929	$ 1,030,854	$ —	$ —	$ 1,030,854
Senior secured financing facility	$ 29,314	$ 33,360	$ —	$ —	$ 33,360
Warehouse financing facility	$ 12,258	$ 13,516	$ —	$ —	$ 13,516
4.50% Convertible Senior Notes	$ 137,252	$ 132,437	$ —	$ —	$ 132,437
12.00% Senior Unsecured Notes	$ 46,426	$ 58,910	$ —	$ —	$ 58,910
Junior unsubordinated notes	$ 51,548	$ 31,955	$ —	$ —	$ 31,955

(1) Carrying value includes deferred debt issuance costs of $307,000 from the redeemed 12.00% Senior Unsecured Notes.
(2) Classified as other assets on the consolidated balance sheet.

(Back to Index)

NOTE 20 - 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, 2021 and 2020, the Company had losses of $8.5 million and $10.4 million, respectively, recorded in accumulated other comprehensive (loss) income, which will be amortized into earnings over the remaining life of the debt. During the years ended December 31, 2021 and 2020, the Company recorded amortization expense, reported in interest expense on the consolidated statements of operations, of $1.9 million and $1.3 million, respectively.

At December 31, 2021 and 2020, the Company had an unrealized gain of $347,000 and $438,000, respectively, attributable to two terminated interest rate swaps in accumulated other comprehensive income (loss) on the consolidated balance sheets, to be accreted into earnings over the remaining life of the debt. The Company recorded accretion income, reported in interest expense on the consolidated statements of operations, of $91,000, $92,000 and $91,000 into earnings during the years ended December 31, 2021, 2020, and 2019, respectively.

The Company's prior origination of fixed-rate CRE whole loans exposed it to market pricing risk in connection with the fluctuations of market interest rates. As market interest rates increase or decrease, the fair value of the fixed-rate CRE whole loans will decrease or increase accordingly. In order to mitigate this market price risk, the Company entered into interest rate swap contracts in which it pays a fixed rate of interest in exchange for a variable rate of interest, usually three-month LIBOR. Unrealized gains and losses on the value of these swap contracts were recorded in other income (expense) on the consolidated statements of operations. In December 2020, these interest rate swap contracts were terminated.

The following tables present the effect of the derivative instruments on the consolidated statements of operations during the years ended December 31, 2021, 2020 and 2019:

The Effect of Derivative Instruments on the Consolidated Statements of Operations (in thousands)

	Derivatives	
Year Ended December 31, 2021	**Consolidated Statements of Operations Location**	**Realized and Unrealized Gain (Loss) (1)**
Interest rate swap contracts, hedging	Interest expense	$ (1,851)

	Derivatives	
Year Ended December 31, 2020	**Consolidated Statements of Operations Location**	**Realized and Unrealized Gain (Loss) (1)**
Interest rate swap contracts	Other (expense) income	$ (10)
Interest rate swap contracts, hedging	Interest expense	$ (1,562)

	Derivatives	
Year Ended December 31, 2019	**Consolidated Statements of Operations Location**	**Realized and Unrealized Gain (Loss) (1)**
Interest rate swap contracts, hedging	Interest expense	$ (138)

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

NOTE 21 - 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, 2021:						
Warehouse financing facilities (2)	$ 66,771	$ —	$ 66,771	$ 66,771	$ —	$ —
At December 31, 2020:						
Warehouse financing facilities (2)	$ 12,258	$ —	$ 12,258	$ 12,258	$ —	$ —

(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 $102.0 million and $20.0 million at December 31, 2021 and 2020, 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.

NOTE 22 - INCOME TAXES

The following table details the components of income taxes at the Company's TRSs (in thousands):

	Years Ended December 31,		
	2021	2020	2019
Income tax (benefit) expense:			
Current:			
Federal	$ —	$ —	$ —
State	—	—	—
Total current	—	—	—
Deferred:			
Federal	—	—	—
State	—	—	—
Total deferred	—	—	—
Total	$ —	$ —	$ —

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,		
	2021	2020	2019
Income tax (benefit) expense:			
Statutory tax	$ (66)	$ (37)	$ 6
State and local taxes, net of federal benefit	(59)	(3,353)	2,716
True-up of prior period tax expense	—	—	816
Valuation allowance	125	6,407	(5,402)
Discontinued operations adjustment	—	—	863
Other items	—	(3,017)	1,001
Total	$ —	$ —	$ —

The components of deferred tax assets and liabilities were as follows for the Company's TRSs (in thousands):

	December 31,	
	2021	2020
Deferred tax assets related to:		
Federal, state and local loss carryforwards	$ 14,362	$ 13,764
Charitable contribution carryforward	58	58
Capital loss carryforward	327	327
Equity investments	6,728	7,369
Interest expense limitation 163(j)	202	—
Total deferred tax assets	21,677	21,518
Valuation allowance	(21,360)	(21,235)
Total deferred tax assets, net of valuation allowance	$ 317	$ 283
Deferred tax liabilities related to:		
Amortization of intangibles	$ (260)	$ (252)
Unrealized gains	(57)	(31)
Total deferred tax liabilities	$ (317)	$ (283)
Deferred tax assets, net	$ —	$ —

At December 31, 2021 and 2020, the Company had $61.1 million and $59.4 million, respectively, of gross federal and $1.9 million and $1.6 million, respectively, of gross state and local net operating tax loss carryforwards (a collective deferred tax asset of $14.4 million and $13.8 million, respectively) reported in other assets in the Company's consolidated balance sheets.

The Company also generated a gross capital loss carryforward of $969,000 (tax effected expense of $327,000) 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, 2021 and 2020. Therefore, a full valuation allowance with a tax effected expense of $21.4 million and $21.2 million has been recorded against the deferred tax asset at December 31, 2021 and 2020, 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 2018, and is subject to examination by state and local jurisdictions for calendar years including and subsequent to 2018.

(Back to Index)

NOTE 23 - QUARTERLY RESULTS

The following is a presentation of the quarterly results of operations:

	March 31 (unaudited)	June 30 (unaudited)	September 30 (unaudited)	December 31 (unaudited)
	(in thousands, except per share data)			
Year ended December 31, 2021:				
Interest income	$ 24,749	$ 25,793	$ 23,986	$ 26,504
Interest expense	13,724	18,702	14,534	14,615
Net interest income	$ 11,025	$ 7,091	$ 9,452	$ 11,889
Net income (loss)	$ 13,056	$ 13,639	$ (4,928)	$ 12,156
Net income allocated to preferred shares	(2,588)	(3,568)	(4,877)	(4,854)
Net income (loss) allocable to common shares	$ 10,468	$ 10,071	$ (9,805)	$ 7,302
Net income (loss) per common share - basic	$ 1.03	$ 1.04	$ (1.03)	$ 0.77
Net income (loss) per common share - diluted	$ 1.03	$ 1.04	$ (1.03)	$ 0.76

	March 31 (unaudited)	June 30 (unaudited)	September 30 (unaudited)	December 31 (unaudited)
	(in thousands, except per share data)			
Year ended December 31, 2020:				
Interest income	$ 33,290	$ 27,243	$ 24,638	$ 23,072
Interest expense	18,394	12,547	13,033	14,034
Net interest income	$ 14,896	$ 14,696	$ 11,605	$ 9,038
Net (loss) income	$ (196,521)	$ (33,400)	$ 8,159	$ 24,049
Net income allocated to preferred shares	(2,588)	(2,587)	(2,588)	(2,587)
Net (loss) income allocable to common shares	$ (199,109)	$ (35,987)	$ 5,571	$ 21,462
Net (loss) income per common share - basic	$ (18.89)	$ (3.41)	$ 0.51	$ 1.96
Net (loss) income per common share - diluted	$ (18.89)	$ (3.41)	$ 0.51	$ 1.95

NOTE 24 - 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, 2021.

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, 2021 and 2020, no such litigation demand was outstanding. Reserves for such potential litigation demands are included in the reserve for mortgage repurchases and indemnifications that totaled $1.3 million and $1.5 million at December 31, 2021 and 2020, respectively. The reserves for mortgage repurchases and indemnifications are included in liabilities held for sale on the consolidated balance sheets.

Settled and Dismissed Litigation Matters

The Company did not have any general litigation reserve at December 31, 2021 or 2020.

(Back to Index)

The Company previously disclosed two consolidated shareholder derivative actions filed in the Court that purported to assert claims on behalf of the Company similar to the claims in the New York State Actions (defined below) (collectively, the “Federal Actions”): (a) by shareholders who declined to make a demand on the Board prior to filing suit (the “Federal Demand Futile Actions”), which comprised a suit filed in January 2017 (the “Greenberg Action”), and another suit filed in January 2017 (the “DeCaro Action”) and (b) by shareholders who served demands on the Board to bring litigation and allege that their demands were wrongfully refused (the “Federal Demand Refused Actions”), which comprised a suit filed in February 2017 (the “McKinney Action”), a suit filed in March 2017 (the “Sherek/Speigel Action”) and a suit filed in April 2017 (the “Sebenoler Action”). In January 2019, the parties to the Federal Actions executed a stipulation and agreement of settlement (the “Federal Actions Settlement Agreement”), which received final approval from the Court on May 17, 2019. Under the Federal Actions Settlement Agreement, the Company agreed to implement certain corporate governance changes and paid $550,000 in plaintiffs’ attorneys’ fees, funded by the Company’s insurers. In exchange for the settlement consideration, the defendants were released from liability for certain claims, including all claims asserted in the Federal Actions. Among other terms and conditions, the Federal Actions Settlement Agreement provided that the defendants deny any and all allegations of wrongdoing and maintained that they have acted lawfully and in accordance with their fiduciary duties at all times.

The Company previously disclosed six separate, additional shareholder derivative suits filed in the Supreme Court of New York purporting to assert claims on behalf of the Company (the “New York State Actions”) that were filed on the following dates: December 2015 (the “Reaves Action”); February 2017 (the “Caito Action”); March 2017 (the “Simpson Action”); March 2017 (the “Heckel Action”); May 2017 (the “Schwartz Action”); and August 2017 (the “Greff Action”). Plaintiffs in the Schwartz Action and Greff Action made demands on the Company’s Board before filing suit, but plaintiffs in the Reaves Action, Caito Action, Simpson Action and Heckel Action did not. All of the shareholder derivative suits were substantially similar and alleged that certain of the Company’s current and former officers and directors breached their fiduciary duties, wasted corporate assets and/or were unjustly enriched. Certain complaints asserted additional claims against the Manager and Resource America for unjust enrichment based on allegations that the Manager received excessive management fees from the Company. In June 2019 and July 2019, the Schwartz Action and Greff Action, respectively, were dismissed. In October 2019, the four remaining New York State Actions were dismissed.

The Company previously disclosed another shareholder derivative action filed in the United States District Court for the District of Maryland against certain of the Company’s former officers and directors and the Manager (the “Hafkey Action”). The complaint asserted a breach of fiduciary duty claim that was substantially similar to the claims at issue in the Federal Actions. In May 2019, the plaintiff in the Hafkey Action voluntarily dismissed his suit in light of the settlement and dismissal of the Federal Actions.

The Company previously disclosed another shareholder derivative action filed in the Maryland Circuit Court against certain of the Company’s current and former officers and directors, as well as the Manager and Resource America (the “Canoles Action”). The complaint (as amended) in the Canoles Action asserted a variety of claims, including claims for breach of fiduciary duty, unjust enrichment and corporate waste, which were based on allegations substantially similar to those at issue in the Federal Demand Futile Actions. In July 2019, the plaintiff in the Canoles Action voluntarily dismissed his suit in light of the settlement and dismissal of the Federal Actions.

Impact of COVID-19

As discussed in Note 2, the COVID-19 pandemic continues to plague countries throughout the globe as virus variants have emerged. While the U.S. and certain countries around the world have eased restrictions and financial markets and unemployment rates have stabilized to some degree, due in large part to the discovery and distribution of vaccines and other treatments, the pandemic continues to cause uncertainty on the U.S. and global economies, generally, and the CRE business in particular. The reinstatement of nationwide restrictions placed on businesses in response to COVID-19 may cause significant cash flow disruptions across the economy that may impact the Company’s borrowers and their ability to stay current with their debt obligations in the near term. Due to the fluidity of this situation, along with other world events, any prediction as to the ultimate adverse impact of the pandemic on economic and market conditions remains difficult to assess. The Company had no contingent liabilities recorded in connection with the COVID-19 pandemic at December 31, 2021 or 2020. However, the impact of the COVID-19 pandemic has had and may continue to have a long-term and material impact on its results of operations, financial condition and cash flows through the fiscal year 2022.

Other Contingencies

As part of the May 2017 sale of its equity interest in Pearlmark Mezzanine Realty Partners IV, L.P., the Company entered into an indemnification agreement pursuant to which the Company agreed to indemnify the purchaser against realized losses of up to $4.3 million on one mezzanine loan until its final maturity date in 2020. As a result of the indemnified party’s partial sale of the mezzanine loan, the maximum exposure was reduced to $536,000 in 2019. In October 2020, the mezzanine loan paid off its balance to the indemnified party, resulting in the extinguishment of the Company’s liability.

(Back to Index)

PCM is subject to additional claims for repurchases or indemnifications on loans that PCM has sold to investors. At December 31, 2021 and 2020, 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.

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 $157.6 million and $67.2 million in unfunded loan commitments at December 31, 2021 and 2020, respectively. Preferred equity investments had $2.5 million in unfunded investment commitments at December 31, 2020. The preferred equity investments paid off during the year ended December 31, 2021.

NOTE 25 - 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 and Note 12, 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, 2021. 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, 2021.

Our independent registered public accounting firm, Grant Thornton LLP, audited our internal control over financial reporting at December 31, 2021. Their report, dated March 8, 2022, 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, 2021 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, 2021, 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, 2021, 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, 2021, and our report dated March 8, 2022 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

Philadelphia, Pennsylvania
March 8, 2022

(Back to Index)

ITEM 9B. OTHER INFORMATION

None.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

Not applicable.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information required by this item will be set forth in our definitive proxy statement with respect to our 2022 annual meeting of stockholders, to be filed on or before April 30, 2022 ("2022 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 2022 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 2022 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 2022 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 2022 Proxy Statement, which is incorporated herein by this reference.

(Back to Index)

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(a)	Asset Purchase Agreement, dated June 6, 2017, by and among Stearns Lending, LLC, Primary Capital Mortgage, LLC, and Resource Capital Corp. (32)
2.1(b)	Mortgage Loan Sale and Purchase Agreement, dated May 29, 2019, by and between RCC Real Estate, Inc. and C-III Commercial Mortgage LLC. (44)
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. (27)
3.1(c)	Articles Supplementary 8.50% Series A Cumulative Redeemable Preferred Stock. (15)
3.1(d)	Articles Supplementary 8.50% Series A Cumulative Redeemable Preferred Stock. (16)
3.1(e)	Articles Supplementary 8.25% Series B Cumulative Redeemable Preferred Stock. (17)
3.1(f)	Articles Supplementary 8.50% Series A Cumulative Redeemable Preferred Stock. (21)
3.1(g)	Articles Supplementary 8.625% Fixed-to-Floating Series C Cumulative Redeemable Preferred Stock. (8)
3.1(h)	Articles Supplementary 7.875% Series D Cumulative Redeemable Preferred Stock, as corrected. (59)
3.1(i)	Articles of Amendment, effective May 25, 2018. (39)
3.1(j)	Articles of Amendment, effective February 16, 2021. (56)
3.1(k)	Articles of Amendment, effective May 28, 2021. (60)
3.2	Fourth Amended and Restated Bylaws of ACRES Commercial Realty Corp. (56)
4.1(a)	Form of Certificate for Common Stock for Resource Capital Corp. (1)
4.1(b)	Form of Certificate for 8.50% Series A Cumulative Redeemable Preferred Stock. (12)
4.1(c)	Form of Certificate for 8.25% Series B Cumulative Redeemable Preferred Stock. (17)
4.1(d)	Form of Certificate for 8.625% Fixed-to-Floating Series C Cumulative Redeemable Preferred Stock. (8)
4.1(e)	Form of Certificate for 7.875% Series D Cumulative Redeemable Preferred Stock. (59)
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(a)	Third Supplemental Indenture, dated August 16, 2017, between Resource Capital Corp. and Wells Fargo Bank, National Association, as Trustee (including the form of 4.50% Convertible Senior Notes due 2022). (34)
4.8(b)	Form of 4.50% Convertible Senior Notes due 2022 (included in Exhibit 4.8(b)).
4.9	Description of Registrant's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934.
4.10(a)	Base Indenture, dated August 16, 2021, between the Company and the Trustee. (63)
4.10(b)	First Supplemental Indenture, dated August 16, 2021, between the Company and the Trustee. (63)
4.10(c)	Form of 5.75% Senior Note due 2026 (included in Exhibit 4.10(b)).

(Back to Index)

(Back to Index)

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. (51)
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. (57)
10.2(a)	2005 Stock Incentive Plan. (1)
10.2(b)	Form of Stock Award Agreement. (7)
10.2(c)	Form of Stock Option Agreement. (7)
10.3(a)	Second Amended and Restated Omnibus Equity Compensation Plan. (45)
10.3(b)	Amendment No. 1 to the Exantas Capital Corp. Second Amended and Restated Omnibus Equity Compensation Plan. (52)
10.3(c)	Third Amended and Restated Omnibus Equity Compensation Plan. (58)
10.3(d)	Form of Stock Award Agreement. (25)
10.3(e)	Form of Stock Award Agreement (for employees with Resource America, Inc. employment agreements). (25)
10.4	Form of Indemnification Agreement. (33)
10.5(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. (51)
10.5(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. (53)
10.5(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. (62)
10.5(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. (68)
10.5(e)	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. (51)
10.6(a)	Note and Warrant Purchase Agreement, dated as of July 31, 2020, by and among Exantas Capital Corp. and the Purchasers signatory thereto. (51)
10.6(b)	Agreement between the Company, OCM XAN Holdings PT, LLC and the Massachusetts Mutual Life Insurance Company, dated August 18, 2021. (64)
10.6(c)	Amendment No. 1 to Note and Warrant Purchase Agreement, dated January 31, 2022, between ACRES Commercial Realty Corp. and the Purchasers signatory thereto. (69)
10.7	Promissory Note, dated as of July 31, 2020, issued by ACRES Capital Corp. to RCC Real Estate, Inc. (51)
10.8(a)	Manager Incentive Plan. (58)
10.8(b)	Form of Stock Award Agreement Under the Manager Incentive Plan. (61)
10.9	Equity Distribution Agreement, dated October 4, 2021, by and among ACRES Commercial Realty Corp., ACRES Capital, LLC and JonesTrading Institutional Services LLC. (66)
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.
99.1(a)	Amended and Restated Master Repurchase and Securities Contract by and between RCC Real Estate SPE 4, LLC, as Seller, and Wells Fargo Bank, National Association, as Buyer, dated as of July 19, 2018. (11)
99.1(b)	First Amendment to Amended and Restated Master Repurchase and Securities Contract by and between RCC Real Estate SPE 4, LLC, as Seller, and Wells Fargo Bank, National Association, as Buyer, dated as of May 29, 2019. (46)
99.1(c)	Second Amendment To Amended And Restated Master Repurchase and Securities Contract by and between RCC Real Estate SPE 4, LLC, as Seller and Wells Fargo Bank, National Association, as Buyer, dated October 2, 2020. (54)
99.1(d)	Amended and Restated Guaranty Agreement made by Exantas Capital Corp., as guarantor, and Wells Fargo Bank, National Association, dated as of July 19, 2018 (11)
99.2(a)	Master Repurchase Agreement between RCC Real Estate SPE 7, LLC and Barclays Bank PLC, dated as of April 10, 2018. (38)
99.2(b)	First Amendment to Master Repurchase Agreement between RCC Real Estate SPE 7, LLC and Barclays Bank PLC dated as of March 9, 2021. (57)
99.2(c)	Second Amendment to Master Repurchase Agreement and First Amendment to Fee Letter, dated October 29, 2021, between RCC Real Estate SPE 7, LLC and Barclays Bank PLC. (67)

(Back to Index)

(Back to Index)

99.2(d)	Third Amendment to Master Repurchase Agreement, dated February 3, 2022, between RCC Real Estate SPE 7, LLC and Barclays Bank PLC. (69)
99.2(e)	Guaranty dated as of April 10, 2018, made by Resource Capital Corp., as guarantor, in favor of Barclays Bank PLC. (38)
99.2(f)	First Amendment to Guaranty dated as of May 7, 2020, made by Exantas Capital Corp., f/k/a Resource Capital Corp., as guarantor, in favor of Barclays Bank PLC. (50)
99.2(g)	Second Amendment to Guaranty, dated October 2, 2020, made by Exantas Capital Corp. as guarantor in favor of Barclays Bank PLC. (54)
99.2(h)	Third Amendment to Guaranty, dated October 29, 2021, made by ACRES Commercial Realty Corp. as guarantor in favor of Barclays Bank PLC. (67)
99.3(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. (40)
99.3(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. (55)
99.3(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. (65)
99.3(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 (67)
99.3(e)	Guarantee made by Exantas Capital Corp., as guarantor, in favor of JPMorgan Chase Bank, National Association, dated October 26, 2018. (40)
99.3(f)	First Amendment to Guarantee Agreement, dated May 6, 2020, between Exantas Capital Corp. and JPMorgan Chase Bank, National Association. (50)
99.3(g)	Amendment No. 2 To Guarantee Agreement, dated October 2, 2020 between Exantas Capital Corp. and JPMorgan Chase Bank, National Association. (54)
99.4(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. (68)
99.4(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. (69)
99.4(c)	Guaranty made by ACRES Commercial Realty Corp., as Guarantor, in favor of Morgan Stanley Mortgage Capital Holdings LLC, dated November 3, 2021. (68)
99.5(a)	Notice of Proposed Settlement of Shareholder Derivative Litigation. (43)
99.5(b)	Stipulation and Agreement of Settlement. (43)
99.6	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 Document.
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104	Cover Page Interactive Data File.

(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 S-11 (File No. 333-132836).
(8)	Filed previously as an exhibit to the Company’s Registration Statement on Form 8-A filed on June 9, 2014.
(9)	Filed previously as an exhibit to the Company’s Annual Report on Form 10-K for the year ended December 31, 2010.
(10)	RESERVED
(11)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on February 4, 2014.
(12)	Filed previously as an exhibit to the Company’s Annual Report on Form 10-K for the year ended December 31, 2012 filed on March 18, 2013.
(13)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on March 2, 2012.
(14)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on June 13, 2012.
(15)	Filed previously as an exhibit to the Company’s registration statement on Form 8-A filed on June 8, 2012.
(16)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on June 29, 2012.
(17)	Filed previously as an exhibit to the Company’s Registration Statement on Form 8-A filed on September 28, 2012.

(Back to Index)

(Back to Index)

(18)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on September 23, 2014.
(19)	RESERVED
(20)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on October 1, 2012.
(21)	Filed previously as an exhibit to the Company Current Report on Form 8-K filed on November 20, 2012.
(22)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on April 8, 2013.
(23)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on July 25, 2013.
(24)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on October 21, 2013.
(25)	Filed previously as an exhibit to the Company’s Quarterly Report on Form 10-Q for the quarter ended June 30, 2014.
(26)	Filed previously as an exhibit to the Company’s Quarterly Report on Form 10-Q for the quarter ended March 31, 2015.
(27)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on September 1, 2015.
(28)	RESERVED
(29)	Filed previously as an exhibit to the Company’s Quarterly Report on Form 10-Q for the quarter ended June 30, 2016.
(30)	RESERVED
(31)	Filed previously as an exhibit to the Company’s Annual Report on Form 10-K for the year ended December 31, 2016.
(32)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on June 8, 2017.
(33)	Filed previously as an exhibit to the Company’s Quarterly Report on Form 10-Q for the quarter ended June 30, 2017.
(34)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on August 16, 2017.
(35)	Filed previously as an exhibit to the Company’s Quarterly Report on Form 10-Q for the quarter ended September 30, 2016.
(36)	RESERVED
(37)	Filed previously as an exhibit to the Company’s Quarterly Report on Form 10-Q for the quarter ended September 30, 2017.
(38)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on April 12, 2018.
(39)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on May 25, 2018.
(40)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on October 30, 2018.
(41)	RESERVED
(42)	Filed previously as an exhibit to the Company’s Annual Report on Form 10-K for the year ended December 31, 2018.
(43)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on March 27, 2019.
(44)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on May 30, 2019.
(45)	Filed previously as an exhibit to the Company’s Proxy Statement filed on April 18, 2019.
(46)	Filed previously as an exhibit to the Company’s Quarterly Report on Form 10-Q for the quarter ended June 30, 2019.
(47)	RESERVED
(48)	RESERVED
(49)	Filed previously as an exhibit to the Company’s Annual Report on Form 10-K for the year ended December 31, 2019.
(50)	Filed previously as an exhibit to the Company’s Quarterly Report on Form 10-Q for the quarter ended March 31, 2020.
(51)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on August 3, 2020.
(52)	Filed previously as an exhibit to the Company’s Quarterly Report on Form 10-Q for the quarter ended June 30, 2020.
(53)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on September 22, 2020.
(54)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on October 7, 2020.
(55)	Filed previously as an exhibit to the Company’s Quarterly Report on Form 10-Q for the quarter ended September 30, 2020.
(56)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on February 18, 2021.
(57)	Filed previously as an exhibit to the Company’s Annual Report on Form 10-K for the year ended December 31, 2020.
(58)	Filed previously as an exhibit to the Company’s Proxy Statement filed on April 12, 2021.
(59)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on May 21, 2021.
(60)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on June 1, 2021.
(61)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on June 9, 2021.
(62)	Filed previously as an exhibit to the Company’s Quarterly Report on Form 10-Q for the quarter ended June 30, 2021.
(63)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on August 17, 2021.
(64)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on August 20, 2021.
(65)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on September 2, 2021.
(66)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on October 7, 2021.
(67)	Filed previously as an exhibit to the Company’s Current Report on Form 8-K filed on October 29, 2021.
(68)	Filed previously as an exhibit to the Company’s Quarterly Report on Form 10-Q for the quarter ended September 30, 2021.

(Back to Index)

(69)	Filed previously as an exhibit to the Company's Current Report on Form 8-K filed on February 3, 2022.

ITEM 16. FORM 10-K SUMMARY

None.

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 8, 2022

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.

/s/ Andrew Fentress	Chairman of the Board	March 8, 2022
ANDREW FENTRESS		
/s/ Mark Fogel	President, Chief Executive Officer & Director	March 8, 2022
MARK FOGEL	(Principal Executive Officer)	
/s/ Karen Edwards	Director	March 8, 2022
KAREN EDWARDS		
/s/ William B. Hart	Director	March 8, 2022
WILLIAM B. HART		
/s/ Gary Ickowicz	Director	March 8, 2022
GARY ICKOWICZ		
/s/ Steven J. Kessler	Director	March 8, 2022
STEVEN J. KESSLER		
/s/ Murray S. Levin	Director	March 8, 2022
MURRAY S. LEVIN		
/s/ P. Sherrill Neff	Director	March 8, 2022
P. SHERRILL NEFF		
/s/ Dawanna Williams	Director	March 8, 2022
DAWANNA WILLIAMS		
/s/ David J. Bryant	Senior Vice President	March 8, 2022
DAVID J. BRYANT	Chief Financial Officer and Treasurer	
	(Principal Financial Officer)	
/s/ Eldron C. Blackwell	Vice President	March 8, 2022
ELDRON C. BLACKWELL	Chief Accounting Officer	
	(Principal Accounting Officer)	

SCHEDULE II
ACRES Commercial Realty Corp.
Valuation and Qualifying Accounts
(in thousands)

	Balance at Beginning of Period	Adoption of Updated Accounting Guidance	Charge to Expense	Loans Charged off/Recovered	Balance at End of Period
Allowance for credit losses:					
Year Ended December 31, 2021	$ 34,310	$ —	$ (21,262)	$ (4,243)	$ 8,805
Year Ended December 31, 2020	$ 1,460	$ 3,032	$ 30,815	$ (997)	$ 34,310
Year Ended December 31, 2019	$ 1,401	$ —	$ 59	$ —	$ 1,460

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						
	Encumbrances	Land	Buildings and Improvements	Costs Capitalized Subsequent to Acquisition - Improvements	Land	Buildings and Improvements	Total	Accumulated Depreciation	Year of Construction	Date Acquired	Life on Which Depreciation in Latest Statements of Comprehensive Income is Computed
Hotel property, Northeast region (1)(2)	N/A	$ —	$ 30,944	$ 134	$ —	$ 31,078	$ 31,078	$ (1,013)	2000	November 2020	34.8 years
Office property, Northeast region (1)	N/A	8,188	4,706	—	8,188	4,706	12,894	(191)	1999	October 2021	36.1 years
Office property (held for sale), Northeast region (2)(3)	N/A	—	17,889	—	—	17,846	17,846	—	1928	October 2021	N/A
Unimproved land, Northeast region	N/A	14,171	—	—	14,171	—	14,171	—	N/A	November 2021	N/A
Total		$ 22,359	$ 53,539	$ 134	$ 22,359	$ 53,630	$ 75,989	$ (1,204)			

(1) 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.
(2) The property was acquired through a deed in lieu of foreclosure transaction.
(3) The property is being held for sale and is evaluated at the lower of cost or fair value.

The following table rolls forward our gross investment in real estate and the related accumulated depreciation (in thousands):

	Years Ended December 31, 2021	2020	2019
Investments in Real Estate:			
Balance at beginning of period	$ 30,944	$ —	$ —
Additions during period:			
Acquisitions through deed-in-lieu of foreclosure	17,889	30,944	—
Other acquisitions	27,065	—	—
Improvements, etc.	134	—	—
Deductions during period:			
Other	(43)	—	—
Balance at close of period	$ 75,989	$ 30,944	$ —
Accumulated Depreciation:			
Balance at beginning of period	$ (112)	$ —	$ —
Additions during period:			
Depreciation expense	(1,092)	(112)	—
Balance at close of period	$ (1,204)	$ (112)	$ —

(Back to Index)

SCHEDULE IV
ACRES Commercial Realty Corp.
Mortgage Loans on Real Estate
At December 31, 2021
(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:								
CRE whole loans in excess of 3% of the carrying amount of total loans								
Borrower A	Multifamily/Rock Hill, SC	1M BR + 3.30% FLOOR 0.10%	2025	I/O	—	$ 67,500	$ 66,792	$ —
Borrower B	Hotel/Phoenix, AZ	1M BR + 3.83% FLOOR 1.92%	2022	I/O	—	56,470	56,362	—
CRE whole loans less than 3% of the carrying amount of total loans								
CRE whole loan (5)	Multifamily/ Various	1M BR + 2.70% - 6.00% FLOOR 0.10% - 2.50%	2022-2025	I/O	—	1,253,718	1,243,103	—
CRE whole loan	Office/ Various	1M BR + 2.82% - 5.85% FLOOR 0.10% - 2.50%	2022-2024	I/O	—	267,908	266,824	—
CRE whole loan (6)	Hotel/ Various	1M BR + 3.90% - 8.50% FLOOR 0.10% - 2.45%	2022-2024	I/O	—	124,088	123,344	8,400
CRE whole loan	Self-Storage/ Various	1M BR + 3.85% - 5.50% FLOOR 0.10% - 1.00%	2024-2025	I/O	—	57,278	56,658	—
CRE whole loan (6)(7)(8)	Retail/ Various	1M BR + 3.25% - 5.00% FLOOR 1.00% - 2.15%	2022	I/O	—	50,651	48,334	19,541
CRE whole loan	Other/ Various	1M BR + 3.50% - 4.25% FLOOR 2.40% - 2.50%	2022-2023	I/O	—	14,181	14,137	—
Total CRE whole loans						1,891,794	1,875,554	27,941
Mezzanine loans:								
Mezzanine loans less than 3% of the carrying amount of total loans (9)						42,772	4,700	38,072
Total mezzanine loans						42,772	4,700	38,072
General allowance for loan loss							(6,508)	
Total loans						$ 1,934,566	$ 1,873,746	$ 66,013

(1) The benchmark rate, "BR", comprises of the London Interbank Offered Rate ("LIBOR") and the Term Secured Overnight Financing Rate ("SOFR"), which are used as benchmarks on the Company's CRE whole loans. Effective June 30, 2023, one-month LIBOR will no longer be published.
(2) Maturity dates exclude extension options that may be available to borrower.
(3) I/O = interest only
(4) The net carrying amount of loans includes an individually determined allowance for credit losses of $2.3 million and a general allowance for credit losses of $6.5 million at December 31, 2021.
(5) Benchmark rates exclude one interest-only multifamily loan with no benchmark floor.
(6) Maturity dates exclude one hotel loan and two retail loans in maturity default at December 31, 2021. In January 2022, one hotel loan and one retail loan in maturity default at December 31, 2021 paid off.
(7) Includes one interest-only retail loan with a face amount of $11.5 million that had an individually determined reserve of $2.3 million.
(8) Includes one retail loan with a face amount of $16.3 million that is an amortizing loan.
(9) Includes one mezzanine loan with a par of $38.1 million and a carrying value of zero in default at December 31, 2021.

(Back to Index)

The following table reconciles our CRE loans carrying amounts for the periods indicated (in thousands):

	Years Ended December 31,		
	2021	2020	2019
Balance at beginning of year	$ 1,507,682	$ 1,789,985	$ 1,568,967
Additions during the period:			
New loans originated or acquired	1,367,157	263,081	874,936
Funding of existing loan commitments	29,855	34,981	43,203
Amortization of loan origination fees and costs, net	8,337	5,555	6,053
Protective advances on legacy CRE loans held for sale	—	—	645
Reversal of (provision for) credit losses, net	21,262	(30,815)	(58)
Loans charged-off	4,243	997	—
Capitalized interest and loan acquisition costs	228	1,126	3,418
Deductions during the period:			
Payoff and paydown of loans	(1,019,616)	(493,968)	(682,846)
Deed in lieu of foreclosure	(19,900)	(37,956)	(18,515)
Capitalized origination fees	(16,202)	(3,821)	(6,687)
Cost of loans sold	(9,300)	(18,451)	—
Cumulative effect of accounting change for adoption of credit loss guidance	—	(3,032)	—
Loans held for sale fair value adjustments	—	—	869
Balance at end of year	$ 1,873,746	$ 1,507,682	$ 1,789,985

DESCRIPTION OF REGISTRANT'S SECURITIES REGISTERED PURSUANT TO SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934

The following is a brief description of the securities of ACRES Commercial Realty Corp. (the "Company" "we," "us," and "our"), registered pursuant to Section 12 of the Securities Exchange Act of 1934, as amended, or the "Exchange Act". This description of the terms of our stock does not purport to be complete and is subject to and qualified in its entirety by reference to the applicable provisions of Maryland General Corporation Law, and the full text of our charter and bylaws.

DESCRIPTION OF COMMON STOCK AND PREFERRED STOCK

General

Our charter provided that we may issue up to 125,000,000 shares of common stock and 100,000,000 shares of preferred stock, both having par value $0.001 per share. In May 2021, we adopted articles of amendment to our charter to decrease our authorized shares of 125,000,000 shares of common stock and 100,000,000 shares of preferred stock to 41,666,666 shares of common stock and 100,000,000 shares of preferred stock. Under Maryland law, our stockholders are not personally liable for our debts and obligations solely as a result of their status as stockholders. Our common stock is listed on the New York Stock Exchange under the trading symbol "ACR." Our Series C preferred stock is listed on the New York Stock Exchange under the trading symbol "ACRPrC." Our Series D preferred stock is listed in the New York Stock Exchange under the trading symbol "ACRPrD."

Common Stock

All shares of our common stock have equal rights as to earnings, assets, distributions and voting and, when issued and paid for, will be duly authorized, validly issued, fully paid and nonassessable. Distributions may be paid to the holders of our common stock if, as and when authorized by our board of directors and declared by us out of funds legally available therefor. Shares of our common stock have no preemptive, appraisal, preferential exchange, conversion or redemption rights and are freely transferable, except where their transfer is restricted by federal and state securities laws, by contract or by the restrictions in our charter. In the event of our liquidation, dissolution or winding up, each share of our common stock will be entitled to share ratably in all of our assets that are legally available for distribution after payment of or adequate provision for all of our known debts and other liabilities and subject to any preferential rights of holders of our preferred stock, if any preferred stock is outstanding at such time. Subject to our charter restrictions on the transfer and ownership of our stock and except as may be specified otherwise in the terms of any class or series of our common stock, each share of our common stock entitles the holder to one vote on all matters submitted to a vote of stockholders, including the election of directors. Except as provided with respect to any other class or series of stock, the holders of our common stock will possess exclusive voting power. There is no cumulative voting in the election of directors. In an uncontested election, each director will be elected by the affirmative vote of a majority of votes cast with respect to the election of that candidate.

Power to Reclassify Unissued Shares of Our Capital Stock

Our charter authorizes our board of directors to classify and reclassify any unissued shares of stock into other classes or series of stock, including preferred stock. Before issuance of shares of each class or series, the board of directors is required by Maryland law and by our charter to set, subject to our charter restrictions on the transfer and ownership of our stock, the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption for each class or series. Thus, the board of directors could authorize the issuance of shares of common stock or preferred stock with terms and conditions that could have the effect of delaying, deferring or preventing a transaction or a change in control that might involve a premium price for holders of our common stock or otherwise be in their best interests.

Power to Issue Additional Shares of Common Stock and Preferred Stock

We believe that the power of our board of directors to amend the charter without stockholder approval to increase the total number of authorized shares of our stock or any class or series of our stock, to issue additional authorized but unissued shares of our common stock or preferred stock and to classify or reclassify unissued shares of our common stock or preferred stock and thereafter to cause us to issue such classified or reclassified shares of stock will provide us with increased flexibility in structuring possible future financings and acquisitions and in meeting other needs that might arise. The additional classes or series, as well as our common stock, will be available for issuance without further action by our stockholders, unless stockholder action is required by applicable law or the rules of any stock exchange or automated quotation system on which our securities may be listed or traded. Although our board of directors has no intention at the present time of doing so, it could authorize us to issue a class or series that could, depending upon the terms of such class or series, delay, defer or prevent a transaction or a change in control of us that might involve a premium price for holders of our common stock or otherwise be in their best interests.

Restrictions on Ownership and Transfer

In order to qualify as a REIT under the Internal Revenue Code, our shares of capital stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year. Also, no more than 50% of the value of our outstanding shares of capital stock may be owned, directly or constructively, by five or fewer individuals (as defined in the Internal Revenue Code to include certain entities) at any time during the second half of any calendar year.

Our charter, subject to certain exceptions, contains restrictions on the number of shares of our capital stock that a person may own and may prohibit certain entities from owning our shares. Our charter provides that (subject to certain exceptions described below) no person may own, or be deemed to own by virtue of the attribution provisions of the Internal Revenue Code, more than 9.8% in value or in number of shares, whichever is more restrictive, of any class or series of our capital stock. Our board may, in its sole discretion, waive the 9.8% ownership limit with respect to a particular stockholder if it is presented with evidence satisfactory to it that such ownership will not then or in the future jeopardize our qualification as a REIT. Our board has waived the ownership limit for Resource America and set its ownership limit at 15% of our outstanding capital stock. Our board may reduce this ownership limit at its discretion, although any such reduction will not be effective as to shares then owned by Resource America in excess of the reduced limit.

Our charter also prohibits any person from:

- beneficially or constructively owning shares of our capital stock that would result in our being “closely held” under Section 856(h) of the Internal Revenue Code or otherwise cause us to fail to qualify as a REIT; or

- transferring shares of our capital stock if such transfer would result in our capital stock being owned by fewer than 100 persons.

Any person who acquires or attempts or intends to acquire beneficial or constructive ownership of shares of our capital stock that will or may violate any of the foregoing restrictions on transferability and ownership, or who is the intended transferee of shares of our stock that are transferred to a trust (as described below), will be required to give notice immediately to us and provide us with such other information as we may request in order to determine the effect of such transfer on our qualification as a REIT. The foregoing restrictions on transferability and ownership will not apply if our board of directors determines that it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT.

Our board of directors, in its sole discretion, may exempt a person from the foregoing restrictions. The person seeking an exemption must provide to our board of directors such representations, covenants and undertakings as our board of directors may deem appropriate in order to conclude that granting the exemption will not cause us to lose our qualification as a REIT. Our board of directors may also require a ruling from the Internal Revenue Service or an opinion of counsel in order to determine or ensure our qualification as a REIT.

Any attempted transfer of our stock that, if effective, would result in a violation of the foregoing restrictions will cause the number of shares causing the violation (rounded up to the nearest whole share) to be automatically transferred to a trust for the exclusive benefit of one or more charitable beneficiaries, and the proposed transferee will not acquire any rights in such shares. The automatic transfer will be deemed to be effective as of the close of business on the business day (as defined in our charter) before the date of the transfer.

If, for any reason, the transfer to a trust does not occur, our charter provides that the purported transfer in violation of the restrictions will be void *ab initio*. Shares of our stock held in a trust will be issued and outstanding shares. The proposed transferee will not benefit economically from ownership of any shares of stock held in a trust and will have no rights to distributions and no rights to vote or other rights attributable to the shares of stock held in a trust. The trustee of the trust will have all voting rights and rights to distributions with respect to shares held in a trust. These rights will be exercised for the exclusive benefit of the charitable beneficiary.

Any distribution paid before our discovery that shares of stock have been transferred to a trust will be paid by the recipient to the trustee upon demand. Any distribution authorized but unpaid will be paid when due to the trustee. Any distribution paid to the trustee will be held in trust for the charitable beneficiary. Subject to Maryland law, the trustee will have the authority to rescind as void any vote cast by the proposed transferee before our discovery that the shares have been transferred to a trust and to recast the vote in accordance with the desires of the trustee acting for the benefit of the charitable beneficiary. However, if we have already taken irreversible corporate action, then the trustee will not have the authority to rescind and recast the vote.

Within 20 days of receiving notice from us that shares of our stock have been transferred to a trust, the trustee will sell the shares to a person designated by the trustee whose ownership of the shares will not violate the above ownership limitations. Upon such sale, the interest of the charitable beneficiary in the shares sold will terminate and the trustee will distribute the net proceeds of the sale to the proposed transferee and to the charitable beneficiary as follows. The proposed transferee will receive the lesser of:

- the price paid by the proposed transferee for the shares or, if the proposed transferee did not give value for the shares in connection with the event causing the shares to be held in a trust (e.g., a gift, devise or other similar transaction), the market price (as defined in our charter) of the shares on the day of the event causing the shares to be held in the trust; and

- the price received by the trustee from the sale or other disposition of the shares.

Any net sale proceeds in excess of the amount payable to the proposed transferee will be paid immediately to the charitable beneficiary. If, before our discovery that shares of our stock have been transferred to a trust, the shares are sold by the proposed transferee, then the shares shall be deemed to have been sold on behalf of such trust and, to the extent that the proposed transferee received an amount for the shares that exceeds the amount the proposed transferee was entitled to receive, the excess must be paid to the trustee upon demand.

In addition, shares of our stock held in a trust will be deemed to have been offered for sale to us, or our designee, at a price per share equal to the lesser of:

- the price per share in the transaction that resulted in the transfer to the trust (or, in the case of a devise or gift, the market price at the time of the devise or gift); and

- the market price on the date we, or our designee, accept the offer.

We will have the right to accept the offer until the trustee has sold the shares. Upon a sale to us, the interest of the charitable beneficiary in the shares sold will terminate and the trustee will distribute the net proceeds of the sale to the proposed transferee. All certificates representing shares of our capital stock will bear a legend referring to the restrictions described above.

Every owner of more than 5% (or such lower percentage as required by the Internal Revenue Code or the regulations promulgated thereunder) of all classes or series of our stock, including shares of common stock, in value or number, within 30 days after the end of each taxable year, will be required to give written notice to us stating the name and address of such owner, the number of shares of each class and series of shares of our stock that the owner beneficially owns and a description of the manner in which the shares are held. Each owner must provide us such additional information as we may request in order to determine the effect, if any, of such beneficial ownership on our qualification as a REIT and to ensure compliance with the ownership limitations. In addition, each such owner must, upon demand, provide to us such information as we may request, in good faith, in order to determine our qualification as a REIT and to comply with the requirements of any taxing authority or governmental authority or to determine such compliance.

These ownership limitations could delay, defer or prevent a transaction or a change in control that might involve a premium price for our common stock or might otherwise be in the best interests of our stockholders.

Registration Rights

In connection with our March 2005 private offering, we granted the Manager both piggyback registration rights and the right to demand that we register shares of restricted common stock and shares of common stock underlying the options issued to the Manager upon completion of the private offering and shares of common stock issued to the Manager as incentive compensation under our management agreement. The Manager has not exercised its piggyback or demand registration rights.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock and Series C preferred stock is American Stock Transfer & Trust Company. We expect that American Stock Transfer & Trust Company will act as the transfer agent for any equity securities we may offer.

Series C Preferred Stock

Listing

Shares of Series C Preferred Stock currently trade on the NYSE under the symbol “ACRPrC.”

Ranking

The Series C Preferred Stock, with respect to distribution rights and rights upon our liquidation, dissolution or winding up, ranks: (i) senior to all of our junior equity securities, including our common stock; (ii) on a parity with any other class or series of our parity equity securities; and (iii) junior to any class or series of our senior equity securities. Any of our convertible or exchangeable debt securities will rank senior to the Series C Preferred Stock prior to conversion or exchange. The Series C Preferred Stock will also rank junior in right of payment to our other existing and future indebtedness.

Distributions

Subject to the preferential rights of holders of any class or series of our senior equity securities, holders of Series C Preferred Stock will be entitled to receive, when, as and if authorized by our board of directors, out of funds legally available for the payment of distributions, cumulative cash distributions from, and including, the date of issuance to, but excluding, July 30, 2024 (the “Fixed-Rate Period”), at an initial rate of 8.625% per annum based on the $25.00 liquidation preference, or $2.15625 per share of the Series C Preferred Stock, payable quarterly, in arrears, on the 30th day of January, April, July and October of each year, ending on July 30, 2024. From, and including, July 30, 2024 and thereafter (the “Floating Rate Period”), holders of Series C Preferred Stock will be entitled to receive cumulative cash distributions at a floating rate equal to three-month LIBOR (as defined below) as calculated on each applicable date of determination (as defined below) plus a spread of 5.927% per annum based on the $25.00 liquidation preference, payable quarterly, in arrears, on the 30th day of January, April, July and October of each year, beginning on October 30, 2024 and thereafter, provided that such floating rate shall not be less than the initial rate of 8.625%. If any date on which distributions would otherwise be payable is not a business day, then the distribution payment date will be the next business day without any adjustment to the amount of distributions paid. Distributions payable on the Series C Preferred Stock for any partial distribution period during the Fixed-Rate Period, including the first distribution period, will be computed on the basis of a 360-day year consisting of twelve 30-day months. Distributions payable on the Series C Preferred Stock for any partial distribution period during the Floating-Rate Period will be computed based on the actual number of days and a 360-day year. We will pay distributions to holders of record as they appear in our stock records at the close of business on the applicable record date, which will be the first day of the calendar month in which the applicable distribution falls, or such other date as designated by our board of directors for the payment of distributions that is not more than 90 days nor less than 10 days prior to the distribution payment date.

The term “three-month LIBOR” means, on any date of determination, the rate (expressed as a percentage per year) for deposits in U.S. dollars for a three-month period as appears on Bloomberg, L.P. page US0003M, as set by the British Bankers Association at 11:00 a.m. (London time) on such date of determination. If the appropriate page is replaced or service ceases to be available, we, acting reasonably, may select another page or service displaying the appropriate rate.

The term “date of determination” means the second London Business Day (as defined below) immediately preceding the applicable distribution payment.

The term “London Business Day” means any day on which dealings in deposits in U.S. dollars are transacted in the London interbank market.

All percentages resulting from the above calculation will be rounded, if necessary, to the nearest one-hundred thousandth of a percentage point, with five one-millionths of a percentage point rounded upwards (*e.g.*, 9.876545% (or 0.09876545) being rounded to 9.87655% (or 0.0987655)) and all dollar amounts used in or resulting from such calculation will be rounded to the nearest cent (with one-half cent being rounded upwards).

Our board of directors will not authorize, and we will not pay, any distributions on the Series C Preferred Stock or set aside funds for the payment of distributions if the terms of any of our agreements, including agreements relating to our indebtedness, prohibit that authorization, payment or setting aside of funds or provide that the authorization, payment or setting aside of funds is a breach of or a default under that agreement, or if the authorization, payment or setting aside of funds is restricted or prohibited by law. We may in the future become a party to agreements that restrict or prevent the payment of distributions on, or the purchase or redemption of, our capital stock. These restrictions may be indirect (for example, covenants requiring us to maintain specified levels of net worth or assets) or direct. We do not believe that any of our current agreements restrict our ability to pay distributions on the Series C Preferred Stock.

Notwithstanding the foregoing, distributions on the Series C Preferred Stock will accrue whether or not we have earnings, whether or not there are funds legally available for the payment of distributions, whether or not distributions are authorized by our board of directors and whether or not the restrictions referred to above exist. Accrued but unpaid distributions on the Series C Preferred Stock will not bear interest, and the holders of Series C Preferred Stock will not be entitled to any distributions in excess of full cumulative distributions as described above. All of our distributions on the Series C Preferred Stock, including any capital gain distributions, will be credited to the previously accrued and unpaid distributions on the Series C Preferred Stock. We will credit any distribution made on the Series C Preferred Stock to accrued and unpaid distributions in order of their respective distribution payment dates, commencing with the earliest.

While any shares of Series C Preferred Stock are outstanding, unless full cumulative distributions on the Series C Preferred Stock for all past distribution periods have been or contemporaneously are declared and paid:

- no distributions will be declared and either paid or set apart for payment, and no other distribution of cash or other property may be declared and made, on or with respect to shares of any class or series of our parity equity securities, or our junior equity securities, including our common stock (other than a distribution paid in shares of, or options, warrants or rights to subscribe for or purchase shares of, our junior equity securities) for any period;

- no shares of any class or series of our parity equity securities, or our junior equity securities, including our common stock, will be redeemed, purchased or otherwise acquired for any consideration (other than a redemption, purchase or acquisition of our common stock made for purposes of and in compliance with requirements of any incentive, benefit or stock purchase plan of ours or as permitted under our charter to maintain our qualification as a REIT for federal income tax purposes); and

- no funds will be paid or made available for a sinking fund by us for the redemption of shares of any class or series of our parity equity securities or our junior equity securities, including our common stock (except by conversion into or exchange for shares of, or options, warrants or rights to purchase or subscribe for shares of, our junior equity securities, and except for purchases or exchanges pursuant to a purchase or exchange offer made on the same terms to all holders of Series C Preferred Stock and all holders of our other parity equity securities, if any). No funds will be paid or made available for a sinking fund by us for the redemption of shares of any class or series of our parity equity securities or our junior equity securities, including our common stock (except by conversion into or exchange for shares of, or options, warrants or rights to purchase or subscribe for shares of, our junior equity securities, and except for purchases or exchanges pursuant to a purchase or exchange offer made on the same terms to all holders of Series C Preferred Stock and all holders of our other parity equity securities, if any).

If we do not declare and either pay or set aside for payment the full cumulative distributions on the Series C Preferred Stock or shares of any other class or series of our parity equity securities, if any, the amount which we have declared will be allocated pro rata to the holders of the Series C Preferred Stock and the shares of such other class or series of our parity equity securities, if any, so that the amount declared per share is proportionate to the accrued and unpaid distributions on those shares.

Liquidation Rights

In the event of our liquidation, dissolution or winding up, whether voluntary or involuntary, the holders of Series C Preferred Stock will be entitled to be paid out of our assets legally available for distribution to our stockholders a liquidation preference in cash or property, at fair market value as determined by our board of directors, of $25.00 per share, plus any accrued and unpaid distributions to, but not including, the date of the payment. Holders of Series C Preferred Stock will be entitled to receive this liquidating distribution before we distribute any assets to holders of our junior equity securities, including our common stock. The rights of holders of Series C Preferred Stock to receive their liquidation preference will be subject to preferential rights of the holders of our senior equity securities, if any, and would be pari passu with the rights of holders of parity equity securities. Written notice will be given to each holder of Series C Preferred Stock of any such liquidation no fewer than 30 days and no more than 60 days prior to the payment date. After payment of the full amount of the liquidating distribution to which they are entitled, the holders of Series C Preferred Stock will have no right or claim to any of our remaining assets. If we consolidate or merge with any other entity, sell, lease, transfer or convey all or substantially all of our assets, or engage in a statutory share exchange, we will not be deemed to have liquidated. If our assets are insufficient to pay the full liquidating distributions to the holders of Series C Preferred Stock or any other class or series of our parity equity securities, if any, then we will distribute our assets to the holders of Series C Preferred Stock and any other class or series of our parity equity securities, if any, ratably in proportion to the full liquidating distributions they would have otherwise received.

Series C Redemption

Generally

We may not redeem the Series C Preferred Stock prior to July 30, 2024, except as described below under "— Series C Special Optional Redemption" and "— Series C Restrictions on Ownership and Transfer." On and after July 30, 2024, upon no fewer than 30 days' nor more than 60 days' written notice, we may, at our option, redeem the Series C Preferred Stock, in whole or from time to time in part, by paying $25.00 per share, plus any accrued and unpaid distributions to, but not including, the date of redemption.

We will give notice of redemption by mail to each holder of record of Series C Preferred Stock at the address shown on our stock transfer books. A failure to give notice of redemption or any defect in the notice or in its mailing will not affect the validity of the redemption of any shares of Series C Preferred Stock except as to the holder to whom notice was defective. Each notice will state the following:

- the redemption date;

- the redemption price, including, without limitation, a statement as to whether or not accumulated but unpaid distributions will be payable as part of the redemption price, or payable on the next distribution payment date, to the record holder at the close of business on the relevant record date;
- the number of shares of Series C Preferred Stock to be redeemed;
- the place or places where the certificates, if any, representing the shares of Series C Preferred Stock to be redeemed are to be surrendered for payment;
- the procedures for surrendering non-certificated shares for payment; and
- that distributions on the shares of Series C Preferred Stock to be redeemed will cease to accrue on the redemption date.

If we redeem fewer than all of the Series C Preferred Stock, the notice of redemption mailed to each stockholder will also specify the number of shares of Series C Preferred Stock that we will redeem from that stockholder. In this case, we will determine the number of shares of Series C Preferred Stock to be redeemed on a pro rata basis, by lot or by any other equitable method we choose. Any redemption may be made conditional on such factors as may be determined by our board of directors and as set forth in the redemption notice. Unless full cumulative distributions on all shares of Series C Preferred Stock have been or contemporaneously are declared and paid for all past distribution periods, we may not redeem any Series C Preferred Stock unless we redeem all of the Series C Preferred Stock.

If we elect to redeem any of the Series C Preferred Stock in connection with a Change of Control (as defined below under "— Series C Special Optional Redemption") and we intend for such redemption to occur prior to the applicable Series C Change of Control Conversion Date (as defined below under "— Series C Conversion Rights"), our redemption notice will also state that the holders of shares of Series C Preferred Stock to which the notice relates will not be able to tender such shares of Series C Preferred Stock for conversion in connection with the Change of Control and each share of Series C Preferred Stock tendered for conversion that is selected for redemption prior to the Series C Change of Control Conversion Date will be redeemed on the related date of redemption instead of converted on the Series C Change of Control Conversion Date.

If we have given a notice of redemption and have paid or set aside sufficient funds for the redemption in trust for the benefit of the holders of shares of Series C Preferred Stock called for redemption, then from and after the redemption date, those shares of Series C Preferred Stock will be treated as no longer being outstanding, no further distributions will accrue and all other rights of the holders of those shares of Series C Preferred Stock will terminate. The holders of those shares of Series C Preferred Stock will retain their right to receive the redemption price for their shares and any accrued and unpaid distributions to (but not including) the redemption date.

If a redemption date falls after a distribution record date and prior to the corresponding distribution payment date, the holders of shares of Series C Preferred Stock at the close of business on a distribution record date will be entitled to receive the distribution payable with respect to the shares of Series C Preferred Stock on the corresponding payment date notwithstanding the redemption of the shares of Series C Preferred Stock between such record date and the corresponding payment date or our default in the payment of the distribution due. Except as provided above and in connection with a redemption pursuant to our special optional redemption, we will make no payment or allowance for unpaid distributions, whether or not in arrears, on shares of Series C Preferred Stock to be redeemed.

The Series C Preferred Stock has no stated maturity and will not be subject to any sinking fund or mandatory redemption provisions, except as provided under "— Series C Restrictions on Ownership and Transfer" below. In order to ensure that we continue to meet the requirements for qualification as a REIT, the Series C Preferred Stock will be subject to the restrictions on ownership and transfer in Article VI of our charter.

Subject to applicable law, we may purchase shares of Series C Preferred Stock in the open market, by tender or by private agreement. Any shares of Series C Preferred Stock that we reacquire will return to the status of authorized but unissued shares.

Series C Special Optional Redemption

In the event of a Change of Control, we may, at our option, redeem the Series C Preferred Stock, in whole or in part and within 120 days after the first date on which such Change of Control occurred, by paying $25.00 per share, plus any accrued and unpaid distributions to, but not including, the date of redemption. If, prior to the Series C Change of Control Conversion Date, we exercise our special optional redemption right by providing a notice of redemption with respect to some or all of the Series C Preferred Stock (whether pursuant to our optional redemption right or our special optional redemption right), the holders of Series C Preferred Stock will not be permitted to exercise the conversion right described below under "— Series C Change of Control Conversion Right" in respect of their shares called for redemption.

We will give notice of redemption by mail to each holder of record of Series C Preferred Stock no fewer than 30 days nor more than 60 days before the redemption date. We will send the notice to your address shown on our stock transfer books. A failure to give notice of redemption or any defect in the notice or in its mailing will not affect the validity of the redemption of any shares of Series C Preferred Stock except as to the holder to whom notice was defective. Each notice will state the following:

- the redemption date;
- the redemption price, including, without limitation, a statement as to whether or not accumulated but unpaid distributions will be payable as part of the redemption price, or payable on the next distribution payment date, to the record holder at the close of business on the relevant record date;
- the number of shares of Series C Preferred Stock to be redeemed;
- the place or places where the certificates, if any, evidencing the shares of Series C Preferred Stock to be redeemed are to be surrendered for payment;
- the procedures for surrendering non-certificated shares for payment;
- that the shares of Series C Preferred Stock are being redeemed pursuant to our special optional redemption right in connection with the occurrence of a Change of Control and a brief description of the transaction or transactions constituting such Change of Control;
- that the holders of shares of Series C Preferred Stock to which the notice relates will not be able to tender such shares of Series C Preferred Stock for conversion in connection with the Change of Control and each share of Series C Preferred Stock tendered for conversion that is selected, prior to the Series C Change of Control Conversion Date, for redemption will be redeemed on the related date of redemption instead of converted on the Series C Change of Control Conversion Date; and
- that distributions on the shares of Series C Preferred Stock to be redeemed will cease to accrue on the redemption date.

If we redeem fewer than all of the shares of Series C Preferred Stock, the notice of redemption mailed to each stockholder will also specify the number of shares of Series C Preferred Stock that we will redeem from each stockholder. In this case, we will determine the number of shares of Series C Preferred Stock to be redeemed on a pro rata basis, by lot or by any other equitable method we may choose. Any redemption may be made conditional on such factors as may be determined by our board of directors and as set forth in the redemption notice. Unless full cumulative distributions on all shares of Series C Preferred Stock have been or contemporaneously are declared and either paid or set aside for payment for all past distribution periods, we generally may not redeem any Series C Preferred Stock unless we redeem all of the Series C Preferred Stock.

If we have given a notice of redemption and have paid or set aside sufficient funds for the redemption in trust for the benefit of the holders of shares of Series C Preferred Stock called for redemption, then from and after the redemption date, those shares of Series C Preferred Stock will be treated as no longer being outstanding, no further distributions will accrue and all other rights of the holders of those shares of Series C Preferred Stock will terminate. The holders of those shares of Series C Preferred Stock will retain their right to receive the redemption price for their shares and any accrued and unpaid distributions to (but not including) the redemption date. If a redemption date falls after a distribution record date and prior to the corresponding distribution payment date, the holders of Series C Preferred Stock at the close of business on a distribution record date will be entitled to receive the distribution payable with respect to the Series C Preferred Stock on the corresponding payment date notwithstanding the redemption of the Series C Preferred Stock between such record date and the corresponding payment date or our default in the payment of the distribution due. Except as provided above, we will make no payment or allowance for unpaid distributions, whether or not in arrears, on Series C Preferred Stock to be redeemed.

A “Change of Control” is when, after the original issuance of the preferred stock, the following have occurred and are continuing:

- the acquisition by any person, syndicate or group deemed to be a “person” under section 13(d)(3) of the Exchange Act of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of purchases, mergers or other acquisition transactions of our capital stock entitling that person to exercise more than 50% of the total voting power of all of our capital stock entitled to vote generally in elections of directors (except that such person will be deemed to have beneficial ownership of all securities that such person has the right to acquire, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition); and
- following the closing of any transaction referred to above, neither we nor the acquiring or surviving entity has a class of common securities (or American Depositary Receipts, or ADRs, representing such securities) listed on the NYSE, the NYSE American, or the NASDAQ Stock Market, or listed or quoted on an exchange or quotation system that is a successor to the NYSE, the NYSE American or NASDAQ.

Series C Conversion Rights

The Series C Preferred Stock is not convertible into or exchangeable for any property or other securities unless upon the occurrence of a Change of Control as described below.

Upon the occurrence of a Change of Control, each holder of Series C Preferred Stock will have the right (subject to our right to redeem the Series C Preferred Stock in whole or in part, as described under "— Series C Redemption," prior to the Series C Change of Control Conversion Date) to convert some or all of the shares of Series C Preferred Stock held by such holder, which we refer to as the Series C Change of Control Conversion Right, on the Series C Change of Control Conversion Date into a number of shares of our common stock per share of Series C Preferred Stock (which we refer to as the Series C Common Stock Conversion Consideration) equal to the lesser of:

- the quotient obtained by dividing (i) the sum of the $25.00 liquidation preference plus the amount of any accrued and unpaid distributions to, but excluding, the Series C Change of Control Conversion Date (unless the Series C Change of Control Conversion Date is after a record date for a share of Series C Preferred Stock distribution payment and prior to the corresponding Series C Preferred Stock distribution payment date, in which case no additional amount for such accrued and unpaid distribution will be included in this sum) by (ii) the Common Stock Price for Series C; and

- 8.69565, the Series C Share Cap.

The Series C Share Cap is subject to pro rata adjustments for any Stock Splits with respect to our common stock. The adjusted Series C Share Cap as the result of a Stock Split will be the number of shares of our common stock that is equivalent to the product obtained by multiplying (i) the Series C Share Cap in effect immediately prior to such Stock Split by (ii) a fraction, (a) the numerator of which is the number of shares of our common stock outstanding after giving effect to such Stock Split and (b) the denominator of which is the number of shares of our common stock outstanding immediately prior to such Stock Split. As of March 8, 2022, the Series C Share Cap was 0.72463.

For the avoidance of doubt, subject to the immediately succeeding sentence, the aggregate number of shares of our common stock (or equivalent Series C Alternative Conversion Consideration (as defined below), as applicable) issuable in connection with the exercise of the Series C Change of Control Conversion Right will not exceed 86,956,500 shares (or equivalent Series C Alternative Conversion Consideration, as applicable) (which we refer to as the Series C Exchange Cap). The Series C Exchange Cap is subject to pro rata adjustments for any Stock Splits on the same basis as the corresponding adjustment to the Share Cap and for additional issuances of shares of Series C Preferred Stock in subsequent offerings, if any. As of March 8, 2022, the Series C Exchange Cap was 7,246,288.87 shares.

In the case of a Change of Control pursuant to which our common stock will receive Series C Alternative Form Consideration, a holder of shares of Series C Preferred Stock will receive upon conversion of such shares of Series C Preferred Stock the kind and amount of Series C Alternative Form Consideration which such holder would have owned or been entitled to receive upon the Change of Control had such holder held a number of shares of our common stock equal to the Series C Common Stock Conversion Consideration immediately prior to the effective time of the Change of Control (which we refer to as the Series C Alternative Conversion Consideration; the Series C Common Stock Conversion Consideration or the Series C Alternative Conversion Consideration, as may be applicable to a Change of Control, is referred to as the Series C Conversion Consideration).

If the holders of our common stock have the opportunity to elect the form of consideration to be received in the Change of Control, the consideration that the holders of Series C Preferred Stock will receive will be the form and proportion of the aggregate consideration elected by the holders of our common stock who participate in the determination (based on the weighted average of elections) and will be subject to any limitations to which all holders of our common stock are subject, including, without limitation, pro rata reductions applicable to any portion of the consideration payable in the Change of Control.

We will not issue fractional shares of common stock upon the conversion of the Series C Preferred Stock. Instead, we will pay the cash value of such fractional shares.

Within 15 days following the occurrence of a Change of Control, we will provide to holders of Series C Preferred Stock a notice of occurrence of the Change of Control that describes the resulting Series C Change of Control Conversion Right. This notice will state the following:

- the events constituting the Change of Control;

- the date of the Change of Control;

- the last date on which the holders of Series C Preferred Stock may exercise their Series C Change of Control Conversion Right;

- the method and period for calculating the Common Stock Price for Series C;

- the Series C Change of Control Conversion Date;

- that if, prior to the Series C Change of Control Conversion Date, we have provided or provide notice of our election to redeem all or any portion of the Series C Preferred Stock, holders will not be able to convert shares of Series C Preferred Stock into a number of shares of our common stock per share of Series C Preferred Stock and such shares will be redeemed on the related redemption date, even if such shares have already been tendered for conversion pursuant to the Series C Change of Control Conversion Right;

- if applicable, the type and amount of Series C Alternative Conversion Consideration entitled to be received per share of Series C Preferred Stock;

- the name and address of the paying agent and the conversion agent; and

- the procedures that the holders of Series C Preferred Stock must follow to exercise the Series C Change of Control Conversion Right.

We will issue a press release for publication on the Dow Jones & Company, Inc., Business Wire, PR Newswire or Bloomberg Business News (or, if these organizations are not in existence at the time of issuance of the press release, such other news or press organization as is reasonably calculated to broadly disseminate the relevant information to the public), or post notice on our website, in any event prior to the opening of business on the first business day following any date on which we provide the notice described above to the holders of Series C Preferred Stock.

To exercise the Series C Change of Control Conversion Right, a holder of Series C Preferred Stock will be required to deliver, on or before the close of business on the Series C Change of Control Conversion Date, the certificates (if any) evidencing shares of Series C Preferred Stock to be converted, duly endorsed for transfer, together with a written conversion notice completed, to our transfer agent. The conversion notice must state:

- the relevant Series C Change of Control Conversion Date;

- the number of shares of Series C Preferred Stock to be converted; and

- that the shares of Series C Preferred Stock are to be converted pursuant to the applicable terms of the Series C Preferred Stock.

The "Series C Series C Change of Control Conversion Date" is the date the shares of Series C Preferred Stock are to be converted, which will be a business day that is no fewer than 20 days nor more than 35 days after the date on which we provide the notice described above to the holders of Series C Preferred Stock.

The "Common Stock Price for Series C" will be: (i) the amount of cash consideration per share of common stock, if the consideration to be received in the Change of Control by the holders of shares of our common stock is solely cash; and (ii) the average of the closing prices, per share, of our common stock on the NYSE for the ten consecutive trading days immediately preceding, but not including, the effective date of the Change of Control, if the consideration to be received in the Change of Control by the holders of shares of our common stock is other than solely cash.

Holders of Series C Preferred Stock may withdraw any notice of exercise of a Series C Change of Control Conversion Right (in whole or in part) by a written notice of withdrawal delivered to our transfer agent prior to the close of business on the business day prior to the Series C Change of Control Conversion Date. The notice of withdrawal must state:

- the number of withdrawn shares of Series C Preferred Stock;

- if certificated shares of Series C Preferred Stock have been issued, the certificate numbers of the withdrawn shares of Series C Preferred Stock; and

- the number of shares of Series C Preferred Stock, if any, which remain subject to the conversion notice.

Notwithstanding the foregoing, if the shares of Series C Preferred Stock are held in global form, the conversion notice and/or the notice of withdrawal, as applicable, must comply with applicable procedures of DTC.

Shares of Series C Preferred Stock as to which the Series C Change of Control Conversion Right has been properly exercised and for which the conversion notice has not been properly withdrawn will be converted into the applicable Series C Conversion Consideration in accordance with the Series C Change of Control Conversion Right on the Series C Change of Control Conversion Date, unless prior to the Series C Change of Control Conversion Date we have provided or provide notice of our election to redeem such shares of Series C Preferred Stock, whether pursuant to our optional redemption right or our special optional redemption right. Holders of Series C Preferred Stock will not have the right to convert any shares that we have elected to redeem prior to the Series C Change of Control Conversion Date. Accordingly, if we have provided a redemption notice with respect to some or all of the Series C Preferred Stock, holders of any Series C Preferred Stock that we have called for redemption will not be permitted to exercise their Series C Change of Control Conversion Right in respect of any of their shares that have been called for redemption, and such shares of Series C Preferred Stock will not be so converted and the holders of such shares will be entitled to receive on the applicable redemption date $25.00 per share, plus any accrued and unpaid distributions thereon to, but not including, the redemption date.

We will deliver amounts owing upon conversion no later than the third business day following the Series C Change of Control Conversion Date. In connection with the exercise of any Series C Change of Control Conversion Right, we will comply with all federal and state securities laws and stock exchange rules in connection with any conversion of shares of Series C Preferred Stock into shares of our common stock. Notwithstanding any other provision of the Series C Preferred Stock, no holder of shares of Series C Preferred Stock will be entitled to convert such shares of Series C Preferred Stock for shares of our common stock to the extent that receipt of such common stock would cause such holder (or any other person) to exceed the share ownership limits contained in our charter and the articles supplementary setting forth the terms of the Series C Preferred Stock, unless we provide an exemption from this limitation for such holder. See "— Series C Restrictions on Ownership and Transfer," below. These Change of Control conversion and redemption features may make it more difficult for a party to take over our company or discourage a party from taking over our company. See "Risk Factors — You may not be permitted to exercise conversion rights upon a Change of Control. If exercisable, the Change of Control conversion feature of the Offered Preferred Stock may not adequately compensate you, and the Change of Control conversion and redemption features of the Offered Preferred Stock may make it more difficult for a party to take over our company or discourage a party from taking over our company."

Except as provided above in connection with a Change of Control, the shares of Series C Preferred Stock are not convertible into or exchangeable for any of our other securities or property.

Voting Rights

Holders of Series C Preferred Stock generally will have no voting rights, except as set forth below.

Whenever (i) distributions on the Series C Preferred Stock are in arrears for six or more quarterly periods, whether or not consecutive (which we refer to as a Series C Preferred Distribution Default) or (ii) we fail to maintain the listing of the Series C Preferred Stock on the NYSE, the NYSE American or NASDAQ, or an exchange or quotation system that is the successor to the NYSE, the NYSE American or NASDAQ, for a period of at least 180 consecutive days (which we refer to as a Series C Listing Default), the number of directors then constituting our board of directors will be increased by two (if not already increased by reason of similar types of provisions with respect to other classes or series of our Voting Parity Stock) and holders of Series C Preferred Stock (voting as a single class with the holders of any other class or series of our preferred stock upon which like voting rights have been conferred, and are exercisable) will be entitled to vote for the election of two Preferred Stock Directors, if not already elected by reason of similar types of provisions with respect to Preferred Stock Directors. In the event of a Series C Preferred Distribution Default or a Series C Listing Default, holders of Series C Preferred Stock and holders of shares of Voting Parity Stock (voting as a single class) will vote in the election of Preferred Stock Directors at a special meeting called by the holders of at least 33% of the outstanding shares of Series C Preferred Stock or the holders of at least 33% of outstanding shares of Voting Parity Stock if the request is received 90 or more days before the next annual meeting of stockholders, or, if the request is received less than 90 days prior to the next annual meeting of stockholders, at the next annual meeting of stockholders or, at our sole discretion, a separate special meeting of stockholders to be held no later than 90 days after our receipt of such request, and thereafter at each subsequent annual meeting of stockholders until the Series C Preferred Distribution Default or Series C Listing Default, as the case may be, has been cured. A Series C Preferred Distribution Default will be cured once all distributions accumulated on the Series C Preferred Stock for the past distribution periods and the then-current distribution period have been paid in full. A Series C Listing Default will be cured once the Series C Preferred Stock has been listed on the NYSE, the NYSE MKT or NASDAQ, or an exchange or quotation system that is the successor to the NYSE, the NYSE American or NASDAQ. The voting rights described above are subject to revesting for each and every Series C Preferred Distribution Default and each and every Series C Listing Default. The Preferred Stock Directors will be elected by a plurality of the votes cast by the holders of the Series C Preferred Stock and the holders of Voting Parity Stock (voting together as a single class) in the election to serve until our next annual meeting of stockholders and until their successors are duly elected and qualified or until such directors' right to hold the office terminates as described below, whichever occurs earlier.

Any Preferred Stock Director may be removed at any time, but only for cause (as defined in our charter), by the vote of, and shall not be removed otherwise than by the vote of, the holders of record of at least two-thirds of the outstanding shares of Series C Preferred Stock and Voting Parity Stock (voting together as a single class). So long as a Series C Preferred Distribution Default or a Series C Listing Default continues, any vacancy in the office of a Preferred Stock Director may be filled by written consent of the Preferred Stock Director remaining in office or, if none remains in office, by a vote of the holders of record of the outstanding shares of Series C Preferred Stock and Voting Parity Stock (voting together as a single class). The Preferred Stock Directors will each be entitled to one vote per director on any matter.

So long as any Series C Preferred Stock remains outstanding, we will not:

- authorize or create, or increase the authorized or issued amount of, any class or series of senior equity securities, or reclassify any authorized shares of our capital stock into any such shares, or create, authorize or issue any obligations or securities convertible into or evidencing the right to purchase any such shares without the affirmative vote of the holders of at least two-thirds of the then-outstanding shares of Series C Preferred Stock (voting as a separate class); or

- amend, alter or repeal the provisions of our charter (including the articles supplementary), whether by merger, consolidation or otherwise, in each case in such a way that would materially and adversely affect any right, preference, privilege or voting power of the Series C Preferred Stock without the affirmative vote of the holders of at least two-thirds of the outstanding shares of Series C Preferred Stock at the time (voting as a separate class).

Notwithstanding the preceding sentence, with respect to the occurrence of a merger, consolidation or a sale or lease of all of our assets as an entirety, so long as shares of Series C Preferred Stock remain outstanding with the terms thereof materially unchanged or the holders of Series C Preferred Stock receive shares of capital stock with rights, preferences, privileges and voting powers substantially the same as those of the Series C Preferred Stock, then the occurrence of any such event will not be deemed to materially and adversely affect the rights, privileges or voting powers of the holders of Series C Preferred Stock. In addition, any increase in the amount of authorized Series C Preferred Stock or the creation or issuance, or increase in the amounts authorized, of any other class or series of our parity equity securities, will not be deemed to materially and adversely affect the rights, preferences, privileges or voting powers of the Series C Preferred Stock.

In any matter in which the holders of Series C Preferred Stock are entitled to vote separately as a class, each share of Series C Preferred Stock will be entitled to one vote. If the holders of Series C Preferred Stock and the holders of Voting Parity Stock are entitled to vote together as a single class on any matter, the holders of Series C Preferred Stock and the holders of Voting Parity Stock will have one vote for each $25.00 of liquidation preference.

Information Rights

During any period in which we are not subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act and any shares of Series C Preferred Stock are outstanding, we will (i) transmit by mail or other permissible means under the Exchange Act to all holders of Series C Preferred Stock as their names and addresses appear in our record books and without cost to such holders, copies of the Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q that we would have been required to file with the SEC pursuant to Section 13 or Section 15(d) of the Exchange Act if we were subject thereto (other than any exhibits that would have been required) and (ii) within 15 days following written request, supply copies of such reports to any prospective holder of the Series C Preferred Stock. We will mail (or otherwise provide) the reports to the holders of Series C Preferred Stock within 15 days after the respective dates by which we would have been required to file such reports with the SEC if we were subject to Section 13 or Section 15(d) of the Exchange Act.

Series C Restrictions on Ownership and Transfer

Our 9.8% ownership limit applies to ownership of shares of Series C Preferred Stock as a separate class pursuant to Article VI of our charter, under which shares of Series C Preferred Stock owned by a stockholder in excess of the ownership limit will be transferred to a charitable trust and may be purchased by us under certain circumstances. Our board of directors may, in its sole discretion, except a person from the ownership limit. Notwithstanding any other provision of the Series C Preferred Stock, no holder of shares of the Series C Preferred Stock will be entitled to convert any shares of Series C Preferred Stock into shares of our common stock to the extent that receipt of our common stock would cause such holder or any other person to exceed the ownership limit contained in our charter.

Preemptive Rights

No holders of Series C Preferred Stock shall, as the holders, have any preemptive rights to purchase or subscribe for our common stock or any other security of our company.

Book-Entry Procedures

DTC acts as securities depositary for the Series C Preferred Stock. We have issued one or more fully registered global securities certificates in the name of DTC's nominee, Cede & Co. Such certificates represent the total aggregate number of shares of Series C Preferred Stock. We deposited such certificates with DTC or a custodian appointed by DTC. We will not issue certificates to you for the shares of Series C Preferred Stock that you purchase, unless DTC's services are discontinued as described below.

Title to book-entry interests in the Series C Preferred Stock will pass by book-entry registration of the transfer within the records of DTC in accordance with its procedures. Book-entry interests in the securities may be transferred within DTC in accordance with procedures established for these purposes by DTC. Each person owning a beneficial interest in the Series C Preferred Stock must rely on the procedures of DTC and the participant through which such person owns its interest to exercise its rights as a holder of the Series C Preferred Stock.

When you purchase shares of the Series C Preferred Stock within the DTC system, the purchase must be by or through a Direct Participant. The Direct Participant will receive a credit for the shares of Series C Preferred Stock on DTC's records. You, as the actual owner of the shares of Series C Preferred Stock, are the "beneficial owner." Your beneficial ownership interest will be recorded on the Direct and Indirect Participants' records, but DTC will have no knowledge of your individual ownership. DTC's records reflect only the identity of the Direct Participants to whose accounts shares of Series C Preferred Stock are credited.

You will not receive written confirmation from DTC of your purchase. The Direct or Indirect Participants through whom you purchased the shares of Series C Preferred Stock should send you written confirmations providing details of your transactions, as well as periodic statements of your holdings. The Direct and Indirect Participants are responsible for keeping an accurate account of the holdings of their customers like you.

Transfers of ownership interests held through Direct and Indirect Participants will be accomplished by entries on the books of Direct and Indirect Participants acting on behalf of the beneficial owners.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to beneficial owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

We understand that, under DTC's existing practices, in the event that we request any action of the holders, or an owner of a beneficial interest in a global security such as you desires to take any action which a holder is entitled to take under our charter, DTC would authorize the Direct Participants holding the relevant shares to take such action, and those Direct Participants and any Indirect Participants would authorize beneficial owners owning through those Direct and Indirect Participants to take such action or would otherwise act upon the instructions of beneficial owners owning through them.

Any redemption notices with respect to the shares of Series C Preferred Stock will be sent to DTC. If less than all of the shares of Series C Preferred Stock are being redeemed, DTC will reduce each Direct Participant's holdings of shares of Series C Preferred Stock in accordance with its procedures.

In those instances where a vote is required, neither DTC nor Cede & Co. itself will consent or vote with respect to the shares of Series C Preferred Stock. Under its usual procedures, DTC would mail an omnibus proxy to us as soon as possible after the record date. The omnibus proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants whose accounts the Series C Preferred Stock are credited to on the record date, which are identified in a listing attached to the omnibus proxy.

Dividends and distributions on the shares of Series C Preferred Stock will be made directly to Cede & Co. (or its successor, if applicable). DTC's practice is to credit participants' accounts on the relevant payment date in accordance with their respective holdings shown on DTC's records unless DTC has reason to believe that it will not receive payment on that payment date.

Payments by Direct and Indirect Participants to beneficial owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name." These payments will be the responsibility of the participant and not of DTC, us or any agent of ours.

DTC may discontinue providing its services as securities depositary with respect to the Series C Preferred Stock at any time by giving reasonable notice to us. Additionally, we may decide to discontinue the book-entry only system of transfers with respect to the Series C Preferred Stock. In that event, we will print and deliver certificates in fully registered form for the Series C Preferred Stock. If DTC notifies us that it is unwilling to continue as securities depositary, or it is unable to continue or ceases to be a clearing agency registered under the Exchange Act and a successor depositary is not appointed by us within 90 days after receiving such notice or becoming aware that DTC is no longer so registered, we will issue the Series C Preferred Stock in definitive form, at our expense, upon registration of transfer of, or in exchange for, such global security.

According to DTC, the foregoing information with respect to DTC has been provided to the financial community for informational purposes only and is not intended to serve as a representation, warranty or contract modification of any kind.

Global Clearance and Settlement Procedures

Initial settlement for the Series C Preferred Stock will be made in immediately available funds. Secondary market trading among DTC's Participants will occur in the ordinary way in accordance with DTC's rules and will be settled in immediately available funds using DTC's Same-Day Funds Settlement System.

Series D Preferred Stock

Listing

Shares of Series D Preferred Stock currently trade on the NYSE under the symbol "ACRPrD."

Ranking

The Series D Preferred Stock, with respect to distribution rights and rights upon our liquidation, dissolution or winding up, ranks: (i) senior to all of our junior equity securities, including our common stock; (ii) on a parity with the Series C Preferred Stock and any other class or series of our parity equity securities; and (iii) junior to any class or series of our senior equity securities. Any of our convertible or exchangeable debt securities will rank senior to the Series D Preferred Stock prior to conversion or exchange. The Series D Preferred Stock will also rank junior in right of payment to our other existing and future indebtedness.

Distributions

Subject to the preferential rights of holders of any class or series of our capital stock expressly designated as ranking senior in right of payment to the Series D Preferred Stock as to dividend rights, the holders of Series D Preferred Stock shall be entitled to receive, when, as and if authorized by our board of directors and declared by us, out of funds legally available for the payment of distributions, cumulative cash distributions, at the rate of 7.875% per annum of the $25.00 per share liquidation preference, equivalent to $1.96875 per annum per share of Series D Preferred Stock. Distributions on the Series D Preferred Stock shall accrue and be cumulative from, but not including, the original date of issuance of any shares of Series D Preferred Stock and shall be payable quarterly, in arrears, on or about the 30th day of January, April, July and October of each year, or, if such day is not a business day, on the next succeeding business day, with the same force and effect as if made on such date. The first distribution on the Series D Preferred Stock sold in this offering was paid on July 30, 2021 and covered the period from, but not including, May 21, 2021 to, but not including July 30, 2021. Distributions payable on the Series D Preferred Stock for any partial distribution period will be prorated and computed on the basis of a 360-day year consisting of twelve 30-day months. We will pay distributions to holders of record as they appear in the stock records of the Corporation at the close of business on the applicable record date, which shall be such date designated by the Board for the payment of distributions that is not more than 90 days nor fewer than ten days prior to the distribution payment date. No holder of any shares of Series D Preferred Stock is entitled to receive any distributions paid or payable on the Series D Preferred Stock with a distribution payment date before the date such shares of Series D Preferred Stock are issued.

Our board of directors will not authorize, and we will not pay, any distributions on the Series D Preferred Stock or set aside funds for the payment of distributions if the terms of any of our agreements, including agreements relating to our indebtedness, prohibit that authorization, payment or setting aside of funds or provide that the authorization, payment or setting aside of funds is a breach of or a default under that agreement, or if the authorization, payment or setting aside of funds is restricted or prohibited by law. We may in the future become a party to agreements that restrict or prevent the payment of distributions on, or the purchase or redemption of, our capital stock. These restrictions may be indirect (for example, covenants requiring us to maintain specified levels of net worth or assets) or direct. None of our current agreements restrict our ability to pay distributions on the Series D Preferred Stock.

Notwithstanding the foregoing, distributions on the Series D Preferred Stock will accrue whether or not we have earnings, whether or not there are funds legally available for the payment of distributions, whether or not distributions are authorized by our board of directors and whether or not the restrictions referred to above exist. Accrued but unpaid distributions on the Series D Preferred Stock will not bear interest, and the holders of Series D Preferred Stock will not be entitled to any distributions in excess of full cumulative distributions as described above. All of our distributions on the Series D Preferred Stock, including any capital gain distributions, will be credited to the previously accrued and unpaid distributions on the Series D Preferred Stock. We will credit any distribution made on the Series D Preferred Stock first to the earliest accrued and unpaid distribution due.

While any shares of Series D Preferred Stock are outstanding, unless full cumulative distributions on the Series D Preferred Stock for all past distribution periods have been or contemporaneously are declared and paid:

- no distributions will be declared and either paid or set apart for payment, and no other distribution of cash or other property may be declared and made, on or with respect to shares of any class or series of our parity equity securities, including shares of Series C Preferred Stock, or our junior equity securities, including our common stock (other than a distribution paid in shares of, or options, warrants or rights to subscribe for or purchase shares of, our junior equity securities) for any period;

- no shares of any class or series of our parity equity securities, including shares of Series C Preferred Stock, or our junior equity securities, including our common stock, will be redeemed, purchased or otherwise acquired for any consideration (other than a redemption, purchase or acquisition of our common stock made for purposes of and in compliance with requirements of any incentive, benefit or stock purchase plan of ours or as permitted under our charter to maintain our qualification as a REIT for federal income tax purposes); and

- no funds will be paid or made available for a sinking fund by us for the redemption of shares of any class or series of our parity equity securities, including shares of Series C Preferred Stock, or our junior equity securities, including our common stock (except by conversion into or exchange for shares of, or options, warrants or rights to purchase or subscribe for shares of, our junior equity securities, and except for purchases or exchanges pursuant to a purchase or exchange offer made on the same terms to all holders of Series D Preferred Stock and all holders of our other parity equity securities, if any).

If we do not declare and either pay or set aside for payment the full cumulative distributions on the Series D Preferred Stock, the Series C Preferred Stock and shares of any other class or series of our parity equity securities, if any, the amount which we have declared will be allocated pro rata to the holders of the Series D Preferred Stock, the Series C Preferred Stock and the shares of such other class or series of our parity equity securities, if any, so that the amount declared per share is proportionate to the accrued and unpaid distributions on those shares. In determining whether a distribution (other than upon voluntary or involuntary liquidation), redemption or other acquisition of our equity securities is permitted under Maryland law, no effect shall be given to amounts that would be needed, if we were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of stockholders whose preferential rights on dissolution are superior to those receiving the distribution.

Liquidation Rights

In the event of our liquidation, dissolution or winding up, whether voluntary or involuntary, the holders of Series D Preferred Stock will be entitled to be paid out of our assets legally available for distribution to our stockholders a liquidation preference in cash or property, at fair market value as determined by our board of directors, of $25.00 per share, plus any accrued and unpaid distributions to, but excluding, the date of the payment. Holders of Series D Preferred Stock will be entitled to receive this liquidating distribution before we distribute any assets to holders of our junior equity securities, including our common stock. The rights of holders of Series D Preferred Stock to receive their liquidation preference will be subject to preferential rights of the holders of our shares of any class or series of our capital stock expressly designated as ranking senior the Series D Preferred Stock as to rights upon our liquidation, dissolution or winding up we may issue in the future. Written notice will be given to each holder of Series D Preferred Stock of any such liquidation no fewer than 30 days and no more than 60 days prior to the payment date. After payment of the full amount of the liquidating distribution to which they are entitled, the holders of Series D Preferred Stock will have no right or claim to any of our remaining assets. If we consolidate or merge with any other entity, sell, lease, transfer or convey all or substantially all of our assets, or engage in a statutory share exchange, we will not be deemed to have liquidated. In the event our assets are insufficient to pay the full liquidating distributions to the holders of Series D Preferred Stock, Series C Preferred Stock and any other class or series of our parity equity securities, if any, then we will distribute our assets to the holders of Series D Preferred Stock, Series C Preferred Stock and any other class or series of our parity equity securities, if any, ratably in proportion to the full liquidating distributions they would have otherwise received

Series D Redemption

<u>Generally</u>

We may not redeem the Series D Preferred Stock prior to May 21, 2026, except as described below under "— Series D Special Optional Redemption" and "— Series D Restrictions on Ownership and Transfer." On and after May 21, 2026, upon no fewer than 30 days' nor more than 60 days' written notice, we may, at our option, redeem the Series D Preferred Stock, in whole or from time to time in part, by paying $25.00 per share, plus any accrued and unpaid distributions (whether or not declared) to, but not including, the date of redemption (other than any distribution with a record date before the applicable redemption date and a payment date after the applicable redemption date, which will be paid on the payment date notwithstanding prior redemption of such shares).

We will give notice of redemption by mail to each holder of record of Series D Preferred Stock at the address shown on our stock transfer books. A failure to give notice of redemption or any defect in the notice or in its mailing will not affect the validity of the redemption of any shares of Series D Preferred Stock except as to the holder to whom notice was defective. Any notice of any redemption may, at our discretion, be subject to one or more conditions precedent, including, but not limited to, completion of a securities offering or other corporate transaction. Each notice will state the following:

- the redemption date;

- the redemption price;

- the number of shares of Series D Preferred Stock to be redeemed;

- the place or places where the certificates, if any, representing the shares of Series D Preferred Stock to be redeemed are to be surrendered for payment;

- the procedures for surrendering non-certificated shares for payment; and

- that distributions on the shares of Series D Preferred Stock to be redeemed will cease to accrue on the redemption date.

If we redeem fewer than all of the Series D Preferred Stock, the notice of redemption mailed to each stockholder will also specify the number of shares of Series D Preferred Stock that we will redeem from that stockholder. In this case, we will determine the number of shares of Series D Preferred Stock to be redeemed on a pro rata basis, by lot or by any other equitable method we choose.

If we elect to redeem any of the Series D Preferred Stock in connection with a Change of Control (as defined above under the Series C Preferred Stock's "— Series D Special Optional Redemption" section) and we intend for such redemption to occur prior to the applicable Series D Change of Control Conversion Date (as defined below under "— Series D Conversion Rights"), our redemption notice will also state that the holders of shares of Series D Preferred Stock to which the notice relates will not be able to tender such shares of Series D Preferred Stock for conversion in connection with the Change of Control and each share of Series D Preferred Stock tendered for conversion that is selected for redemption prior to the Series D Change of Control Conversion Date will be redeemed on the related date of redemption instead of converted on the Series D Change of Control Conversion Date.

If we have given a notice of redemption and have paid or set aside sufficient funds for the redemption in trust for the benefit of the holders of shares of Series D Preferred Stock called for redemption, then from and after the redemption date, those shares of Series D Preferred Stock will be treated as no longer being outstanding, no further distributions will accrue and all other rights of the holders of those shares of Series D Preferred Stock will terminate. The holders of those shares of Series D Preferred Stock will retain their right to receive the redemption price for their shares and any accrued and unpaid distributions to (but not including) the redemption date.

The holders of shares of Series D Preferred Stock at the close of business on a distribution record date will be entitled to receive the distribution payable with respect to the shares of Series D Preferred Stock on the corresponding payment date notwithstanding the redemption of the shares of Series D Preferred Stock between such record date and the corresponding distribution payment date or our default in the payment of the distribution due. Except as provided above and in connection with a redemption pursuant to our special optional redemption, we will make no payment or allowance for unpaid distribution, whether or not in arrears, on shares of Series D Preferred Stock to be redeemed.

The Series D Preferred Stock has no stated maturity and will not be subject to any sinking fund or mandatory redemption provisions, except as provided under "— Series D Restrictions on Ownership and Transfer" below. In order to ensure that we continue to meet the requirements for qualification as a REIT, the Series D Preferred Stock will be subject to the restrictions on ownership and transfer in Article VI of our charter.

Subject to applicable law, we may purchase shares of Series D Preferred Stock in the open market, by tender or by private agreement. Any shares of Series D Preferred Stock that we reacquire will return to the status of authorized but unissued shares of our preferred stock.

Series D Special Optional Redemption

In the event of a Change of Control, we may, at our option, redeem the Series D Preferred Stock, in whole or in part and within 120 days after the first date on which such Change of Control occurred, by paying $25.00 per share, plus any accrued and unpaid distributions to, but not including, the date of redemption. If, prior to the Series D Change of Control Conversion Date, we exercise our special optional redemption right by providing a notice of redemption with respect to some or all of the Series D Preferred Stock (whether pursuant to our optional redemption right or our special optional redemption right), the holders of Series D Preferred Stock will not be permitted to exercise the conversion right described below under "— Series D Change of Control Conversion Right" in respect of their shares called for redemption.

We will give notice of redemption by mail to each holder of record of Series D Preferred Stock no fewer than 30 days nor more than 60 days before the redemption date. We will send the notice to your address shown on our stock transfer books. A failure to give notice of redemption or any defect in the notice or in its mailing will not affect the validity of the redemption of any shares of Series D Preferred Stock except as to the holder to whom notice was defective. Each notice will state the following:

- the redemption date;

- the redemption price;

- the number of shares of Series D Preferred Stock to be redeemed;

- the place or places where the certificates, if any, evidencing the shares of Series D Preferred Stock to be redeemed are to be surrendered for payment;

- the procedures for surrendering non-certificated shares for payment;
- that the shares of Series D Preferred Stock are being redeemed pursuant to our special optional redemption right in connection with the occurrence of a Change of Control and a brief description of the transaction or transactions constituting such Change of Control;
- that the holders of shares of Series D Preferred Stock to which the notice relates will not be able to tender such shares of Series D Preferred Stock for conversion in connection with the Change of Control and each share of Series D Preferred Stock tendered for conversion that is selected, prior to the Series D Change of Control Conversion Date, for redemption will be redeemed on the related date of redemption instead of converted on the Series D Change of Control Conversion Date; and
- that distributions on the shares of Series D Preferred Stock to be redeemed will cease to accrue on the redemption date.

If we redeem fewer than all of the outstanding shares of Series D Preferred Stock, the notice of redemption mailed to each stockholder will also specify the number of shares of Series D Preferred Stock that we will redeem from each stockholder. In this case, we will determine the number of shares of Series D Preferred Stock to be redeemed on a pro rata basis or by lot.

If we have given a notice of redemption and have paid or set aside sufficient funds for the redemption in trust for the benefit of the holders of shares of Series D Preferred Stock called for redemption, then from and after the redemption date, those shares of Series D Preferred Stock will be treated as no longer being outstanding, no further distributions will accrue and all other rights of the holders of those shares of Series D Preferred Stock will terminate. The holders of those shares of Series D Preferred Stock will retain their right to receive the redemption price for their shares and any accrued and unpaid distributions to (but not including) the redemption date. If a redemption date falls after a distribution record date and prior to the corresponding distribution payment date, the holders of Series D Preferred Stock at the close of business on a distribution record date will be entitled to receive the distribution payable with respect to the Series D Preferred Stock on the corresponding payment date notwithstanding the redemption of the Series D Preferred Stock between such record date and the corresponding payment date or our default in the payment of the distribution due. Except as provided above, we will make no payment or allowance for unpaid distributions, whether or not in arrears, on Series D Preferred Stock to be redeemed.

Series D Conversion Rights

Upon the occurrence of a Change of Control, each holder of Series D Preferred Stock will have the right (subject to our right to redeem the Series D Preferred Stock in whole or in part, as described under "— Series D Redemption," prior to the Series D Change of Control Conversion Date) to convert some or all of the shares of Series D Preferred Stock held by such holder, which we refer to as the Series D Change of Control Conversion Right, on the Series D Change of Control Conversion Date into a number of shares of our common stock per share of Series D Preferred Stock (which we refer to as the Series D Common Stock Conversion Consideration) equal to the lesser of:

- the quotient obtained by dividing (i) the sum of the $25.00 liquidation preference plus the amount of any accrued and unpaid distributions to, but excluding, the Series D Change of Control Conversion Date (unless the Series D Change of Control Conversion Date is after a record date for a share of Series D Preferred Stock distribution payment and prior to the corresponding Series D Preferred Stock distribution payment date, in which case no additional amount for such accrued and unpaid distribution will be included in this sum) by (ii) the Common Stock Price for Series D; and
- 3.4698, the Series D Share Cap.

The Series D Share Cap is subject to pro rata adjustments for any Stock Splits with respect to our common stock. The adjusted Series D Share Cap as the result of a Stock Split will be the number of shares of our common stock that is equivalent to the product obtained by multiplying (i) the Series D Share Cap in effect immediately prior to such Stock Split by (ii) a fraction, (a) the numerator of which is the number of shares of our common stock outstanding after giving effect to such Stock Split and (b) the denominator of which is the number of shares of our common stock outstanding immediately prior to such Stock Split.

For the avoidance of doubt, subject to the immediately succeeding sentence, the aggregate number of shares of our common stock (or equivalent Series D Alternative Conversion Consideration (as defined below), as applicable) issuable in connection with the exercise of the Change of Control Conversion Right shall not exceed 8,327,520 shares of common stock (or equivalent Series D Alternative Conversion Consideration, as applicable) or 9,576,648 shares of common stock (or equivalent Series D Alternative Conversion Consideration, as applicable) if the underwriters' over-allotment is exercised in full, subject to increase on a pro rata basis if we issue additional shares of Series D Preferred Stock (the "Series D Exchange Cap"). The Series D Exchange Cap is subject to pro rata adjustments for any Stock Splits on the same basis as the corresponding adjustment to the Share Cap and for additional issuances of shares of Series D Preferred Stock in subsequent offerings, if any.

In the case of a Change of Control pursuant to which our common stock will be converted into cash, securities or other property or assets (including any combination thereof) (the "Series D Alternative Form Consideration, a holder of shares of Series D Preferred Stock will receive upon conversion of such shares of Series D Preferred Stock the kind and amount of Series D Alternative Form Consideration which such holder would have owned or been entitled to receive upon the Change of Control had such holder held a number of shares of our common stock equal to the Series D Common Stock Conversion Consideration immediately prior to the effective time of the Change of Control (which we refer to as the Series D Alternative Conversion Consideration; the Series D Common Stock Conversion Consideration or the Series D Alternative Conversion Consideration, as may be applicable to a Change of Control, is referred to as the Series D Conversion Consideration).

If the holders of our common stock have the opportunity to elect the form of consideration to be received in the Change of Control, the consideration that the holders of Series D Preferred Stock will receive will be the form and proportion of the aggregate consideration elected by the holders of our common stock who participate in the determination (based on the weighted average of elections) and will be subject to any limitations to which all holders of our common stock are subject, including, without limitation, pro rata reductions applicable to any portion of the consideration payable in the Change of Control.

We will not issue fractional shares of common stock upon the conversion of the Series D Preferred Stock. Instead, we will pay the cash value of such fractional shares based upon the Common Stock Price for Series D used in determining the Series D Common Stock Conversion Consideration for such Change of Control.

Within 15 days following the occurrence of a Change of Control, provided we have not then exercised our right to redeem all shares of Series D Preferred Stock pursuant to the redemption provisions described above we will provide to holders of Series D Preferred Stock a notice of occurrence of the Change of Control that describes the resulting Series D Change of Control Conversion Right. No failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the conversion of any shares of Series D Preferred Stock except as to the holder to whom notice was defective or not given. This notice will state the following:

- the events constituting the Change of Control;
- the date of the Change of Control;
- the last date on which the holders of Series D Preferred Stock may exercise their Series D Change of Control Conversion Right;
- the method and period for calculating the Common Stock Price for Series D;
- the Series D Change of Control Conversion Date;
- that if, prior to the Series D Change of Control Conversion Date, we have provided or provide notice of our election to redeem all or any portion of the Series D Preferred Stock, holders will not be able to convert shares of Series D Preferred Stock and such shares will be redeemed on the related redemption date, even if such shares have already been tendered for conversion pursuant to the Series D Change of Control Conversion Right;
- if applicable, the type and amount of Series D Alternative Conversion Consideration entitled to be received per share of Series D Preferred Stock;
- the name and address of the paying agent and the conversion agent; and
- the procedures that the holders of Series D Preferred Stock must follow to exercise the Series D Change of Control Conversion Right.

We will issue a press release for publication on or in the Wall Street Journal, Business Wire, PR Newswire or Bloomberg Business News (or, if these organizations are not in existence at the time of issuance of the press release, such other news or press organization as is reasonably calculated to broadly disseminate the relevant information to the public), or post notice on our website, in any event prior to the opening of business on the first business day following any date on which we provide the notice described above to the holders of Series D Preferred Stock.

To exercise the Series D Change of Control Conversion Right, a holder of shares of Series D Preferred Stock will be required to deliver, on or before the close of business on the Series D Change of Control Conversion Date, the certificates (if any) representing shares of Series D Preferred Stock to be converted, duly endorsed for transfer, together with a written conversion notice completed, to our transfer agent. The conversion notice must state:

- the relevant Series D Change of Control Conversion Date;
- the number of shares of Series D Preferred Stock to be converted; and

- that the shares of Series D Preferred Stock are to be converted pursuant to the applicable terms of the Series D Preferred Stock.

The "Series D Change of Control Conversion Date" is the date the shares of Series D Preferred Stock are to be converted, which will be a business day that is no fewer than 20 days nor more than 35 days after the date on which we provide the notice described above to the holders of Series D Preferred Stock.

The "Common Stock Price for Series D" shall be (i) if the consideration to be received in the Change of Control by the holders of the Common Stock is solely cash, the amount of cash consideration per share of Common Stock, or (ii) if the consideration to be received in the Change of Control by holders of the Common Stock is other than solely cash, (x) the average of the closing sale prices per share of Common Stock (or, if no closing sale price is reported, the average of the closing bid and ask prices or, if more than one in either case, the average of the average closing bid and the average closing ask prices) for the ten consecutive trading days immediately preceding, but not including, the effective date of the Change of Control as reported on the principal U.S. securities exchange on which the Common Stock is then traded, or (y) the average of the last quoted bid prices for the Common Stock in the over-the-counter market as reported by OTC Markets Group Inc. or similar organization for the ten consecutive trading days immediately preceding, but not including, the effective date of the Change of Control, if the Common Stock is not then listed for trading on a U.S. securities exchange.]

Holders of Series D Preferred Stock may withdraw any notice of exercise of a Series D Change of Control Conversion Right (in whole or in part) by a written notice of withdrawal delivered to our transfer agent prior to the close of business on the business day prior to the Series D Change of Control Conversion Date. The notice of withdrawal must state:

- the number of withdrawn shares of Series D Preferred Stock;
- if certificated shares of Series D Preferred Stock have been issued, the certificate numbers of the withdrawn shares of Series D Preferred Stock; and
- the number of shares of Series D Preferred Stock, if any, which remain subject to the conversion notice.

Notwithstanding the foregoing, if the shares of Series D Preferred Stock are held in global form, the conversion notice and/or the notice of withdrawal, as applicable, must comply with applicable procedures of DTC.

Shares of Series D Preferred Stock as to which the Series D Change of Control Conversion Right has been properly exercised and for which the conversion notice has not been properly withdrawn will be converted into the applicable Series D Conversion Consideration in accordance with the Series D Change of Control Conversion Right on the Series D Change of Control Conversion Date, unless prior to the Series D Change of Control Conversion Date we have provided or provide notice of our election to redeem such shares of Series D Preferred Stock, whether pursuant to our optional redemption right or our special optional redemption right. Holders of Series D Preferred Stock will not have the right to convert any shares that we have elected to redeem prior to the Series D Change of Control Conversion Date. Accordingly, if we have provided a redemption notice with respect to some or all of the Series D Preferred Stock, holders of any Series D Preferred Stock that we have called for redemption will not be permitted to exercise their Series D Change of Control Conversion Right in respect of any of their shares that have been called for redemption, and such shares of Series D Preferred Stock will not be so converted and the holders of such shares will be entitled to receive on the applicable redemption date $25.00 per share, plus any accrued and unpaid distributions (whether or not declared) thereon to, but not including, the redemption date.

We will deliver all securities, cash and any other property owing upon conversion no later than the third business day following the Series D Change of Control Conversion Date. In connection with the exercise of any Series D Change of Control Conversion Right, we will comply with all federal and state securities laws and stock exchange rules in connection with any conversion of shares of Series D Preferred Stock into shares of our common stock. Notwithstanding any other provision of the Series D Preferred Stock, no holder of shares of Series D Preferred Stock will be entitled to convert such shares of Series D Preferred Stock for shares of our common stock to the extent that receipt of such common stock would cause such holder (or any other person) to exceed the share ownership limits contained in our charter and the articles supplementary setting forth the terms of the Series D Preferred Stock, unless we provide an exemption from this limitation for such holder. See "— Series D Restrictions on Ownership and Transfer," below. These Change of Control conversion and redemption features may make it more difficult for a party to take over our company or discourage a party from taking over our company. See "Risk Factors — You may not be permitted to exercise conversion rights upon a Change of Control. If exercisable, the Change of Control conversion feature of the Offered Preferred Stock may not adequately compensate you, and the Change of Control conversion and redemption features of the Offered Preferred Stock may make it more difficult for a party to take over our company or discourage a party from taking over our company."

Except as provided in the articles supplementary setting forth the terms of the Series D Preferred Stock in connection with a Change of Control, the shares of Series D Preferred Stock are not convertible into or exchangeable for any of our other securities or property.

Voting Rights

Holders of Series D Preferred Stock generally will have no voting rights, except as set forth articles supplementary setting forth the terms of the Series D Preferred Stock.

Whenever distributions on the Series D Preferred Stock are in arrears for six quarterly periods, whether or not consecutive (which we refer to as a Series D Preferred Distribution Default), the number of directors then constituting our board of directors will be increased by two (if not already increased by reason of similar arrangements with respect to any parity equity securities upon which like voting rights have been conferred and are exercisable) and holders of Series D Preferred Stock (voting together as a single class with the holders of any other class or series of our parity equity securities upon which like voting rights have been conferred, and are exercisable, such as our Series C Preferred Stock) will be entitled to vote for the election of two Preferred Stock Directors at a special meeting called by the holders of at least 33% of the outstanding shares of Series D Preferred Stock or the holders of at least 33% of outstanding shares of any such other class or series of our parity equity securities if the request is received 90 or more days before the next annual meeting of stockholders, or, if the request is received less than 90 days prior to the next annual meeting of stockholders, at the next annual meeting of stockholders or, at our sole discretion, a separate special meeting of stockholders to be held no later than 90 days after our receipt of such request, and thereafter at each subsequent annual meeting of stockholders until all distributions accumulated on the Series D Preferred Stock for the past distribution periods and the then-current distribution period have been paid in full. The Preferred Stock Directors will be elected by a plurality of the votes cast by the holders of shares of Series D Preferred Stock and all other classes or series of our parity equity securities, voting together as a single class, in the election to serve until our next annual meeting of stockholders and until their successors are duly elected and qualified or until such directors' right to hold the office terminates as described below, whichever occurs earlier.

If and when all accumulated distributions in arrears for all past distributions periods and distributions for the then-current distributions period on the Series D Preferred Stock shall have been paid in full, the holders of shares of Series D Preferred Stock will immediately be divested of the voting rights described above (subject to revesting in the event of each and every Preferred Distribution Default) and, if all accumulated distributions in arrears and the distributions for the then-current distribution period have been paid in full on all other classes or series of our parity equity securities upon which like voting rights have been conferred and are exercisable, the term of office of each Preferred Stock Director so elected will immediately terminate and the number of directors will be reduced accordingly. Any Preferred Stock Director may be removed at any time, but only for cause (as defined in our charter), by the vote of, and shall not be removed otherwise than by the vote of, the holders of record of at least two-thirds of the outstanding shares of Series D Preferred Stock (when they have the voting rights described above) and any other class or series of parity equity securities (voting together as a single class) upon which like voting rights have been conferred and are exercisable. So long as a Series D Preferred Distribution Default continues, any vacancy in the office of a Preferred Stock Director may be filled by written consent of the Preferred Stock Director remaining in office or, if none remains in office, by a vote of the holders of record of the outstanding shares of Series D Preferred Stock when they have the voting rights described above and the holders of all other classes or series of our parity equity securities upon which like voting rights have been conferred and are exercisable (voting together as a single class). The Preferred Stock Directors will each be entitled to one vote per director on any matter.

So long as any Series D Preferred Stock remains outstanding, we will not:

- authorize or create, or increase the authorized or issued amount of, any class or series of our capital stock expressly designated as ranking senior to the Series D Preferred Stock as to distribution rights and rights upon our liquidation, dissolution or winding up, or reclassify any authorized shares of our capital stock into any such shares, or create, authorize or issue any obligations or securities convertible into or evidencing the right to purchase any such shares without the affirmative vote of the holders of at least two-thirds of the then-outstanding shares of Series D Preferred Stock at the time (voting as a separate class); or

- amend, alter or repeal the provisions of our charter (including the articles supplementary), whether by merger, consolidation, conversion or otherwise, in each case in such a way that would materially and adversely affect any right, preference, privilege or voting power of the Series D Preferred Stock or the holders thereof without the affirmative vote of the holders of at least two-thirds of the outstanding shares of Series D Preferred Stock at the time (voting as a separate class).

Notwithstanding the preceding sentence, with respect to the occurrence of a merger, consolidation, conversion or a sale or lease of all of our assets as an entirety, so long as shares of Series D Preferred Stock remain outstanding with the terms thereof materially unchanged or the holders of shares of Series D Preferred Stock receive shares of, or options, warrants or rights to purchase or subscribe for shares of, capital stock with rights, preferences, privileges and voting powers substantially the same as those of the Series D Preferred Stock, then the occurrence of any such event will not be deemed to materially and adversely affect the rights, privileges or voting powers of the holders of shares of Series D Preferred Stock. In addition, any increase in the amount of authorized Series D Preferred Stock or the creation or issuance, or increase in the amounts authorized, of any other class or series of our parity equity securities, will not be deemed to materially and adversely affect the rights, preferences, privileges or voting powers of the Series D Preferred Stock or the holders thereof. In addition, the voting provisions above will not apply if, at or prior to the time when the act with respect to which the vote would otherwise be required would occur, we have redeemed all outstanding shares of Series D Preferred Stock.

In any matter in which the holders of shares of Series D Preferred Stock are entitled to vote separately as a single class, each share of Series D Preferred Stock will be entitled to one vote. If the holders of shares of Series D Preferred Stock and any other class or series of parity equity securities are entitled to vote together as a single class on any matter, the holders of Series D Preferred Stock and the shares of the other class or series of our parity equity securities will have one vote for each $25.00 of liquidation preference.

Information Rights

During any period in which we are not subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act and any shares of Series D Preferred Stock are outstanding, we will (i) transmit by mail or other permissible means under the Exchange Act to all holders of Series D Preferred Stock as their names and addresses appear in our record books and without cost to such holders, copies of the Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q that we would have been required to file with the SEC pursuant to Section 13 or Section 15(d) of the Exchange Act if we were subject thereto (other than any exhibits that would have been required) and (ii) within 15 days following written request, supply copies of such reports to any prospective holder of the Series D Preferred Stock. We will mail (or otherwise provide) the reports to the holders of Series D Preferred Stock within 15 days after the respective dates by which we would have been required to file such reports with the SEC if we were subject to Section 13 or Section 15(d) of the Exchange Act.

Series D Restrictions on Ownership and Transfer

Our 9.8% ownership limit applies to ownership of shares of Series D Preferred Stock as a separate class pursuant to Article VI of our charter, under which shares of Series D Preferred Stock owned by a stockholder in excess of the ownership limit will be transferred to a charitable trust and may be purchased by us under certain circumstances. Our board of directors may, in its sole discretion, except a person from the ownership limit. Notwithstanding any other provision of the Series D Preferred Stock, no holder of shares of the Series D Preferred Stock will be entitled to convert any shares of Series D Preferred Stock into shares of our common stock to the extent that receipt of our common stock would cause such holder or any other person to exceed the ownership limit contained in our charter.

Preemptive Rights

No holders of Series D Preferred Stock shall, as the holders, have any preemptive rights to purchase or subscribe for our common stock or any other security of our company.

Book-Entry Procedures

DTC acts as securities depositary for the Series D Preferred Stock. We have issued one or more fully registered global securities held in book-entry form.

Title to book-entry interests in the Series D Preferred Stock will pass by book-entry registration of the transfer within the records of DTC in accordance with its procedures. Book-entry interests in the securities may be transferred within DTC in accordance with procedures established for these purposes by DTC. Each person owning a beneficial interest in the Series D Preferred Stock must rely on the procedures of DTC and the participant through which such person owns its interest to exercise its rights as a holder of the Series D Preferred Stock.

When you purchase shares of the Series D Preferred Stock within the DTC system, the purchase must be by or through a Direct Participant. The Direct Participant will receive a credit for the shares of Series D Preferred Stock on DTC's records. You, as the actual owner of the shares of Series D Preferred Stock, are the "beneficial owner." Your beneficial ownership interest will be recorded on the Direct and Indirect Participants' records, but DTC will have no knowledge of your individual ownership. DTC's records reflect only the identity of the Direct Participants to whose accounts shares of Series D Preferred Stock are credited.

You will not receive written confirmation from DTC of your purchase. The Direct or Indirect Participants through whom you purchased the shares of Series D Preferred Stock should send you written confirmations providing details of your transactions, as well as periodic statements of your holdings. The Direct and Indirect Participants are responsible for keeping an accurate account of the holdings of their customers like you.

Transfers of ownership interests held through Direct and Indirect Participants will be accomplished by entries on the books of Direct and Indirect Participants acting on behalf of the beneficial owners.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to beneficial owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

We understand that, under DTC's existing practices, in the event that we request any action of the holders, or an owner of a beneficial interest in a global security such as you desires to take any action which a holder is entitled to take under our charter, DTC would authorize the Direct Participants holding the relevant shares to take such action, and those Direct Participants and any Indirect Participants would authorize beneficial owners owning through those Direct and Indirect Participants to take such action or would otherwise act upon the instructions of beneficial owners owning through them.

Any redemption notices with respect to the shares of Series D Preferred Stock will be sent to Cede & Co. If less than all of the shares of Series D Preferred Stock are being redeemed, DTC will reduce each Direct Participant's holdings of shares of Series D Preferred Stock in accordance with its procedures.

In those instances where a vote is required, neither DTC nor Cede & Co. itself will consent or vote with respect to the shares of Series D Preferred Stock. Under its usual procedures, DTC would mail an omnibus proxy to us as soon as possible after the record date. The omnibus proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants whose accounts the Series D Preferred Stock are credited to on the record date, which are identified in a listing attached to the omnibus proxy.

Dividends and distributions on the shares of Series D Preferred Stock will be made directly to DTC's nominee (or its successor, if applicable). DTC's practice is to credit participants' accounts on the relevant payment date in accordance with their respective holdings shown on DTC's records unless DTC has reason to believe that it will not receive payment on that payment date.

Payments by Direct and Indirect Participants to beneficial owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name." These payments will be the responsibility of the participant and not of DTC, us or any agent of ours.

DTC may discontinue providing its services as securities depositary with respect to the Series D Preferred Stock at any time by giving reasonable notice to us. Additionally, we may decide to discontinue the book-entry only system of transfers with respect to the Series D Preferred Stock. In that event, we will print and deliver certificates in fully registered form for the Series D Preferred Stock. If DTC notifies us that it is unwilling to continue as securities depositary, or it is unable to continue or ceases to be a clearing agency registered under the Exchange Act and a successor depositary is not appointed by us within 90 days after receiving such notice or becoming aware that DTC is no longer so registered, we will issue the Series D Preferred Stock in definitive form, at our expense, upon registration of transfer of, or in exchange for, such global security.

According to DTC, the foregoing information with respect to DTC has been provided to the financial community for informational purposes only and is not intended to serve as a representation, warranty or contract modification of any kind.

Global Clearance and Settlement Procedures

Initial settlement for the Series D Preferred Stock will be made in immediately available funds. Secondary market trading among DTC's Participants will occur in the ordinary way in accordance with DTC's rules and will be settled in immediately available funds using DTC's Same-Day Funds Settlement System.

CERTAIN PROVISIONS OF THE MARYLAND GENERAL CORPORATION LAW AND OUR CHARTER AND BYLAWS

The Maryland General Corporation Law, or MGCL, and our charter and bylaws contain provisions that could make it more difficult for a potential acquirer to acquire us by means of a tender offer, proxy contest or otherwise. We expect that these provisions may discourage certain coercive takeover practices and inadequate takeover bids and may encourage persons seeking to acquire control of us to negotiate first with our board of directors. We believe that the benefits of these provisions outweigh the potential disadvantages of discouraging any such acquisition proposals because, among other things, the negotiation of such proposals may improve their terms.

Number of Directors; Vacancies; Removal

Our charter provides that the number of directors will be set only by the board of directors in accordance with our bylaws. Our bylaws provide that a majority of our entire board of directors may at any time increase or decrease the number of directors. However, unless our bylaws are amended, the number of directors may never be less than two nor more than 15. Our bylaws currently provide that any vacancy may be filled by a majority of the remaining directors, except a vacancy resulting from an increase in the number of directors must be filled by a majority of the entire board of directors. Any individual elected to fill such vacancy will serve until the next annual meeting of stockholders and until a successor is duly elected and qualifies.

Our charter provides that a director may be removed only for cause, as defined in our charter, and then only by the affirmative vote of at least two-thirds of the votes entitled to be cast in the election of directors.

Action by Stockholders

Under the MGCL, stockholder action can be taken only at an annual or special meeting of stockholders or by unanimous written consent in lieu of a meeting (unless the charter provides for a lesser percentage, which our charter does not). These provisions, combined with the requirements of our bylaws regarding the calling of a stockholder-requested special meeting of stockholders discussed below, may have the effect of delaying consideration of a stockholder proposal until the next annual meeting.

Advance Notice Provisions for Stockholder Nominations and Stockholder Proposals

Our bylaws provide that with respect to an annual meeting of stockholders, nominations of individuals for election to the board of directors and the proposal of business to be considered by stockholders may be made only:

- pursuant to our notice of the meeting;
- by the board of directors; or
- by a stockholder who was a stockholder of record both at the time of giving of notice by such stockholder as provided for in our bylaws and at the time of the annual meeting and who is entitled to vote at the meeting and who has complied with the advance notice procedures of the bylaws.

With respect to special meetings of stockholders, only the business specified in our notice of the meeting may be brought before the meeting. Nominations of individuals for election to the board of directors at a special meeting of stockholders at which directors are to be elected may be made only:

- pursuant to our notice of the meeting;
- by the board of directors; or
- provided that the board of directors has determined that directors will be elected at the meeting, by a stockholder who was a stockholder of record both at the time of giving of notice by such stockholder as provided for in our bylaws and at the time of the annual meeting and who is entitled to vote at the meeting and who has complied with the advance notice provisions of the bylaws.

The purpose of requiring stockholders to give us advance notice of nominations and other business is to afford our board of directors a meaningful opportunity to consider the qualifications of the proposed nominees and the advisability of any other proposed business and, to the extent deemed necessary or desirable by our board of directors, to inform stockholders and make recommendations about such qualifications or business, as well as to provide a more orderly procedure for conducting meetings of stockholders. Although our bylaws do not give our board of directors any power to disapprove stockholder nominations for the election of directors or proposals recommending certain action, they may have the effect of precluding a contest for the election of directors or the consideration of stockholder proposals if proper procedures are not followed and of discouraging or deterring a third party from conducting a solicitation of proxies to elect its own slate of directors or to approve its own proposal without regard to whether consideration of such nominees or proposals might be harmful or beneficial to us and our stockholders.

Calling of Special Meetings of Stockholders

Our bylaws provide that special meetings of stockholders may be called by our board of directors and certain of our officers. Additionally, our bylaws provide that, subject to the satisfaction of certain procedural and informational requirements by the stockholders requesting the meeting, a special meeting of stockholders shall be called by our secretary upon the written request of stockholders entitled to cast not less than a majority of all the votes entitled to be cast at such meeting.

Approval of Extraordinary Corporate Action; Amendment of Charter and Bylaws

Under Maryland law, a Maryland corporation generally cannot dissolve, amend its charter, merge, sell all or substantially all of its assets, engage in a share exchange or engage in similar transactions outside the ordinary course of business unless approved by the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast on the matter. However, a Maryland corporation may provide in its charter for approval of these matters by a lesser percentage, but not less than a majority of all of the votes entitled to be cast on the matter. Our charter generally provides for approval of charter amendments (not including certain amendments relating to director removal, classification of preferred stock and transfer and ownership limitations, which still require the statutory two-thirds vote referred to above) and extraordinary transactions, which have been first declared advisable by our board of directors, by the stockholders entitled to cast at least a majority of the votes entitled to be cast on the matter.

Our bylaws provide that the board of directors may adopt, alter or repeal any provision of our bylaws and to make new bylaws. In addition, our bylaws may be altered, amended or repealed, in whole or in part, and new bylaws may be adopted by our stockholders, without approval of the board of directors, by the affirmative vote of a majority of the votes entitled to be cast on the matter by stockholders entitled to vote.

No Appraisal Rights

As permitted by the MGCL, our charter provides that stockholders will not be entitled to exercise appraisal rights, unless the board of directors determines that such rights will apply.

Control Share Acquisitions

The Maryland Control Share Acquisition Act provides that control shares of a Maryland corporation acquired in a control share acquisition have no voting rights except to the extent approved by a vote of two-thirds of the votes entitled to be cast on the matter. Shares owned by the acquirer, by officers of the corporation or by directors who are employees of the corporation are excluded from shares entitled to vote on the matter.

Control shares are voting shares of stock which, 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.

Control shares do not include shares the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval. A control share acquisition means the acquisition of control shares, but does not include the acquisition of shares (i) under the laws of descent and distribution, (ii) under the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing this subtitle or (iii) pursuant to a merger, consolidation or share exchange effected under Subtitle 1 of the Control Share Acquisition Act if the corporation is a party to the merger, consolidation or share exchange.

A person who has made or proposes to make a control share acquisition may compel the board of directors of the corporation to call a special meeting of stockholders to be held within 50 days of demand to consider the voting rights of the shares. The right to compel the calling of a special meeting is subject to the satisfaction of certain conditions, including an undertaking to pay the expenses of the meeting. If no request for a meeting is made, the corporation may itself present the question at any stockholders meeting.

If voting rights are not approved at the meeting or if the acquiring person does not deliver an acquiring person statement as required by the statute, then the corporation may repurchase for fair value any or all of the control shares, except those for which voting rights have previously been approved. The right of the corporation to repurchase control shares is subject to certain conditions and limitations. Fair value is determined, without regard to the absence of voting rights for the control shares, as of the date of the last control share acquisition by the acquirer or of any meeting of stockholders at which the voting rights of the shares are considered and not approved. If voting rights for 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. The fair value of the shares as determined for purposes of appraisal rights may not be less than the highest price per share paid by the acquirer in the control share acquisition.

The Control Share Acquisition Act does not apply to shares acquired in a merger, consolidation or share exchange if the corporation is a party to the transaction or to acquisitions approved or exempted by the charter or bylaws of the corporation.

Our bylaws contain a provision exempting from the Control Share Acquisition Act any and all acquisitions by any person of our shares of stock. There can be no assurance that such provision will not be amended or eliminated at any time in the future. However, we will amend our bylaws to be subject to the Control Share Acquisition Act only if the board of directors determines that it would be in our best interests.

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 10% 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 10% 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 he or she 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 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, excluding 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 various 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.

Subtitle 8

Subtitle 8 of Title 3 of the MGCL permits a Maryland corporation with a class of equity securities registered under the Exchange Act and at least three independent directors to elect to be subject, by provision in its charter or bylaws or a resolution of its board of directors and notwithstanding any contrary provision in the charter or bylaws, to any or all of five provisions:

- a classified board;

- a two-thirds stockholder vote requirement for removing a director;

- a requirement that the number of directors be fixed only by vote of the directors;

- a requirement that a vacancy on the board be filled only by the remaining directors and for the remainder of the full term of the class of directors in which the vacancy occurred; and

- a majority requirement for the calling of a special meeting of stockholders.

Through provisions in our charter and bylaws unrelated to Subtitle 8, we already (a) require a two-thirds stockholder vote for the removal of any director from the board, as well as require such removal be for cause (as defined in our charter), (b) unless called by our chairman of the board, our president, our chief executive officer or the board, require the request of holders of a majority of outstanding shares to call a special meeting and (c) vest in the board the exclusive power to fix the number of directorships. Our bylaws currently provide that any vacancy may be filled by a majority of the remaining directors, except a vacancy resulting from an increase in the number of directors must be filled by a majority of the entire board of directors. Any individual elected to fill such vacancy will serve until the next annual meeting of stockholders and until a successor is duly elected and qualified. However, our board of directors may elect by resolution to be subject to any or all provisions, in whole or in part, of Subtitle 8 that are not yet already applicable to us so long as we have at least three directors who, at the time of any such election, are not officers or employees of the company, are not acquiring persons, are not directors, officers, affiliates or associates of an acquiring person and were not nominated or designated as directors by an acquiring person.

Exhibit 21.1

List of Subsidiaries of
ACRES Commercial Realty Corp.

Subsidiaries	State of Incorporation
2501-2901 Renaissance JV, LLC	Delaware
2501 Renaissance, LLC	Delaware
2901 Renaissance Holdings 1 LLC	Delaware
2901 Renaissance Holdings 2 LLC	Delaware
2901 Renaissance, LLC	Delaware
333 West College Ave., LLC	Delaware
65 E. Wacker 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 Capital Corp. 2020-RSO8, Ltd.	Cayman Islands
Exantas Capital Corp. 2020-RSO8, LLC	Delaware
Exantas Capital Corp. 2020-RSO9, Ltd.	Cayman Islands
Exantas Capital Corp. 2020-RSO9, LLC	Delaware
Exantas Phili Holdings, LLC (F/K/A Exantas HGI Holdings, LLC)	Delaware
Exantas Real Estate Funding 2020-RSO8 Investor, LLC	Delaware
Exantas Real Estate Funding 2020-RSO9 Investor, LLC	Delaware
Exantas Real Estate TRS, Inc.	Delaware
Innovation 2100 LLC	Delaware
Innovation 2100 Senior LLC	Delaware
Life Care Funding, LLC	New York
Plymouth Meeting Holdings, LLC	Delaware
Primary Capital Mortgage, LLC (F/K/A Primary Capital Advisors, LLC)	Georgia
RCC Commercial, Inc.	Delaware
RCC Commercial II, Inc.	Delaware
RCC Commercial III, Inc.	Delaware
RCC Prospect Holdings, LLC	Delaware
RCC Real Estate Acquisitions SPE, LLC	Delaware
RCC Real Estate SPE 7, 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
Resource TRS III, LLC	Delaware
Resource TRS LLC	Delaware
RSO EquityCo, LLC	Delaware

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our reports dated March 8, 2022, 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, 2021. 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

Philadelphia, PA

March 8, 2022

Exhibit 31.1

CERTIFICATION

I, Mark Fogel, certify that:

1. I have reviewed this annual report on Form 10-K for the year ended December 31, 2021 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 8, 2022

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

Exhibit 31.2

CERTIFICATION

I, David J. Bryant, certify that:

1. I have reviewed this annual report on Form 10-K for the year ended December 31, 2021 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 8, 2022	/s/ David J. Bryant
	David J. Bryant
	Chief Financial Officer and Treasurer

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report on Form 10-K of ACRES Commercial Realty Corp. (the “Company”) for the year ended December 31, 2021 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 8, 2022	/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.

EXHIBIT 32.2

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of ACRES Commercial Realty Corp. (the "Company") for the year ended December 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, David J. Bryant, 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 8, 2022	/s/ David J. Bryant
	David J. Bryant
	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.

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 rate of 20% in the case of taxpayers whose taxable income exceeds certain thresholds depending on filing status) on qualified dividend income, 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 taxes 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 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 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 and we dispose of the assets or otherwise comply with such asset tests within six months after the last day of the quarter, 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 violation is due to reasonable cause, 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, and

  - any undistributed taxable income from earlier periods, 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 capital gain. In that case, a U.S. stockholder (as defined below) would be deemed to have paid tax on its proportionate share of our undistributed capital gain and include such proportionate share in income as long-term capital gains (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 transactions between us and a TRS that 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 10-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:

  - 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, during the last half of any taxable year.

  - 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.

  - 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.

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.

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. 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 restricts the ownership and transfer of our stock so that we should continue to satisfy these requirements. 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. 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 a corporation, other than a TRS, all of the capital stock of which is owned by the REIT. Thus, in applying the requirements described herein, any "qualified REIT subsidiary" that we own will be ignored, and all assets, liabilities, and items of income, deduction, and credit of such subsidiary will be treated as our assets, liabilities, and items of income, deduction and credit.

Other Disregarded Entities and Partnerships. An unincorporated domestic entity, such as a partnership or limited liability company, that has a single owner, generally is not treated as an entity separate from its parent for federal income tax purposes. 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 a partnership that has other partners, the REIT is treated as owning its proportionate share of the assets of the partnership and as earning its allocable share of the gross income of the partnership for purposes of the applicable REIT qualification tests. For purposes of the 10% value test (described in “-Asset Tests”), our proportionate share is based on our proportionate interest in the equity interests and certain debt securities issued by the partnership. For all of the other asset and income tests, our proportionate share is based on our proportionate interest in the capital interests in the partnership. 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.

Taxable REIT Subsidiaries. A REIT is permitted to own up to 100% of the stock of one or more TRS. A TRS is generally a fully taxable corporation 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. 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. Any TRSs that are not able to qualify as an electing real property trade or business would not be able to deduct interest that exceeds its interest income plus 30 percent of its taxable income.

Taxable Mortgage Pools. An entity, or a portion of an entity, 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 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 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 at the maximum rate (30%), 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.

Excess inclusion income is taxable (at the highest corporate tax rates) to us, rather than our stockholders, to the extent allocable to our shares held in record name by disqualified organizations (generally, tax-exempt entities not subject to unrelated business income tax, including governmental organizations). 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 TRS elections. 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;
- dividends or other distributions on, and gain from the sale of, shares in other REITs;
- gain from the sale of real estate assets;
- 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

- income derived from the temporary investment 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.

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 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 (but for hedges entered into prior to July 30, 2008, the rules applicable to hedging transactions were more restrictive). 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 the specific application 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 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.

Interest on debt secured by a mortgage on real property or on interests in real property, including, for this purpose, discount points, 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 the highest principal amount of a loan outstanding during a taxable year exceeds (1) the fair market value of the real property securing the loan as of the date 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. The portion of the interest income that will not be qualifying income for purposes of the 75% gross income test will be equal to the interest income multiplied by the proportion the amount by which the loan exceeds the value of the real estate that is security for the loan bears to the outstanding principal amount of 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, 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 potentially 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, especially in light of current economic conditions, we may agree to additional loan modifications. If the amendments to an outstanding loan results in a "significant modifications" 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. Long-standing REIT regulations might be read to require us to redetermine whether the amount of the loan exceeds the fair market value of the real property securing the loan as of the date of such a significant modification for purposes of apportioning interest under the gross income tests. Because modifications often occur in distressed scenarios, this retesting of the new debt instrument for REIT qualification purposes may result in a portion of a loan that was a qualifying real estate asset prior to modification to be treated as a non-qualifying security that produces non-qualifying income for the 75% income test, which could result in loss of our REIT qualification. The IRS issued Revenue Procedure 2011-16, which was recently modified and superseded by Revenue Procedure 2014-51, under which we would not be required to revalue the real estate underlying the new debt instrument for purposes of the 75% gross income test and the REIT asset tests if the modification occurred by default or certain other conditions apply.

In addition, although not currently contemplated, in the event that we invest in a mortgage that is secured by both real property and other property, and the loan is not fully secured by real property, we would be required to apportion our annual interest income to the real property security based on a fraction, the numerator of which is the value of the real property securing the loan, determined when we commit to acquire the loan, and the denominator of which is the highest "principal amount" of the loan during the year. Revenue Procedure 2014-51 interprets the "principal amount" of the loan to be the face amount of the loan, despite the Internal Revenue Code requiring taxpayers to treat any market discount, which is the difference between the purchase price of the loan and its face amount, for all purposes (other than certain withholding and information reporting purposes) as interest rather than principal. Any mortgage loan that we invest in that is not fully secured by real property may therefore be subject to the interest apportionment rules and the position taken in Revenue Procedure 2014-51 as described above.

Fee Income. We may receive various fees in connection with our operations. The fees 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 for services are not qualifying income for purposes of either gross income test. 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.

We treat certain income inclusions received with respect to our current and contemplated 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 treat 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 only protect the recipient of the letter, 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 exceeds 5% of our gross income and/or we could fail to qualify as a REIT. In any event, as noted above, such income does not constitute qualifying income satisfying the 75% gross income test. The amount of such income could be substantial, and a decline in the amount of income from qualifying sources relative to income from such TRSs could jeopardize our compliance with the 75% gross income test, and in the event determined to be non-qualifying income for the 95% gross income test such income from TRSs could result in our failing to qualify as a REIT or having to pay a substantial penalty tax.

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 and the rent paid by the TRS is substantially comparable to the rent paid by the unrelated tenants for comparable space. 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 its 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. 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 changes or fluctuations with respect to borrowings made or to be made, or incurred or to be incurred, to acquire or carry real estate assets, or (2) currency fluctuations with respect to an item of 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. 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 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;
- 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-traded REITs (not to exceed 25% of our assets unless secured by 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, 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 25% (20% for years beginning after December 31, 2017) 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.

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.
- Any security issued by a REIT.
- Any debt instrument issued by an entity treated as a partnership for federal income tax purposes to the extent of our interest as a partner in the 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 “-Requirements for Qualification-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% for years beginning after December 31, 2017 (and less than 25% for years beginning prior to January 1, 2018) 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 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 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 sum of certain items of non-cash income.

We 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.

We may satisfy the 90% distribution test with taxable distributions of our stock or debt securities. The IRS has issued private letter rulings to other REITs treating 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. Those rulings may be relied upon only by taxpayers to whom they were issued, but we could request a similar ruling from the IRS. Accordingly, it is unclear whether and to what extent we will be able to make taxable dividends payable in cash and stock. 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. 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 REIT ordinary income for such year,
- 95% of our REIT capital gain 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 amounts we actually distribute. We may elect to retain and pay income tax on the net capital gain we receive in a taxable year. See “-Taxation of Taxable U.S. Stockholders.” If we so elect, we will 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.

Recordkeeping Requirements

We must maintain certain records in order to qualify as a REIT. In addition, to avoid a monetary penalty, we must request on an annual basis information from our stockholders designed to disclose the actual ownership of our outstanding stock. We intend to comply with these requirements.

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 and any applicable alternative minimum 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. 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 holder 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 holder 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 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” for the maximum tax rate accorded to capital gains. Qualified dividend income generally includes dividends paid to individuals, trusts and estates by domestic C corporations and certain qualified foreign corporations. 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 20% rate (in the case of taxpayers whose taxable income exceeds certain thresholds depending on filing status) on qualified dividend income. However, under the Tax Cuts and Jobs Act, regular dividends from REITs are treated as income from a pass-through entity and are eligible for a 20% deduction. As a result, our regular dividends will be taxed at 80% of an individual’s marginal tax rate. The current maximum rate is 37% resulting in a maximum tax rate of 29.6%. However, the maximum 20% 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 3.8% 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 are generally 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.

We may recognize taxable income in excess of our economic income, known as phantom income, in the first years that we hold certain investments, and experience an offsetting excess of economic income over our taxable income in later years. As a result, stockholders at times may be required to pay federal income tax on distributions that economically represent a return of capital rather than a dividend. These distributions would be offset in later years by distributions representing economic income that would be treated as returns of capital for federal income tax purposes. Taking into account the time value of money, this acceleration of federal income tax liabilities may reduce a stockholder’s after-tax return on his or her investment to an amount less than the after-tax return on an investment with an identical before-tax rate of return that did not generate phantom income. For example, if an investor with a 30% tax rate purchases a taxable bond with an annual interest rate of 10% on its face value, the investor’s before-tax return on the investment would be 10% and the investor’s after-tax return would be 7%. However, if the same investor purchased our capital stock at a time when the before-tax rate of return was 10%, the investor’s after-tax rate of return on such stock might be somewhat less than 7% as a result of our phantom income. In general, as the ratio of our phantom income to our total income increases, the after-tax rate of return received by a taxable stockholder will decrease. We will consider the potential effects of phantom income on our taxable stockholders in managing our investments.

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.

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.

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 you, (ii) results in a “complete termination” of your share interest in us, or (iii) is “not essentially equivalent to a dividend” with respect to you, 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 you 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 you, must generally be taken into account. If you do not own (actually or constructively) any of our common stock, or you own an insubstantial percentage of our outstanding common or preferred stock, based upon current law, a redemption of your 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 your preferred stock depends upon the facts and circumstances at the time the determination must be made, you are advised to consult your own tax advisor to determine such tax treatment.

If a redemption of preferred stock is not treated as a distribution taxable as a dividend to you, it will be treated as a taxable sale or exchange of the stock. As a result, you 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) your 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 you. Your adjusted basis in the redeemable preferred stock for tax purposes will be transferred to your remaining shares in us. If you do 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.

The IRS recently published proposed Treasury regulations that would require a share-by-share determination upon redemption so that a holder with varying tax basis for its shares of preferred stock could have taxable income with respect some shares, even though the holder's aggregate basis for the shares would be sufficient to absorb the entire redemption distribution. Additionally, these proposed Treasury regulations would not permit the transfer of basis in the redeemed shares to the remaining shares of our stock held (directly or indirectly) by the redeemed holder. Instead, the unrecovered basis in our preferred shares would be treated as a deferred loss to be recognized when certain conditions are satisfied. These proposed Treasury regulations would be effective for transactions that occur after the date the regulations are published as final Treasury regulations.

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. The highest marginal individual income tax rate for years beginning after December 31, 2017 is 37%. The maximum tax rate on long-term capital gain applicable to stockholders taxed at individual rates is 20% for sales and exchanges of assets held for more than one year. The maximum tax rate on long-term capital gain from the sale or exchange of "section 1250 property," or depreciable real property, is 25% to the extent that such gain would have been treated as ordinary income if the property were "section 1245 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 taxable to our stockholders taxed at individual rates at a maximum 20% or 25% rate. Thus, 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 of $3,000. 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 3.8% Medicare surtax in the case of certain taxpayers whose modified adjusted gross income exceeds certain thresholds depending on filing status.

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 at a current rate of 24% (28% for years beginning prior to January 1, 2018 or after December 31, 2025) 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. For a discussion of the backup withholding rules as applied to non-U.S. stockholders. See "-Taxation of Non-U.S. Stockholders."

Medicare Tax on Unearned Income

As noted above, U.S. stockholders that are individuals, estates or trusts to pay an additional 3.8% tax on "net investment income" earned directly or indirectly by U.S. Holders 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 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 equal to 30% of 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 30% branch profits tax in the case of a corporate non-U.S. stockholder. We plan to withhold federal income tax at the rate of 30% 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 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 the 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 interests in real property. 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 applicable alternative minimum tax. A non-U.S. corporate stockholder not entitled to treaty relief or exemption also may be subject to the 30% branch profits tax on such a distribution. We must withhold 21% (35% for years beginning prior to January 1, 2018) of 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% (5% for 2015 and prior years) 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 21% 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 continue to 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% (5% for 2015 and prior years) 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, 5% or less of our capital stock at all times throughout the five-year period ending on the date of the sale or exchange.

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 the purchaser of the stock could be required to withhold 15% of 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 30% tax on his or her capital gains.

Recent legislation provides for additional exemptions from provisions relating to ownership of interests in U.S. real estate by non-U.S. persons applicable to "qualified shareholders" and "qualified foreign pension plans," as further described below.

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 U.S. tax as income effectively connected with a U.S. trade or business and thus will not be subject to special withholding rules under FIRPTA. While a “qualified shareholder” will not be subject to FIRPTA withholding on REIT 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.

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 on a sale of our stock.

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 (1), 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 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, 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 REIT stock directly or indirectly (through one or more partnerships) will not be subject to U.S. tax as income effectively connected with a U.S. trade or business and thus will not be subject to special withholding rules under FIRPTA. 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.

The tax provisions relating to qualified shareholders and qualified foreign pension funds are complex. Stockholders should consult their tax advisors with respect to the impact of those provisions on them.

Provisions Relating to Foreign Accounts

Legislation (known as the Foreign Account Tax Compliance Act, or FATCA) imposes withholding taxes on certain types of payments made to "foreign financial institutions" and certain other non-U.S. entities. Under this legislation, the failure to comply with additional certification, information reporting and other specified requirements could result in withholding tax being imposed on payments of dividends and sales proceeds to U.S. stockholders (as defined above) who own shares of our capital stock through foreign accounts or foreign intermediaries and certain non-U.S. stockholders. The legislation imposes a 30% withholding tax on dividends on, and gross proceeds from the sale or other disposition of, our capital stock paid to a foreign financial institution or to a foreign entity other than a financial institution, unless (i) the foreign financial institution undertakes certain diligence and reporting obligations, or (ii) the foreign entity that is not a financial institution either certifies it does not have any substantial United States owners or furnishes identifying information regarding each substantial United States owner. If the payee is a foreign financial institution, it must enter into an agreement with the U.S. Treasury Department requiring, among other things, that it undertake to identify accounts held by certain United States persons or United States-owned foreign entities, annually report certain information about such accounts, and withhold 30% on payments to account holders whose actions prevent it from complying with these reporting and other requirements. The IRS has required withholding under FATCA with respect to dividends paid after June 30, 2014 (subject to a "transition period" applicable through the end of 2015 with respect to which the IRS will take into account certain good faith compliance efforts) and was expected to begin to require withholding under FATCA with respect to gross proceeds of a disposition of our capital stock paid after December 31, 2018. However on December 13, 2018, the Treasury Department issued a Notice of Proposed Rulemaking that would eliminate FATCA withholding on payments of gross sales proceeds before such withholding would have begun. The IRS and the Treasury Department have been collaborating with foreign governments under bilateral "intergovernmental agreements" to implement the policy objectives of FATCA. Prospective investors should consult their tax advisors regarding FATCA.

Legislative or Other Actions Affecting REITs

The rules dealing with federal income taxation are constantly under review by persons involved in the legislative process by the IRS and the U.S. Treasury Department. No assurance can be given as to whether, when, or in what form, federal income tax laws applicable to us or our stockholders may be enacted, possibly with retroactive effect. Such changes may occur even though The Tax Cuts and Jobs Act was recently passed, particularly since there is a new administration. Changes to the federal income tax laws and interpretations of federal income tax laws could adversely affect an investment in our shares of 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.