

Risk Factors Comparison 2025-03-17 to 2024-03-07 Form: 10-K

Legend: New Text Removed Text Unchanged Text Moved Text Section

This section describes material risks affecting our business. In connection with the forward- looking statements that appear in this annual report, you should carefully review the factors discussed below and the cautionary statements referred to in “ Forward- Looking Statements.” Risk Factors Summary Our risk factors include discussion of risks to our business attributable to the impact of current economic conditions, risks related to our financing, risks related to our operations, risks related to our investments, risks related to our Manager, risks related to our organization and structure, tax risks and general risks, including as follows:

- If current economic and market conditions were to deteriorate, our ability to obtain the capital and financing necessary for growth may be limited, which could limit our profitability, ability to make distributions and the market price of our common stock.
- Our portfolio has been financed in material part through the use of leverage that may reduce the return on our investments and cash available for distribution.
- Our repurchase agreements, warehouse facilities and other short- term financings have credit risks that could result in losses.
- We are exposed to loss if lenders under our repurchase agreements, warehouse facilities, senior secured financing facility or other short- term financings liquidate the assets securing those facilities. Moreover, assets acquired by us pursuant to our repurchase agreements, warehouse facilities, senior secured financing facility or other short- term financings may not be suitable for refinancing through long- term arrangements that may require us to liquidate some or all of the related assets.
- We will incur losses on our repurchase transactions if the counterparty to the transactions defaults on its obligation to resell the underlying assets back to us at the end of the transaction term, or if the value of the underlying assets has declined as of the end of the term or if we default in our obligations to purchase the assets.
- We may have to repurchase assets that we have sold in connection with CRE debt securitizations and other securitizations.
- Financing our REIT qualifying assets with repurchase agreements and warehouse facilities could adversely affect our ability to qualify as a REIT.
- Historically, we have financed most of our investments through CRE debt securitizations and have retained the equity. CRE debt securitization equity receives distributions from the CRE debt securitization only if the CRE debt securitization generates enough income to first pay the holders of its debt securities and its expenses.
- If our CRE debt securitization financings fail to meet their performance tests, including over- collateralization and interest coverage requirements, our net income and cash flow from these CRE debt securitizations will be eliminated.
- If we issue debt securities, the terms may restrict our ability to make cash distributions, require us to obtain approval to sell our assets or otherwise restrict our operations in ways that could make it difficult to execute our investment strategy and achieve our investment objectives.
- Depending upon market conditions, we intend to seek financing through CRE debt securitizations, which would expose us to risks relating to the accumulation of assets for use in the CRE debt securitizations.
- We may change our investment strategy without stockholder consent, which may result in riskier investments than those currently targeted.
- Our business is highly dependent on communications and information systems, and systems failures or cybersecurity incidents could significantly disrupt our business, which may, in turn, negatively affect the market price of our common stock and our ability to operate our business.
- Declines in the market values of our investments may reduce periodic reported results, credit availability and our ability to make distributions.
- Increases in interest rates and other factors could reduce the value of our investments, result in reduced earnings or losses and reduce our ability to pay distributions.
- We record some of our portfolio investments, including those classified as assets held for sale, at fair value as estimated by our management and, as a result, there will be uncertainty as to the value of these investments.
- We may face competition for suitable investments. (Back to Index)
- Many of our investments may be illiquid, which may result in our realizing less than their recorded value should we need to sell such investments quickly.
- Our investments in real estate and commercial mortgage loans, mezzanine loans and CRE equity investments are subject to the risks inherent in owning the real estate securing or underlying those investments that could result in losses to us.
- Our investments in real estate are subject to particular conditions that may have a negative impact on our results of operations.
- Our investments in real estate are illiquid. We may not be able to dispose of properties when desired or on favorable terms.
- If our allowance for credit losses is not adequate to cover actual future loan and lease losses, our earnings may decline.
- The current expected credit losses, or CECL, model may require us to increase our allowance for credit losses and therefore may have a material adverse effect on our business, financial condition and results of operations.
- Our investment portfolio may have material geographic, sector, property- type and sponsor concentrations.
- We may be exposed to environmental liabilities with respect to properties that we own or take title to in the future.
- We depend on our Manager and ACRES to develop and operate our business and may not find suitable replacements if the Management Agreement terminates.
- Our Manager’ s fee structure may not create proper incentives, and the incentive compensation we pay our Manager may increase the investment risk of our portfolio.
- Our Manager manages our portfolio pursuant to very broad investment guidelines and our Board does not approve each investment decision, which may result in our making riskier investments.
- Our Manager and ACRES will face conflicts of interest relating to the allocation of investment opportunities and such conflicts may not be resolved in our favor, which could limit our ability to acquire assets and, in turn, limit our ability to make distributions and reduce your overall investment return.
- Our officers and many of the investment professionals that provide services to us through our Manager are also officers or employees of ACRES and may face conflicts regarding the allocation of their time.
- Our charter and bylaws contain provisions that may inhibit potential acquisition bids that you and other stockholders may consider favorable, and the market price of our common stock may be lower as a result.
- Maryland takeover statutes may prevent a change in control of us, and the market price of our common stock may be lower as a result.
- Our rights and the rights of our stockholders to take action against our directors and officers are limited, which could limit your recourse in the event of

actions not in your best interests. • We have not established a minimum distribution payment level and we cannot assure you of our ability to make distributions in the future. In the future, we may use uninvested offering proceeds or borrowed funds to make distributions. • Loss of our exclusion from regulation under the Investment Company Act would require significant changes in our operations and could reduce the market price of our common stock and our ability to make distributions. • Legislative, regulatory or administrative changes could adversely affect our stockholders or us.

Risks Related to Impact of Current Economic Conditions 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 **taxable REIT subsidiary (“TRSs- TRS”)** retain earnings as new capital, we are subject to REIT qualification requirements that limit the value of TRS stock and securities relative to the other assets owned by a REIT. A prolonged economic slowdown or lengthy or severe recession causing declining real estate values could impair our investments and harm our operations. We believe the risks associated with our business will be more severe during periods of economic slowdown or recession if these periods are accompanied by declining real estate values. Declining real estate values will likely reduce the level of new mortgage loan originations and other real estate- related investment activities since borrowers often use the appreciation in their existing real estate holdings or the expected appreciation in value- add projects to support the purchase of or incremental investment in additional properties. Further, declining real estate values significantly increase the likelihood that we will incur losses on our loans in the event of default because the value of our collateral may be insufficient to cover our investment in the loan. Any sustained period of increased payment delinquencies, foreclosures or losses could adversely affect our ability to invest in, sell or securitize loans, which could materially and adversely affect our results of operations, financial condition, liquidity and our ability to pay distributions. The **outbreak effects of the widespread spread of illnesses or contagious disease, such as COVID-19, has caused, and may continue to cause, disruptions to the other U. S. and public health emergencies on the global economy, the markets and to our business, which has had, and may continue to have, an adverse impact on our financial condition, our results of operations and our liquidity and capital resources.** **Outbreaks of contagious diseases, such as COVID-19, as well as individual issuers, assets and capital markets and could have serious negative effects on social, economic and financial systems, including significant uncertainty and volatility in the financial markets. Future infectious illness outbreaks or other public health emergencies could have similar or other unforeseen impacts and may exacerbate pre-existing political or any future pandemic or epidemic, may have a material social and economic risks in certain countries or globally, which could adversely affect impact on our financial condition, liquidity and results of operations and the market price of our common stock.** **A public health emergency could result in and an increase of the costs and affect liquidity in the market, either of which could adversely affect our results of operations and market price of our common stock.** We expect that while **In addition, a public health emergency could impair the information technology and the other operational systems upon which we rely and could otherwise disrupt the ability of ACRES employees to perform essential tasks on behalf of the company. Governmental and quasi- governmental authorities and regulators throughout the world have at times responded to major economic disruptions with a variety of fiscal and monetary policy changes, including, but not limited to, direct impacts of COVID-19 have subsided capital infusions into companies and other issuers, indirect impacts are new monetary tools and lower interest rates. An unexpected or sudden reversal of these policies, or the ineffectiveness of these policies, is likely to increase volatility** continue to some extent as the longer- term macro- economic effects of the pandemic continue. The rapid development of the pandemic and the resulting economic effects have created uncertainty surrounding the ultimate impact of the COVID-19 pandemic on the global economy generally, and the CRE business in particular. As a result, we cannot project the ultimate adverse impact of COVID-19 and any future pandemics or epidemics, on the global economy or our business, including our financial condition and performance. The extent of the impact of COVID-19, or any future pandemics or epidemics, will depend on future developments, including new information that may emerge about the severity of the pandemic or epidemic, the timing, scope and effectiveness of additional governmental responses to the pandemic or epidemic, including the potential re- imposition of quarantines, states of emergencies, restrictions on travel and stay- at- home orders and the ensuing reactions by consumers, companies, governmental entities and global markets- **market, which could adversely affect the market price of our common stock.**

Risks Related to Our Financing 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. 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. 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. 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. 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 in which we retained the equity interest. Depending on market conditions and credit availability, we intend to use CRE debt securitizations to finance our investments in the future. The equity interests of a CRE debt securitization are subordinate in right of payment to all other securities issued by the CRE debt securitization. The equity is usually entitled to all of the income generated by the CRE debt securitization after the CRE debt securitization pays all of the interest due on the debt securities and its other expenses. However, there will be little or no income available to the CRE debt securitization equity if there are excessive defaults by the issuers of the underlying collateral, which would significantly reduce the value of that interest. Reductions in the value of the equity interests we have in a CRE debt securitization, if we determine that they are other- than- temporary, will reduce our earnings. In addition, the liquidity of the equity securities of CRE debt securitizations is constrained and, because they represent a leveraged investment in the CRE debt securitization' s assets, the value of the equity securities will generally have greater fluctuations than the value of the underlying collateral. Our CRE debt securitizations generally provide that the principal amount of their assets must exceed the principal balance of the related securities issued by them by a certain amount, commonly referred to as " over- collateralization. " If delinquencies and / or losses exceed specified levels, based on the analysis by the rating agencies (or any financial guaranty insurer) of the characteristics of the assets collateralizing the securities issued by the CRE debt securitization issuer, the required level of over- collateralization may be increased or may be prevented from decreasing as would otherwise be permitted if losses or delinquencies did not exceed those levels. A failure by a CRE debt securitization to satisfy an over- collateralization test typically results in accelerated distributions to the holders of the senior debt securities issued by the CRE debt securitization entity, resulting in a reduction or elimination of distributions to more junior securities until the over- collateralization requirements have been met or the senior debt securities have been paid in full. Our equity holdings and, when we acquire debt interests in CRE debt securitizations, our debt interests, if any, generally are subordinate in right of payment to the other classes of debt securities issued by the CRE debt securitization entity. Accordingly, if over- collateralization tests are not met, distributions on the subordinated debt and equity we hold in these CRE debt securitizations will cease, resulting in a substantial reduction in our cash flow. Other tests (based on

delinquency levels, interest coverage or other criteria) may restrict our ability to receive cash distributions from assets collateralizing the securities issued by the CRE debt securitization entity. Although at December 31, 2023-2024, all of our CRE debt securitizations met their performance tests, we cannot assure you that our CRE debt securitizations will satisfy the performance tests in the future. For information concerning compliance by our CRE debt securitizations with their over-collateralization tests and interest coverage tests, see "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operation- Liquidity and Capital Resources." If any of our CRE debt securitizations fail to meet collateralization, interest coverage or other tests relevant to the most senior debt issued and outstanding by the CRE debt securitization issuer, an event of default may occur under that CRE debt securitization. If that occurs, our Manager's ability to manage the CRE debt securitization likely would be terminated and our ability to attempt to cure any defaults in the CRE debt securitization would be limited, which would increase the likelihood of a reduction or elimination of cash flow and returns to us in those CRE debt securitizations for an indefinite time. 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. Historically, we have financed a significant portion of our assets through the use of CRE debt securitizations, and have accumulated assets for these financings through short-term credit facilities, typically repurchase agreements or warehouse facilities. Depending upon market conditions, and, consequently, the extent to which such financing is available to us, we expect to seek similar financing arrangements in the future. In addition to risks discussed above, these arrangements could expose us to other credit risks, including the following:

- An event of default under one short-term facility may constitute a default under other credit facilities we may have, potentially resulting in asset sales and losses to us, as well as increasing our financing costs or reducing the amount of investable funds available to us.
- We may be unable to acquire a sufficient amount of eligible assets to maximize the efficiency of a CRE debt securitization issuance, which would require us to seek other forms of term financing or liquidate the assets. We may not be able to obtain term financing on acceptable terms, or at all, and liquidation of the assets may be at prices less than those we paid, resulting in losses to us.
- Using short-term financing to accumulate assets for a CRE debt securitization issuance may require us to obtain new financing as the short-term financing matures. Residual financing may not be available on acceptable terms, or at all. Moreover, an increase in short-term interest rates at the time that we seek to enter into new borrowings may reduce the spread between the income on our assets and the cost of our borrowings. This would reduce returns on our assets, which would reduce earnings and, in turn, cash available for distribution to our stockholders. We may be subject to losses arising from current and future guarantees of debt and contingent obligations of our subsidiaries or joint venture partners. We may guarantee the performance of the obligations of our subsidiaries, including credit and repurchase facilities, derivative agreements, unsecured indebtedness and indebtedness incurred by our joint venture partners. Non-performance on such obligations may cause losses to us in excess of the capital invested in our subsidiary or the relevant joint venture and there is no assurance that we will have sufficient capital to cover any such losses. The debt facilities that we use to finance our investments may require us to provide additional collateral. If the market value of the loans or investments pledged or sold by us to a funding source decline in value, we may be required by the lender to provide additional collateral or pay down a portion of the funds advanced. We may not have the funds available to pay down such future debt, which could result in defaults. Posting additional collateral to support these facilities would reduce our liquidity and limit our ability to leverage our assets. In the event we do not have sufficient liquidity to meet such requirements, lenders can accelerate the indebtedness, increase interest rates and terminate our ability to borrow. Further, lenders may require us to maintain a certain amount of uninvested cash or set aside unlevered assets sufficient to maintain a specified liquidity position. As a result, we may not be able to leverage our assets as fully as we would choose, which could reduce our return on assets. In the event that we are unable to meet these collateral obligations, our financial condition could deteriorate rapidly.

Risks Related to Our Operations Subject to maintaining our qualification as a REIT and our exclusion from regulation under the Investment Company Act, we may change our investment strategy, including the percentage of assets that may be invested in each asset class, or in the case of securities, in a single issuer, at any time without the consent of our stockholders, which could result in our making investments that are different from, and possibly riskier than, the investments described in this report. A change in our investment strategy may increase our exposure to interest rate, credit market and real estate market fluctuations, all of which may reduce the market price of our common stock and reduce our ability to make distributions to stockholders. Furthermore, a change in our asset allocation could result in our making investments in asset categories different from those described in this report. We believe earnings available for distribution ("EAD"), a non-GAAP financial measure, is an appropriate measure to evaluate our performance and ability to pay dividends; however, in certain instances EAD may not be reflective of actual economic results. We utilize EAD as a measure to evaluate our performance and ability to pay dividends and believe that it is useful to analysts, investors and other parties in the evaluations of REITs. We believe EAD is a useful measure of our performance and ability to pay dividends because it excludes the effects of certain transactions and GAAP adjustments that we believe are not necessarily indicative of our current CRE loan origination portfolio and other CRE-related investments and operations. EAD excludes (i) non-cash equity compensation expense, (ii) unrealized gains or losses, (iii) non-cash provision for loan losses, (iv) non-cash impairments on securities, (v) non-cash amortization of discounts or premiums associated with borrowings, (vi) net income or loss from limited partnership interests owned at the initial measurement date, (vii) net income or loss from non-core assets, (viii) real estate depreciation and amortization, (ix) foreign currency gains or losses and (x) income or losses from discontinued operations. EAD may also be adjusted periodically to exclude certain one-time events pursuant to changes in GAAP and certain non-cash items. Although pursuant to the Management Agreement we

calculate incentive compensation using EAD excluding incentive compensation payable to our Manager, we include incentive compensation payable to our Manager in EAD for reporting purposes. EAD does not represent net income or cash generated from operating activities and should not be considered as an alternative to GAAP net income or as a measure of liquidity under GAAP. Our methodology for calculating EAD may differ from methodologies used by other companies to calculate similar supplemental performance measures, and accordingly, our reported EAD may not be comparable to similar performance measures used by other companies. If we fail to maintain an effective system of internal controls, we may not be able to accurately report our financial results or prevent fraud. If we fail to maintain an effective system of internal control, fail to correct any flaws in the design or operating effectiveness of internal controls over financial reporting and disclosure, or fail to prevent fraud, our stockholders could lose confidence in our financial and other reporting, which could harm our business and the trading price of our common stock. Our due diligence may not reveal all of an investment's weaknesses. Before investing in any asset, we will assess the strength and skills of the asset's management and operations, the value of the asset and, for debt investments, the value of any collateral securing the debt, the ability of the asset or underlying collateral to service the debt and other factors that we believe are material to the performance of the investment. In making the assessment and otherwise conducting customary due diligence, we will rely on the resources available to us and, in some cases, an investigation by third parties. Our due diligence processes, however, may not uncover all facts that may be relevant to an investment decision. We depend on the information systems of our Manager, ACRES and third parties. Any failure or interruption of our systems or cyber- attacks or security breaches of our networks or systems could cause delays or other problems in our lending activities. A disruption or breach could also lead to unauthorized access to and release, misuse, loss or destruction of our confidential information or personal or confidential information of our Manager, ACRES or third parties, which could lead to regulatory fines, litigation, costs of remediating the breach and reputational harm. In addition, we also face the risk of operational failure, termination or capacity constraints of any of the third parties with which we do business or that facilitate our business activities, including clearing agents or other financial intermediaries we use to facilitate our securities transactions, if their respective systems experience failure, interruption, cyber- attacks, or security breaches. If unauthorized parties gain access to our technology systems, they may be able to steal, publish, delete or modify private and sensitive information. Although we have implemented various measures to manage risks relating to these types of events, such systems could prove to be inadequate and, if compromised, could become inoperable for extended periods of time, cease to function properly or fail to adequately secure private information, including material nonpublic information. We may face increased costs as we continue to evolve our cyber defenses in order to contend with changing risks. These costs and losses associated with these risks are difficult to predict and quantify, but could have a significant adverse effect on our operating results. The costs related to cyber or other security threats or disruptions may not be fully insured or indemnified by other means. As our and our borrowers' reliance on technology has increased, so have the risks posed to our information systems, both internal and those provided by third- party service providers, and the information systems of our borrowers. We have implemented processes, procedures and internal controls to help mitigate cybersecurity risks and cyber intrusions, but these measures, as well as our increased awareness of the nature and extent of a risk of a cyber- incident, do not guarantee that a cyber- incident will not occur and / or that our operations or confidential information will not be negatively impacted by such an incident. Computer malware, viruses, computer hacking and phishing attacks have become more prevalent in our industry and may occur on our systems. We rely heavily on our financial, accounting and other data processing systems. Although we have not detected a material cybersecurity breach to date, other financial services institutions have reported material breaches of their systems, some of which have been significant. Even with all reasonable security efforts, not every breach can be prevented or even detected. It is possible that we have experienced an undetected breach. There is no assurance that we, or the third parties that facilitate our business activities, have not or will not experience a breach. Cyber- attacks on our network or other systems could have a material adverse effect on our business and results of operations, due to, among other things, the loss of investor or proprietary data, interruptions or delays in the operation of our business and damage to our reputation. There can be no assurance that measures we take to ensure the integrity of our systems will provide protection, especially because cyberattack techniques used change frequently or are not recognized until successful. It is difficult to determine what, if any, negative impact may directly result from any specific interruption or cyber- attacks or security breaches of our networks or systems (or the networks or systems of third parties that facilitate our business activities) or any failure to maintain performance, reliability and security of our technical infrastructure, but such computer malware, viruses and computer hacking and phishing attacks may negatively affect our operations. Risks Related to Our Investments Historically, we have classified a substantial portion of our assets for accounting purposes as "available- for- sale." As a result, reductions in the market values of those assets were directly charged to accumulated other comprehensive loss and reduce our stockholders' equity. A decline in these values would reduce the book value of our assets. Moreover, if there is an indication of credit quality issues for a specific investment, under the current expected credit losses, or CECL, accounting guidance, we must record a provision to our earnings in order to estimate expected losses. A decline in the market value of our assets may also adversely affect us in instances where we have borrowed money based on the market value of those assets. If the market value of those assets declines, the lender may require us to post additional collateral to support the loan. If we are unable to post the additional collateral, we would have to repay some portion or all of the loan, which may require us to sell assets, which could potentially be under adverse market conditions. As a result, our earnings would be reduced or we could sustain losses, and cash available to make distributions could be reduced or eliminated. A significant risk associated with our investment in CRE- related loans, and, historically, our CMBS and other debt investments is the risk that either or both of long- term and short- term interest rates increase significantly. If long- term rates increase, the market value of our assets would decline. Even if assets underlying investments we may own in the future are guaranteed by one or more persons, including government or government- sponsored agencies, those guarantees do not protect against declines in market value of the related assets caused by interest rate changes. At the same time, with respect to assets that are not match- funded or that have been acquired with variable

rate or short-term financing, an increase in short-term interest rates would increase our interest expense, reducing our net interest spread or possibly result in negative cash flow from those assets. This could result in reduced profitability and distributions or losses. Heightened consumer demand, combined with constrained labor markets and supply chain imbalances, have created inflationary pressure within the U. S. economy. While our ownership of commercial real estate and floating rate loans can act as effective hedges against inflation, increased costs could compromise property performance and thus mortgage loan performance. Increased consumer demand, along with tight labor markets and supply chain imbalances, have created inflationary pressure on the U. S. economy. Our ownership of commercial real estate can act as an effective hedge against inflation, since in an inflationary environment, increases in the cost of construction and higher mortgage rates are likely to make new supply more expensive, leading to a limited supply of buildings, which in turn increases both rental rates and property values. Further, the Federal Reserve has raised, and may continue to raise, interest rates in an effort to combat inflation, and so the interest payable on our existing fixed rate debt on our real estate portfolio becomes relatively cheaper, and the rates on our floating rate loans and financing adjust accordingly. Increased costs, such as increased energy costs and wages, could stress property performance and thus mortgage loan performance. We use interest rate hedges to mitigate the effect of inflation on our fixed rate loans. While our diversified portfolio may serve to mitigate the negative effects of inflation on any singular location or property type, certain assets or markets may be more negatively affected by inflation. The transition away from reference rates and the use of alternative replacement reference rates may adversely affect the value of our loans, investments and borrowings and could affect our results of operations.

~~Historically, we have used the London Interbank Offered Rate (“LIBOR”) as the benchmark interest rate for our floating-rate whole loans and we have been exposed to LIBOR through our floating-rate borrowings. In March 2021, the United Kingdom’s, or U.K.’s, Financial Conduct Authority (“FCA”) announced that it would cease publication of the one-week and the two-month USD LIBOR immediately after December 31, 2021, and cease publication of the remaining tenors immediately after June 30, 2023. In July 2021, the U. S. Federal Reserve, in conjunction with the Alternative Reference Rates Committee, a steering committee comprising large U. S. financial institutions, identified Secured Overnight Financing Rate (“SOFR”) as its preferred alternative rate for LIBOR. Following this announcement, we began to transition the contractual benchmark rates of existing floating-rate whole loans and borrowings to alternate rates. At December 31, 2023, our entire portfolio of floating-rate whole loans and floating-rate borrowings have transitioned to SOFR.~~

There can be no guarantee that existing or future provisions for alternative reference rates will include adequate methodologies for adjustments or that the alternative reference rates will be similar to or produce the economic equivalent of, or be more or less favorable than the current reference rate, particularly during times of economic stress. As such, the potential effect of any such event on our cost of capital and net investment income cannot yet be determined and any changes to benchmark interest rates could increase our financing costs or reduce our interest income, which could impact our results of operations, cash flows and the market value and liquidity of our investments. There could be a mismatch between the timing of the transition to a replacement rate between our investments and our financing, or a mismatch between the replacement rate used by our investments and our financing. Changes or uncertainty resulting from the transition to a replacement rate, including any market dislocations and disruptions as a result thereof, could adversely affect our business, reputation, increase the risk of litigation or other disputes, and increase transition-related expenses, among other adverse consequences. Investing in mezzanine debt, preferred equity, mezzanine or other subordinated tranches of CMBS involves greater risks of loss than senior secured debt investments. Subject to maintaining our qualification as a REIT and exclusion from regulation under the Investment Company Act, we may invest in mezzanine debt, preferred equity and mezzanine or other subordinated tranches of CMBS. We currently have investments in mezzanine debt. These types of investments carry a higher degree of risk of loss than senior secured debt investments such as our whole loan investments because, in the event of default and foreclosure, holders of senior liens will be paid in full before mezzanine investors. Depending on the value of the underlying collateral at the time of foreclosure, there may not be sufficient assets to pay all or any part of amounts owed to mezzanine investors. Moreover, mezzanine and other subordinate debt investments may have higher LTV than conventional senior lien financing, resulting in less equity in the collateral and increasing the risk of loss of principal. If a borrower defaults or declares bankruptcy, we may be subject to agreements restricting or eliminating our rights as a creditor, including rights to call a default, cure a default, foreclose on collateral, and accelerate maturity or control decisions made in bankruptcy proceedings. In addition, the prices of lower credit quality securities are generally less sensitive to interest rate changes than more highly rated investments, but more sensitive to economic downturns or individual issuer developments because the ability of obligors of investments underlying the securities to make principal and interest payments may be impaired. In such event, existing credit support relating to the securities’ structure may not be sufficient to protect us against loss of our principal. For additional risks regarding real estate-related loans, see “Risks Related to Investments- Our commercial mortgage loans and mezzanine loans are subject to the risks inherent in owning the real estate securing or underlying those investments that could result in losses to us.” Our investments in preferred equity involve a greater risk of loss than traditional first mortgage debt investments we make. We may make preferred equity investments in entities that own or acquire CRE properties. Preferred equity investments involve a higher degree of risk than first mortgage loans due to a variety of factors, including the risk that, similar to mezzanine loans, such investments are subordinate to first mortgage loans and are not collateralized by property underlying the investment. Unlike mezzanine loans, preferred equity investments generally do not have a pledge of the ownership interests of the entity that owns the interest in the entity owning the property. Although as a holder of preferred equity we may enhance our position with covenants that limit the activities of the entity in which we hold an interest and protect our equity by obtaining an exclusive right to control the underlying property after an event of default, should such a default occur on our investment, we would only be able to proceed against the entity in which we hold an interest, and not the property owned by such entity and underlying our investment. As a result, we may not recover some or all of our investment. We 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. 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-originate or participate in loans with third parties;**
- **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. 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.

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

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

We risk loss of principal on defaulted CRE loans we hold to the extent of any deficiency between the value we can realize from the sale of the collateral securing the loan upon foreclosure and the loan' s principal and accrued interest. Moreover, foreclosure of a mortgage loan can be an expensive and lengthy process that could reduce the net amount we can realize on the foreclosed mortgage loan. In a bankruptcy of a mortgage loan borrower, the mortgage loan will be deemed to be secured only to the extent of the value of the underlying collateral at the time of bankruptcy as determined by the bankruptcy court, and the lien securing the mortgage loan will be subject to the avoidance powers of the bankruptcy trustee or debtor- in- possession to the extent the lien is unenforceable under state law. We may be obligated to fund a portion of the loan at one or more future dates. We may not have the funds available at such future date (s) to meet our funding obligation under the loan. In that event, we would likely be in breach of the loan documents unless we are able to raise the capital, which we may not be able to achieve on favorable terms or at all. Additionally, if we are in breach of the loan documents, the borrower may file a claim against us for failure to perform under the loan documents. For a discussion of additional risks associated with mezzanine loans, see “ Risks Related to Our Investments- Investing in mezzanine debt, preferred equity and mezzanine or other subordinated debt investments involves greater risks of loss than senior secured debt investments. ” If our allowance for credit losses is not adequate to cover actual future loan losses, our earnings may decline. We maintain an allowance for credit losses to provide for loan defaults and non- performance by borrowers of their obligations. Our allowance for credit losses may not be adequate to cover actual future loan losses and future provisions for credit losses could materially reduce our income. We base our allowance for credit losses on historical loss experience, current portfolio and market conditions and reasonable and supportable forecasts for the duration of

each respective loan. However, losses have in the past, and may in the future, exceed our current estimates, and the difference could be substantial. The amount of future losses is susceptible to changes in economic, operating and other conditions that may be beyond our control and difficult to estimate, including changes in interest rates, changes in borrowers' creditworthiness and the value of collateral securing loans. Additionally, if we seek to expand our loan portfolios, we may need to make additional provisions for credit losses to ensure that the allowance remains at levels deemed appropriate by our management for the size and quality of our portfolios. While we believe that our allowance for credit losses at December 31, ~~2023~~ 2024 is adequate to cover our anticipated losses, we cannot assure you that it will not increase in the future. Any increase in our allowance for credit losses will reduce our income and, if sufficiently large, could cause us to incur significant losses. The CECL model may require us to increase our allowance for credit losses and therefore may have a material adverse effect on our business, financial condition and results of operations. The CECL allowance required is a valuation account that is deducted from the related loans' and debt securities' amortized cost basis on our consolidated balance sheets, which reduces our total stockholders' equity. Additional changes to the CECL allowance are recognized through net income on our consolidated statements of operations. While the guidance does not require any particular method for determining the CECL allowance, it does specify the allowance should be based on relevant information about past events, including historical loss experience, current portfolio and market conditions, and reasonable and supportable forecasts for the duration of each respective loan. Because our methodology for determining CECL allowances may differ from the methodologies employed by other companies, our CECL allowances may not be comparable with the CECL allowances reported by other companies. In addition, other than pursuant to a few narrow exceptions, the guidance requires that all financial instruments subject to the CECL model have some amount of reserve to reflect the GAAP principal underlying the CECL model that all loans, debt securities, and similar assets have some inherent risk of loss, regardless of credit quality, subordinate capital, or other mitigating factors. Accordingly, the adoption of the CECL model materially affected our determination of the allowance for credit losses and required us to increase our allowance upon adoption and recognize provisions for credit losses earlier in the lending cycle. Moreover, the CECL model has created more volatility in the level of our allowance for credit losses. If we are required to materially increase our level of allowance for credit losses for any reason, such increase could adversely affect our business, financial condition and results of operations. 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. In the course of our business, we have made direct investments in, and expect we will continue to make direct investments in, properties or taken title to, and expect we will in the future take title to, real estate through foreclosure on collateral underlying real estate debt investments. When we do take title to any property, we could be subject to environmental liabilities with respect to it. In such a circumstance, we may be held liable to a governmental entity or to third parties for property damage, personal injury, investigation and clean- up costs they incur as a result of environmental contamination, or may have to investigate or clean up hazardous or toxic substances, or chemical releases at a property. The costs associated with investigation or remediation activities could be substantial and could reduce our income and ability to make distributions. Additionally, the presence of hazardous substances on a property we own may adversely affect our ability to sell the property. Real estate ownership is subject to particular conditions that may have a negative impact on our results of operations. We are subject to all of the inherent risks associated with the ownership of real estate. We may not be successful in the development or redevelopment / expansion of the acquired properties. In addition, the real estate investments may not perform as well as expected, impacting our anticipated return on investment. We are subject to other risks in connection with any acquisition, development and redevelopment / expansion activities, including the following: • acquisition or construction costs of a project may be higher than projected, potentially making the project unfeasible or unprofitable; • development, redevelopment or expansions may take considerably longer than expected, delaying the commencement due to supply chain disruptions; • we may be unable to obtain zoning, occupancy or other governmental approvals; and • occupancy rates and rents may not meet our projections and the project may not be accretive. We risk the loss of our investment if a development or redevelopment / expansion project is unsuccessful, either because it is not meeting our expectations when operational or was not completed according to the project planning. Real estate property investments are illiquid. We may not be able to dispose of properties when desired or on favorable terms. Real estate investments are relatively illiquid. Many factors that are beyond our control affect the real estate market. Our ability to quickly sell or exchange any of our properties in response to changes in economic and other conditions will be limited. No assurances can be given that we will recognize full value, at a price and at terms that are acceptable to us, for any property that we are required to sell for liquidity

reasons. Our inability to respond rapidly to changes in the performance of our investments could adversely affect our financial condition and results of operations. We may not have control, or control may be limited, over certain of our loans and real estate equity investments. Some of our loans or real estate equity investments may be co-lender, joint venture or other arrangements in which we share the rights, obligations and benefits of the loan or real estate equity investment with other lenders, servicers or joint venture partners. We may need the consent of these parties to exercise our rights under the respective agreements, including rights with respect to amendment of loan documentation, enforcement proceedings in the event of default and the institution of, and control over, foreclosure proceedings. The participants of these agreements may have interests that may not be aligned with ours and may be able to take actions to which we object but will be bound if our investment interest represents a non-controlling interest. We may be adversely affected by such actions. Additionally, our co-lenders, servicers or joint venture partners may have financial difficulties and may not be able to perform their financial obligations in accordance with their respective agreements, in which case we may be obligated to perform on their behalf. If we do not have the capital available or are unable to access funding, we may not have the capital available to meet those obligations, which will most likely result in a default under the respective agreement and could adversely affect our results of operations and financial condition.

Risks Related to Our Manager We 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 is entitled to receive a base management fee equal to 1 / 12th of our equity, as defined in the Management Agreement, multiplied by 1.50%. Since the base management fee is based on our outstanding equity, our Manager could be incentivized to recommend strategies that increase our equity, and there may be circumstances where increasing our equity will not optimize the returns for our stockholders. In addition to its base management fee, our Manager is entitled to receive incentive compensation. This compensation is equal to the excess of (1) the product of (a) 20% and (b) the excess of (i) our EAD, as defined in the Management Agreement, for the previous 12-month period, over (ii) the product of (A) our book value equity (as defined in the Management Agreement) in the previous 12-month period, and (B) 7% per annum, over (2) the sum of any incentive compensation paid to our Manager with respect to the first three calendar quarters of such previous 12-month period; provided, however, that no incentive compensation shall be payable with respect to any calendar quarter unless EAD (as defined in the Management Agreement) for the 12 most recently completed calendar quarters (or such lesser number of completed calendar quarters from September 30, 2022) in the aggregate is greater than zero. In evaluating investments and other management strategies, the opportunity to earn incentive compensation based on EAD may lead our Manager to place undue emphasis on the maximization of EAD at the expense of other criteria, such as preservation of capital, in order to achieve higher incentive compensation. Investments with higher yields generally have higher risk of loss than investments with lower yields. If our interests and those of our Manager are not aligned, the execution of our business plan and our results of operations could be adversely affected, which could adversely affect our results of operations and financial condition. Our Manager 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 Management Agreement does not prohibit our Manager, or ACRES from investing in or managing entities that invest in asset classes that are the same as, or similar to, our targeted asset classes, except that they may not raise funds for, sponsor or advise any new publicly-traded REIT that invests primarily in MBS in the U.S. We rely on our Manager to identify suitable investment opportunities for us. Our executive officers and several of the other key real estate professionals, acting on behalf of our Manager, are also the key real estate professionals acting on behalf of the advisors of other investment programs sponsored by, and other clients managed by, ACRES. As such, these investment programs and clients rely on many of the same real estate professionals as will future programs and vehicles sponsored by ACRES. Many investment opportunities that are suitable for us may also be suitable for one or more of these investment programs or clients. When an investment opportunity becomes available, the allocation committee established by ACRES, in accordance with its investment allocation policies and procedures, will offer the opportunity to the investment program or clients for which the investment opportunity is most suitable based on the available capital, investment objectives, portfolio and criteria of each. Thus, the allocation committees could direct attractive investment opportunities to an investment program or client other than us, which could result in us not investing in

investment opportunities that could provide an attractive return or investing in investment opportunities that provide less attractive returns. Any of the foregoing may reduce our ability to make distributions to you. Our officers, other than our Chief Financial Officer, Chief Accounting Officer and several accounting and tax professionals on their staff, as well as the officers, directors and employees of ACRES who provide services to us, are not required to work full time on our affairs, and may devote significant time to the affairs of ACRES. As a result, there may be significant conflicts between us, on the one hand, and our Manager and ACRES on the other, regarding allocation of our Manager's and ACRES' resources to the management of our investment portfolio. We have engaged in and may again engage in transactions with entities affiliated with our Manager. Our policies and procedures may be insufficient to address any conflicts of interest that may arise. We have established policies and procedures regarding review, approval and ratification of transactions that may give rise to a conflict of interest between persons affiliated or associated with our Manager and us. In the ordinary course of our business, we have ongoing relationships and have engaged in and may again engage in transactions with entities affiliated or associated with our Manager. See "Item 13. Certain Relationships and Related Transactions and Director Independence- Relationships and Related Transactions" in this report. Our policies and procedures may not be sufficient to address any conflicts of interest that arise. Our Manager's liability is limited under the Management Agreement, and we have agreed to indemnify our Manager against certain liabilities. Our Manager does not assume any responsibility other than to render the services called for under the Management Agreement, and will not be responsible for any action of our Board in following or declining to follow its advice or recommendations. ACRES, our Manager, their directors, managers, officers, employees and affiliates will not be liable to us, any subsidiary of ours, our directors, our stockholders or any subsidiary's stockholders for acts performed in accordance with and pursuant to the Management Agreement, except for acts constituting bad faith, willful misconduct, gross negligence, or reckless disregard of their duties under the Management Agreement. We have agreed to indemnify the parties for all damages and claims arising from acts not constituting bad faith, willful misconduct, gross negligence, or reckless disregard of duties, performed in good faith in accordance with and pursuant to the Management Agreement.

Risks Related to Our Organization and Structure

Our charter and bylaws contain provisions that may 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 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 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 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. We rely on an exclusion from registration as an investment company afforded by Section 3 (a) (1) (C) of the Investment Company Act. To qualify for this exclusion, we do not engage in the business of investing, reinvesting, owning, holding, or trading securities and we do not own “ investment securities ” with a value that exceeds 40 % of the value of our total assets (exclusive of government securities and cash items) on an unconsolidated basis. We may not be able to maintain such a mix of assets in the future, and attempts to maintain such an asset mix may impair our ability to pursue otherwise attractive investments. In addition, these rules are subject to change and such changes may have an adverse impact on us. We may need to avail ourselves of alternative exclusions and exemptions that may require a change in the organizational structure of our business. Furthermore, as it relates to our investment in our real estate subsidiary, ACRES RF, we rely on an exclusion from registration as an investment company afforded by Section 3 (c) (5) (C) of the Investment Company Act. Given the material size of ACRES RF relative to our 3 (a) (1) (C) exclusion, were ACRES RF to be deemed to be an investment company (other than by application of the Section 3 (c) (1) exemption for closely held companies and the Section 3 (c) (7) exemption for companies owned by “ qualified purchasers ”), we would not qualify for our 3 (a) (1) (C) exclusion. Under the Section 3 (c) (5) (C) exclusion, ACRES RF is required to maintain, on the basis of positions taken by the SEC staff in interpretive and no- action letters, a minimum of 55 % of the value of the total assets of its portfolio in Qualifying Interests and a minimum of 80 % in Qualifying Interests and real estate- related assets, with the remainder permitted to be miscellaneous assets. Because registration as an investment company would significantly affect ACRES RF’ s ability to engage in certain transactions or to organize itself in the manner it is currently organized, we intend to maintain its qualification for this exclusion from registration. Historically, we treat our investments in mezzanine loans and our investments in CMBS as Qualifying Interests for purposes of determining our eligibility for the exclusion provided by Section 3 (c) (5) (C) to the extent such treatment is consistent with guidance provided by the SEC or its staff. In the absence of specific guidance or guidance that otherwise supports the treatment of these investments as Qualifying Interests, we will treat them, for purposes of determining our eligibility for the exclusion provided by Section 3 (c) (5) (C), as real estate- related assets or miscellaneous assets, as appropriate. If ACRES RF’ s portfolio does not comply with the requirements of the exclusion we rely upon, it could be forced to alter its portfolio by selling or otherwise disposing of a substantial portion of the assets that are not Qualifying Interests or by acquiring a significant position in assets that are Qualifying Interests. Altering its portfolio in this manner may have an adverse effect on its investments if it is forced to dispose of or acquire assets in an unfavorable market, and may adversely affect our stock price. If it were established that we were an unregistered investment company, there would be a risk that we would be subject to monetary penalties and injunctive relief in an action brought by the SEC that we would be unable to enforce contracts

with third parties, that third parties could seek to obtain rescission of transactions undertaken during the period it was established that we were an unregistered investment company, and that we would be subject to limitations on corporate leverage that would have an adverse impact on our investment returns. Rapid changes in the values of our real estate- related investments may make it more difficult for us to maintain our qualification as a REIT or exclusion from regulation under the Investment Company Act. If the market value or income potential of our real estate- related investments declines as a result of economic conditions, increased interest rates, prepayment rates or other factors, we may need to increase our real estate- related investments and income and / or liquidate our non- qualifying assets in order to maintain our REIT qualification or exclusion from registration under the Investment Company Act. If the decline in real estate asset values and / or income occurs quickly, this may be especially difficult to accomplish. We may have to make investment decisions that we otherwise would not make absent REIT qualification and Investment Company Act considerations. Risks Related to Our REIT Status and Certain Other Tax Items Complying with REIT requirements may cause us to forgo otherwise attractive opportunities. To qualify as a REIT for federal income tax purposes, we must continually satisfy various tests regarding the sources of our income, the nature and diversification of our assets, the amounts we distribute to our stockholders and the ownership of our common stock. In order to meet these tests, we may be required to forgo investments we might otherwise make. Thus, compliance with the REIT requirements may hinder our investment performance. In particular, at least 75 % of our assets at the end of each calendar quarter must consist of real estate assets, government securities, cash and cash items. For this purpose, “ real estate assets ” generally include interests in real property, such as land, buildings, leasehold interests in real property, stock of other entities that qualify as REITs, interests in mortgage loans secured by real property, investments in stock or debt investments during the one- year period following the receipt of new capital and regular or residual interests in a real estate mortgage investment conduit (“ REMIC ”). In addition, the amount of securities of a single issuer, other than a TRS, that we hold must generally not exceed either 5 % of the value of our gross assets or 10 % of the vote or value of such issuer’ s outstanding securities. Certain of the assets that we hold are not qualified and will not be qualified real estate assets for purposes of the REIT asset tests. CMBS securities should generally qualify as real estate assets. However, to the extent that we own non- REMIC collateralized mortgage obligations or other debt investments secured by mortgage loans (rather than by real property) or secured by non- real estate assets, or debt securities that are not secured by mortgages on real property, those securities are likely not qualifying real estate assets for purposes of the REIT asset test, and will not produce qualifying real estate income. Further, whether securities held by warehouse lenders or financed using repurchase agreements are treated as qualifying assets or as generating qualifying real estate income for purposes of the REIT asset and income tests depends on the terms of the warehouse or repurchase financing arrangement. We generally will be treated as the owner of any assets that collateralize CRE debt securitization transactions to the extent that we retain all of the equity of the securitization vehicle and do not make an election to treat such securitization vehicle as a TRS, as described in further detail below. It may be possible to reduce the impact of the REIT asset and gross income requirements by holding certain assets through our TRSs, subject to certain limitations as described below. Our qualification as a REIT and exemption from U. S. federal income tax with respect to certain assets may depend on the accuracy of legal opinions or advice rendered or given or statements by the issuers of securities in which we invest, and the inaccuracy of any such opinions, advice or statements may adversely affect our REIT qualification and result in significant corporate level tax. When purchasing securities, we have relied and may rely on opinions or advice of counsel for the issuer of such securities, or statements made in related offering documents, for purposes of determining whether such securities represent debt or equity securities for U. S. federal income tax purposes, and also to what extent those securities constitute REIT real estate assets for purposes of the REIT asset tests and produce income that qualifies under the 75 % REIT gross income test. In addition, when purchasing CRE debt securitization equity, we have relied and may rely on opinions or advice of counsel regarding the qualification of interests in the debt of such CRE debt securitizations for U. S. federal income tax purposes. The inaccuracy of any such opinions, advice or statements may adversely affect our REIT qualification and result in significant corporate- level tax. We may realize excess inclusion income that would increase our tax liability and that of our stockholders. Excess inclusion income could result if we hold a residual interest in a REMIC or if we were to own an interest in a taxable mortgage pool. Excess inclusion income also is generated if we issue debt obligations, such as certain CRE debt securitizations, with two or more maturities and the terms of the payments on these obligations bear a relationship to the payments that we receive on our mortgage related securities securing those debt obligations. While we do not expect to acquire significant amounts of residual interests in REMICs, nor do we currently own residual interests in taxable mortgage pools, we do issue debt in certain CRE debt securitizations that generates excess inclusion income. If we realize excess inclusion income and allocate it to stockholders, this income cannot be offset by net operating losses of the stockholders. If the stockholder is a tax- exempt entity, then this income would be fully taxable as unrelated business taxable income under Section 512 of the Code. If the stockholder is a foreign person, it would be subject to federal income tax withholding on this income without reduction or exemption pursuant to any otherwise applicable income tax treaty. If we realize excess inclusion income, we will be taxed at the highest corporate income tax rate on a portion of such income that is allocable to the percentage of our stock held in record name by “ disqualified organizations, ” which are generally cooperatives, governmental entities and tax- exempt organizations that are exempt from unrelated business taxable income. To the extent that our stock owned by “ disqualified organizations ” is held in record name by a broker- dealer or other nominee, the broker / dealer or other nominee would be liable for the corporate level tax on the portion of our excess inclusion income allocable to the stock held by the broker- dealer or other nominee on behalf of “ disqualified organizations. ” We expect that disqualified organizations will own our stock. Because this tax would be imposed on us, all of our investors, including investors that are not disqualified organizations, would bear a portion of the tax cost associated with the classification of us or a portion of our assets as a taxable mortgage pool. A regulated investment company or other pass through entity owning stock in record name will be subject to tax at the highest corporate rate on any excess inclusion income allocated to its owners that are disqualified organizations. Finally, if we fail to qualify as a REIT, our taxable mortgage

pool securitizations will be treated as separate corporations, for federal income tax purposes that cannot be included in any consolidated corporate tax return. Failure to qualify as a REIT would subject us to federal income tax, which would reduce the cash available for distribution to our stockholders. We believe that we have been organized and operated in a manner that has enabled us to qualify as a REIT for federal income tax purposes commencing with our taxable year ended on December 31, 2005. However, the federal income tax laws governing REITs are extremely complex, and interpretations of the federal income tax laws governing qualification as a REIT are limited. Qualifying as a REIT requires us to meet various tests regarding the nature of our assets and our income, the ownership of our outstanding stock, and the amount of our distributions on an ongoing basis. If we fail to qualify as a REIT in any calendar year and we do not qualify for certain statutory relief provisions, we will be subject to federal income tax, including any applicable alternative minimum tax on our taxable income, at regular corporate rates. Distributions to stockholders would not be deductible in computing our taxable income. Corporate tax liability would reduce the amount of cash available for distribution to our stockholders. Under some circumstances, we might need to borrow money or sell assets in order to pay that tax. Furthermore, if we fail to maintain our qualification as a REIT and we do not qualify for the statutory relief provisions, we no longer would be required to distribute substantially all of our REIT taxable income, determined without regard to the dividends paid deduction and excluding net capital gains, to our stockholders. Unless our failure to qualify as a REIT was excused under federal tax laws, we could not re-elect to qualify as a REIT until the fifth calendar year following the year in which we failed to qualify. In addition, if we fail to qualify as a REIT, our taxable mortgage pool securitizations will be treated as separate corporations for U. S. federal income tax purposes. A determination that we have not made required distributions would subject us to tax or require us to pay a deficiency dividend; payment of tax would reduce the cash available for distribution to our stockholders. In order to qualify as a REIT, in each calendar year we must distribute to our stockholders at least 90 % of our REIT taxable income, determined without regard to the deduction for dividends paid and excluding net capital gain. To the extent that we satisfy the 90 % distribution requirement, but distribute less than 100 % of our taxable income, we will be subject to federal corporate income tax on our undistributed income. In addition, we will incur a 4 % nondeductible excise tax on the amount, if any, by which our distributions in any calendar year are less than the sum of: • 85 % of our ordinary income for that year; • 95 % of our capital gain net income for that year; and • 100 % our undistributed taxable income from prior years. We intend to make distributions to our stockholders in a manner intended to satisfy the 90 % distribution requirement and to distribute all or substantially all of our net taxable income to avoid both corporate income tax and the 4 % nondeductible excise tax. There is no requirement that a domestic TRS distribute its after-tax net income to its parent REIT or their stockholders and our U. S. TRS may determine not to make any distributions to us. However, non- U. S. TRSs will generally be deemed to distribute their earnings to us on an annual basis for federal income tax purposes, regardless of whether such TRSs actually distribute their earnings. Our taxable income may substantially exceed our net income as determined by GAAP because, for example, realized capital losses will be deducted in determining our GAAP net income but may not be deductible in computing our taxable income. In addition, we may invest in assets that generate taxable income in excess of economic income or in advance of the corresponding cash flow from the assets, referred to as phantom income. Although some types of phantom income are excluded to the extent they exceed 5 % of our REIT taxable income in determining the 90 % distribution requirement, we will incur corporate income tax and the 4 % nondeductible excise tax with respect to any phantom income items if we do not distribute those items on an annual basis. As a result, we may generate less cash flow than taxable income in a particular year. It is also possible that a loss that we treat as an ordinary loss would be re-characterized as a capital loss. In such event we might have to pay tax for the year in question or pay a deficiency dividend so that we meet the dividends paid requirement for that year. In all such events, we may be required to use cash reserves, incur debt, or liquidate non-cash assets at rates or times that we regard as unfavorable in order to satisfy the distribution requirement and to avoid corporate income tax and the 4 % nondeductible excise tax in that year. If we make distributions in excess of our current and accumulated earnings and profits, they will be treated as a return of capital, which will reduce the adjusted basis of your stock. To the extent such distributions exceed your adjusted basis, you may recognize a capital gain upon distribution. Unless you are a tax-exempt entity, distributions that we make to you generally will be subject to tax as ordinary income to the extent of our current and accumulated earnings and profits as determined for federal income tax purposes. If the amount we distribute to you exceeds your allocable share of our current and accumulated earnings and profits, the excess will be treated as a return of capital to the extent of your adjusted basis in your stock, which will reduce your basis in your stock but will not be subject to tax. To the extent the amount we distribute to you exceeds both your allocable share of our current and accumulated earnings and profits and your adjusted basis, this excess amount will be treated as a gain from the sale or exchange of a capital asset. For risks related to the use of uninvested offering proceeds or borrowings to fund distributions to stockholders, see “Risks Related to Our Organization and Structure.” We have not established a minimum distribution payment level and we cannot assure you of our ability to make distributions in the future. Our ownership of and relationship with our TRSs will be limited and a failure to comply with the limits would jeopardize our REIT qualification and may result in the application of a 100 % excise tax. A REIT may own up to 100 % of the securities of one or more TRSs. A TRS may earn types of income or hold assets that would not be qualifying income or assets if earned or held directly by the parent REIT. Both the subsidiary and the REIT must jointly elect to treat the subsidiary as a TRS. A corporation of which a TRS directly or indirectly owns more than 35 % of the voting power or value of the stock will automatically be treated as a TRS. Overall, no more than 20 % of the value of a REIT’s assets may consist of stock or securities of one or more TRSs. A TRS will pay federal, state and local income tax at regular corporate rates on any income that it earns, whether or not it distributes that income to us. In addition, the TRS rules limit the deductibility of interest paid or accrued by a TRS to its parent REIT to assure that the TRS is subject to an appropriate level of corporate taxation. The rules also impose a 100 % excise tax on certain transactions between a TRS and its parent REIT that are not conducted on an arm’s-length basis. Exantas Real Estate TRS, Inc. (“XAN RE TRS”) will pay federal, state and local income tax on its taxable income, and its after-tax net income is available for distribution to us but is not required to be distributed to

us. Income that is not distributed to us by XAN RE TRS will not be subject to the REIT 90 % distribution requirement and therefore will not be available for distributions to our stockholders. We anticipate that the aggregate value of the securities we hold in our TRS will be less than 20 % of the value of our total assets, including our TRS securities. We will monitor the compliance of our investments in TRSs with the rules relating to value of assets and transactions not on an arm's-length basis. We cannot assure you, however, that we will be able to comply with such rules. Complying with REIT requirements may limit our ability to hedge effectively. The REIT provisions of the Code substantially limit our ability to hedge MBS and related borrowings. Under these provisions, our annual gross income from non-qualifying hedges of our borrowings, together with any other income not generated from qualifying real estate assets, cannot exceed 25 % of our gross income. In addition, our aggregate gross income from non-qualifying hedges, fees and certain other non-qualifying sources cannot exceed 5 % of our annual gross income determined without regard to income from qualifying hedges. As a result, we might have to limit our use of advantageous hedging techniques or implement those hedges through XAN RE TRS. This could increase the cost of our hedging activities or expose us to greater risks associated with changes in interest rates than we would otherwise want to bear. The tax on prohibited transactions will limit our ability to engage in transactions, including certain methods of securitizing mortgage loans that would be treated as sales for federal income tax purposes. A REIT's net income from prohibited transactions is subject to a 100 % tax. In general, prohibited transactions are sales or other dispositions of property, other than foreclosure property, but including mortgage loans, held primarily for sale to customers in the ordinary course of business. We might be subject to this tax if we were able to sell or securitize loans in a manner that was treated as a sale of the loans for federal income tax purposes. Therefore, in order to avoid the prohibited transactions tax, we may choose not to engage in certain sales of loans and may limit the structures we utilize for our securitization transactions even though such sales or structures might otherwise be beneficial to us. Legislative, regulatory or administrative changes could be enacted or promulgated at any time, either prospectively or with retroactive effect, and may adversely affect our stockholders and / or us. The U. S. federal tax rules that affect REITs are under review constantly by persons involved in the legislative process, the IRS and the U. S. Treasury Department, which results in statutory changes as well as frequent revisions to Treasury regulations and interpretations. Revisions in U. S. federal tax laws and interpretations thereof could cause us to change our investments, commitments and strategies, which could also affect the tax considerations of an investment in our stock. Dividends paid by REITs do not qualify for the reduced tax rates provided for under current law. Dividends paid by REITs are generally not eligible for the reduced 15 % maximum tax rate for dividends paid to individuals (20 % for those with taxable income above certain thresholds that are adjusted annually under current law). The more favorable rates applicable to regular corporate dividends could cause stockholders who are individuals to perceive investments in REITs to be relatively less attractive than investments in the stock of non-REIT corporations that pay dividends to which more favorable rates apply, which could reduce the value of the stocks of REITs. However, for taxable years beginning before January 1, 2026, non-corporate taxpayers may deduct up to 20 % of certain pass-through business income, including "qualified REIT dividends" (generally, dividends received by a REIT stockholder that are not designated as capital gain dividends or qualified dividend income), subject to certain limitations. Dividends from REITs as well as regular corporate dividends will also be subject to a 3.8 % Medicare surtax for taxpayers with modified adjusted gross income above \$ 200,000 (if single) or \$ 250,000 (if married and filing jointly). We may lose our REIT qualification or be subject to a penalty tax if we modify mortgage loans or acquire distressed debt in a way that causes us to fail our REIT gross income or asset tests. Many of the terms of our mortgage loans, mezzanine loans and B- notes and the loans supporting our MBS have been modified and may in the future be modified to avoid foreclosure actions and for other reasons. If the terms of the loan are modified in a manner constituting a "significant modification," such modification triggers a deemed exchange for tax purposes of the original loan for the modified loan. Under existing Treasury Regulations, if a loan is secured by real property and other property and the highest principal amount of the loan outstanding during a taxable year exceeds the fair market value of the real property securing the loan as of (1) the date we agreed to acquire or originate the loan or (2) in the event of certain significant modifications, the date we modified the loan, then a portion of the interest income from such a loan will not be qualifying income for purposes of the 75 % gross income test, but will be qualifying income for purposes of the 95 % gross income test. Although the law is not entirely clear, a portion of the loan may not be treated as a qualifying "real estate asset" for purposes of the 75 % asset test. The non-qualifying portion of such a loan would be subject to, among other requirements, the 10 % value test. Revenue Procedure 2011-16, as modified and superseded by Revenue Procedure 2014-51, provides a safe harbor pursuant to which we will not be required to redetermine the fair market value of the real property securing a loan for purposes of the REIT gross income and asset tests in connection with a loan modification that is: (1) occasioned by a borrower default; or (2) made at a time when we reasonably believe that the modification to the loan will substantially reduce a significant risk of default on the original loan. We cannot assure you that all of our loan modifications have qualified or will qualify for the safe harbor in Revenue Procedure 2011-16, as modified and superseded by Revenue Procedure 2014-51. To the extent we significantly modify loans in a manner that does not qualify for that safe harbor, we will be required to redetermine the value of the real property securing the loan at the time it was significantly modified. In determining the value of the real property securing such a loan, we may not obtain third-party appraisals, but rather may rely on internal valuations. No assurance can be provided that the IRS will not successfully challenge our internal valuations. If the terms of our mortgage loans, mezzanine loans and B- notes and loans supporting our MBS are significantly modified in a manner that does not qualify for the safe harbor in Revenue Procedure 2011-16, as modified and superseded by Revenue Procedure 2014-51, and the fair market value of the real property securing such loans has decreased significantly, we could fail the 75 % gross income test, the 75 % asset test and / or the 10 % value test. Unless we qualified for relief under certain cure provisions in the Code, such failures could cause us to fail to qualify as a REIT. Our subsidiaries and we have invested and may invest in the future in distressed debt, including distressed mortgage loans, mezzanine loans, B- notes and MBS. Revenue Procedure 2011-16, as modified and superseded by Revenue Procedure 2014-51, provides that the IRS will treat a distressed mortgage loan acquired by a REIT that is secured by

real property and other property as producing in part non-qualifying income for the 75 % gross income test. Specifically, Revenue Procedure 2011-16, as modified and superseded by Revenue Procedure 2014-51, indicates that interest income on a loan will be treated as qualifying income based on the ratio of (1) the fair market value of the real property securing the loan determined as of the date the REIT committed to acquire the loan and (2) the face amount of the loan (and not the purchase price or current value of the loan). The face amount of a distressed mortgage loan and other distressed debt will typically exceed the fair market value of the real property securing the debt on the date the REIT commits to acquire the debt. We believe that we will continue to invest in distressed debt in a manner consistent with complying with the 75 % gross income test and maintaining our qualification as a REIT. The failure of a loan subject to a repurchase agreement, a mezzanine loan or a preferred equity investment to qualify as a real estate asset would adversely affect our ability to qualify as a REIT. We have entered into and we intend to continue to enter into sale and repurchase agreements under which we nominally sell certain of our loan assets to a counterparty and simultaneously enter into an agreement to repurchase the sold assets. We believe that we have been and will be treated for U. S. federal income tax purposes as the owner of the loan assets that are the subject of any such agreement notwithstanding that the agreement may transfer record ownership of the assets to the counterparty during the term of the agreement. It is possible, however, that the IRS could assert that we did not own the loan assets during the term of the sale and repurchase agreement, in which case we could fail to qualify as a REIT. In addition, we have acquired in the past and may continue to acquire mezzanine loans, which are loans secured by equity interest in a partnership or limited liability company that directly or indirectly owns real property, and preferred equity investments, which are senior equity interests in entities that own or acquire real properties. In Revenue Procedure 2003-65, or the Revenue Procedure, the IRS provided a safe harbor pursuant to which a mezzanine loan, if it meets each of the requirements contained in the Revenue Procedure, will be treated by the IRS as a real estate asset for purposes of the REIT asset tests, and interest derived from the mezzanine loan will be treated as qualifying mortgage interest for purposes of the REIT 75 % income test. Although the Revenue Procedure provides a safe harbor on which taxpayers may rely, it does not prescribe rules of substantive tax law. We have acquired and may continue to acquire mezzanine loans that may not meet all of the requirements for reliance on this safe harbor. In the event we own a mezzanine loan that does not meet the safe harbor, the IRS could challenge the loan's treatment as a real estate asset for purposes of the REIT asset and income tests, and if the challenge were sustained, we could fail to qualify as a REIT.

General Risk Factors - We cannot predict the effects ~~may not be able to generate future taxable income to fully utilize our net capital loss carryforwards.~~ As of December 31, 2024, we had an CLCF of \$ 121.9 million that expires on December 31, 2025. We can utilize our CLCF to reduce our net capital gain income that would be subject to income taxes to the extent it is not distributed to our shareholders. Utilizing our CLCF may allow us to reduce our required distributions to shareholders or income tax liability which would allow us to retain future taxable income as capital. However, we may not generate sufficient taxable income of the appropriate tax character to fully utilize this carryforward prior to its expiration. To the extent that our CLCF expires unutilized, we may not fully realize the benefit of this tax attribute which could lead to higher annual distribution requirements or tax liabilities after 2025. Our qualification as a REIT could be jeopardized as a result of an interest in joint ventures. We hold and may continue to hold certain limited partner or non-managing member interests in partnerships or limited liability companies that are joint ventures. If a partnership or limited liability company in which we own an interest takes or expects to take actions that could jeopardize our qualification as a REIT or require us taken by the U. S. government and governmental agencies in response to economic conditions pay tax, we may be forced to dispose of our interest in such entity the U. S. In response to economic addition, it is possible that a partnership or limited liability company could take and an market conditions action which could cause us to fail a REIT gross income or asset test. U. S. and foreign governments and governmental agencies have established that we would not become aware of such action in time to dispose of or our proposed a number of programs designed to improve interest in the partnership or limited liability company or take the other corrective action on a timely basis financial system and credit markets, and to stimulate economic growth. Many governments - In that case, we could fail to continue to qualify as a REIT unless we 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 qualify expand their lending activities. We are unable to evaluate the effects these programs and conditions will have upon our financial condition, income, or for ability a statutory REIT " savings " provision, which may require us to make distributions pay a significant penalty tax to maintain our stockholders REIT qualification.