

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

Form 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended December 31, 2022

or

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

Commission file number: 001-32136

Arbor Realty Trust, Inc.

(Exact name of registrant as specified in its charter)

Maryland

(State or other jurisdiction of incorporation or organization)

333 Earle Ovington Boulevard, Suite 900, Uniondale, NY

(Address of principal executive offices)

20-0057959

(I.R.S. Employer Identification No.)

11553

(Zip Code)

(Registrant's telephone number, including area code): **(516) 506-4200**

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

Title of each class	Trading symbols	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	ABR	New York Stock Exchange
Preferred Stock, 6.375% Series D Cumulative Redeemable, par value \$0.01 per share	ABR-PD	New York Stock Exchange
Preferred Stock, 6.25% Series E Cumulative Redeemable, par value \$0.01 per share	ABR-PE	New York Stock Exchange
Preferred Stock, 6.25% Series F Fixed-to-Floating Rate Cumulative Redeemable, par value \$0.01 per share	ABR-PF	New York Stock Exchange

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

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

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

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer
Smaller reporting company

Accelerated filer
Emerging growth company

Non-accelerated filer

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

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

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

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

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

The aggregate market value of the registrant's common stock, all of which is voting, held by non-affiliates of the registrant as of June 30, 2022 (computed based on the closing price on such date as reported on the NYSE) was \$2.13 billion. As of February 10, 2023, the registrant had 179,818,642 shares of common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the definitive proxy statement for the registrant's 2023 Annual Meeting of Stockholders (the "2023 Proxy Statement"), to be filed on or before April 30, 2023, are incorporated by reference into Part III of this report.

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Forward-Looking Statements

This report contains certain “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements relate to, among other things, the operating performance of our investments and financing needs. We use words such as “anticipate,” “expect,” “believe,” “intend,” “should,” “could,” “will,” “may” and similar expressions to identify forward-looking statements, although not all forward-looking statements include these words. Forward-looking statements are based on certain assumptions, discuss future expectations, describe future plans and strategies, contain projections of results of operations or of financial condition or state other forward-looking information. Our ability to predict results or the actual effect of future plans or strategies is inherently uncertain. These forward-looking statements involve risks, uncertainties and other factors that may cause our actual results in future periods to differ materially from forecasted results. Factors that could have a material adverse effect on our operations and future prospects include, but are not limited to, changes in economic, macroeconomic and geopolitical conditions generally, and the real estate market specifically, in particular, due to the severity and duration of the novel coronavirus (“COVID-19”) pandemic; the potential impact of the COVID-19 pandemic on our business, results of operations and financial condition; adverse changes in our status with government-sponsored enterprises affecting our ability to originate loans through such programs; changes in interest rates; the quality and size of the investment pipeline and the rate at which we can invest our cash; impairments in the value of the collateral underlying our loans and investments; inflation; changes in federal and state laws and regulations, including changes in tax laws; the availability and cost of capital for future investments; and competition. Readers are cautioned not to place undue reliance on any of these forward-looking statements, which reflect our views as of the date of this report. The factors noted above could cause our actual results to differ significantly from those contained in any forward-looking statement.

Although we believe the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance, or achievements. We are under no duty to update any of the forward-looking statements after the date of this report to conform these statements to actual results.

PART I

Item 1. Business

In this Annual Report on Form 10-K we refer to Arbor Realty Trust, Inc. and subsidiaries as “Arbor,” “we,” “us,” “our,” or the “Company” unless we specifically state otherwise, or the context indicates otherwise.

Overview

Arbor is a Maryland corporation formed in 2003. We operate through two business segments: our Structured Loan Origination and Investment Business, or “Structured Business,” and our Agency Loan Origination and Servicing Business, or “Agency Business.”

Through our Structured Business, we invest in a diversified portfolio of structured finance assets in the multifamily, single-family rental (“SFR”) and commercial real estate markets, primarily consisting of bridge loans, in addition to mezzanine loans, junior participating interests in first mortgages and preferred and direct equity. We also invest in real estate-related joint ventures and may directly acquire real property and invest in real estate-related notes and certain mortgage-related securities.

Through our Agency Business, we originate, sell and service a range of multifamily finance products through the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac,” and together with Fannie Mae, the government-sponsored enterprises, or “GSEs”), the Government National Mortgage Association (“Ginnie Mae”), Federal Housing Authority (“FHA”) and the U.S. Department of Housing and Urban Development (together with Ginnie Mae and FHA, “HUD”). We retain the servicing rights and asset management responsibilities on substantially all loans we originate and sell under the GSE and HUD programs. We are an approved Fannie Mae Delegated Underwriting and Servicing (“DUS”) lender nationally, a Freddie Mac Multifamily Conventional Loan lender, seller/servicer, in New York, New Jersey and Connecticut, a Freddie Mac affordable, manufactured housing, senior housing and small balance loan (“SBL”) lender, seller/servicer, nationally and a HUD MAP and LEAN senior housing/healthcare lender nationally. We also originate and service permanent financing loans underwritten using the guidelines of our existing agency loans sold to the GSEs, which we refer to as “Private Label” loans and originate and sell finance products through conduit/commercial mortgage-backed securities (“CMBS”) programs. We pool and securitize the Private Label loans and sell certificates in the securitizations to third-party investors, while retaining the servicing rights and the highest risk bottom tranche certificate of the securitization (“APL certificates”).

Substantially all of our operations are conducted through our operating partnership, Arbor Realty Limited Partnership (“ARLP”), for which we serve as the indirect general partner, and ARLP’s subsidiaries. We are organized to qualify as a real estate investment trust (“REIT”) for U.S. federal income tax purposes. A REIT is generally not subject to federal income tax on its REIT-taxable income that is distributed to its stockholders, provided that at least 90% of its REIT-taxable income is distributed and provided that certain other requirements are met. Certain of our assets that produce non-qualifying REIT income, primarily within the Agency Business, are operated through taxable REIT subsidiaries (“TRS”), which are part of our TRS consolidated group (the “TRS Consolidated Group”) and are subject to U.S. federal, state and local income taxes. In general, our TRS entities may hold assets that the REIT cannot hold directly and may engage in real estate or non-real estate-related business.

Business Objectives and Strategy

We have an annuity-based business model that drives our diversified income streams to produce consistent earnings growth and to maximize the total return to our stockholders. In our Structured Business, our primary focus is on maximizing the interest margin on our loans (yield on investments less cost to finance investments) and growing our loan portfolio which also provides a pipeline to growth in our Agency/GSE servicing portfolio. In our Agency Business, our primary focus is growing the fees generated from our origination platform and the stable earnings associated with our servicing portfolio. Our primary objectives are to generate cash available for distribution and facilitate capital appreciation, which we believe can be achieved through the following investment strategies.

Investment Strategy

The financing of multifamily, senior housing, healthcare, SFR and other diverse commercial real estate offers opportunities that demand customized financing solutions. We believe that providing both structured products and GSE/agency loans through direct originations and in-house underwriting capabilities throughout our national network of sales offices and lending solutions through various GSE and HUD programs provides us with a competitive advantage, since this allows us to meet the multiple needs of borrowers through fully integrated, comprehensive product offerings. We employ the following investment strategies:

Provide Customized Financing. We provide a suite of comprehensive customized financing solutions to meet the various needs of borrowers. We target borrowers whose options may be limited by conventional bank financing, have demonstrated a history of enhancing the value of the properties they operate and who may benefit from the customized financing solutions we offer.

Execute Transactions Rapidly. We act quickly and decisively on proposals, provide commitments and close transactions within a few weeks and sometimes days, if required. We believe that our rapid execution attracts opportunities from both borrowers and other lenders that would not otherwise be available and that our ability to structure flexible terms and close loans quickly gives us a competitive advantage.

Manage Credit Quality. A critical component of our strategy is our ability to manage the real estate risks associated with our investment portfolio. We actively manage the credit quality of our portfolio by using the expertise of our asset management group, which has a proven track record of structuring and repositioning investments to improve credit quality and yield.

Use Our Relationships with Existing Borrowers. We have solid relationships with a large nationwide borrower base and maintain a strong reputation in the commercial real estate finance industry. Through the expertise of our originators, we offer a wide range of customized financing solutions and benefit from our existing customer base by using existing business to create potential refinancing opportunities.

Long-Established Relationships with GSEs. Our Agency Business benefits from our long-established relationships with Fannie Mae, Freddie Mac and HUD enabling us to offer a broad range of loan products and services which maximizes our ability to meet borrowers' needs.

Leverage the Experience of Executive Officers and Our Employees. Our executive officers and employees have extensive experience originating and managing structured commercial real estate investments. Our senior management team has, on average, over 30 years of experience in the financial services industry.

Our Primary Targeted Investments

We pursue short-term and long-term lending and investment opportunities and primarily target transactions where we believe we have competitive advantages, particularly our lower cost structure and in-house underwriting capabilities. Our primary focus has been, and continues to be, first mortgage lending in the highly attractive and stable multifamily real estate sector.

Through our Structured Business, we offer the following investment types:

Bridge Financing. We offer bridge financing products to borrowers who are typically seeking short-term capital to use in an acquisition of property. The borrower has usually identified an undervalued asset that has been under managed and/or is in a recovering market. From the borrower's perspective, shorter term bridge financing is advantageous because it allows for time to improve the property value without encumbering it with restrictive, long-term debt that may not reflect optimal leverage for a non-stabilized property.

Our bridge loans are predominantly secured by first mortgage liens on the properties. Additional yield enhancements may include origination fees, deferred interest, yield look-backs, and participating interests, which are equity interests in the borrower that share in a percentage of the underlying cash flows of the property. Borrowers typically use the proceeds of a conventional mortgage, such as our GSE/agency loans, to repay a bridge loan.

SFR Portfolio Financing. We offer various financing products to borrowers who are looking to acquire conventional, workforce and affordable single-family rental housing. These borrowers are usually looking to purchase properties to hold for the long-term with permanent financing or acquire investments to develop with bridge, build-to-rent or line of credit financing options.

Mezzanine Financing. We offer mezzanine financing in the form of loans that are subordinate to a conventional first mortgage loan and senior to the borrower's equity in a transaction. Mezzanine financing may take the form of loans secured by pledges of ownership interests in entities that directly or indirectly control the real property or subordinated loans secured by second mortgage liens on the property. We may also require additional security such as personal guarantees, letters of credit and/or additional collateral unrelated to the property. Similar to our bridge loans, the yield on these investments may be enhanced by prepaid and deferred interest payments, yield look-backs and participating interests. We hold a majority of our mezzanine loans through subsidiaries of our operating partnership that are pass-through entities for tax purposes.

Preferred Equity Investments. We provide financing by making preferred equity investments in entities that directly or indirectly own real property. In cases where the terms of a first mortgage prohibit additional liens on the ownership entity, such as in mezzanine financing, investments structured as preferred equity in the entity owning the property serve as viable financing substitutes. With preferred equity investments, we typically become a member in the ownership entity. Similar to our bridge loans, the yield on these investments may be enhanced by prepaid and deferred interest payments, yield look-backs and participating interests.

Junior Participation Financing. We offer junior participation financing in the form of a junior participating interest in the senior debt. Junior participation financings have the same obligations, collateral and borrower as the senior debt. The junior participation interest is subordinated to the senior debt by virtue of a contractual agreement between the senior debt lender and the junior participating interest lender. Similar to our bridge loans, the yield on these investments may be enhanced by prepaid and deferred interest payments, yield look-backs and participating interests.

Structured Transactions. We also periodically invest in structured transactions, which are primarily comprised of joint ventures formed to acquire, develop and/or sell real estate related assets. These joint ventures are generally not majority owned or controlled by us and are primarily accounted for under the equity method of accounting.

Through our Agency Business, we focus primarily on the following investment types:

GSE and HUD Agency Lending. We are one of 25 approved lenders that participate in Fannie Mae's DUS program and one of 22 lenders approved as a Freddie Mac Multifamily Conventional Loan lender for multifamily, manufactured, student, affordable and certain seniors housing properties, one of 12 participants in the Freddie Mac SBL program and an approved HUD MAP and LEAN lender providing construction permanent loans to developers and owners of multifamily housing, affordable housing, seniors housing and healthcare facilities. We underwrite, originate, sell and service multifamily mortgage loans across the U.S. through the GSE and HUD programs and also originate and sell loans through the conduit markets. Our focus is primarily on small balance loans.

Private Label. We underwrite, originate and service permanent financing loans underwritten using similar guidelines of our existing agency loans sold to the GSEs. We pool and securitize the Private Label loans and sell certain certificates in the securitizations to third-party investors, while retaining the APL certificates.

SFR Fixed Rate. We underwrite, originate and service long-term permanent fixed rate loans on SFR properties. The loans are subsequently sold to third-party investors while retaining mortgage servicing.

We retain the servicing rights and asset management responsibilities on substantially all Agency Business loans.

Other Investment Opportunities

Real Property. We have, and may in the future, obtain real estate by foreclosure, through partial or full settlement of mortgage debt related to our loans. We may identify such assets and initiate an asset-specific plan to maximize the value of the investment, which may include appointing a third-party property manager, renovating the property, leasing or increasing occupancy, or selling the asset. As such, these transactions may require the use of additional capital prior to completion of the specific plan.

Debt Securities. We have, and may in the future, invest in bond securities, such as those issued by Freddie Mac SBL securitizations from loans originated under the Freddie Mac SBL program and SFR bonds. These securities are generally carried at cost and are often purchased at a discount to their face value, which is accreted into interest income, if deemed collectable, over the expected remaining life of the related security as a yield adjustment.

Structured Business Portfolio Overview

Loan and investment portfolio product type and asset class information at December 31, 2022 is as follows (\$ in thousands):

Type	Asset Class	Number	Unpaid Principal	Wtd. Avg. Pay Rate (1)	Wtd. Avg. Remaining Months to Maturity
Bridge Loans	Multifamily	436	\$ 12,830,999	8.20 %	20.4
	Single-Family Rental	241	927,373	9.00 %	18.1
	Land	7	118,595	0.12 %	0.5
	Office	2	70,410	4.02 %	7.3
	Healthcare	2	65,627	9.60 %	0.0
	Hotel	1	40,850	9.02 %	0.6
	Student Housing	1	25,700	9.02 %	10.5
	Retail	2	16,500	8.13 %	21.8
		<u>692</u>	<u>14,096,054</u>	<u>8.17 %</u>	<u>19.8</u>
Mezzanine Loans	Multifamily	40	194,621	8.66 %	68.1
	Other	4	18,878	2.59 %	10.8
		<u>44</u>	<u>213,499</u>	<u>8.13 %</u>	<u>63.1</u>
Preferred Equity	Multifamily	4	91,300	9.25 %	41.3
	Other	4	19,425	— %	29.0
		<u>8</u>	<u>110,725</u>	<u>7.63 %</u>	<u>39.2</u>
Other	Single-Family Rental	3	35,845	8.76 %	32.8
Total		<u>747</u>	<u>\$ 14,456,123</u>	<u>8.17 %</u>	<u>20.6</u>

- (1) “Weighted Average Pay Rate” is a weighted average, based on each loan’s unpaid principal balance (“UPB”), of our interest rate required to be paid monthly as stated in the individual loan agreements. Certain loans and investments that require an additional rate of interest “accrual rate” to be paid at maturity are not included in the weighted average pay rate as shown in the table. Including certain fees earned and costs associated with the structured portfolio, the weighted average current interest rate was 8.42%.

Loan and investment portfolio asset class and geographic concentration information at December 31, 2022 is as follows (\$ in thousands):

Asset Class	UPB	Percentage	Geographic	UPB	Percentage
			Concentrations		
Multifamily	\$ 13,116,920	91 %	Texas	\$ 3,246,422	22 %
Single-Family Rental	963,218	7 %	Florida	2,072,269	14 %
Land	136,028	1 %	Georgia	1,298,274	9 %
Office	80,035	1 %	North Carolina	924,813	6 %
Healthcare	65,627	< 1 %	New York	682,590	5 %
Hotel	40,850	< 1 %	Other (1)	6,231,755	44 %
Other	53,445	< 1 %	Total	<u>\$ 14,456,123</u>	<u>100 %</u>
Total	<u>\$ 14,456,123</u>	<u>100 %</u>			

- (1) No other individual state represented 4% or more of the total.

The overall yield on our loan and investment portfolio in 2022 was 6.26% on average assets of \$14.38 billion, which was computed by dividing the interest income earned during 2022 by the average assets during 2022. Our cost of funds in 2022 was 4.07% on average borrowings of \$13.24 billion, which was computed by dividing the interest expense incurred during 2022 by the average borrowings during 2022. At December 31, 2022, our loan and investment portfolio were comprised of 97% floating rate loans and 3% fixed rate loans.

We also own unconsolidated investments in equity affiliates totaling \$79.1 million, which consists primarily of a joint venture formed to invest in a residential mortgage banking business and an investment in a multifamily-focused commercial real estate investment fund.

Agency Business Lending and Servicing Overview

One of the Agency Business’s primary sources of revenue are the gains and fees recognized from the origination and sale of mortgage loans. Loans originated under GSE and HUD programs, as well as our SFR fixed rate product, are generally sold within 60 days from the loan origination date, while our Private Label loans are pooled and generally expected to be sold and securitized within 180 days of loan origination. Our loan activity in 2022 was comprised of originations totaling \$4.77 billion, sales totaling \$5.44 billion and commitment volume totaling \$5.15 billion. Our gains and fees as a percentage of our loan sales volume (“sales margin”) was 134 basis points for 2022.

We also retain the mortgage servicing rights (“MSRs”) on substantially all loans we originate, and record as revenue the fair value of the expected net future cash flows associated with the servicing of these loans. Servicing revenue is generated from the fees we receive for servicing the loans and on escrow deposits held on behalf of borrowers, net of amortization on the MSR assets. Our income from MSRs as a percentage of loan commitment volume (“MSR rate”) was 135 basis points for 2022.

Agency Business servicing portfolio product and geographic concentration information at December 31, 2022 is as follows (\$ in thousands):

Product	Product Concentrations				Geographic Concentrations		
	Loan Count	UPB (1)	Percent of Total	Wtd. Avg. Servicing Fee Rate (basis points)	Wtd. Avg. Life of Servicing Portfolio (years)	State	UPB Percentage of Total
Fannie Mae	2,460	\$ 19,038,124	68 %	50.2	8.0	Texas	11 %
Freddie Mac	1,214	5,153,207	18 %	25.0	9.0	New York	11 %
Private Label	130	2,074,859	8 %	18.5	7.6	California	8 %
FHA	96	1,155,893	4 %	14.9	19.5	North Carolina	8 %
Bridge	4	301,182	1 %	12.5	1.7	Georgia	6 %
SFR - Fixed Rate	53	274,764	1 %	19.8	6.0	Florida	5 %
Total	<u>3,957</u>	<u>\$ 27,998,029</u>	<u>100 %</u>	<u>41.1</u>	<u>8.6</u>	New Jersey	5 %
						Illinois	4 %
						Other (2)	42 %
						Total	<u>100 %</u>

(1) Excludes loans in which we are not collecting a servicing fee.

(2) No other individual state represented 4% or more of the total.

Operations

The following describes our lending and investment process for both our Structured and Agency Businesses.

Origination. We have a network of sales and support offices in California, Florida, Georgia, Indiana, Maryland, Massachusetts, New Jersey, New York, Ohio, Oklahoma, Pennsylvania and Texas that staff approximately 26 loan originators who solicit property owners, developers, and mortgage loan brokers. In some instances, the originators accept loan applications which meet our underwriting criteria from a select group of mortgage loan brokers. Once potential borrowers have been identified, we determine which of our financing products best meet the borrower’s needs. Loan originators in every sales office can offer borrowers the full array of finance products for both the Structured and Agency businesses. After identifying a suitable product, we work with the borrower to prepare a loan application. Upon completion by the borrower, the application is forwarded to our underwriters for due diligence.

Underwriting and Risk Management. Our underwriters perform due diligence on all proposed transactions prior to approval and commitment using several tools to manage and mitigate potential loan losses and risk sharing exposure. The underwriters analyze each loan application in accordance with the guidelines below to determine the loan's conformity with the guidelines. Key factors considered in credit decisions include, but are not limited to, debt service coverage, loan to value ratios and property financial and operating performance. In general, our underwriting guidelines require evaluation of the following:

- The borrower and each person directing a borrowing entity's activities (a "key principal"), including a review of their experience, credit, operating, bankruptcy and foreclosure history;
- Historic and current property revenues and expenses;
- Potential for near-term revenue growth and opportunity for expense reduction and increased operating efficiencies;
- Property location, its attributes and competitive position within its market;
- Proposed ownership structure, financial strength and real estate experience of the borrower and property management;
- Third-party appraisal, environmental review, flood certification, zoning and engineering studies;
- Market assessment, including property inspection, review of tenant lease files, surveys of comparable properties and an analysis of area economic and demographic trends;
- Review of an acceptable mortgagee's title policy and an "as built" survey;
- Construction quality of the property to determine future maintenance and capital expenditure requirements;
- The requirements for any reserves, including those for immediate repairs or rehabilitation, replacement reserves, tenant improvement and leasing commission costs, real estate taxes and property casualty and liability insurance; and
- For any application for one of our Agency products, we will underwrite the loan to the relevant agency or Company guidelines.

All our Fannie Mae loans are subject to credit committee and management review and approval in accordance with our policies and procedures, and loans of \$50.0 million and greater are subject to modified risk-sharing in accordance with Fannie Mae requirements. We also rely heavily on loan surveillance and credit risk management. We have a dedicated group of employees whose sole function is to monitor and analyze loan performance from closing to payoff, with the primary goal of managing and mitigating risk within the Fannie Mae portfolio.

We continuously refine our underwriting criteria based upon actual loan portfolio experience and as market conditions and investor requirements evolve.

Investment Approval Process. We apply an established investment approval process to all loans and other investments proposed for our Structured Business before submitting each proposal for final approval. A written report is generated for every loan or other investment that is submitted to our credit committee for approval, which consists of our chief executive officer, chief credit officer and executive vice president of structured finance. The report includes a description of the prospective borrower and any guarantors, the collateral, and the proposed use of investment proceeds, as well as borrower and property financial statements and analysis. The report also includes an analysis of borrower liquidity, net worth, cash investment, income, credit history and operating experience. All transactions require the approval of the majority of the members of our credit committee. Following the approval of a transaction, our underwriting and servicing departments, together with our asset management group, assure that all loan approval terms have been satisfied and conform to lending requirements established for that particular transaction.

Our loan approval process for the Agency Business requires the submission of a detailed loan package in accordance with our underwriting checklist to our agency loan committee for approval. Our agency loan committee consists of multiple members of our senior and executive management teams, including our chief underwriter for the Agency Business and its chief operating officer. All transactions require the approval of up to four members, depending on the size of the loan. In addition, we are required to submit a completed loan underwriting package to Freddie Mac and HUD for approval prior to origination.

Servicing. We service all loans and investments through our internal loan servicing department in Tonawanda, New York. Our loan servicing operations are designed to provide prompt customer service and accurate and timely information for account follow up, financial reporting and management review. Following the funding of an approved loan, all pertinent loan data is entered into our data processing system, which provides monthly billing statements, tracks payment performance and processes contractual interest rate adjustments on variable rate loans. The servicing group works closely with our asset management group to ensure the appropriate level of customer service and monitoring of loans.

For most loans serviced under the Fannie Mae DUS program, we are required to advance, in the event of a borrower failing to pay, the principal and interest payments and tax and insurance escrow amounts associated with a loan for four months. We are reimbursed by Fannie Mae for these advances, which may be used to offset any losses incurred under our risk-sharing obligations once the loan and the related loss share is settled.

Under the HUD program, we are obligated to advance tax and insurance escrow amounts and principal and interest payments on the Ginnie Mae securities until the Ginnie Mae security is fully paid. In the event of a default on a HUD-insured loan, we can elect to assign the loan to HUD and file a mortgage insurance claim. HUD will reimburse approximately 99% of any losses of principal and interest on the loan and Ginnie Mae will reimburse substantially all of the remaining losses.

Asset Management. Effective asset and portfolio management is essential to maximize the performance and value of a real estate investment. The asset management group customizes a plan with the loan originators and underwriters to track each investment from origination through disposition. This group monitors each investment's operating history, local economic trends and rental and occupancy rates and evaluates the underlying property's competitiveness within its market. This group assesses ongoing and potential operational and financial performance of each investment in order to evaluate and ultimately improve its operations and financial viability. The asset management group performs frequent onsite inspections, conducts meetings with borrowers and evaluates and participates in the budgeting process, financial and operational review and renovation plans of each underlying property. This group also focuses on increasing the productivity of onsite property managers and leasing brokers. This group communicates the status of each transaction against its established asset management plan to senior management, in order to enhance and preserve capital, as well as to avoid litigation and potential exposure.

Timely and accurate identification of an investment's operational and financial issues and each borrower's objectives is essential to implementing an executable loan workout and restructuring process, if required. Since the existing property management may not have the requisite expertise to manage the workout process effectively, our asset management group determines the current operating and financial status of an asset or portfolio and performs a liquidity analysis of the property and ownership entity and then, if appropriate, identifies and evaluates alternatives to maximize the value of an investment.

Operating Policies and Strategies

Financing Policies. We finance our structured finance investments primarily by borrowing against, or "leveraging," our existing portfolio and using the proceeds to acquire additional mortgage assets. We expect to incur debt such that we will maintain an equity-to-assets ratio no less than 20% (including junior subordinated notes as equity), although the actual ratio may be lower from time to time depending on market conditions and other factors deemed relevant. Our charter and bylaws do not limit the amount of indebtedness we can incur, and the Board of Directors has discretion to deviate from or change our indebtedness policy at any time, provided that we are in compliance with our bank covenants. However, we intend to maintain an adequate capital base to protect against various business environments in which our financing and hedging costs might exceed the interest income from our investments.

Our Structured Business investments are financed primarily by collateralized loan obligations ("CLOs") and credit and repurchase facilities with institutional lenders. We also finance the business through public and private offerings of our equity and debt, including common and preferred stock issuances, senior and convertible debt instruments and other loan securitization arrangements, when it appears advantageous to do so.

Our Agency Business finances loan originations with several committed and uncommitted warehouse credit facilities on a short-term basis, as these loans are generally transferred or sold within 60 days from the loan origination date. We also meet a significant portion of our restricted liquidity requirements and purchase and loss obligations with Fannie Mae and Freddie Mac through letters of credit issued by a financial institution.

Credit Risk Management Policy. We are exposed to various levels of credit risk depending on the nature of our underlying assets and the nature and level of credit enhancements supporting our assets. We, including our chief credit officer and our asset management group, review and monitor credit risk and other risks of loss associated with each investment. In addition, within our primary business line of financing multifamily assets, we seek to diversify our portfolio to avoid undue geographic, issuer, industry and certain other types of concentrations. Our Board of Directors monitors the overall portfolio risk and reviews levels of provision for loss.

Interest Rate Risk Management Policy. To the extent that it is consistent with our election to qualify as a REIT, we generally follow an interest rate risk management policy intended to mitigate the negative effects of major interest rate changes. We minimize our interest rate risk from borrowings by attempting to structure the key terms of our borrowings to generally correspond to the interest rate terms of our assets.

We enter into hedging transactions to protect our investment portfolio from interest rate and credit risk exposures. These transactions may include interest rate and credit default swaps, the purchase or sale of interest rate collars, caps or floors, options, mortgage derivatives and other hedging instruments. These instruments may be used to hedge as much of the interest rate risk we determine is in the best interest of our stockholders, given the cost of such hedges and the need to maintain our status as a REIT. In general, income from hedging transactions does not constitute qualifying income for purposes of the REIT gross income requirements. To the extent, however, that a hedging contract reduces interest rate risk on indebtedness incurred to acquire or carry real estate assets, any income that is derived from the hedging contract would not give rise to non-qualifying income for purposes of the 75% or 95% gross income tests. We may elect to bear a level of interest rate risk that could otherwise be hedged when we believe, based on all relevant facts, that bearing such risk is worthwhile.

Disposition Policies. We evaluate our Structured Business portfolio on a regular basis to determine if it continues to satisfy our investment criteria. Subject to certain restrictions applicable to REITs, we may sell our investments opportunistically and use the proceeds for debt reduction, additional originations, or working capital purposes.

Equity Capital Policies. Subject to applicable law, our Board of Directors has the authority, without further stockholder approval, to issue additional authorized common stock and preferred stock or otherwise raise capital, including through the issuance of senior securities and convertible debt instruments, in any manner and on the terms and for the consideration it deems appropriate, including in exchange for property. We may in the future issue common stock or units of partnership interest in our operating partnership in connection with acquisitions. We may, under certain circumstances, repurchase our common stock in private transactions with our stockholders, if those purchases are approved by our Board of Directors.

Conflicts of Interest Policies. We, our executive officers, and Arbor Commercial Mortgage, LLC (“ACM”) face conflicts of interests because of our relationships with each other and the way in which our business is structured. ACM has approximately 7% of the voting interest in our stock at December 31, 2022. Our chairman and chief executive officer also serves as the chief executive officer of ACM, beneficially owns approximately 35% of the outstanding membership interests of ACM and controls all voting interests in ACM. One of our directors is the chief operating officer of Arbor Management, LLC (the managing member of ACM) and a trustee of two trusts that own noncontrolling membership interests in ACM. In addition, our chief financial officer, our treasurer and some of our counsel also perform similar roles for ACM, and another of our executive officers’ acts as the general counsel of ACM. Our chief executive officer, one of our directors and certain aforementioned executive officers are members of ACM’s executive committee and, excluding our chief executive officer, own minority membership interests in ACM.

We have implemented several policies, through board action and through the terms of our charter and our agreements with ACM, to help address these conflicts of interest, including the following:

- Our charter requires that a majority of our Board of Directors be independent directors and that only independent directors make any determination on our behalf with respect to the relationships or transactions that present a conflict of interest for our directors or officers; and
- Decisions concerning our participation in any transaction with ACM, or its affiliates, including our ability to purchase securities and mortgages or other assets from ACM, or our ability to sell securities and assets to ACM, must be reviewed and approved or ratified by a majority of our independent directors.

Our Board of Directors has approved the operating policies and the strategies set forth above. Our Board of Directors has the power to modify or waive these policies and strategies without the consent of our stockholders to the extent that the Board of Directors determines that such modification or waiver is in the best interest of our stockholders. Among other factors, developments in the market that either affects the policies and strategies mentioned herein, or that change our assessment of the market, may cause our Board of Directors to revise its policies and strategies. However, if such modification or waiver involves the relationship of, or a transaction between us, and ACM, the approval of a majority of our independent directors is also required. We may not, however, amend our charter to change the requirement that a majority of our board consists of independent directors or the requirement that our independent directors approve related party transactions without the approval of two thirds of the votes entitled to be cast by our stockholders.

Federal and State Regulation of Commercial Real Estate Lending Activities

Our multifamily and commercial real estate lending, servicing and asset management businesses are subject, in certain instances, to supervision and regulation by federal and state governmental authorities. In addition, these businesses may be subject to various laws and judicial and administrative decisions imposing various requirements and restrictions, which, among other things, regulate lending activities and conduct with borrowers, establish maximum interest rates, finance charges and other charges require disclosures to borrowers and prohibit illegal discrimination. Although many states do not regulate commercial finance, certain states impose limitations on interest rates and other charges on certain collection practices and creditor remedies. Some states also require licensing of lenders, loan brokers and servicers and adequate disclosure of certain contract terms. We are required to comply with certain provisions of, among other statutes and regulations, the USA PATRIOT Act, regulations promulgated by the U.S. Department of the Treasury's Office of Foreign Asset Control and other federal and state securities laws and regulations. These legal and regulatory requirements that apply to us are subject to change from time to time and may become more restrictive, making compliance with applicable requirements more difficult, expensive or otherwise restrict our ability to conduct our business in the manner that it is now conducted.

Compliance with Federal, State and Local Environmental Laws

Properties that we may acquire directly or indirectly through partnerships, and the properties underlying our structured finance investments and mortgage-related securities, are subject to various federal, state and local environmental laws, ordinances and regulations. Under these laws, ordinances and regulations, a current or previous owner of real estate (including, in certain circumstances, a secured lender that acquires ownership or control of a property) may become liable for the costs of removal or remediation of certain hazardous or toxic substances or petroleum product releases at, on, under or in its property. These laws typically impose cleanup responsibility and liability without regard to whether the owner or control party knew of or was responsible for the release or presence of the hazardous or toxic substances. The costs of investigation, remediation or removal of these substances may be substantial and could exceed the value of the property. An owner or control party of a site may be subject to common law claims by third parties based on damages and costs resulting from environmental contamination emanating from a site. Certain environmental laws also impose liability in connection with the handling of or exposure to materials containing asbestos. These laws allow third parties to seek recovery from owners of real properties for personal injuries associated with materials containing asbestos. Our operating costs and the values of these assets may be adversely affected by the obligation to pay for the cost of complying with existing environmental laws, ordinances, and regulations, as well as the cost of complying with future legislation, and our income and ability to make distributions to our stockholders could be affected adversely by the existence of an environmental liability with respect to properties we may acquire. We endeavor to ensure these properties are complying in all material respects with all federal, state and local laws, ordinances and regulations regarding hazardous or toxic substances or petroleum products.

Requirements of the GSEs and HUD

To maintain our status as an approved lender for Fannie Mae and Freddie Mac and as a HUD-approved mortgagee and issuer of Ginnie Mae securities, we are required to meet and maintain various eligibility criteria established by these entities, such as minimum net worth, operational liquidity and collateral requirements and compliance with reporting requirements. We are required to originate loans and perform our loan servicing functions in accordance with the applicable program requirements and guidelines established by these agencies. If we fail to comply with the requirements of any of these programs, the agencies may terminate or withdraw our licenses and approvals to participate in the GSE or HUD programs. In addition, the agencies have the authority under their guidelines to terminate a lender's authority to sell loans to it and service their loans. The loss of one or more of these approvals would have a material adverse impact on our operations and could result in further disqualification with other counterparties.

Competition

We face significant competition across our business, including, but not limited to, other mortgage REITs, specialty finance companies, savings and loan associations, banks, mortgage bankers, insurance companies, mutual funds, institutional investors, investment banking firms, other lenders, governmental bodies and other entities, some of which may have greater name recognition, financial resources and lower costs of capital available to them. In addition, there are numerous institutions with asset acquisition objectives similar to ours, and others may be organized in the future which may increase competition. Competitive variables include market presence and visibility, size of loans offered and underwriting standards. To the extent that a competitor is willing to risk larger amounts of capital in a particular transaction or to employ more liberal underwriting standards when evaluating potential loans, our origination volume and profit margins for our investment portfolio could be impacted. Our competitors may also be willing to accept lower returns on their investments and may succeed in originating the loans that we have targeted.

We compete based on quality of service, relationships, loan structure, terms, pricing, and industry experience, including the knowledge of local and national commercial real estate market conditions, loan product expertise and the ability to analyze and manage credit risk. Our competitors also seek to compete aggressively based on these factors and our success depends on our ability to offer attractive loan products, provide superior service, demonstrate our industry knowledge and experience, maintain and capitalize on relationships with investors, borrowers and key loan correspondents and remain competitive in pricing. In addition, future changes in laws, regulations and GSE/HUD program requirements, and consolidation in the commercial real estate finance market could lead to the entry of more competitors or enhance the competitive strength of our existing competitors.

Although we believe we are well positioned to continue to compete effectively in each facet of our business, there can be no assurance that we will do so or that we will not encounter increased competition in the future that could limit our ability to compete effectively.

Human Capital

At December 31, 2022, we employed 630 individuals, none of which are represented by a union or subject to a collective bargaining agreement, and we have never experienced a work stoppage.

The attraction, development and retention of our employees is a critical success factor for our business. We have a dedicated recruitment team which leverages internal and external resources to enable successful employee recruitment. We emphasize employee development and training and have established Arbor University, an on-line portal with a variety of training and development courses for our employees.

Our compensation and benefit programs aim to attract, retain, and motivate employees to achieve superior results. We provide employee wages that are competitive and consistent with employee positions, skill levels, knowledge, and location. Annual increases and incentive compensation are based on merit, which is communicated to employees at the time of hiring and documented through our talent management process as part of our annual review procedures and upon promotion and/or internal transfer. All employees are eligible for health insurance, including mental health coverage, prescription drug benefits, dental and vision insurance, flexible spending accounts, paid and unpaid leaves, disability/accident coverage and participation in a 401K plan. We also have a flexible telecommuting policy, which allows eligible employees to work remotely one day per week.

To assess and improve employee retention and engagement, we conduct periodic employee surveys and take actions designed to address areas of employee concerns. We believe the combination of competitive compensation, career growth and development opportunities, including promoting employees from within, have helped manage our employee tenure and voluntary turnover.

Corporate Governance and Internet Address

Effective February 15, 2023, our Board of Directors approved and adopted the amended and restated bylaws. The bylaws include revisions to Article II, Section 1 to clarify that all meetings of stockholders may be held partially or solely by means of remote communication. The prior bylaws mandated that all meetings of stockholders be held at a physical location. There were also a number of other changes made that were deemed necessary to conform to the Securities and Exchange Commission's ("SEC") universal proxy rules. The foregoing description of the bylaws does not purport to be complete and is qualified in its entirety by reference to the full text of the bylaws, a copy of which is attached hereto as Exhibit 3.9.

Our internet address is www.arbor.com. All our filings with the SEC are made available free of charge through our website, including this report, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to such reports, if any, as filed with the SEC as soon as reasonably practicable after such filing. Our website also contains our code of business conduct and ethics, code of ethics for chief executive and senior financial officers, corporate governance guidelines, stockholder communications with the Board of Directors, and the charters of the key committees of our Board of Directors. No information contained in or linked to our website is incorporated by reference in this report.

Item 1A. Risk Factors

Our business is subject to various risks, including the risks listed below. If any of these risks actually occur, our business, financial condition and results of operations could be materially adversely affected, and the value of our common stock could decline. The risk factors listed below should not be considered an all-inclusive list. New risk factors emerge periodically, and we cannot guarantee that the factors described below list all risks that may become material to us at any later time. Some of the risk factors discussed below may have different impacts on our Structured and Agency Businesses.

Risk Factor Summary

Risks Related to Our Business. The ongoing COVID-19 pandemic has caused severe disruptions to the United States and global economy and may have an adverse impact on our business, results of operations and financial condition.

An economic slowdown, a lengthy or severe recession, declining real estate values, or changes in interest rates, including the continued transition from LIBOR, could harm our operations, affect our ability to obtain financing on reasonable terms and have other adverse effects on us. If economic conditions deteriorate and/or we experience a turbulent economic environment, we will likely: (1) experience increases in loan loss reserves and other impairments; (2) encounter difficulty estimating loan loss reserves; and (3) experience a decline in loan repayments. If we are unable to invest excess capital on acceptable terms, or at all, it would likely result in a declining portfolio and would adversely affect the returns from our investments and our operating results.

The real estate investment business is highly competitive, and our success depends on our ability to compete, including attracting and retaining qualified loan originators to grow and maintain our relationships with key customers and with the GSEs, U.S. Department of HUD and institutional investors.

Our business is subject to risk of loss in connection with defaults on loans, failed loan deliveries to GSEs and potential requirements to repurchase loans already sold to GSEs or other issuers of securitizations for a breach of representations or warranties. If we fail to act proactively with delinquent borrowers in an effort to avoid defaults, the number of delinquent loans could increase, which could have a material adverse effect on us.

We satisfy most of our restricted liquidity requirements with Fannie Mae with a letter of credit issued by one of our lenders. If the letter of credit was not renewed for any reason, we could suffer a reduction in our cash flow from operations, or we may breach our obligations to Fannie Mae, which would have a material adverse effect on our Agency Business.

A significant portion of our Agency Business's revenue is derived from loan servicing fees. Any declines in the value of our servicing portfolio, including agreement terminations from breaches of servicing agreements, or a reduction in the fees paid for servicing the loans could have a material adverse effect on our results of operations and liquidity.

For most loans we service under the Fannie Mae and HUD programs, we are required to advance payments due to investors if the borrower is delinquent in making such payments, which requirement could adversely impact our liquidity and harm our results of operations.

Risks Related to Our Financing and Hedging Activities. We finance a significant amount of our loans and investments through a variety of means, including CLOs, securitizations, credit facilities, equity capital, senior and convertible debt instruments, and other structured financings. These vehicles may contain restrictive covenants and may require us to provide additional collateral or repurchase assets if the value of pledged assets, some of which we guarantee, decline in value. If we are unable to acquire eligible investments, find suitable replacement investments and access financing sources on favorable terms, or at all, we may not be able to obtain the level of leverage necessary to optimize our return on investment and cash available for distribution to our stockholders may decline.

In certain circumstances, we employ hedging strategies to limit the effects of changes in interest rates (and in some cases credit spreads), including interest rate swaps, caps, floors and other derivative products. Our loans and investments may be subject to fluctuations in interest rates which may not be adequately protected by our hedging strategies. Hedging instruments involve risks and costs, and could expose us to contingent liabilities in the future.

Risks Relating to Regulatory Matters. If we fail to maintain certain qualifications and licenses or comply with GSE and HUD regulations and program requirements, we may lose our approved lender status and fail to gain additional approvals or licenses for our business. We are also subject to changes in laws, regulations and existing GSE and HUD program requirements, including potential increases in reserve and risk retention requirements that could increase our costs and affect the way we conduct business, which could materially and adversely affect our financial results.

The changes and effects of government regulation, including the Investment Advisors Act and our exemption from the Investment Company Act, could negatively impact the market value of loans or increase our costs, which could materially and adversely affect our financial results.

A change to the conservatorship of Fannie Mae and Freddie Mac and related actions, along with any changes in laws and regulations affecting the relationship between Fannie Mae and Freddie Mac and the U.S. federal government, could materially and adversely affect our Agency Business.

Cybersecurity Risks. If we are unable to safeguard against cybersecurity breaches and cyber-attacks with respect to our information systems, our business may be adversely affected.

Risks Related to Our Corporate and Ownership Structure. Our charter generally does not permit ownership in excess of 5% of our capital stock and attempts to acquire our capital stock in excess of this limit are ineffective without prior approval from our Board of Directors. This, along with our staggered board and other provisions of our charter and bylaws, could discourage a change of control of us. In addition, we may be significantly influenced by ACM and our chief executive officer as a result of their beneficial ownership.

Risks Related to Our Status as a REIT. We conduct our operations to qualify as a REIT under the Internal Revenue Code. If we fail to remain qualified as a REIT, we will be subject to corporate tax and could face a substantial tax liability, including taxable mortgage pools resulting from certain of our securitizations. Even if we remain qualified as a REIT, we may face other tax liabilities, including taxes on any undistributed income, tax on income from some activities conducted as a result of a foreclosure, and state or local income, property and transfer taxes, all of which could reduce our cash flow and our distributions to stockholders. Complying with REIT requirements may cause us to forego or liquidate otherwise attractive opportunities and investments.

The Agency Business may have adverse tax consequences to our business if its value, or the income generated thereby, increases relative to the value of our other REIT-compliant assets and income, which could cause us to fail to satisfy one or more of the Internal Revenue Code requirements applicable to REITs.

We may be unable to generate sufficient revenue from operations to pay our operating expenses and to pay dividends to our stockholders, resulting in the need to borrow funds to satisfy our REIT distribution requirements, which could cause a portion of our distributions to be treated as a return of capital.

General Risks. We are subject to certain general risks, all of which could have an adverse effect on our business, financial condition and results of operations, such as: (1) volatility in our stock price; (2) losses of key personnel with long standing business relationships; (3) adverse resolutions of lawsuits; (4) future terrorist attacks; and (5) changes to laws and regulations, including environmental, social and governance matters.

Risks Related to Our Business

The ongoing COVID-19 pandemic has caused severe disruptions to the United States and global economy and to our business and may continue to have an adverse impact on our business, results of operations and financial condition.

The ongoing effects of the COVID-19 pandemic have caused significant disruptions to the U.S. and global economies. Although vaccine availability and usage have continued to increase, which has led to less negative short-term effects, such as travel bans, quarantines, layoffs and shutdowns, the ongoing longer-term macroeconomic effects on inflation, interest rates, capital markets, labor

shortages, property values and global supply chains continue to negatively impact many industries, including the U.S. commercial real estate market. In addition, new strains of COVID-19 continue to emerge, which may cause governments and businesses to re-impose aggressive measures to help slow its spread, making the future impact difficult to predict.

More particularly, the consequences of the COVID-19 pandemic that have had, and may continue to have in the future, adverse impacts on our business are as follows:

- During the onset of the pandemic, we experienced, and may experience in the future:
 - declines in the value of our assets, including our loan and securities portfolios, which could result in margin calls and other mandatory prepayments under the credit facilities we use to finance those assets;
 - an increase in payment delinquencies from our borrowers resulting in additional credit losses; and
 - an increase in the cost to obtain financing and other adverse effects of obtaining financing under terms and conditions that are less favorable to us, and if conditions worsen, could prevent us from obtaining financing at all;
- In the event of any forced sales of the securities and other assets that secure our repurchase and other financing arrangements, such sales may be on terms less favorable to us than might otherwise be available under normal conditions, which could result in losses;
- Disruptions in the credit markets have had, and may continue to have, a negative impact our ability to execute on securitizations, which may have an adverse effect on our liquidity and results of operations; and
- To the extent conditions worsen, there may be a materially negative effect on our results of operations, and, in turn, on cash available for distribution to our stockholders, on the value of our assets and on the market price of our common stock.

Since the current expected credit loss (“CECL”) methodology for the recognition of credit losses estimates losses for the life of our investment, our financial results may be negatively affected when weak or deteriorating economic conditions are forecasted, which generally results in increases in estimated credit losses under CECL. As a result of factoring in the ongoing macroeconomic effects of the COVID-19 pandemic to the forecast models used to estimate our credit losses, we may experience continued volatility in our future provisions for credit losses.

To the extent the COVID-19 pandemic adversely affects our business, results of operations, financial condition and cash flows, it may also have the effect of heightening many of the other risks described in this “Risk Factors” section. There are no comparable recent events that provide guidance as to the effect of COVID-19 as a global pandemic may have, other than what has transpired to date, and as a result, its ultimate impact on our operations and financial results remains highly uncertain and subject to change.

An economic slowdown, a lengthy or severe recession, or declining real estate values could harm our operations.

The risks associated with our business are more severe during periods of economic downturn, particularly if accompanied by declining real estate values. Declining real estate values limit our new mortgage loan originations, since borrowers often use increases in the value of their properties to support the purchase of additional properties and significantly increase the likelihood that we will incur losses on defaulted loans because the value of our collateral may be insufficient to repay the loan in full. Borrowers may also be less able to pay principal and interest on our loans if the economy weakens. Any sustained period of increased payment delinquencies, foreclosures and resulting losses could adversely affect our net interest income as well as our ability to originate, sell and securitize loans, which could significantly harm our results of operations, financial condition, business prospects and our ability to make distributions to stockholders.

Prolonged disruptions in the financial markets could affect our ability to obtain financing on reasonable terms and have other adverse effects on us and the market price of our common stock.

Commercial real estate can be adversely affected by a lack of liquidity caused by a prolonged economic downturn, which may limit our ability to raise equity or debt in the capital markets or obtain other financing on favorable terms. If we do issue equity, it may be dilutive to our existing stockholders or could result in the issuance of securities that have rights, preferences and privileges that are senior to those of our existing securities. If economic or market conditions deteriorate, lending institutions may choose to exit markets such as repurchase lending, become insolvent, further tighten their lending standards or increase the amount of equity capital required to obtain financing, and such events could make it more difficult for us to obtain financing on favorable terms or at all, in which event our profitability will be adversely affected. These factors may also make it more difficult for our borrowers to repay our loans as they may experience difficulties in selling assets, obtaining other financing or realize increased costs of financing. Disruptions in the financial markets also may have a material adverse effect on the market value of our common stock.

Increases in loan loss reserves and other impairments are likely if economic conditions deteriorate.

A decline in economic conditions could negatively impact the credit quality of our loan and investment portfolio and could cause us to experience increases in loan loss reserves, defaulted loans and other asset impairment charges.

Loan loss reserves are particularly difficult to estimate in a turbulent economic environment.

We perform a quarterly evaluation of our loans to determine whether an impairment charge is necessary and adequate to absorb probable losses. The valuation process requires certain estimates and judgments, which are more difficult to make during a period in which available commercial real estate credit is limited and commercial real estate transactions have decreased. Our estimates and judgments are based on several factors, including projected cash flows from the collateral securing our loans, loan structure, including the availability of reserves and recourse guarantees, likelihood of repayment in full at loan maturity, potential for refinancing by other lenders and expected market discount rates for varying property types. If our estimates and judgments are not correct, our results of operations and financial condition could be severely impacted.

Loan repayments are less likely in a volatile market environment.

Loan repayments are a significant source of liquidity for us. If borrowers are unable to refinance loans at maturity, the loans could go into default and the liquidity that we expect to receive from such repayments may not be available. Further, in the event the commercial real estate finance market deteriorates, borrowers that have extension rights will be more likely to exercise such rights, which will further delay our ability to access liquidity through repayments.

We may be unable to invest excess capital on acceptable terms, or at all, which would adversely affect our operating results.

We may not be able to identify investments that meet our investment criteria and we may not be successful in closing the investments that we do identify. In addition, the investments that we fund with our capital may not produce a satisfactory return on capital, which would adversely affect our operating results.

A declining portfolio could adversely affect the returns from our investments.

Conditions in the capital markets could lead to a reduction in our loan and investment portfolio. If we do not have the opportunity to originate quality investments to replace loans that are repaid, it will likely result in reduced returns from our investments.

Changes in interest rates and the continued transition from LIBOR could have an adverse effect on our net investment income.

A significant portion of our loans and borrowings in our business are variable-rate instruments. While some elements of our business may benefit from rising rates, in the event of a significant rising interest rate environment and/or economic downturn, defaults could increase and result in credit losses, which could adversely affect our liquidity and operating results, and such delinquencies or defaults could have an adverse effect on the spreads between interest-earning assets and interest-bearing liabilities. In addition, as interest rates rise, it is likely that income from our investment in a residential mortgage banking business would be adversely affected, since rising rates generally decrease the demand for residential real estate loans and the number of loan originations.

In 2021, the United Kingdom's Financial Conduct Authority, which regulates LIBOR, announced that all LIBOR tenors relevant to us will cease to be published and will no longer be representative after June 30, 2023. This coincides with an announcement made by the ICE Benchmark Administration Limited indicating that it would have to cease publication of LIBOR tenors immediately after the last publication on June 30, 2023, as a result of not having access to necessary input data to calculate such LIBOR tenors. Therefore, the Federal Reserve, along with the Federal Deposit Insurance Corporation ("FDIC") and Office of the Comptroller of the Currency issued supervisory guidance encouraging financial institutions to cease entering into new contracts that are indexed off U.S. dollar LIBOR by December 31, 2021. The Federal Reserve, in conjunction with the Alternative Reference Rates Committee, a steering committee comprised of large U.S. financial institutions, announced replacement of U.S. dollar LIBOR with a new index calculated by short-term repurchase agreements, backed by U.S. Treasury securities called the Secured Overnight Financing Rate ("SOFR").

In connection with such recommendations and developments, all variable rate loans originated by us beginning January 1, 2022 have been indexed to SOFR. In addition, all of our historical loan origination contracts and credit facility agreements include provisions for determining an alternative base rate in the event that LIBOR is discontinued. Such provisions provide for a transition, upon the occurrence of certain triggers, to a SOFR-based interest rate or, under certain circumstances, interest rates based on another benchmark to be determined, together in each case with certain spread adjustments and other changes necessary to implement such replacement benchmark. We have an internal task force to oversee the coordination of our transition from LIBOR, which includes evaluating and mitigating the risks associated with the transition. Key areas of focus for the task force include managing the transition for legacy transactions, updating agreements and contracts that use LIBOR as a reference rate, modifying policies and procedures to account for the transition, communicating with our internal and external stakeholders, and preparing for the risks associated with such transition. Notwithstanding our efforts, the transition away from LIBOR may ultimately have a material adverse effect on our business, financial condition and results of operations, including the result of changes in interest rates payable to us by our borrowers or payable by us to our lenders.

We may not be able to hire and retain qualified loan originators or grow and maintain our relationships with key customers, and if we are unable to do so, our ability to implement our business and growth strategies could be limited.

We depend on our loan originators to generate new loans by developing relationships with commercial property owners, real estate agents and brokers, which leads to repeat and referral business. Accordingly, we must be able to attract, motivate and retain skilled loan originators. The market for loan originators is highly competitive and we may incur increased costs to hire and retain them. We cannot guarantee that we will be able to attract or retain qualified loan originators. If we cannot attract, motivate, or retain a sufficient number of skilled loan originators, or even if we are successful but at higher costs, we could be materially and adversely affected.

The real estate investment business is highly competitive. Our success depends on our ability to compete with other providers of capital for real estate investments.

Our business is highly competitive. Competition may cause us to accept economic or structural features in our investments, particularly in our Structured Business, that we would not have otherwise accepted and it may cause us to search for investments in markets outside of our traditional product expertise. We compete for attractive investments with traditional lending sources, such as insurance companies and banks, as well as other REITs, specialty finance companies and private equity vehicles with similar investment objectives, which may make it more difficult for us to consummate our target investments. Many of our competitors have greater financial resources and lower costs of capital than we do, which provides them with a competitive advantage over us.

We may not achieve our targeted rate of return on our investments.

We originate or acquire investments based on our projections of rates of return on such investments, which in turn are principally based upon assumptions regarding the performance of assets, the amount and terms of available financing of such assets and the manner and timing of dispositions, including asset recovery and remediation strategies, all of which are subject to significant uncertainty. In addition, unanticipated events or conditions may occur and may have a significant effect on the actual rate of return received on an investment. As we acquire or originate investments, whether new or as replacements for maturing investments, there can be no assurance that we will be able to produce rates of return comparable to returns on our previous or existing investments.

Our due diligence may not reveal all of a borrower's liabilities and may not reveal other weaknesses in its business.

Before making a loan to a borrower, we assess the borrower's management and other factors that are material to the performance of the investment. In performing our diligence, we rely on the resources available to us and, in some cases, an investigation by third parties. This process is particularly important and subjective with respect to newly organized entities because there may be little or no information publicly available about the entities. There can be no assurance that our due diligence process will uncover all relevant facts or that any investment will be successful.

Preferred equity investments involve a greater risk of loss than traditional mortgage financing.

In our Structured Business, we may invest in preferred equity investments, which involve a higher degree of risk than traditional mortgage financing. Such investments are usually subordinate to other loans and are not secured by the property underlying the investment. Should the issuer default on our investment, we can only proceed against the entity in which we have an interest, and not the underlying property. As a result, we may not recover some or all of our investment.

We may invest in mezzanine loans which are subject to a greater risk of loss than loans secured by a first priority mortgage lien.

In our Structured Business, we may invest in mezzanine loans that are generally secured by a pledge of the ownership interests of the entity that directly or indirectly owns the property. Mezzanine loans have a higher degree of risk than senior mortgage loans because the investment may become unsecured as a result of foreclosure by the mortgage holder. In the event of a bankruptcy of our borrower, we may not have full recourse to the assets of the borrower, or the borrower's assets may not be sufficient to satisfy our mezzanine loan. If a borrower defaults on our mezzanine loan or debt senior to our loan, or in the event of a borrower bankruptcy, our mezzanine loan will be satisfied only after the senior debt is paid. As a result, we may not recover some or all of our investment. In addition, mezzanine loans may have higher loan to value ratios than mortgage loans, resulting in less equity in the property and increasing the risk of loss of principal.

We may invest in junior participation loans which may be subject to additional risks relating to the privately negotiated structure and terms of the transaction, which may result in losses to us.

In our Structured Business, we may invest in junior participation loans, which are mortgage loans typically secured by a first mortgage on a single commercial property or group of related properties but 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 to pay the junior participation loan after payment of the senior note. Since each transaction is privately negotiated, the structure of such loans can vary. For example, as a holder of a junior participation loan, our rights to control the process following a borrower default may be limited. A junior participation loan may not be liquid and, consequently, we may be unable to dispose of underperforming or non-performing investments. The higher risks associated with a subordinate position in any investment we make could subject us to increased risk of losses.

Volatility in values of multifamily and commercial properties may adversely affect our loans and investments.

Multifamily and commercial property values and net operating income derived from such properties are subject to volatility and may be affected adversely by a number of factors, including fires and other casualties, natural disasters, acts of war and/or terrorism, adverse economic conditions, local real estate conditions (such as an oversupply of similar properties), changes or continued weakness in specific industry segments, construction quality, construction cost, age and design, demographic factors, retroactive changes to building or similar codes, increases in operating expenses (such as energy costs) and other factors that may cause unanticipated and uninsured performance declines and/or losses to us or the owners and operators of the real estate securing our investment. In the event a property's net operating income decreases, a borrower may have difficulty repaying our loan, which could result in losses to us. In addition, decreases in property values reduce the value of the collateral and the potential proceeds available to a borrower to repay our loans, which could negatively impact our operating results.

Many of our commercial real estate loans are funded with interest reserves and our borrowers may be unable to replenish those interest and other reserves once they run out.

Given the transitional nature of many of the loans in our Structured Business portfolio, we often require borrowers to post reserves to cover interest and operating expenses until the property cash flows are projected to increase sufficiently to cover those costs. We generally require the borrower to replenish reserves if they are depleted due to underperformance or if the borrower wants to exercise extension options under the loan. Revenues from the properties underlying these loans may decrease in an economic downturn, making it more difficult for borrowers to replenish the reserves, which could have an adverse impact on our operating results and cash flows.

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

Our ability to manage our structured portfolio of loans and investments may be limited by the form in which they are made. For example, our investments may be subject to rights of senior lenders and servicers under inter-creditor or servicing agreements whose interests may not be aligned with ours. We may co-invest with third parties through participation agreements, partnerships, joint ventures or other entities, and we may have limited control rights. We may rely on independent third-party management or strategic partners with respect to the management of an asset. In such event, we may not be able to exercise sufficient control over the loan or investment and the risks associated therewith. Further, a third-party partner may have financial difficulties that impact our asset or may have economic or business objectives which are inconsistent with ours. In addition, we may, in certain circumstances, be liable for the actions of our third-party partners.

Properties may fail to perform as expected.

We may obtain properties through foreclosure proceedings or through other investment. Such properties may not perform as expected and may subject us to unknown liabilities including environmental remediation and claims by tenants, vendors or other persons against the former owners of the properties. Inaccurate assumptions regarding future rental or occupancy rates could result in overly optimistic estimates of future revenues. Further, operating expenses or the costs necessary to bring an acquired property up to standards established for its intended market position may be underestimated.

The loss of, or changes in, our Agency Business's relationships with the GSEs, U.S. Department of HUD and institutional investors would adversely affect our ability to originate commercial real estate loans through GSE and HUD programs, which would materially and adversely affect us.

Currently, the Agency Business originates a significant portion of its loans for sale through GSE and HUD programs. The Agency Business is approved as a Fannie Mae DUS lender nationwide, a Freddie Mac Program Plus lender in New York, New Jersey and Connecticut, a Freddie Mac Targeted Affordable Housing, Manufactured Housing Community, Seniors Housing and SBL lender nationwide, a HUD MAP and LEAN lender nationwide, and a Ginnie Mae issuer. Our status as an approved lender affords us a number of advantages but may be terminated by the applicable GSE or HUD at any time. The loss of such status would, or changes in our relationships could, prevent us from being able to originate real estate loans for sale through the particular GSE or HUD, which would materially and adversely affect us. It could also result in a loss of similar approvals from other GSEs or HUD.

We also originate and sell loans to investment banks through our Private Label and the CMBS conduit markets. If these investment banks discontinue their relationship with us and replacement investors cannot be found on a timely basis, we could be adversely affected.

Our Agency Business is subject to risk of loss in connection with defaults on loans sold under the Fannie Mae DUS program that could materially and adversely affect our results of operations and liquidity.

Under the Fannie Mae DUS program, our Agency Business originates and services multifamily loans for Fannie Mae without needing Fannie Mae's prior approval, as long as the loans meet the underwriting guidelines set forth by Fannie Mae. In return for such delegated authority and the commitment to purchase loans by Fannie Mae, we are required to share risk of loss on loans sold through Fannie Mae and we must provide collateral to Fannie Mae to secure any losses. Under the full risk-sharing formula, we absorb the first 5% of any losses on the UPB of a loan at the time of loss settlement, and above 5% we share the loss with Fannie Mae, with our maximum loss capped at 20% of the original UPB of a loan. Our Agency Business has modified its risk-sharing obligations on some Fannie Mae DUS loans to reduce potential loss exposure on those loans. In addition, Fannie Mae can increase our risk-sharing obligations if the loan does not meet specific underwriting criteria or if the loan defaults within 12 months of its sale to Fannie Mae. At December 31, 2022, the Agency Business had pledged \$64.4 million in restricted liquidity as collateral against future losses under \$19.04 billion of loans outstanding that are subject to risk-sharing obligations. Fannie Mae collateral requirements may change in the future. At December 31, 2022, the Agency Business's allowance for loss-sharing balance was \$57.2 million, which may not be sufficient to cover future loss sharing obligations. While our Agency Business originates loans that meet the underwriting guidelines defined by Fannie Mae, in addition to our own internal underwriting guidelines, underwriting criteria may not always protect against loan defaults. Other factors can lead to a default on a loan, such as a decline in property value, cash flow, occupancy, maintenance needs and other financing obligations. If loan defaults increase, our risk-sharing obligation payments under the Fannie Mae DUS program may increase which could have a material adverse effect on our results of operations and liquidity. In addition, any failure to pay our share of losses under the Fannie Mae DUS program could result in the revocation of our Fannie Mae license and in the exercise of various remedies available to Fannie Mae under the Fannie Mae DUS program, including the transfer of our servicing portfolio to another Fannie Mae approved servicer.

We satisfy most of our restricted liquidity requirements with Fannie Mae with a letter of credit issued by one of our lenders. If the letter of credit was not renewed for any reason, we could suffer a reduction in our cash flow from operations, or we may breach our obligations to Fannie Mae, which would have a material adverse effect on our Agency Business.

Our Agency Business is required to pledge restricted cash as collateral for our loss sharing obligations. At December 31, 2022, this requirement totaled \$64.4 million and was satisfied with a \$64.0 million letter of credit and cash issued to Fannie Mae. Our current letter of credit facility expires in September 2025. The facility is collateralized by the cash flow generated from the Agency Business's Fannie Mae servicing portfolio and contains certain financial and other covenants. If we were to default on the letter of credit facility, or we are unable to renew or replace this facility on favorable terms, or at all, it could have a material adverse effect on our cash flow and our financial condition. If we were unable to replace the letter of credit facility with either a similar facility or cash, we would be in breach of our obligations to Fannie Mae, which would have a material adverse effect on our business and operations.

If we fail to act proactively with delinquent borrowers in an effort to avoid a default, the number of delinquent loans could increase, which could have a material adverse effect on us.

As a loan servicer for GSEs and HUD, we are the primary contact with the borrower throughout the life of the loan and under our servicing agreements, we are responsible for asset management, including actions to mitigate losses. We believe we have developed an effective asset management process for tracking each loan we service. However, we may be unsuccessful in identifying loans that are in danger of underperforming or defaulting or in taking appropriate action once those loans are identified. While we can make recommendations, decisions regarding loss mitigation are within the control of the GSEs, HUD and institutional investors. When loans become delinquent, we may incur additional expenses in servicing and asset managing the loans and we are required to advance principal and interest payments and tax and insurance escrow amounts. Our Agency Business could also be subject to a loss of its contractual servicing fee, and for its loss sharing obligations to Fannie Mae. These events could have a negative impact on our cash flows and on the net carrying value of the MSR on our balance sheet and could result in a charge to our earnings. As a result of the foregoing, a rise in delinquencies could have a material adverse effect on our Agency Business.

A reduction in the fees paid for servicing the loans of our Agency Business or an increase in loan or security interest rates by investors could materially and adversely affect our results of operations and liquidity.

The Agency Business's results of operations and liquidity could be materially and adversely affected if the GSEs, HUD or institutional investors lower the price they are willing to pay for loans, lower their servicing fees or adversely change the material terms of their loan purchases or servicing arrangements with us. A number of factors determine the price we receive for our agency loans. With respect to Fannie Mae originations, loans are generally sold as Fannie Mae insured securities to third-party investors. For HUD originations, loans are generally sold as Ginnie Mae securities to third-party investors. In both cases, the price paid to us reflects, in part, the competitive market bidding process for these securities.

Our Agency Business sells loans directly to Freddie Mac who may choose to hold, sell or later securitize such loans. We believe terms set by Freddie Mac are influenced by similar market factors as those that impact the price of Fannie Mae insured or Ginnie Mae securities, although the pricing process differs. With respect to loans that are placed with institutional investors, the origination fees that we receive from borrowers are determined through negotiations, competition and other market conditions.

Loan servicing fees are based, in part, on the risk-sharing obligations associated with the loan and the market pricing of credit risk. The credit risk premium offered by Fannie Mae for new loans can change periodically but remains fixed once we enter into a commitment to sell the loan. There can be no assurance that such fees will continue to remain at such levels or that such levels will be sufficient if delinquencies occur.

A significant portion of our Agency Business's revenue is derived from loan servicing fees and declines in, or terminations of, servicing engagements, or breaches of servicing agreements, could have a material adverse effect on us.

We expect that loan servicing fees will continue to represent a significant portion of our Agency Business' revenues. These fees are primarily derived from loans that have been originated by us and sold through GSE and HUD programs. A decline in the number or value of loans that the Agency Business originates for these investors or terminations of its servicing engagements will decrease these fees. HUD has the right to terminate our current servicing engagements for cause. In addition to termination for cause, Fannie Mae and Freddie Mac may terminate our servicing engagements without cause by paying a termination fee, which may not compensate us fully for the loss of the future servicing revenue. The Agency Business is also subject to losses that may arise as a result of servicing errors, such as a failure to maintain insurance, pay taxes or provide required notices. If we fail to perform, or we breach our servicing obligations to the GSEs or HUD, our servicing engagements may be terminated. Declines in or terminations of servicing engagements or breaches of such obligations could materially and adversely affect our financial results.

The Agency Business is subject to the risk of failed loan deliveries, and even after a successful closing and delivery, we may be required to repurchase the loan or to indemnify the investor if there is a breach of a representation or warranty made by the Agency Business in connection with the sale of the loan through a GSE or HUD program, any of which could have a material adverse effect on us.

Our Agency Business bears the risk that a borrower will choose not to close on a loan that has been pre-sold to an investor or that the investor will choose not to purchase a loan under certain circumstances, including, for example, a casualty event that impacts the condition of a property after we fund the loan and prior to the investor purchase date. We also bear the risk of serious errors in loan documentation that prevent timely delivery of the loan prior to the investor purchase date. A failure to deliver a loan could be a default under the warehouse facility we used to finance the loan. Although the Agency Business has experienced only a few failed loan deliveries in its history, none of which had a material impact on its financial condition or results of operations, we can provide no assurance that we will not experience additional failed deliveries in the future or that any losses will not be material or will be mitigated through property insurance or payment protections.

We must make certain representations and warranties concerning each loan we originate for GSE or HUD programs. The representations and warranties relate to our practices in the origination and servicing of the loans and the accuracy of the information being provided by us. For example, we are generally required to provide the following, among other, representations and warranties: we are authorized to do business and to sell or assign the loan; the loan conforms to the requirements of the GSEs or HUD and certain laws and regulations; the underlying mortgage represents a valid first lien on the property and there are no other liens on the property; the loan documents are valid and enforceable; taxes, assessments, insurance premiums, rents and similar other payments have been paid or escrowed; the property is insured, conforms to zoning laws and remains intact; and we do not know of any issues regarding the loan that are reasonably expected to cause the loan to be delinquent or unacceptable for investment or adversely affect its value.

In the event of a breach of any representation or warranty, investors could, among other things, require us to repurchase the loan or seek indemnification for losses or, in the case of Fannie Mae, increase the level of risk-sharing on the loan. Our obligation to repurchase the loan is independent of our risk-sharing obligations. The GSEs or HUD could require us to repurchase a loan if representations and warranties are breached, even if the loan is not in default. Because many such representations and warranties are based on third-party reports, such as title reports and environmental reports, we may not receive similar representations and warranties from such third parties that would serve as a claim against them. Even if we receive representations and warranties from such third parties or the borrower, our ability to recover on any such claim may be dependent, in part, upon the financial condition and liquidity of such third-party or the borrower. Although we believe that we have capable personnel at all levels, use qualified third parties and have established controls to ensure that all loans are originated pursuant to requirements established by the GSEs and HUD, in addition to our own internal requirements, there can be no assurance that we, our employees or third parties will not make mistakes. Any significant repurchase or indemnification obligations imposed on us could have a material adverse effect on the Agency Business.

For most loans we service under the Fannie Mae and HUD programs, we are required to advance payments due to investors if the borrower is delinquent in making such payments, which requirement could adversely impact our liquidity and harm our results of operations.

For most loans we service under the Fannie Mae DUS program, we are required to advance the principal and interest payments and tax and insurance escrow amounts if the borrower is delinquent in making loan payments. After four continuous months of making advances on behalf of the borrower, we can submit a reimbursement claim to Fannie Mae, which Fannie Mae may approve at its discretion. We are reimbursed by Fannie Mae for these advances in the event the loan is brought current. In the event of a default, any advances made by the Agency Business are used to reduce the proceeds required to settle any loss share. Our advances may also be reimbursed, to the extent that any recovery on the collateral exceeds the UPB.

Under the HUD program, we are obligated to advance tax and insurance escrow amounts and principal and interest payments on the underlying loan until the Ginnie Mae security has been fully paid. In the event of a default on a HUD insured loan, we can elect to assign the loan to HUD and file a mortgage insurance claim. HUD will reimburse approximately 99% of any losses of principal and interest on the loan and Ginnie Mae will reimburse most of the remaining losses of principal and interest.

Although the Agency Business has historically funded all required advances from operating cash flow, there can be no assurance we will be able to do so in the future. If the Agency Business does not have sufficient operating cash flows to fund such advances, we may need to finance such amounts. We currently have a credit facility with a \$50 million sublimit for principal and interest advances we make as the primary servicer to Fannie Mae in connection with potential delinquent loans under the Fannie Mae forbearance program, however, such financing may not be available to us in the future, or, may be costly and could prevent the Agency Business from pursuing its business and growth strategies.

Risks Related to Our Financing and Hedging Activities

We may not be able to access financing sources on favorable terms, or at all, which could adversely affect our ability to execute our business plan.

We finance our Structured Business loans and investments through a variety of means, including CLOs, securitizations, credit facilities, equity capital, senior and convertible debt instruments, and other structured financings. We finance our Agency Business loan originations, prior to sale to, or securitization by, an agency, through credit facilities provided by commercial banks. Our access to these sources of funding can be impacted by conditions in the financing markets that are beyond our control, including lack of liquidity and wider credit spreads, which we have experienced in the past. If these conditions deteriorate, there can be no assurance that any existing agreements will be renewed or extended at expiration and alternative sources of financing may not be available or may not accommodate our needs. This could subject us to more recourse indebtedness and the risk that debt service on less efficient forms of financing would require a larger portion of our cash flows, thereby reducing cash available for distribution to our stockholders, funds available for operations as well as for future business opportunities.

Credit facilities may contain restrictive covenants relating to our operations.

Credit facilities may contain various financial covenants and restrictions, including minimum net worth, liquidity and debt-to-equity ratios. Other restrictive covenants may prohibit a change in control, disposing of or encumbering assets, limiting outstanding debt, and restrictions from making material amendments to underwriting guidelines without lender approval. While we actively manage our loan and investment portfolio, a weak economic environment may make compliance with these covenants more difficult. Failure to comply with any of these covenants could result in defaults and there can be no assurance that our lenders would waive any default or amend the defaulted covenant, which could have a material adverse effect on us.

We may not be able to obtain the level of leverage necessary to optimize our return on investment.

In our Structured Business, our return on investment depends, in part, upon our ability to grow our portfolio of invested assets through the use of leverage at a debt cost that is lower than the yield earned on our investments. We typically obtain leverage through the issuance of CLOs, credit agreements and other borrowings. Our ability to obtain the necessary leverage on beneficial terms depends upon market conditions and the quality of the portfolio assets that collateralize our indebtedness. Our failure to obtain and/or maintain leverage at desired levels or on attractive terms could have a material adverse effect on the performance of our Structured Business. Moreover, we may be dependent upon a few lenders to provide financing under credit agreements for our origination or acquisition of loans and investments and there can be no assurance that these agreements will be renewed or extended at expiration. Our ability to obtain financing through CLOs is subject to conditions in the debt capital markets which are impacted by factors beyond our control that may reduce the level of investor demand for such securities.

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 credit 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.

We utilize a significant amount of debt to finance our portfolio, which may subject us to an increased risk of loss, adversely affecting the return on our investments and reducing cash available for distribution.

We utilize a significant amount of debt to finance our operations, which may compound losses and reduce the cash available for distributions to our stockholders. We generally leverage our portfolio through the use of securitizations, including the issuance of CLOs, credit facilities, and other borrowings. The leverage we employ varies depending on the types of assets being financed, availability of favorable credit facilities, the loan-to-value and debt service coverage ratios of our assets, the yield on our assets, the targeted leveraged return we expect from our portfolio and our ability to meet ongoing covenants related to our asset mix and financial performance. Substantially all of our assets are pledged as collateral for our borrowings. In addition, we may acquire real property subject to debt obligations. The return on our investments and cash available for distribution to our stockholders may be reduced to the extent that changes in market conditions increase our financing cost relative to the income that we can derive from our assets.

Our debt service payments reduce the net income available for distributions to our stockholders. Moreover, we may not be able to meet our debt service obligations and, in such event, we risk the loss of some or all of our assets to foreclosure or sale to satisfy our debt obligations.

We may guarantee some of the leverage and contingent obligations of our subsidiaries.

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

We may not be able to acquire suitable investments for a CLO issuance, or we may not be able to issue CLOs on attractive terms, or at all, which may require us to utilize more costly financing for our investments.

We have financed, and, if the opportunities exist in the future, we may continue to finance certain investments in our Structured Business through the issuance of CLOs. During the period we are acquiring investments for eventual long-term financing through CLOs, we have typically financed these investments through credit and repurchase agreements. We are subject to the risk that we will not be able to acquire a sufficient amount of eligible investments to maximize the efficiency of a CLO issuance. In addition, conditions in the debt capital markets may make the issuance of CLOs less attractive to us even when we do have a sufficient pool of collateral, or we may not be able to execute a CLO transaction on terms favorable to us or at all. If we are unable to issue a CLO to finance these investments, we may be required to utilize other forms of potentially less attractive financing.

The use of CLO financings with over-collateralization and interest coverage requirements may have a negative impact on our cash flows.

The terms of CLOs will generally provide that the principal amount of investments must exceed the principal balance of the CLO bonds by a certain amount and that interest income exceeds interest expense by a certain amount. Generally, CLO terms provide that, if certain delinquencies and/or losses or other factors cause a decline in collateral value or cash flow levels, the cash flow otherwise payable on subordinated bonds, which may be held by us, may be redirected to repay senior classes of CLO bonds until the issuer or the collateral is in compliance with the terms of the governing documents. Other tests (based on delinquency levels or other criteria) may restrict our ability to receive interest payments from assets pledged to secure CLOs. We cannot assure that the performance tests will be satisfied. If our investments fail to perform as anticipated, our over-collateralization, interest coverage or other credit enhancement expense associated with our CLOs will increase. With respect to future CLOs we may issue, we cannot assure that the terms of the delinquency tests, over-collateralization requirements and interest coverage terms, cash flow release mechanisms or other significant terms will be favorable to us. Failure to obtain favorable terms with regard to these matters may adversely affect our cash flow and profitability.

We may not be able to find suitable replacement investments for CLO reinvestment periods.

CLOs have defined periods during which principal payments on assets held in the CLO can be reinvested, commonly referred to as a reinvestment period. Our ability to find investments during the reinvestment period that meet the criteria set forth in the CLO governing documents may determine the success of our CLOs. Our potential inability to find suitable investments may cause, among other things, lower returns, interest deficiencies, hyper-amortization of the senior CLO liabilities and may cause us to reduce the life of the CLO and accelerate the amortization of certain fees and expenses.

We may be required to repurchase loans that we have sold or to indemnify holders of our CLOs.

If any of the loans we originate or acquire and sell or securitize through CLOs do not comply with representations and warranties we make about the loans, the borrowers and the underlying properties, we may be required to repurchase those loans, replace them with substitute loans or indemnify persons for losses or expenses incurred as a result of a breach of a representation or warranty. Repurchased loans typically require a significant allocation of working capital to carry on our books, and our ability to borrow against such assets is limited. Any significant repurchases or indemnification payments could adversely affect our financial condition and operating results.

Through our Private Label platform we engage in securitization transactions relating to real estate mortgage loans that expose us to potentially material risks.

Securitizations and other similar transactions generally require us to incur short-term debt on a recourse basis to finance the accumulation of loans or other assets prior to securitization. If demand for investing in securitization transactions weakens, we may be unable to complete the securitization of loans accumulated for that purpose, which may adversely affect our financial results. In connection with engaging in securitization transactions, we perform due diligence with respect to the loans or other assets we are securitizing and make representations and warranties relating to those loans and assets.

Securitization transactions also require us to prepare marketing and disclosure materials, including term sheets, offering documents, and prospectuses, that include disclosures regarding the proposed securitization and the assets being securitized. If our marketing and disclosure materials are alleged or found to contain inaccuracies or omissions, we may be liable under federal and state law for damages to third parties that invest in these securitizations, including in circumstances where we relied on a third party in preparing accurate disclosures, and we may incur other expenses and costs in connection with disputing these allegations or settling claims. Additionally, we may retain various third-party service providers when we engage in securitization transactions, including special servicers, trustees, administrative and paying agents, and custodians, among others. We frequently contractually agree to indemnify these service providers against claims and losses they may suffer in connection with the provision of services to us and/or the securitization vehicle. To the extent any of these service providers are liable for damages to third parties that have invested in these securitization transactions, we may incur costs and expenses as a result of these indemnities.

The securitization market is subject to an evolving regulatory environment that may affect certain aspects of these activities.

As a result of past dislocation of the credit markets, the securitization market has become subject to additional regulation. In particular, pursuant to the Dodd-Frank Act, various federal agencies have promulgated rules that require issuers in securitizations to retain at least 5% of the risk associated with the securities. To the extent we utilize the securitization market and retain this risk of loss through subordinate interests or B Piece bonds in our securitized debt transactions, this could reduce our returns on these transactions.

Our loans and investments may be subject to fluctuations in interest rates which may not be adequately protected, or protected at all, by our hedging strategies.

Our current investment strategy for our Structured Business emphasizes loans with both floating and fixed interest rates. Floating rate investments earn interest at rates that adjust from time to time (typically monthly) based upon an index, allowing this portion of our portfolio to be insulated from changes in value due to changes in interest rates. Fixed rate investments, however, may experience changes in value as interest rates change. The majority of our interest-earning assets and interest-bearing liabilities in our Structured Business have floating rates of interest. However, depending on market conditions, fixed rate assets may become a greater portion of our new loan originations. We may employ hedging strategies to limit the effects of changes in interest rates (and in some cases credit spreads), including interest rate swaps, caps, floors and other derivative products, however, no strategy can completely insulate us from the risks associated with interest rate changes. Hedging involves certain additional risks such as counterparty risk, the legal enforceability of hedging contracts, the early repayment of hedged transactions and the risk that unanticipated and significant changes in interest rates may cause a significant loss of basis in the contract and a change in current period expense. We cannot give assurances that we will be able to enter into hedging transactions or that such hedging transactions will adequately protect us against the foregoing risks. In addition, hedges which are not highly correlated (and appropriately designated and documented as cash flow hedges) with a variable rate financing will impact our reported income as marked-to-market gains and losses will be recorded on our statement of income.

Hedging instruments may not be guaranteed by an exchange or its clearing house and involve risks and costs.

The cost of using hedging instruments increases during periods of rising and volatile interest rates and as the period covered by the instrument lengthens. We may increase our hedging activity and thus increase our hedging costs during periods when interest rates are volatile or rising and hedging costs have increased.

In addition, hedging instruments involve risk since they currently are often not guaranteed by an exchange or clearing house. The enforceability of agreements underlying derivative transactions may depend on compliance with applicable statutory, commodity and other regulatory requirements and, depending on the identity of the counterparty, applicable international requirements. The business failure of a hedging counterparty will most likely result in a default. Default by our counterparty may result in the loss of unrealized profits and force us to cover our resale commitments, if any, at the then current market price. Although generally we will seek to reserve the right to terminate our hedging positions, it may not always be possible to dispose of or close out a hedging position without the consent of the counterparty, and we may not be able to enter into an offsetting contract to cover our risk. We cannot assure that a liquid secondary market will exist for hedging instruments purchased or sold, and we may be required to maintain a position until exercise or expiration, which could result in losses.

We may enter into derivative contracts that could expose us to contingent liabilities in the future.

Subject to maintaining our qualification as a REIT, part of our investment strategy involves entering into derivative contracts that could require us to fund cash payments in the future under certain circumstances (e.g., the early termination of the derivative agreement caused by an event of default or other early termination event, or the decision by a counterparty to request margin securities it is contractually owed under the terms of the derivative contract). The amount due would be equal to the unrealized loss of the open swap positions with the applicable counterparty and could also include other fees and charges. These economic losses will be reflected in our financial results of operations, and our ability to fund these obligations will depend on the liquidity of our assets and access to capital at the time, and the need to fund these obligations could adversely impact our financial condition.

Our investments financed in foreign locations may involve significant risks.

We have financed, and, if the opportunities exist in the future, we may continue to finance, certain investments outside of the U.S. Financing investments in foreign locations may expose us to additional risks not typically inherent in the U.S. These risks include changes in exchange control regulations, political and social instability, expropriation, imposition of foreign taxes, less liquid markets, the lack of available information, higher transaction costs, less government supervision of exchanges, brokers and issuers, less developed bankruptcy laws, difficulty in enforcing contractual obligations, lack of uniform accounting and auditing standards and greater price volatility.

Transactions may be denominated in a foreign currency, which would subject us to the risk that the value of a particular currency may change in relation to the U.S. dollar. We may employ hedging techniques to minimize such risk, but we can offer no assurance that we will, in fact, hedge currency risk or, that if we do, such strategies will be effective. As a result, a change in currency exchange rates may adversely affect our profitability if future transactions outside the U.S. are denominated in a foreign currency.

Risks Relating to Regulatory Matters

If our Agency Business fails to comply with the regulations and program requirements of the GSEs and HUD, we may lose our approved lender status with these entities and fail to gain additional approvals or licenses for our business. We are also subject to changes in laws, regulations and existing GSE and HUD program requirements, including potential increases in reserve and risk retention requirements that could increase our costs and affect the way we conduct the Agency Business, which could materially and adversely affect our financial results.

Our Agency Business is subject to federal, state and local laws and regulations, and the regulations and policies of the GSEs and HUD. These laws, regulations, rules and policies impose, among other things, minimum net worth, operational liquidity and collateral requirements. Fannie Mae requires the Agency Business to maintain operational liquidity based on a formula that considers the balance of the loan and the level of credit loss exposure (level of risk sharing). Fannie Mae also requires its DUS lenders to maintain collateral, which may include pledged securities, for their risk-sharing obligations. The amount of collateral required under the Fannie Mae DUS program is calculated at the loan level and is based on the balance of the loan, the level of risk-sharing, the seasoning of the loans and the rating of the Fannie Mae DUS lender.

Regulatory authorities also require the Agency Business to submit financial reports and to maintain a quality control plan for the underwriting, origination and servicing of loans. The Agency Business is also subject to inspection by the GSEs, HUD, and regulatory authorities. Any failure to comply with these requirements could lead to, among other things, the loss of a license as an approved GSE or HUD lender, the inability to gain additional approvals or licenses, the termination of contractual rights without compensation, demands for indemnification or loan repurchases, class action lawsuits and administrative enforcement actions.

Failure to maintain certain qualifications and licenses could adversely affect our results of operations.

Current laws and regulations impose qualification and licensing obligations on our business, in addition to imposing requirements and restrictions affecting, among other things: loan originations, interest rates, finance and other fees that we may charge, disclosures to borrowers, the terms of secured transactions, collection, repossession and claims handling procedures, personnel qualifications and other trade practices. Our business is also subject to inspection by certain state regulatory authorities. Any failure to comply with these requirements could result in a variety of consequences, including, but not limited to the loss of the licensure required to originate, sell, or service loans, the inability to procure additional approvals or licenses, the inability to enforce our contracts, and administrative enforcement actions.

Failure to maintain an exemption from regulation as an investment company under the Investment Company Act would adversely affect our results of operations.

We conduct our business in a manner that allows us to avoid being regulated as an investment company under the Investment Company Act of 1940 (the “Act”). Pursuant to Section 3(c)(5)(C) of the Act, entities that are primarily engaged in the business of purchasing or otherwise acquiring “mortgages and other liens on and interests in real estate” are currently exempted from regulation thereunder. The SEC has provided guidance on the availability of this exemption and generally requires an exempt company to maintain at least 55% of its assets directly in “qualifying real estate interests.” To be considered a qualifying real estate interest test, an investment must meet various criteria. Loans that are secured by equity interests in entities that directly or indirectly own the underlying real property, rather than a mortgage on the underlying property itself, may not qualify for purposes of the 55% test. Mortgage-related securities that do not represent all of the certificates issued with respect to an underlying pool of mortgages may also not qualify for purposes of the 55% test. Therefore, our ability to invest in these types of loans and equity interests may be limited by the Act. There can be no assurance that the laws and regulations governing the applicability of the Act to REITs, including those of the SEC’s regarding the 55% test, will not change in a manner that adversely affects our operations. To the extent that we do not comply with the 55% test, another exemption or exclusion from registration under the Act or if the SEC no longer permits our exemption, we may be classified as an investment company. In that event, we could, among other things, be required to either (a) substantially change the manner in which we conduct our operations to avoid registration or (b) register as an investment company, either of which could have an adverse effect on us and the market price of our common stock. If we were required to register as an investment company, we would become subject to regulation with respect to our capital structure (including our ability to use leverage), management, operations, transactions with affiliated persons (as defined in the Act) and portfolio composition, including restrictions with respect to diversification and industry concentration and other matters.

One of our subsidiaries is required to register under the Investment Advisers Act, and is subject to regulation under that Act.

One of our subsidiaries is subject to the extensive regulation prescribed by the Investment Advisers Act of 1940 (the “Advisors Act”). The SEC oversees our activities as a registered investment adviser under this regulatory regime. A failure to comply with the obligations imposed by the Advisors Act, including record-keeping, advertising, operating requirements, disclosure obligations and prohibitions on fraudulent activities, could result in fines, censure, suspensions of personnel or investing activities or other sanctions, including revocation of our registration as an investment adviser. The regulations under the Advisors Act are designed to protect investors and other clients, and are not designed to protect holders of our publicly traded stock. Even if a sanction imposed against our subsidiary or its personnel involves a small monetary amount, the adverse publicity related to such sanction could harm our reputation and our relationship with our investors and impede our ability to raise additional capital. In addition, compliance with the Advisors Act may require us to incur additional costs, and these costs may be material.

The effects of government regulation could negatively impact the market value of loans.

Loans related to development projects bear additional risk in that government regulation could impact the value of the project by limiting the development of the property. If the proper approvals for the completion of the project are not granted, the value of the collateral may be adversely affected which may negatively impact the value of the loan.

A change to the conservatorship of Fannie Mae and Freddie Mac and related actions, along with any changes in laws and regulations affecting the relationship between Fannie Mae and Freddie Mac and the U.S. federal government, could materially and adversely affect our Agency Business.

Currently, the Agency Business originates most of its loans for sale through GSE and HUD programs and a substantial majority of our servicing rights are derived from loans we sell through GSE and HUD programs. Changes in the business charters, structure, or existence of one or both of the GSEs could eliminate or substantially reduce the number of loans we may originate with the GSEs, which in turn would lead to a reduction in our fee and interest income and our servicing revenue.

Conservatorships of the GSEs

The Federal Housing Finance Agency (“FHFA,”) the GSEs’ regulator, placed each GSE into conservatorship in 2008. The conservatorship is a statutory process designed to preserve and conserve the GSEs’ assets and property and put them in a sound and solvent condition. The conservatorships have no specified termination dates and there continues to be significant uncertainty regarding the future of the GSEs, including how long they will continue to exist in their current forms, the extent of their roles in the housing markets and whether they will continue to exist following conservatorship. In 2014, the FHFA released its strategic plan for the GSEs, in which it changed its goal of “contraction” of the GSEs’ multifamily businesses to “maintaining” the businesses.

Housing Finance Reform

In the past, federal legislation has been proposed to reform the housing finance system, including the GSEs. Several of the bills require the wind down or receivership of the GSEs within a specified period of enactment and place certain restrictions on the GSEs’ activities prior to being wound down or placed into receivership. It is unclear at this time what the Biden administration’s views are with respect to the future of the GSEs.

We expect Congress will continue to consider housing finance reform, including conducting hearings and considering legislation that could alter the housing finance system, including the activities or operations of the GSEs. We cannot predict the prospects for the enactment, timing or content of legislative proposals regarding the future status of the GSEs.

In November 2022, the FHFA announced that its 2023 loan origination caps for Fannie Mae and Freddie Mac will be \$75 billion for each enterprise for a total opportunity of \$150 billion (the “2023 Caps”), which has decreased from its 2022 loan origination caps of \$78 billion for each enterprise. The FHFA has stated that they will continue to monitor the market and reserves the right to increase the 2023 Caps if warranted, however, they will not reduce the 2023 Caps if the market is smaller than initially projected. The 2023 Caps will continue to apply to all multifamily business, have no exclusions, and mandate that 50% be directed towards mission driven, affordable housing. The FHFA has removed the requirement that at least 25% be affordable to residents at or below 60% of area median income (“AMI”) to reduce inconsistencies with their housing goals regulation. Further, the FHFA has changed certain definitions of mission driven affordable housing and also allows loans to finance energy or water efficiency improvements with units affordable at or below 80% of AMI to be classified as mission-driven, up from 60% AMI in 2022. This increase will allow the GSEs to expand their effort on energy and water conservation measures at workforce housing properties. Our originations with the GSEs are highly profitable executions as they provide significant gains from the sale of our loans, non-cash gains related to MSR and servicing revenues. Therefore, a decline in our GSE originations could negatively impact our financial results. We are unsure whether the FHFA will impose stricter limitations on GSE multifamily production volume in the future.

Cybersecurity Risks

If we are unable to safeguard against cybersecurity breaches and cyber-attacks with respect to our information systems, our business may be adversely affected.

Cybersecurity incidents and cyber-attacks, which include malicious software, ransomware or terrorists attacks, unauthorized attempts to gain access to sensitive, confidential or otherwise protected information related to us and our customers, have been occurring globally at a more frequent and severe level and are expected to continue to increase in frequency and severity in the future. In the course of our business, we gather, transmit and retain confidential information through our information systems. Although we endeavor to protect confidential information through the implementation of security technologies, processes and procedures, it is possible that an individual or group could penetrate our security systems and access sensitive information about our business and employees. Any misappropriation, loss or unauthorized disclosure of confidential information gathered, stored or used by us could have a material impact on the operation of our business, including damaging our reputation with our borrowers, employees, third parties and investors. We could also incur significant costs in implementing additional security measures and organizational changes, implementing additional protection technologies, training employees or engaging consultants. In addition, we could become subject to litigation from any cybersecurity breach. We have not experienced any material misappropriation, loss or unauthorized disclosure of confidential or personally identifiable information as a result of a cybersecurity breach or other act, however, a cybersecurity breach or other act and/or disruption to our information technology systems could have a material adverse effect on our business, prospects, financial condition or results of operations.

Risks Related to Our Corporate and Ownership Structure

ACM and our chief executive officer have significant influence over our policies and strategies.

Our chairman, chief executive officer and president is also the chief executive officer of ACM, and beneficially owns approximately 35% of the outstanding membership interests of ACM. ACM has approximately 7% of the voting power of our outstanding stock at December 31, 2022. As a result of our chief executive officer's beneficial ownership of stock held by ACM, as well as his beneficial ownership of additional shares of our common stock, our chief executive officer has approximately 7% of the voting power of our outstanding stock at December 31, 2022. Because of his positions with us and ACM, and his ability to effectively vote a substantial minority of our outstanding stock, our chief executive officer has significant influence over our policies and strategy.

Our charter generally does not permit ownership in excess of 5% of our capital stock, and attempts to acquire our capital stock in excess of this limit are ineffective without prior approval from our Board of Directors which could discourage a change of control of us.

In order to qualify as a REIT, not more than 50% of the value of our outstanding shares of capital stock may be owned, directly or indirectly, by five or fewer individuals during the last half of a taxable year. To prevent that from occurring, our charter provides that, subject to certain exceptions, no person, including entities, may own, or be deemed to own by virtue of the attribution provisions of the Internal Revenue Code, more than 5% of the aggregate value or number of shares (whichever is more restrictive) of our outstanding common stock, or more than 5%, by value, of our outstanding shares of stock of all classes or series, in the aggregate.

While these restrictions are designed to prevent any five individuals from owning more than 50% of our shares, they could also discourage a change in control of our company. These restrictions may also deter tender offers that may be attractive to stockholders or limit the opportunity for stockholders to receive a premium for their shares if an investor makes purchases of shares to acquire a block of shares.

Our charter's constructive ownership rules are complex and may cause the outstanding stock owned by a group of related individuals or entities to be deemed to be constructively owned by one individual or entity. Shares of our stock that would otherwise be directly or indirectly acquired or held by a person in violation of the ownership limitations are, in general, automatically transferred to a trust for the benefit of a charitable beneficiary, and the purported owner's interest in such shares is void. In addition, any person who acquires shares in excess of these limits is obliged to immediately give written notice to us and provide us with any information we may request in order to determine the effect of the acquisition on our status as a REIT.

Our Board of Directors have approved resolutions under our charter allowing our chief executive officer and ACM, in relation to our chief executive officer's controlling equity interest, a former director, as well as four outside investors, to own more than the ownership interest limit of our common stock stated in our charter.

Our staggered board and other provisions of our charter and bylaws may prevent a change in our control.

Our Board of Directors is divided into three classes of directors. The current terms of the Class II, Class III and Class I directors will expire in 2023, 2024 and 2025, respectively. Directors of each class are chosen for three-year terms upon the expiration of their current terms, and each year one class of directors is elected by the stockholders. The staggered terms of our directors may reduce the possibility of a tender offer or an attempt at a change in control, even though a tender offer or change in control might be in the best interest of our stockholders. In addition, our charter and bylaws also contain other provisions that may delay or prevent a transaction or a change in control that might involve a premium price for our common stock or otherwise be in the best interest of our stockholders.

Risks Related to Our Status as a REIT

If we fail to remain qualified as a REIT, we will be subject to corporate tax and could face a substantial tax liability.

We conduct our operations to qualify as a REIT under the Internal Revenue Code. However, qualification as a REIT involves the application of highly technical and complex Internal Revenue Code provisions for which only limited judicial and administrative authorities exist. Even a technical or inadvertent mistake could jeopardize our REIT status. Our continued qualification as a REIT will depend on our satisfaction of certain asset, income, organizational, distribution, stockholder ownership and other requirements on a continuing basis. In addition, our ability to satisfy the requirements to qualify as a REIT depends in part on the actions of third parties over which we have no control or only limited influence, including in cases where we own an equity interest in an entity that is classified as a partnership for U.S. federal income tax purposes.

Furthermore, new tax legislation, administrative guidance or court decisions, in each instance potentially with retroactive effect, could make it more difficult or impossible for us to qualify as a REIT. If we fail to qualify as a REIT in any tax year, then:

- We would be taxed as a domestic corporation, which, among other things, means we would be unable to deduct distributions to stockholders in computing taxable income and would be subject to federal income tax on our taxable income at corporate rates;
- Any resulting tax liability could be substantial and would reduce the amount of cash available for distribution to stockholders; and
- Unless we were entitled to relief under applicable statutory provisions, we would be disqualified from treatment as a REIT for the subsequent four taxable years following the year during which we lost our qualification, and thus, our cash available for distribution to stockholders would be reduced for each of the years during which we did not qualify as a REIT.

Even if we remain qualified as a REIT, we may face other tax liabilities that reduce our cash flow.

Even if we remain qualified for taxation as a REIT, we may be subject to certain federal, state and local taxes on our income and assets, including taxes on any undistributed income, tax on income from some activities conducted as a result of a foreclosure, and state or local income, property and transfer taxes. Any of these taxes would decrease cash available for distribution to our stockholders. In addition, in order to meet the REIT qualification requirements, or to avert the imposition of a 100% tax that applies to certain gains derived by a REIT from dealer property or inventory, we hold some of our assets through taxable subsidiary corporations, the income of which is subject to federal and state income tax.

The Agency Business may have adverse tax consequences.

As REITs, we and our subsidiary, Arbor Realty SR, Inc. (“ARSR”) generally may not directly hold certain assets and conduct certain operations in connection with the Agency Business. As a result, we are holding those assets and operations through taxable REIT subsidiaries (each, a TRS) of ARSR, which are subject to corporate income tax. Moreover, under the REIT asset tests, no more than 20% of our total gross assets may consist of the stock or other securities of one or more TRSs. In addition, although dividends payable by TRSs constitute qualifying income for purposes of the 95% REIT gross income test, they are non-qualifying income for purposes of the 75% REIT gross income test. Accordingly, if the value of our Agency Business or the income generated thereby increases relative to the value of our other, REIT-compliant assets and income, we or ARSR may fail to satisfy one or more of the Internal Revenue Code requirements applicable to REITs. Although the Agency Business is not expected to adversely affect our ability, or that of ARSR, to continue to qualify as a REIT in the future, no assurances can be given in that regard.

The “taxable mortgage pool” rules may increase the taxes that we may incur and reduce the amount of our distributions to our stockholders.

Certain of our securitizations have resulted in the creation of taxable mortgage pools for federal income tax purposes. So long as 100% of the equity interests in a taxable mortgage pool are owned by an entity that qualifies as a REIT, including ARSR, we would generally not be adversely affected by the characterization of the securitization as a taxable mortgage pool. Certain categories of stockholders, however, such as foreign stockholders eligible for treaty or other tax benefits, stockholders with net operating losses, and certain tax-exempt stockholders that are subject to unrelated business income tax, could be subject to increased taxes on a portion of their dividend income from us that is attributable to the taxable mortgage pool. To the extent that we elect to retain excess inclusion income attributable to the taxable mortgage pool rather than passing it through to our stockholders, we may incur corporate level tax on a portion of our income from the taxable mortgage pool. In that case, we may reduce the amount of our distributions to our stockholders by the amount of tax paid by us.

The “taxable mortgage pool” rules may limit the manner in which we effect future securitizations.

Certain of our securitization and other financing transactions could result in us, or a portion of our assets, to be treated as a taxable mortgage pools for federal income tax purposes. If we enter into such transactions, we could be precluded from selling equity interests in these securitizations to outside investors, or selling any debt securities issued in connection with these securitizations that might be considered to be equity interests for tax purposes. These limitations may prevent us from using certain techniques to maximize our returns from securitization and financing transactions.

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

To qualify as a REIT for federal income tax purposes we must continually satisfy tests concerning, among other things, the sources of our income, the nature and diversification of our assets, the amounts we distribute to our stockholders and the ownership of our stock. We may be required to make distributions to stockholders at disadvantageous times or when we do not have funds readily available for distribution. Thus, compliance with the REIT requirements may hinder our ability to operate solely on the basis of maximizing profits.

Complying with REIT requirements may force us to liquidate otherwise attractive investments.

To qualify as a REIT we must ensure that at the end of each calendar quarter at least 75% of the value of our assets consists of cash, cash items, government securities and qualified REIT real estate assets. The remainder of our investment in securities generally cannot comprise more than 10% of the outstanding voting securities, or more than 10% of the total value of the outstanding securities, of any one issuer. In addition, in general, no more than 5% of the value of our assets (other than assets which qualify for purposes of the 75% asset test) may consist of the securities of any one issuer, and no more than 20% of the value of our total assets may be represented by securities of one or more TRSs. If we fail to comply with these requirements, we must correct such failure within 30 days after the end of the calendar quarter to avoid losing our REIT status and suffering adverse tax consequences. As a result, we may be required to liquidate otherwise attractive investments, or, if we fail to liquidate the applicable investments, we may lose our status as a REIT.

We may be unable to generate sufficient revenue from operations to pay our operating expenses and to pay dividends to our stockholders.

As a REIT, we are generally required to distribute at least 90% of our REIT-taxable income each year to our stockholders. In order to qualify for the tax benefits afforded to REITs, we intend to declare quarterly dividends and to make distributions to our stockholders in amounts such that we distribute all or substantially all of our REIT-taxable income each year, subject to certain adjustments. However, our ability to make distributions may be adversely affected by the risk factors described in this report. In the event of a future downturn in our operating results and financial performance or unanticipated declines in the value of our asset portfolio, we may be unable to declare or pay quarterly dividends. The timing and amount of dividends are in the sole discretion of our Board of Directors, which considers, among other factors, our earnings, financial condition, debt service obligations and applicable debt covenants, REIT qualification requirements and other tax considerations and capital expenditure requirements as our board may deem relevant.

Among the factors that could adversely affect our results of operations and impair our ability to make distributions to our stockholders are:

- Use of funds and our ability to make profitable structured finance investments;
- Defaults in our asset portfolio or decreases in the value of our portfolio;
- Anticipated operating expense levels may not prove accurate, as actual results may vary from estimates; and
- Increased debt service requirements, including those resulting from higher interest rates on variable rate indebtedness.

A change in any one of these factors could affect our ability to make distributions. If we are not able to comply with the restrictive covenants and financial ratios contained in future credit facilities, our ability to make distributions to our stockholders may also be impaired. We cannot assure that we will be able to make distributions to our stockholders in the future or that the level of any distributions we make will increase over time.

We may need to borrow funds to satisfy our REIT distribution requirements, and a portion of our distributions may constitute a return of capital. Debt service on any borrowings for this purpose will reduce our cash available for distribution.

To qualify as a REIT, we must generally, among other requirements, distribute at least 90% of our REIT-taxable income, subject to certain adjustments, to our stockholders each year. To the extent that we satisfy the distribution requirement, but distribute less than 100% of our taxable income, we will be subject to federal corporate income tax on our undistributed taxable income. In addition, we will be subject to a 4% nondeductible excise tax if the actual amount that we pay out to our stockholders in a calendar year is less than a minimum amount specified under federal tax laws.

From time to time, we may generate taxable income greater than our net income for financial reporting purposes, or our taxable income may be greater than our cash flow available for distribution to our stockholders. If we do not have other funds available in these situations we could be required to borrow funds, issue stock or sell investments at disadvantageous prices or find another alternative source of funds to make distributions sufficient to enable us to satisfy the REIT distribution requirement and to avoid corporate income tax and the 4% excise tax in a particular year.

We may be subject to adverse legislative or regulatory tax changes that could reduce the market price of our common stock.

The present U.S. federal income tax treatment of REITs and their stockholders may be modified, possibly with retroactive effect, by legislative, judicial or administrative action at any time, which could affect the U.S. federal income tax treatment of an investment in our shares. The U.S. federal income tax rules, including those dealing with REITs, are constantly under review by persons involved in the legislative process, the Internal Revenue Service and the U.S. Treasury Department, which results in statutory changes as well as frequent revisions to regulations and interpretations.

The Tax Cuts and Jobs Act enacted in 2017 made substantial changes to the Internal Revenue Code. Among those changes for corporations, beginning in 2018, the corporate federal tax rate (which impacts our TRS) was reduced from 35% to 21%; various deductions were eliminated or modified, including substantial limitations on the deductibility of interest; and the deductions of net operating losses became subject to certain additional limitations. Ordinary dividends paid by a REIT (including dividends that we pay that are not capital gain dividends or “qualified dividend income”) are generally eligible for a 20% deduction from the applicable marginal rate. Therefore, the top marginal rate on such dividends is generally 29.6% (80% of the top marginal rate of 37%).

A portion of our dividends (including dividends received from our TRS) may be eligible for preferential rates as “qualified dividend income,” which has a top individual tax rate of 20% to U.S. stockholders. In addition, certain U.S. stockholders who are individuals, trusts or estates, and whose income exceeds certain thresholds, are required to pay a 3.8% medicare tax on our dividends and gain from the sale of our stock.

The Inflation Reduction Act of 2022 (“IRA”) enacted in August 2022 introduced various new provisions to the Internal Revenue Code. Among those new provisions affecting corporations include the corporate book minimum tax and an excise tax on net stock repurchases effective January 1, 2023. As REITs, we and our subsidiary, ARSR are exempt from these provisions. While such provisions may be applicable to our TRSs, we currently do not expect the IRA to have a material impact on our consolidated financial statements.

Furthermore, certain provisions of the recently enacted legislations, including the IRA, may still require guidance through the issuance of treasury regulations in order to assess their full scope and impact to us. There may be a substantial delay before the issuance of such treasury regulations, increasing the uncertainty as to the ultimate effect of the statutory amendments on us. There may also be further technical corrections legislation proposed with respect to the provisions of the recently enacted legislation, the effect of which cannot be predicted and may be adverse to us or our stockholders.

General Risks

The price of our common stock may be volatile.

The trading price of our common stock may be highly volatile and could be subject to a number of factors beyond our control, including (1) the general reputation of REITs and the attractiveness of our equity securities in comparison to other equity securities, including securities issued by other real estate-based companies, (2) our financial performance, (3) coordinated buying and selling activity by market participants, including market manipulation, (4) publication of information in the media, including online blog and social media about our Company by third parties, and (5) general stock and bond market conditions.

The market value of our stock is based primarily on the market's perception of our growth potential and our current and future earnings and dividends. Consequently, our common stock may trade at prices that are higher or lower than our book value per share of common stock. If our future earnings or dividends are less than expected, it is likely that the market price of our common stock will diminish.

At times, stock markets experience extreme price and volume fluctuations that affect the market prices of equity securities of many companies. These fluctuations may be unrelated or disproportionate to the operating performance of those companies. These broad market fluctuations, as well as general economic, political and market conditions such as recessions and interest rate changes, may negatively impact the market price of our common stock. If the market price of our common stock declines, you may not realize any return on your investment and may lose some or all of your investment.

Companies that experience volatility in the market price of their stock may be subject to securities class action litigation. We may be the target of this type of litigation in the future. Securities litigation against us could result in substantial costs and divert management's attention from other business concerns, which could also harm our business.

We depend on key personnel for our future success, the loss of whom could threaten our ability to operate our business successfully.

Our future success depends, to a significant extent, on our ability to hire and retain a sufficient number of qualified personnel, including our executive officers. The nature of our executive officers' experience and the extent of the relationships they have developed with owners of multifamily and commercial properties and financial institutions are important to our success. We cannot assure their continued employment as our officers. The loss of services of certain of our executive officers could harm our business and prospects.

The adverse resolution of a lawsuit could have a material adverse effect on our financial condition and results of operations.

The adverse resolution of litigation brought against us or any of our assets could have a material adverse effect on our financial condition and results of operations. See Note 14 for information on litigation matters.

The impact of any future terrorist attacks and the availability of terrorism insurance expose us to certain risks.

Any future terrorist attacks, the anticipation of any such attacks, and the consequences of any military or other response by the U.S. and its allies may have an adverse impact on the U.S. financial markets, real estate markets and/or the economy in general. We cannot predict the effect that any such future events would have on our business or the credit quality of our loans and investments.

The Terrorism Risk Insurance Act (“TRIA”), requires insurers to make terrorism insurance available under their property and casualty insurance policies in order to receive federal compensation under TRIA for insured losses. However, this legislation does not regulate the pricing of such insurance. The absence of affordable insurance coverage may adversely affect the real estate lending market, lending volume and the market’s overall liquidity and may reduce the number of suitable investment opportunities available to us and the pace at which we are able to make investments. If the properties that we invest in are unable to obtain affordable insurance coverage, the value of those investments could decline and in the event of an uninsured loss, we could lose all or a portion of our investment.

The impact of any future laws, and amendments to current laws, may impact our business.

Future federal and state legislation could impose additional obligations or restrictions with respect to our business, adversely impacting our revenue and/or expenses. It is difficult to predict the exact nature of any future legislative or regulatory initiatives and the extent to which they may impact our business, financial condition, or results of operations.

Environmental, social and governance matters may cause us to incur additional costs, make personnel changes, and affect the attractiveness of our stock to investors.

Shareholder, public and governmental expectations and pressure have been increasing with respect to corporate responsibility, sustainability, diversity and inclusion and other environmental, social and governance (“ESG”) matters. Shareholder advisory services and other organizations have developed and publish, and others may in the future develop and publish, rating systems and other scoring and reporting mechanisms to evaluate and compare our ESG performance with that of others in our industry. These ratings systems frequently change, and scores are often based on a relative ranking which may cause our scores to deteriorate if peer rankings improve. In addition, current shareholders and prospective investors may use these ratings, and/or their own internal ESG benchmarks, to determine whether, and to what extent, they may choose to invest in our securities, engage with us to advocate for improved ESG performance or disclosure, make voting decisions as shareholders, or take other actions to hold us and our board of directors accountable with respect to ESG matters.

Some legislatures, government agencies and listing exchanges have mandated or proposed, and others may in the future further mandate, certain ESG disclosure or performance. For example, board diversity and inclusion is an ESG topic that is receiving heightened attention from lawmakers and listing exchanges. If we are unable to recruit, attract and/or retain qualified members of our board of directors to maintain compliance with the diversity requirements of applicable mandates within the prescribed timelines, we could be exposed to costly fines and penalties. In addition, the standards for tracking and reporting on ESG matters are relatively new, have not been harmonized, and continue to evolve. As a result, our selection of ESG disclosure frameworks and topics may change from time to time, may result in a lack of comparative data from period to period, or differ from the expectations of our shareholders and other stakeholders. We may also face reputational damage in the event our corporate responsibility initiatives or objectives, including with respect to board diversity, do not meet the standards or expectations of shareholders, prospective investors, lawmakers, listing exchanges or other stakeholders, or if we are unable to achieve acceptable ESG ratings from third-party rating services. Failure to comply with ESG-related laws, exchange policies or stakeholder expectations could materially and adversely impact the value of our stock and related cost of capital, and limit our ability to fund future growth, or result in increased investigations and litigation or threats thereof.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

Our principal corporate offices are located in leased space at 333 Earle Ovington Boulevard, Uniondale, New York, 11553.

Item 3. Legal Proceedings

Information with respect to certain legal proceedings is set forth in Note 14 and is incorporated herein by reference.

PART II

Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market Information

Our common stock is listed on the New York Stock Exchange (“NYSE”) under the symbol “ABR.” On February 8, 2023, there were 126,854 record holders of our common stock, including persons holding shares in broker accounts under street names.

We are organized and conduct our operations to qualify as a REIT, which requires that we distribute at least 90% of our REIT-taxable income. No assurance, however, can be given as to the amounts or timing of future distributions as such distributions are subject to our taxable earnings, financial condition, capital requirements and such other factors as our Board of Directors deems relevant.

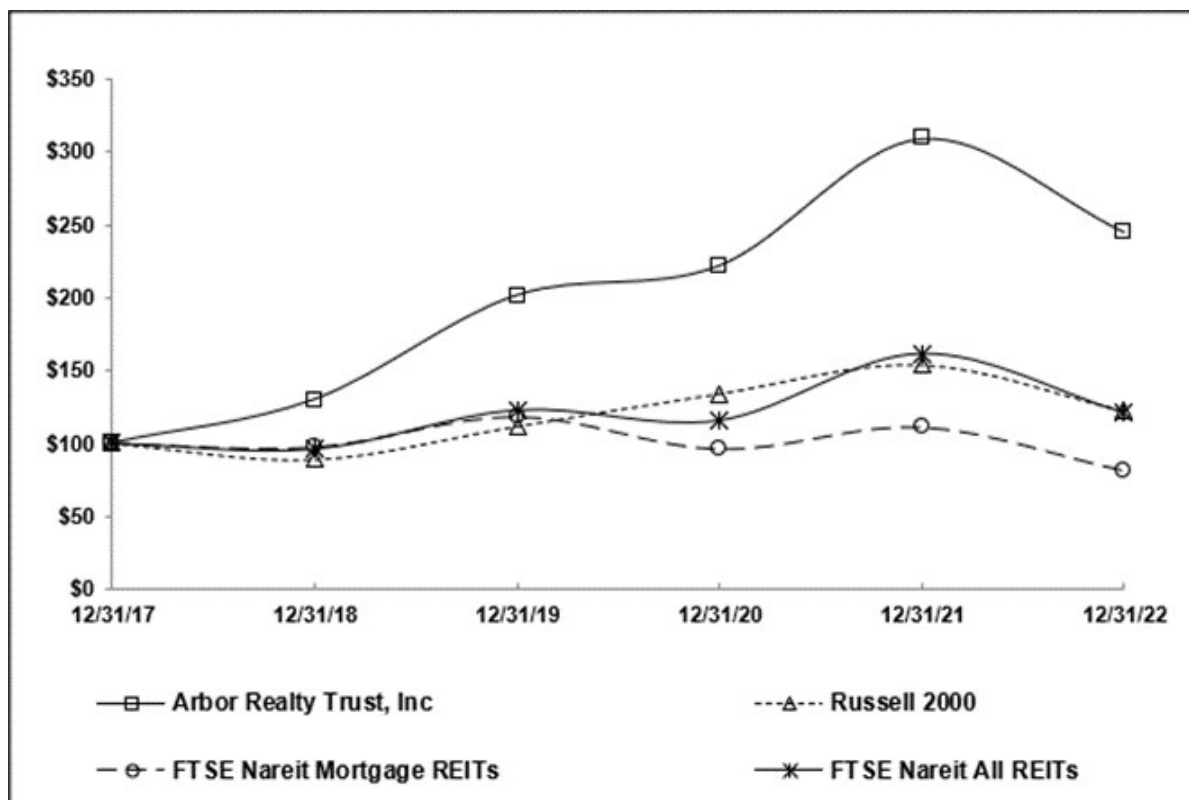
Securities Authorized for Issuance under Equity Compensation Plans

This information will be contained in our definitive proxy statement for the 2023 Annual Meeting of Stockholders, to be filed within 120 days following the end of our fiscal year and is incorporated herein by reference.

Stockholder Return

The graph below compares the cumulative total stockholder return for our common stock with the Russell 2000 Index, the NAREIT All REITs Index and the NAREIT Mortgage REITs Index for the five-year period from December 31, 2017 to December 31, 2022. The graph assumes a \$100 investment on January 1, 2018, and the reinvestment of any dividends. This graph is not necessarily indicative of future stock price performance. The information included in the graph and table below was obtained from 2023 Russell Investment Group.

Total Return Performance



Index	Period Ending					
	12/31/17	12/31/18	12/31/19	12/31/20	12/31/21	12/31/22
Arbor Realty Trust, Inc	100.00	129.86	201.63	221.89	309.36	245.34
Russell 2000	100.00	88.99	111.70	134.00	153.85	122.41
FTSE Nareit Mortgage REITs	100.00	97.48	118.27	96.07	111.09	81.53
FTSE Nareit All REITs	100.00	95.90	122.82	115.62	161.73	121.13

In accordance with SEC rules, this “Stockholder Return” section shall not be incorporated by reference into any of our future filings under the Securities Act or the Exchange Act and shall not be deemed to be soliciting material or to be filed under the Securities Act or the Exchange Act.

Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations

You should read the following discussion in conjunction with the sections of this report entitled “Forward-Looking Statements” and “Risk Factors,” along with the historical consolidated financial statements including related notes, included in this report.

Overview

Through our Structured Business, we invest in a diversified portfolio of structured finance assets in the multifamily, SFR and commercial real estate markets, primarily consisting of bridge loans, in addition to mezzanine loans, junior participating interests in first mortgages and preferred and direct equity. We also invest in real estate-related joint ventures and may directly acquire real property and invest in real estate-related notes and certain mortgage-related securities.

Through our Agency Business, we originate, sell and service a range of multifamily finance products through Fannie Mae and Freddie Mac, Ginnie Mae, FHA and HUD. We retain the servicing rights and asset management responsibilities on substantially all loans we originate and sell under the GSE and HUD programs. We are an approved Fannie Mae DUS lender nationally, a Freddie Mac Multifamily Conventional Loan lender, seller/servicer, in New York, New Jersey and Connecticut, a Freddie Mac affordable, manufactured housing, senior housing and SBL lender, seller/servicer, nationally and a HUD MAP and LEAN senior housing/healthcare lender nationally. We also originate and service permanent financing loans underwritten using the guidelines of our existing agency loans sold to the GSEs, which we refer to as “Private Label” loans and originate and sell finance products through CMBS programs. We pool and securitize the Private Label loans and sell certificates in the securitizations to third-party investors, while retaining the servicing rights and APL certificates of the securitization.

We conduct our operations to qualify as a REIT. A REIT is generally not subject to federal income tax on its REIT-taxable income that is distributed to its stockholders, provided that at least 90% of its REIT-taxable income is distributed and provided that certain other requirements are met.

Our operating performance is primarily driven by the following factors:

Net interest income earned on our investments. Net interest income represents the amount by which the interest income earned on our assets exceeds the interest expense incurred on our borrowings. If the yield on our assets increases or the cost of borrowings decreases, this will have a positive impact on earnings. However, if the yield earned on our assets decreases or the cost of borrowings increases, this will have a negative impact on earnings. Net interest income is also directly impacted by the size and performance of our asset portfolio. We recognize the bulk of our net interest income from our Structured Business. Additionally, we recognize net interest income from loans originated through our Agency Business, which are generally sold within 60 days of origination.

Fees and other revenues recognized from originating, selling and servicing mortgage loans through the GSE and HUD programs. Revenue recognized from the origination and sale of mortgage loans consists of gains on sale of loans (net of any direct loan origination costs incurred), commitment fees, broker fees, loan assumption fees and loan origination fees. These gains and fees are collectively referred to as gain on sales, including fee-based services, net. We record income from MSR assets at the time of commitment to the borrower, which represents the fair value of the expected net future cash flows associated with the rights to service mortgage loans that we originate, with the recognition of a corresponding asset upon sale. We also record servicing revenue which consists of fees received for servicing mortgage loans, net of amortization on the MSR assets recorded. Although we have long-established relationships with the GSE and HUD agencies, our operating performance would be negatively impacted if our business relationships with these agencies deteriorate. Additionally, we also recognize revenue from originating, selling and servicing our Private Label loans.

Income earned from our structured transactions. Our structured transactions are primarily comprised of investments in equity affiliates, which represent unconsolidated joint venture investments formed to acquire, develop and/or sell real estate-related assets. Operating results from these investments can be difficult to predict and can vary significantly period-to-period. When interest rates rise, the income from these investments can be significantly and negatively impacted, particularly from our investment in a residential mortgage banking business, since rising interest rates generally decrease the demand for residential real estate loans. In addition, we periodically receive distributions from our equity investments. It is difficult to forecast the timing of such payments, which can be substantial in any given quarter. We account for structured transactions within our Structured Business.

Credit quality of our loans and investments, including our servicing portfolio. Effective portfolio management is essential to maximize the performance and value of our loan and investment and servicing portfolios. Maintaining the credit quality of the loans in our portfolios is of critical importance. Loans that do not perform in accordance with their terms may have a negative impact on earnings and liquidity.

COVID-19 Impact. The ongoing effects of COVID-19 created significant disruptions to the U.S. and global economies, which could continue a period of global economic slowdown. Although vaccine availability and usage have continued to increase, which has led to less negative short-term effects, such as travel bans, quarantines, layoffs and shutdowns, the ongoing longer-term macroeconomic effects on inflation, interest rates, capital markets, labor shortages, property values and global supply chains continue to negatively impact many industries, including the U.S. commercial real estate market. Although we have not been significantly impacted by COVID-19 to-date, the impact of COVID-19 on companies continues to evolve, and the extent and duration of the economic fallout from this pandemic to our business, particularly rising inflation, increasing interest rates and dislocation in capital markets, remains unclear and present risk with respect to our financial condition, results of operations, liquidity, and ability to pay distributions.

Significant Developments During 2022

Financing and Capital Markets Activity.

- Closed two collateralized securitization vehicles (CLO 18 and 19) totaling \$3.10 billion, of which \$2.53 billion of investment grade notes were issued to third-party investors and \$387.3 million of below investment-grade notes and a \$187.1 million equity interest in the portfolio were retained by us;
- Closed a \$489.3 million Private Label securitization and retained the most subordinate certificates totaling \$43.4 million;
- Closed our first Freddie Mac Q Series securitization totaling \$315.8 million and retained certain subordinate and interest-only certificates totaling \$79.0 million;
- Raised \$485.8 million of capital from the issuances of common stock and an additional issuance of Series F preferred stock;
- Raised \$426.9 million from the issuance of our 7.50% convertible notes and 8.50% senior unsecured notes and used a significant portion to repay existing debt;
- Increased our Structured Business warehouse capacity by \$1.80 billion; and
- Unwound CLO 10, redeeming \$441.0 million of outstanding notes, which were repaid from refinancing the remaining assets within CLO 18 and cash held by CLO 10.

Structured Business Activity.

- Grew our structured loan and investment portfolio 19% to \$14.46 billion on loan originations totaling \$6.15 billion, partially offset by loan runoff totaling \$3.82 billion;
- Loan runoff included the sale of four bridge loans at par with an aggregate UPB of \$296.9 million;
- Sold a \$110.5 million loan at a discount for \$102.2 million, releasing \$66.3 million of capital for investment and recognized a \$9.2 million loss. We have the potential to recover up to \$2.8 million depending on the future performance of the loan;
- Within our equity investments, we received cash distributions totaling \$37.4 million, including \$23.8 million (recognized as a return of capital) from our residential mortgage venture and \$11.1 million (recognized as income) from our Lexford venture. We also recorded \$4.9 million of income from our residential mortgage venture, received a \$2.6 million equity participation interest and recorded a \$2.4 million other-than-temporary impairment (see Note 8); and
- Agreed to a \$7.4 million settlement on the Extended Stay litigation (see Note 14).

Agency Business Activity.

- Loan originations and sales totaled \$4.77 billion and \$5.44 billion, respectively; and
- Grew our fee-based servicing portfolio 4%, or \$1.04 billion, to \$28.00 billion.

Dividend. We raised our quarterly common dividend three times during 2022 to an annual run rate of \$1.60 per share, representing an 8% increase over the prior year.

Current Market Conditions, Risks and Recent Trends

As discussed throughout this report, the ongoing COVID-19 pandemic continues to impact the global economy in unprecedented ways, causing significant disruptions and liquidity constraints in many market segments, including the financial services, real estate and credit markets. Although vaccine availability and usage have continued to increase, which has led to less negative short-term effects, such as travel bans, quarantines, layoffs and shutdowns, the ongoing longer-term macroeconomic effects on inflation, interest rates, capital markets, labor shortages, property values and global supply chains continue to negatively impact many industries, including the U.S. commercial real estate market. Although we have not been significantly impacted by COVID-19 to-date, adverse economic conditions have resulted, and may continue to result, in rising interest rates, dislocation in capital markets, declining real estate values of certain asset classes, increased payment delinquencies and defaults and increased loan modifications and foreclosures, all of which could have a significant impact on our future results of operations, financial condition, business prospects and our ability to make distributions to our stockholders.

The Federal Reserve has raised interest rates throughout 2022 to combat inflation and restore price stability and it is expected that rates will continue to rise throughout the first half of 2023, potentially even longer. Currently, rising interest rates will positively impact our net interest income since our structured loan portfolio exceeds our corresponding debt balances and the vast majority of our loan portfolio is floating-rate based on SOFR or LIBOR. In addition, a greater portion of our debt is fixed-rate (convertible and senior unsecured notes), as compared to our structured loan portfolio, and will not reset as interest rates rise. Therefore, increases in interest income due to rising interest rates is likely to be greater than the corresponding increase in interest expense on our variable rate debt. Additionally, we earn interest on our escrow balances, so an increasing interest rate environment will increase our earnings on such balances. See “Quantitative and Qualitative Disclosures about Market Risk” below for additional details. Conversely, such rising interest rates could negatively impact real estate values and limit a borrower’s ability to make debt service payments, which may limit new mortgage loan originations and increase the likelihood of incurring losses from defaulted loans if the reduction in the collateral value is insufficient to repay their loans in full.

We have been very successful in raising capital through various vehicles to grow our businesses. The anticipated continual rise in interest rates and unpredictable geopolitical landscape may cause a further dislocation in the capital markets resulting in a continual reduction of available liquidity. Tightening liquidity conditions in equity and capital markets affect the availability and cost of capital and the increased cost of credit, or degradation in debt financing terms, may impact our ability to identify and execute investments on attractive terms. Periods of volatility and dislocation in the capital markets, as observed recently, could limit our ability to grow our Structured Business since this business is more reliant on the capital markets to grow, but can also present us with unique avenues to participate in other lower cost financing options and build on existing, and create new, relationships with lenders. Since our Agency Business requires limited capital to grow, as originations are financed through warehouse facilities for generally up to 60 days before the loans are sold, tightening liquidity conditions in equity and capital markets should not have a substantial impact on our ability to grow this business.

We are a national originator with Fannie Mae and Freddie Mac, and the GSEs remain the most significant providers of capital to the multifamily market. In November 2022, the FHFA announced that its 2023 Caps for Fannie Mae and Freddie Mac will be \$75 billion for each enterprise for a total opportunity of \$150 billion, which has decreased from its 2022 loan origination caps of \$78 billion for each enterprise. The FHFA has stated that they will continue to monitor the market and reserves the right to increase the 2023 Caps if warranted, however, they will not reduce the 2023 Caps if the market is smaller than initially projected. The 2023 Caps will continue to apply to all multifamily business, have no exclusions, and mandate that 50% be directed towards mission driven, affordable housing. The FHFA has removed the requirement that at least 25% be affordable to residents at or below 60% of AMI to reduce inconsistencies with their Housing Goals regulation. Further, the FHFA has changed certain definitions of mission driven affordable housing and also allows loans to finance energy or water efficiency improvements with units affordable at or below 80% of AMI to be classified as mission-driven, up from 60% AMI in 2022. This increase will allow the GSEs to expand their effort on energy and water conservation measures at workforce housing properties. Our originations with the GSEs are highly profitable executions as they provide significant gains from the sale of our loans, non-cash gains related to MSRs and servicing revenues. Therefore, a decline in our GSE originations could negatively impact our financial results. We are unsure whether the FHFA will impose stricter limitations on GSE multifamily production volume in the future.

Changes in Financial Condition

Assets – Comparison of balances at December 31, 2022 to December 31, 2021:

Our Structured loan and investment portfolio balance was \$14.46 billion and \$12.16 billion at December 31, 2022 and 2021, respectively. This increase was primarily due to loan originations exceeding loan payoffs and paydowns by \$2.33 billion. See below for details.

Our portfolio had a weighted average current interest pay rate of 8.17% and 4.26% at December 31, 2022 and 2021, respectively. Including certain fees earned and costs associated with the structured portfolio, the weighted average current interest rate was 8.42% and 4.62% at December 31, 2022 and 2021, respectively. Our debt that finances our loans and investment portfolio totaled \$13.28 billion and \$11.17 billion at December 31, 2022 and 2021, respectively, with a weighted average funding cost of 6.22% and 2.33%, respectively, which excludes financing costs. Including financing costs, the weighted average funding rate was 6.50% and 2.61% at December 31, 2022 and 2021, respectively.

Activity from our Structured Business portfolio is comprised of the following (\$ in thousands):

	Year Ended December 31,	
	2022	2021
Loans originated (1)	\$ 6,151,647	\$ 9,720,515
Number of loans	318	422
Weighted average interest rate	5.72 %	4.33 %

(1) We committed to fund SFR loans totaling \$1.08 billion and \$729.5 million during 2022 and 2021, respectively.

Loan runoff	\$ 3,818,554	\$ 2,516,771
Number of loans	177	167
Weighted average interest rate	7.20 %	6.27 %

Loans extended	\$ 1,684,274	\$ 1,235,888
Number of loans	66	69

Loans held-for-sale from the Agency Business decreased \$739.5 million, primarily from loan sales exceeding originations by \$670.4 million as noted in the following table, and the payoff of a \$55.0 million Private Label loan. Loan sales included \$489.3 million of Private Label loans which were sold in a Private Label loan securitization in the first quarter of 2022. Our GSE loans are generally sold within 60 days, while our Private Label loans are generally expected to be sold and securitized within 180 days from the loan origination date. Activity from our Agency Business portfolio is comprised of the following (in thousands):

	Loan Originations	Loan Sales
Fannie Mae	\$ 2,919,566	\$ 3,139,414
Freddie Mac	1,353,001	1,456,595
Private Label	217,542	515,086
FHA	188,394	241,457
SFR - Fixed Rate	89,683	86,071
Total	\$ 4,768,186	\$ 5,438,623

Securities held-to-maturity increased \$16.1 million, primarily due to the purchase, at a discount, of \$27.6 million of APL certificates in connection with a Private Label securitization, partially offset by principal payments received from underlying loan payoffs from our B Piece bonds.

Investments in equity affiliates decreased \$10.5 million, primarily due to \$23.8 million in cash distributions received from our investment in a residential mortgage banking business and a \$2.4 million other-than-temporary impairment in our North Vermont Avenue venture, partially offset by net fundings totaling \$13.1 million on our Fifth Wall (“Fifth Wall”) and AMAC Holdings III LLC (“AMAC III”) ventures and \$4.9 million of income from the residential mortgage business.

Other assets increased \$101.5 million, primarily due to increases in interest receivables from portfolio growth and increases in the benchmark index rates, along with the \$30.1 million acquisition of a multifamily property for full satisfaction of the underlying debt.

Liabilities – Comparison of balances at December 31, 2022 to December 31, 2021:

Credit and repurchase facilities decreased \$639.8 million, primarily due to loan sales exceeding originations in our Agency Business as described above.

Securitized debt increased \$1.96 billion, primarily due to the issuance of two new CLOs and completion of our first Freddie Mac Q Series securitization, where we issued \$2.76 billion of notes and certificates to third-party investors, partially offset by the unwind of a CLO totaling \$441.0 million and paydowns on existing CLOs totaling \$360.1 million.

Senior unsecured notes increased \$105.4 million, primarily due to our issuance of \$150.0 million of 8.50% notes, partially offset by the repurchase of \$46.2 million of our 5.625% notes.

Convertible senior unsecured notes, net increased \$21.0 million, primarily due to the issuance of \$287.5 million of 7.50% convertible notes, substantially offset by the redemption of our 4.75% convertible notes totaling \$264.0 million.

Due to borrowers decreased \$35.4 million, primarily due to the funding of previously committed loan originations, partially offset by unfunded commitments on new originations in our Structured Business.

Other liabilities increased \$47.9 million, primarily due to a \$34.9 million increase in interest payable from greater debt balances on portfolio growth and higher benchmark interest rates and \$20.9 million of financing placed on the multifamily property acquisition described above, partially offset by a decrease in accrued commissions from lower origination volume in 2022 compared to 2021.

Equity

During 2022, we sold 26,335,788 shares of our common stock through our “At-The-Market” equity agreement and a public offering, raising net proceeds totaling \$408.7 million.

During 2022, we completed a public offering of an additional 3,292,000 shares of our Series F preferred stock, generating net proceeds of \$77.1 million.

See Note 16 for details of our dividends declared and our deferred compensation transactions during 2022.

Agency Servicing Portfolio

The following table sets forth the characteristics of our loan servicing portfolio collateralizing our mortgage servicing rights and servicing revenue (\$ in thousands):

Product	December 31, 2022									
	Servicing Portfolio UPB	Loan Count	Wtd. Avg. Age of Portfolio (years)	Wtd. Avg. Portfolio Maturity (years)	Interest Rate Type		Wtd. Avg. Note Rate	Annualized Prepayments as a % of Portfolio (1)	Delinquencies as a % of Portfolio (2)	
					Fixed	Adjustable				
Fannie Mae	\$ 19,038,124	2,460	3.1	8.5	96 %	4 %	4.20 %	12.71 %	0.13 %	
Freddie Mac	5,153,207	1,214	2.8	10.2	84 %	16 %	4.26 %	19.78 %	0.27 %	
Private Label	2,074,859	130	1.9	7.8	100 %	— %	3.60 %	— %	— %	
FHA	1,155,893	96	2.5	33.5	100 %	— %	3.17 %	1.59 %	— %	
Bridge	301,182	4	0.9	1.6	— %	100 %	7.68 %	— %	— %	
SFR - Fixed Rate	274,764	53	1.4	6.3	100 %	— %	5.04 %	0.30 %	— %	
Total	\$ 27,998,029	3,957	2.9	9.7	93 %	7 %	4.17 %	12.35 %	0.14 %	

Product	December 31, 2021									
	Servicing Portfolio UPB	Loan Count	Wtd. Avg. Age of Portfolio (years)	Wtd. Avg. Portfolio Maturity (years)	Interest Rate Type		Wtd. Avg. Note Rate	Annualized Prepayments as a % of Portfolio (1)	Delinquencies as a % of Portfolio (2)	
					Fixed	Adjustable				
Fannie Mae	\$ 19,127,397	2,710	3.0	8.8	98 %	2 %	3.99 %	12.00 %	0.20 %	
Freddie Mac	4,943,905	1,317	2.8	10.9	86 %	14 %	3.82 %	17.01 %	0.79 %	
Private Label	1,711,326	102	1.2	8.6	100 %	— %	3.64 %	— %	— %	
FHA	985,063	90	2.0	33.9	100 %	— %	3.01 %	23.69 %	— %	
SFR - Fixed Rate	191,698	45	0.9	6.7	100 %	— %	4.54 %	— %	— %	
Total	\$ 26,959,389	4,264	2.8	10.1	96 %	4 %	3.90 %	12.50 %	0.29 %	

- (1) Prepayments reflect loans repaid prior to six months from loan maturity. The majority of our loan servicing portfolio has a prepayment protection term and therefore, we may collect a prepayment fee which is included as a component of servicing revenue, net. See Note 5 for details.
- (2) Delinquent loans reflect loans that are contractually 60 days or more past due. At December 31, 2022 and 2021, delinquent loans totaled \$38.7 million and \$77.6 million, respectively, of which zero and \$9.8 million, respectively, were in the foreclosure process. No loans were in bankruptcy at December 31, 2022 and 2021.

Our Agency Business servicing portfolio represents commercial real estate loans, which are generally transferred or sold within 60 days from the date the loan is funded. Primarily all loans in our servicing portfolio are collateralized by multifamily properties. In addition, we are generally required to share in the risk of any losses associated with loans sold under the Fannie Mae DUS program, see Note 11.

Comparison of Results of Operations for Years Ended December 31, 2022 and 2021

The following table provides our consolidated operating results (\$ in thousands):

	Year Ended December 31,		Increase / (Decrease)	
	2022	2021	Amount	Percent
Interest income	\$ 948,401	\$ 466,087	\$ 482,314	103 %
Interest expense	557,617	212,005	345,612	163 %
Net interest income	390,784	254,082	136,702	54 %
Other revenue:				
Gain on sales, including fee-based services, net	55,816	123,037	(67,221)	(55)%
Mortgage servicing rights	69,346	130,230	(60,884)	(47)%
Servicing revenue, net	92,192	74,814	17,378	23 %
Property operating income	1,877	185	1,692	nm %
Gain (loss) on derivative instruments, net	26,609	(2,684)	29,293	nm %
Other income, net	(17,563)	7,566	(25,129)	nm %
Total other revenue	228,277	333,148	(104,871)	(31)%
Other expenses:				
Employee compensation and benefits	161,825	171,796	(9,971)	(6)%
Selling and administrative	53,990	45,575	8,415	18 %
Property operating expenses	2,136	718	1,418	197 %
Depreciation and amortization	8,732	7,215	1,517	21 %
Provision for loss sharing (net of recoveries)	1,862	(6,167)	8,029	nm %
Provision for credit losses (net of recoveries)	21,169	(21,113)	42,282	nm %
Litigation settlement	7,350	—	7,350	nm %
Total other expenses	257,064	198,024	59,040	30 %
Income before extinguishment of debt, sale of real estate, income from equity affiliates and income taxes	361,997	389,206	(27,209)	(7)%
Loss on extinguishment of debt	(4,933)	(3,374)	(1,559)	46 %
Gain on sale of real estate	—	3,693	(3,693)	nm %
Income from equity affiliates	14,247	34,567	(20,320)	(59)%
Provision for income taxes	(17,484)	(46,285)	28,801	(62)%
Net income	353,827	377,807	(23,980)	(6)%
Preferred stock dividends	40,954	21,888	19,066	87 %
Net income attributable to noncontrolling interest	28,044	38,507	(10,463)	(27)%
Net income attributable to common stockholders	\$ 284,829	\$ 317,412	\$ (32,583)	(10)%

nm – not meaningful

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The following table presents the average balance of our Structured Business interest-earning assets and interest-bearing liabilities, associated interest income (expense) and the corresponding weighted average yields (\$ in thousands):

	Year Ended December 31,					
	2022			2021		
	Average Carrying Value (1)	Interest Income / Expense	W/A Yield / Financing Cost (2)	Average Carrying Value (1)	Interest Income / Expense	W/A Yield / Financing Cost (2)
<i>Structured Business interest-earning assets:</i>						
Bridge loans	\$ 13,997,117	\$ 859,339	6.14 %	\$ 7,340,522	\$ 384,406	5.24 %
Mezzanine / junior participation loans	202,484	19,473	9.62 %	215,837	18,954	8.78 %
Preferred equity investments	142,738	15,219	10.66 %	213,616	21,570	10.10 %
Other	36,262	6,141	16.94 %	29,772	1,493	5.01 %
Core interest-earning assets	14,378,601	900,172	6.26 %	7,799,747	426,423	5.47 %
Cash equivalents	585,281	3,450	0.59 %	443,779	616	0.14 %
Total interest-earning assets	<u>\$ 14,963,882</u>	<u>\$ 903,622</u>	<u>6.04 %</u>	<u>\$ 8,243,526</u>	<u>\$ 427,039</u>	<u>5.18 %</u>
<i>Structured Business interest-bearing liabilities:</i>						
CLO	\$ 7,496,568	\$ 265,560	3.54 %	\$ 3,503,175	\$ 64,318	1.84 %
Credit and repurchase facilities	3,967,648	173,365	4.37 %	2,149,729	57,993	2.70 %
Unsecured debt	1,610,809	91,604	5.69 %	1,157,275	67,353	5.82 %
Trust preferred	154,336	7,427	4.81 %	154,336	4,771	3.09 %
Q Series securitization	11,033	703	6.37 %	—	—	— %
Total interest-bearing liabilities	<u>\$ 13,240,394</u>	<u>538,659</u>	<u>4.07 %</u>	<u>\$ 6,964,515</u>	<u>194,435</u>	<u>2.79 %</u>
Net interest income		<u>\$ 364,963</u>			<u>\$ 232,604</u>	

(1) Based on UPB for loans, amortized cost for securities and principal amount for debt.

(2) Weighted average yield calculated based on annualized interest income or expense divided by average carrying value.

Net Interest Income

The increase in interest income was mainly due to a \$476.6 million increase from our Structured Business, primarily due to a significant increase in our average core interest-earning assets from loan originations exceeding loan runoff, along with increases in the average yield on core interest-earning assets. The increase in the average yield was primarily due to increases in benchmark index rates, partially offset by lower rates on originations, as compared to loan runoff.

The increase in interest expense was mainly due to a \$344.2 million increase from our Structured Business, primarily due to an increase in the average balance of our interest-bearing liabilities, due to the significant growth in our loan portfolio and the issuance of additional unsecured debt, along with an increase in the average cost of our interest-bearing liabilities, mainly from increases in benchmark index rates.

Agency Business Revenue

The decrease in gain on sales, including fee-based services, net was primarily due to a 30% decrease in the sales margin from 1.92% to 1.34%, along with a 15% decrease (\$976.5 million) in loan sales volume. The decrease in the sales margin was primarily due to lower margins received on our Private Label and SFR loan sales.

The decrease in income from MSRs was primarily due to a 34% decrease in the MSR rate from 2.05% to 1.35% and a 19% decrease (\$1.20 billion) in loan commitment volume. The decrease in the MSR rate was primarily due to lower average servicing fees on Fannie Mae loan commitments, due to a reduction in servicing rates on newer loans and a larger average loan size which carries lower servicing fees.

The increase in servicing revenue, net was primarily due to an increase in earnings on escrow balances as a result of increases in benchmark index rates as well as higher escrow balances during 2022.

Other Income

The gains and losses on derivative instruments in 2022 and 2021, respectively, were related to changes in the fair values of our Swaps and forward sale commitments held by our Agency Business.

The decrease in other income, net during 2022 was primarily due to \$15.7 million of unrealized impairment losses recorded on certain loans held-for sale in our Agency Business and \$11.2 million of losses recognized in 2022 related to sales of bridge loans in our Structured Business.

Other Expenses

The decrease in employee compensation and benefits expense was primarily due to a decrease in commissions from lower GSE/Agency loan sales volume, partially offset by an increase in headcount as a result of the portfolio growth in both business segments.

The increase in selling and administrative expenses was primarily due to higher professional fees (legal and consulting) in connection with the growth in both business segments, as well as increases in travel and events as travel continues to gain momentum from COVID-19.

We recorded CECL provisions totaling \$23.0 million during 2022 and a provision recovery of \$27.3 million during 2021. The CECL provision in 2022 primarily reflects increases in our loans and investments balance, as a result of portfolio growth, along with rising interest rates and inflation in our CECL models for our Structured Business, which predominantly consists of variable rate loans. The provision recovery during 2021 was primarily due to the reversal of CECL reserves in both business segments in connection with improved market conditions and expected future forecasts.

We recorded an accrual of \$7.4 million in 2022 pertaining to the settlement of the Extended Stay litigation as described in Note 14.

Loss on Extinguishment of Debt

The loss on extinguishment of debt in 2022 and 2021 represents deferred financing fees recognized in connection with the unwind of CLOs, along with the 2022 repurchase of our 4.75% convertible notes.

Gain on Sale of Real Estate

The gain recorded in 2021 was from our acquisition of an office property (for full satisfaction of the underlying debt) with an appraisal value in excess of the outstanding loan and the sale of a repurchased Fannie Mae loan.

Income from Equity Affiliates

Income from equity affiliates in 2022 primarily reflects \$11.1 million in distributions received from our Lexford venture, \$4.9 million of income from our investment in a residential mortgage banking business, and \$2.6 million from an equity participation interest on a property that was sold. The income in 2022 was partially offset by a \$2.4 million other-than-temporary impairment in our North Vermont Avenue investment. Income from equity affiliates in 2021 primarily reflects \$34.6 million of income from our residential mortgage business. The higher income in 2021 from the residential mortgage business was driven by the historically low interest rates and strength in the residential housing market during 2021.

Provision for Income Taxes

In 2022, we recorded a tax provision of \$17.5 million, which consisted of a current tax provision of \$19.2 million and a deferred tax benefit of \$1.7 million. In 2021, we recorded a tax provision of \$46.3 million, which consisted of current and deferred tax provisions of \$35.4 million and \$10.9 million, respectively. The decrease in the tax provision was primarily due to lower income generated from our investment in a residential banking business and a decrease in the pre-tax income from our Agency Business.

Preferred Stock Dividends

The increase in preferred stock dividends was due to the issuances of our Series D, E and F preferred stock, which included a significantly larger number of shares than our Series A, B and C preferred stock that were redeemed in the second quarter of 2021.

Net Income Attributable to Noncontrolling Interest

The noncontrolling interest relates to the outstanding operating partnership units (“OP Units”) issued as part of the 2016 acquisition of ACM’s agency platform (the “Acquisition”). There were 16,293,589 OP Units and 16,325,095 OP Units outstanding at December 31, 2022 and 2021, respectively, which represented 8.4% and 9.7% of our outstanding stock at December 31, 2022 and 2021, respectively.

Comparison of Results of Operations for Years Ended December 31, 2021 and 2020

For a discussion of our results of operations for the year ended December 31, 2021 compared to the year ended December 31, 2020, please refer to Item 7 of Part II, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our Annual Report on Form 10-K for the year ended December 31, 2021, which was filed with the SEC on February 18, 2022, and is available on the SEC’s website at www.sec.gov and the “Investor Relations” section of our website at www.arbor.com.

Liquidity and Capital Resources

Sources of Liquidity. Liquidity is a measure of our ability to meet our potential cash requirements, including ongoing commitments to repay borrowings, satisfaction of collateral requirements under the Fannie Mae DUS risk-sharing agreement and, as an approved designated seller/servicer of Freddie Mac’s SBL program, operational liquidity requirements of the GSE agencies, fund new loans and investments, fund operating costs and distributions to our stockholders, as well as other general business needs. Our primary sources of funds for liquidity consist of proceeds from equity and debt offerings, proceeds from CLOs and securitizations, debt facilities and cash flows from operations. We closely monitor our liquidity position and believe our existing sources of funds and access to additional liquidity will be adequate to meet our liquidity needs.

The ongoing COVID-19 pandemic has contributed to adverse economic and market conditions, causing significant disruptions and liquidity constraints in many market segments, including the financial services, real estate and credit markets, while adding to ongoing longer-term macroeconomic effects on inflation, interest rates and capital markets. We are monitoring the COVID-19 pandemic and its impact on our financing sources, borrowers and their tenants, as well as the economy as a whole, including the tightening liquidity conditions in equity and capital markets. To the extent that our financing sources, borrowers and their tenants continue to be impacted by the pandemic, or by the other risks disclosed in our filings with the SEC, it would have a material adverse effect on our liquidity and capital resources.

As described in Note 10, certain of our repurchase facilities include margin call provisions associated with changes in interest spreads which are designed to limit the lenders credit exposure. If we experience significant decreases in the value of the properties serving as collateral under these repurchase agreements, which is set by the lenders based on current market conditions, the lenders have the right to require us to repay all, or a portion, of the funds advanced, or provide additional collateral.

We had \$13.28 billion in total structured debt outstanding at December 31, 2022. Of this total, \$9.73 billion, or 73%, does not contain mark-to-market provisions and is comprised of non-recourse securitized debt, senior unsecured debt and junior subordinated notes, the majority of which have maturity dates in 2024, or later. The remaining \$3.55 billion of debt is in credit and repurchase facilities with several different banks that we have long-standing relationships with. While we expect to extend or renew all of our facilities as they mature, we cannot provide assurance that they will be extended or renewed on as favorable terms.

As of February 8, 2023, we had approximately \$685.0 million in cash and \$420.0 million of replenishable cash available under our CLO vehicles, as well as other liquidity sources. In addition to our ability to extend our credit and repurchase facilities and raise funds from equity and debt offerings, we also have a \$28.00 billion agency servicing portfolio at December 31, 2022, which is mostly prepayment protected and generates approximately \$115.0 million per year in recurring cash flow.

At December 31, 2022, we had \$2.49 billion of debt that was subject to margin calls related to changes in interest spreads.

To maintain our status as a REIT under the Internal Revenue Code, we must distribute annually at least 90% of our REIT-taxable income. These distribution requirements limit our ability to retain earnings and thereby replenish or increase capital for operations. However, we believe that our capital resources and access to financing will provide us with financial flexibility and market responsiveness at levels sufficient to meet current and anticipated capital and liquidity requirements.

Cash Flows. Cash flows provided by operating activities totaled \$1.10 billion during 2022 and consisted primarily of net cash inflows of \$650.4 million as a result of loan sales exceeding loan originations in our Agency Business and net income of \$353.8 million, as well as certain other non-cash net income adjustments.

Cash flows used in investing activities totaled \$2.32 billion during 2022. Loan and investment activity (originations and payoffs/paydowns) comprise the majority of our investing activities. Loan originations from our Structured Business totaling \$5.96 billion, net of payoffs and paydowns of \$3.42 billion and proceeds from the sale of \$397.3 million of structured loans, resulted in net cash outflows of \$2.13 billion.

Cash flows provided by financing activities totaled \$1.57 billion during 2022 and consisted primarily of net proceeds of \$1.96 billion from securitized debt activity, \$486.3 million of proceeds from the issuance of common and preferred stock and \$124.6 million from senior unsecured notes activity, partially offset by net cash outflows of \$617.0 million from debt facility activities (facility paydowns were greater than financed loan originations) and \$321.7 million of distributions to our stockholders and OP Unit holders.

Agency Business Requirements. The Agency Business is subject to supervision by certain regulatory agencies. Among other things, these agencies require us to meet certain minimum net worth, operational liquidity and restricted liquidity collateral requirements, purchase and loss obligations and compliance with reporting requirements. Our adjusted net worth and operational liquidity exceeded the agencies' requirements at December 31, 2022. Our restricted liquidity and purchase and loss obligations were satisfied with letters of credit totaling \$69.0 million. See Note 14 for details about our performance regarding these requirements.

We also enter into contractual commitments with borrowers providing rate lock commitments while simultaneously entering into forward sale commitments with investors. These commitments are outstanding for short periods of time (generally less than 60 days) and are described in Note 12.

Debt Facilities. We maintain various forms of short-term and long-term financing arrangements. Borrowings underlying these arrangements are primarily secured by a significant amount of our loans and investments and substantially all our loans held-for-sale. The following is a summary of our debt facilities (in thousands):

Debt Instruments	December 31, 2022			Maturity Dates (2)
	Commitment	UPB (1)	Available	
<u>Structured Business</u>				
Credit and repurchase facilities	\$ 6,728,841	\$ 3,549,694	\$ 3,179,147	2023 - 2025
Securitized debt (3)	7,886,066	7,886,066	—	2023 - 2027
Senior unsecured notes	1,399,600	1,399,600	—	2023 - 2028
Convertible senior unsecured notes	287,500	287,500	—	2025
Junior subordinated notes	154,336	154,336	—	2034 - 2037
Structured Business total	16,456,343	13,277,196	3,179,147	
<u>Agency Business</u>				
Credit and repurchase facilities (4)	2,150,534	306,315	1,844,219	2023 - 2024
Consolidated total	\$ 18,606,877	\$ 13,583,511	\$ 5,023,366	

(1) Excludes the impact of deferred financing costs.

(2) See Note 14 for a breakdown of debt maturities by year.

(3) Maturity dates represent the weighted average remaining maturity based on the underlying collateral at December 31, 2022.

(4) The \$750 million As Soon as Pooled ® Plus ("ASAP") agreement we have with Fannie Mae has no expiration date.

We utilize our credit and repurchase facilities primarily to finance our loan originations on a short-term basis prior to loan securitizations, including through CLOs. The timing, size and frequency of our securitizations impact the balances of these borrowings and produce some fluctuations. The following table provides additional information regarding the balances of our borrowings (in thousands):

Quarter Ended	Quarterly Average UPB	End of Period UPB	Maximum UPB at Any Month-End
December 31, 2022	\$ 4,441,774	\$ 3,856,009	\$ 4,403,368
September 30, 2022	4,534,744	4,642,911	4,642,911
June 30, 2022	4,581,226	4,561,393	4,926,070
March 31, 2022	4,224,503	4,315,388	4,842,785
December 31, 2021	3,771,684	4,493,699	4,493,699
September 30, 2021	3,191,129	3,409,598	3,409,598
June 30, 2021	2,327,114	2,021,412	2,588,456
March 31, 2021	2,177,350	2,220,307	2,262,160
December 31, 2020	1,939,759	2,238,722	2,238,722
September 30, 2020	1,406,219	1,454,419	1,454,419
June 30, 2020	1,692,940	1,240,910	2,033,312
March 31, 2020	1,829,495	1,851,758	2,003,278

Our debt facilities, including their restrictive covenants, are described in Note 10.

Off-Balance-Sheet Arrangements. At December 31, 2022, we had no off-balance-sheet arrangements.

Inflation. The Federal Reserve has raised interest rates throughout 2022 to combat inflation and restore price stability and it is expected that rates will continue to rise throughout the first half of 2023, potentially even longer. Currently, rising interest rates will positively impact our net interest income since our structured loan portfolio exceeds our corresponding debt balances and the vast majority of our loan portfolio is floating-rate based on SOFR or LIBOR. In addition, a greater portion of our debt is fixed-rate (convertible and senior unsecured notes), as compared to our structured loan portfolio, and will not reset as interest rates rise. Therefore, increases in interest income due to rising interest rates is likely to be greater than the corresponding increase in interest expense on our variable rate debt. See “Quantitative and Qualitative Disclosures about Market Risk” below for additional details.

Derivative Financial Instruments

We enter into derivative financial instruments in the normal course of business to manage the potential loss exposure caused by fluctuations of interest rates. See Note 12 for details.

Critical Accounting Estimates

Management’s discussion and analysis of financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with the Financial Accounting Standards Board (“FASB”) Accounting Standards Codification(TM), the authoritative reference for accounting principles generally accepted in the U.S. (“GAAP”). The preparation of financial statements in conformity with GAAP requires the use of estimates and assumptions that could affect the reported amounts in our consolidated financial statements. Actual results could differ from these estimates.

A summary of our critical accounting policies is presented in Note 2. Many of these accounting policies require judgment and the use of estimates and assumptions when applying these policies in the preparation of our consolidated financial statements. Each quarter, we assess these estimates and assumptions based on several factors, including historical experience, which we believe to be reasonable under the circumstances. These estimates are subject to change in the future if any of the underlying assumptions or factors change.

Non-GAAP Financial Measures

Distributable Earnings. We are presenting distributable earnings because we believe it is an important supplemental measure of our operating performance and is useful to investors, analysts and other parties in the evaluation of REITs and their ability to provide dividends to stockholders. Dividends are one of the principal reasons investors invest in REITs. To maintain REIT status, REITs are required to distribute at least 90% of their REIT-taxable income. We consider distributable earnings in determining our quarterly dividend and believe that, over time, distributable earnings is a useful indicator of our dividends per share.

We define distributable earnings as net income (loss) attributable to common stockholders computed in accordance with GAAP, adjusted for accounting items such as depreciation and amortization (adjusted for unconsolidated joint ventures), non-cash stock-based compensation expense, income from MSR, amortization and write-offs of MSR, gains/losses on derivative instruments primarily associated with Private Label loans not yet sold and securitized, changes in fair value of GSE-related derivatives that temporarily flow through earnings (net of any tax impact), deferred tax provision (benefit), CECL provisions for credit losses (adjusted for realized losses as described below), amortization of the convertible senior notes conversion option (in comparative periods prior to 2022) and gains/losses on the receipt of real estate from the settlement of loans (prior to the sale of the real estate). We also add back one-time charges such as acquisition costs and one-time gains/losses on the early extinguishment of debt and redemption of preferred stock.

We reduce distributable earnings for realized losses in the period we determine that a loan is deemed nonrecoverable in whole or in part. Loans are deemed nonrecoverable upon the earlier of: (1) when the loan receivable is settled (i.e., when the loan is repaid, or in the case of foreclosure, when the underlying asset is sold); or (2) when we determine that it is nearly certain that all amounts due will not be collected. The realized loss amount is equal to the difference between the cash received, or expected to be received, and the book value of the asset.

Distributable earnings is not intended to be an indication of our cash flows from operating activities (determined in accordance with GAAP) or a measure of our liquidity, nor is it entirely indicative of funding our cash needs, including our ability to make cash distributions. Our calculation of distributable earnings may be different from the calculations used by other companies and, therefore, comparability may be limited.

Distributable earnings are as follows (\$ in thousands, except share and per share data):

	Year Ended December 31,		
	2022	2021	2020
Net income attributable to common stockholders	\$ 284,829	\$ 317,412	\$ 163,395
Adjustments:			
Net income attributable to noncontrolling interest	28,044	38,507	25,208
Income from mortgage servicing rights	(69,346)	(130,230)	(165,517)
Deferred tax (benefit) provision	(1,741)	10,892	4,726
Amortization and write-offs of MSR	104,378	91,356	65,979
Depreciation and amortization	11,069	10,900	11,486
Loss on extinguishment of debt	4,933	3,374	3,546
Provision for credit losses, net	25,077	(39,856)	73,402
Loss on derivative instruments, net	3,480	432	43,596
Gain on real estate from settlement of loan	—	(2,466)	—
Stock-based compensation	14,973	9,929	9,046
Loss on redemption of preferred stock	—	3,479	—
Distributable earnings (1)	<u>\$ 405,696</u>	<u>\$ 313,729</u>	<u>\$ 234,867</u>
Diluted weighted average shares outstanding - GAAP (1)	199,112,630	156,089,595	133,969,296
Less: Convertible notes dilution (2)	(16,888,226)	—	—
Diluted weighted average shares outstanding - distributable earnings (1)	<u>182,224,404</u>	<u>156,089,595</u>	<u>133,969,296</u>
Diluted distributable earnings per share (1)	<u>\$ 2.23</u>	<u>\$ 2.01</u>	<u>\$ 1.75</u>

(1) Amounts are attributable to common stockholders and OP Unit holders. The OP Units are redeemable for cash, or at our option for shares of our common stock on a one-for-one basis.

- (2) Beginning in the first quarter of 2022, the diluted weighted average shares outstanding were adjusted to exclude the potential shares issuable upon conversion and settlement of our convertible senior notes principal balance. Excluding the effect of a potential conversion in shares until a conversion occurs is consistent with past treatment and other unrealized adjustments to distributable earnings.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Market risk is the exposure to loss due to factors that affect the overall performance of the financial markets such as changes in interest rates, availability of capital, equity prices, real estate values and credit ratings. The primary market risks that we are exposed to are capital markets risk, real estate values, credit risk and interest rate risk.

Capital Markets Risk. We are exposed to the risks related to the equity and debt capital markets and our ability to raise capital or finance our business operations through these markets. As a REIT, we are required to distribute at least 90% of our REIT-taxable income annually, which significantly limits our ability to accumulate operating cash flow and, therefore, requires us to utilize the equity and debt capital markets to finance our business. To mitigate this risk, we monitor both the equity and debt capital markets to make informed decisions on the amount, timing, type and terms of the capital we raise.

Real Estate Values and Credit Risk. Commercial mortgage assets may be viewed as exposing an investor to greater risk of loss than residential mortgage assets since such assets are typically secured by larger loans to fewer obligors than residential mortgage assets. Multifamily and commercial property values, net operating income derived from such properties, and borrowers' credit ratings are subject to volatility and may be negatively affected by a number of factors, including, but not limited to, events such as natural disasters and pandemics, acts of war, terrorism, local economic and/or real estate conditions (such as industry slowdowns, oversupply of real estate space, occupancy rates, construction delays and costs) and other macroeconomic factors beyond our control. The performance and value of our loan and investment and servicing portfolios depend on the borrowers' ability to operate the properties that serve as collateral so that they produce adequate cash flow to pay their loans. We attempt to mitigate these risks through our underwriting and asset management processes. Our asset management team reviews our portfolios consistently and is in regular contact with borrowers to monitor the performance of the collateral and enforce our rights as necessary.

Interest Rate Risk. Interest rate risk is highly sensitive to many factors, including governmental monetary and tax policies, domestic and international economic and political considerations, and other factors beyond our control.

The operating results of our Structured Business depend in large part on differences between the income from our loans and our borrowing costs. Most of our Structured Business loans and borrowings are variable-rate instruments, that are currently based on SOFR as we continue to transition away from LIBOR (collectively referred to as the "Index Rates" below). The objective of this strategy is to minimize the impact of interest rate changes on our net interest income. We also have various fixed rate loans in our portfolio that are financed with variable rate borrowings. Additionally, loans are sometimes extended and, consequently, do not pay off on their original maturity dates. If a loan is extended, our exposure to interest rate risk may be increased. In these instances, we could have a fixed rate loan financed with variable debt with no corresponding hedge, which may result in debt which is unprotected from interest rate risk. Some of our loans and borrowings are subject to interest rate floors. As a result, the impact of a change in interest rates may be different on our interest income than on our interest expense. We have utilized interest rate swaps in the past to limit interest rate risk. Derivatives are used for hedging purposes rather than speculation. We do not enter into financial instruments for trading purposes.

The following table projects the potential impact on interest (in thousands) for a 12-month period, assuming hypothetical instantaneous increases of 50 basis points and 100 basis points in the Index Rates. Since it is unlikely that the Index Rates will decrease in the near future as a result of the current economic environment, we have excluded the impact of decreases in the Index Rates.

	Assets (Liabilities) Subject to Interest Rate Sensitivity (1)	50 Basis Point Increase	100 Basis Point Increase
Interest income from loans and investments	\$ 14,456,123	\$ 69,844	\$ 139,688
Interest expense from debt obligations	(13,277,196)	57,989	115,978
Impact to net interest income (2)		<u>\$ 11,855</u>	<u>\$ 23,710</u>

- (1) Represents the UPB of our loan portfolio and the principal balance of our debt.
- (2) The impact of hypothetical rate changes to net interest income are further benefited by interest income earned on our cash, restricted cash and escrow balances. At December 31, 2022, we had \$2.50 billion of cash, restricted cash and escrows, which is earning interest at a weighted average rate of approximately 3.75%, or approximately \$94 million annually. The interest rates on these balances are not indexed to an Index Rate and are negotiated periodically with each corresponding bank, therefore, the interest rates may not change in conjunction with changes in Index Rates.

We enter into interest rate swaps to hedge our exposure to changes in interest rates inherent in (1) our held-for-sale Agency Business Private Label loans from the time the loans are rate locked until sale and securitization, and (2) our Agency Business SFR – fixed rate loans from the time the loans are originated until the time they can be financed with match term fixed rate securitized debt. Our interest rate swaps are tied to the five-year and ten-year swap rates and hedge our exposure to Private Label loans, until the time they are securitized, and changes in the fair value of our held-for-sale Agency Business SFR – fixed rate loans. A 50 basis point and a 100 basis point increase to the five-year and ten-year swap rates on our interest rate swaps held at December 31, 2022 would have resulted in a gain of \$5.0 million and \$10.0 million, respectively, in 2022, while a 50 basis point and a 100 basis point decrease in the rates would have resulted in a loss of \$5.0 million and \$10.0 million, respectively.

Our Agency Business originates, sells and services a range of multifamily finance products with Fannie Mae, Freddie Mac and HUD. Our loans held-for-sale to these agencies are not currently exposed to interest rate risk during the loan commitment, closing and delivery process. The sale or placement of each loan to an investor is negotiated prior to closing on the loan with the borrower, and the sale or placement is generally effectuated within 60 days of closing. The coupon rate for the loan is set after we establish the interest rate with the investor.

In addition, the fair value of our MSR is subject to market risk since a significant driver of the fair value of these assets is the discount rates. A 100 basis point increase in the weighted average discount rate would decrease the fair value of our MSR by \$18.0 million at December 31, 2022, while a 100 basis point decrease would increase the fair value by \$19.1 million.

Item 8. Financial Statements and Supplementary Data

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All other schedules are omitted because they are not applicable or the required information is shown in the consolidated financial statements or notes thereto.

Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Arbor Realty Trust, Inc. and Subsidiaries

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Arbor Realty Trust, Inc. and Subsidiaries (the Company) as of December 31, 2022 and 2021, the related consolidated statements of income, changes in equity and cash flows for each of the three years in the period ended December 31, 2022, and the related notes and financial statement schedule listed in the Index at Item 15(a) (collectively referred to as the “consolidated financial statements”). In our opinion, based on our audits and the report of other auditors, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2022, in conformity with U.S. generally accepted accounting principles.

We did not audit the financial statements of Wakefield Investment Holdings LLC, a corporation in which the Company has a 25.0% interest. In the consolidated financial statements, the Company’s investment in Wakefield Investment Holdings LLC is stated at \$65.8 million as of December 31, 2021, and the Company’s equity in the net income of Wakefield Investment Holdings LLC is stated at \$34.6 million in 2021 and \$75.7 million in 2020. Those statements were audited by other auditors whose report has been furnished to us, and our opinion, insofar as it relates to the amounts included for Wakefield Investment Holdings LLC, is based solely on the report of the other auditors.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company’s internal control over financial reporting as of December 31, 2022, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) and our report dated February 17, 2023 expressed an unqualified opinion thereon.

Basis for Opinion

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

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

Critical Audit Matters

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

Valuation of Mortgage Servicing Rights

Description of the Matter

The Company's capitalized mortgage servicing rights (MSRs) totaled \$401.5 million and \$422.7 million as of December 31, 2022 and 2021, respectively. As explained in Note 2 to the consolidated financial statements, the Company recognized MSRs at estimated fair value upon the sale of an originated loan when the Company retained the right to service the loan. The MSRs are amortized over the period of net servicing income or loss and are evaluated for impairment based on the fair value at each reporting date. The Company engaged an independent third-party valuation expert to assist in determining the fair value of the MSRs. The fair value estimates for the MSRs primarily utilize discounted cash flow models that incorporate significant assumptions including discount rate and servicing cost.

Auditing the valuation of the MSRs was complex and involved a high degree of subjectivity due to the nature of the assumptions. In particular, the valuation of the MSRs was sensitive to assumptions such as discount rate and servicing cost, which were based on current market data and had a significant effect on the valuation of the MSRs.

How We Addressed the Matter in Our Audit

We obtained an understanding, evaluated the design, and tested the operating effectiveness of internal controls over the MSR valuation process. This included testing controls over management's evaluation of the MSR valuations prepared by the third-party expert and controls over the data inputs and the significant assumptions used in the discounted cash flow models.

We involved our valuation professionals to assist with our procedures. Our audit procedures included, among others, testing the completeness and accuracy of the data provided to management's third-party expert, evaluating the appropriateness of the methodology used to determine the fair value of the MSRs and testing the significant assumptions used in the discounted cash flow models. We utilized information obtained from market participants and recent market activity on other MSR transactions to test management's assumptions and identify potential sources of contrary information.

Allowance for Credit Losses

Description of the Matter

The Company's allowance for credit losses related to structured loans and investments (including unfunded loan commitments) totaled \$132.6 million and \$113.2 million, as of December 31, 2022 and 2021, respectively. The Company's allowance for loss-sharing obligations related to the Fannie Mae DUS program totaled \$22.7 million and \$21.7 million as of December 31, 2022 and 2021, respectively. As explained in Note 2 to the consolidated financial statements, management estimated the allowance for credit losses and allowance for loss-sharing obligations related to the Fannie Mae DUS program for the expected life of the loan using third party models, which consider loss factors determined through the generation of probability of defaults and loss given defaults for similar loans with similar credit, historical experience and current conditions for similar loans, reasonable and supportable forecasts about the future, and specific factors depending on the nature of the loans. For loans experiencing credit deterioration, management may use cash flow models or third-party appraisals to estimate the fair value of the underlying collateral securing the loan and record a specific allowance for credit losses, if impaired.

Auditing management's estimation of credit loss for structured loans and loss-sharing obligations related to the Fannie Mae DUS program was complex and involved a high degree of subjectivity due to the significant uncertainty associated with the assumptions used in the estimation. In particular, the estimation of the allowance for credit losses and allowance for loss-sharing obligations were sensitive to significant assumptions, such as reasonable and supportable forecast periods, and depending on the nature of the loan, debt service coverage ratio, loan-to-value, capitalization rates, and expected life of the loan or contractual period in which the Company is exposed to credit risk.

How We Addressed the Matter in Our Audit

We obtained an understanding, evaluated the design and tested the operating effectiveness of internal controls over the allowance for credit losses process. This included testing internal controls over management's expected credit loss and impaired loan assessments, including testing controls over significant model assumptions and data inputs used in those assessments.

We involved our valuation professionals to assist with our procedures. Our audit procedures included, among others, evaluating the appropriateness of the methodologies used to estimate the allowance for credit losses and loss-sharing obligations, testing the completeness and accuracy of data used in the expected credit loss and cash flow models, and testing the significant assumptions used in the models. We utilized the Company's historical data and information obtained from market participants to test management's assumptions and identify potential sources of contrary information.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 2003.

New York, New York

February 17, 2023

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(\$ in thousands, except share and per share data)

	December 31,	
	2022	2021
Assets:		
Cash and cash equivalents	\$ 534,357	\$ 404,580
Restricted cash	713,808	486,690
Loans and investments, net (allowance for credit losses of \$132,559 and \$113,241)	14,254,674	11,981,048
Loans held-for-sale, net	354,070	1,093,609
Capitalized mortgage servicing rights, net	401,471	422,734
Securities held-to-maturity, net (allowance for credit losses of \$3,153 and \$1,753)	156,547	140,484
Investments in equity affiliates	79,130	89,676
Due from related party	77,419	84,318
Goodwill and other intangible assets	96,069	100,760
Other assets	371,440	269,946
Total assets	\$ 17,038,985	\$ 15,073,845
Liabilities and Equity:		
Credit and repurchase facilities	\$ 3,841,814	\$ 4,481,579
Securitized debt	7,849,270	5,892,810
Senior unsecured notes	1,385,994	1,280,545
Convertible senior unsecured notes, net	280,356	259,385
Junior subordinated notes to subsidiary trust issuing preferred securities	143,128	142,382
Due to related party	12,350	26,570
Due to borrowers	61,237	96,641
Allowance for loss-sharing obligations	57,168	56,064
Other liabilities	335,789	287,885
Total liabilities	13,967,106	12,523,861
Commitments and contingencies (Note 14)		
Equity:		
Arbor Realty Trust, Inc. stockholders' equity:		
Preferred stock, cumulative, redeemable, \$0.01 par value: 100,000,000 shares authorized, shares issued and outstanding by period:	633,684	556,163
Special voting preferred shares - 16,293,589 and 16,325,095 shares		
6.375% Series D - 9,200,000 shares		
6.25% Series E - 5,750,000 shares		
6.25% Series F - 11,342,000 and 8,050,000 shares		
Common stock, \$0.01 par value: 500,000,000 shares authorized - 178,230,522 and 151,362,181 shares issued and outstanding	1,782	1,514
Additional paid-in capital	2,204,481	1,797,913
Retained earnings	97,049	62,532
Total Arbor Realty Trust, Inc. stockholders' equity	2,936,996	2,418,122
Noncontrolling interest	134,883	131,862
Total equity	3,071,879	2,549,984
Total liabilities and equity	\$ 17,038,985	\$ 15,073,845

Note: Our consolidated balance sheets include assets and liabilities of consolidated variable interest entities, or VIEs, as we are the primary beneficiary of these VIEs. At December 31, 2022 and 2021, assets of our consolidated VIEs totaled \$9,785,261 and \$7,144,806, respectively, and the liabilities of our consolidated VIEs totaled \$7,876,024 and \$5,902,623, respectively. See Note 15 for discussion of our VIEs.

See Notes to Consolidated Financial Statements.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF INCOME
(\$ in thousands, except share and per share data)

	Year Ended December 31,		
	2022	2021	2020
Interest income	\$ 948,401	\$ 466,087	\$ 339,465
Interest expense	557,617	212,005	169,216
Net interest income	<u>390,784</u>	<u>254,082</u>	<u>170,249</u>
Other revenue:			
Gain on sales, including fee-based services, net	55,816	123,037	94,607
Mortgage servicing rights	69,346	130,230	165,517
Servicing revenue, net	92,192	74,814	54,385
Property operating income	1,877	185	3,976
Gain (loss) on derivative instruments, net	26,609	(2,684)	(58,335)
Other income, net	(17,563)	7,566	4,109
Total other revenue	<u>228,277</u>	<u>333,148</u>	<u>264,259</u>
Other expenses:			
Employee compensation and benefits	161,825	171,796	144,380
Selling and administrative	53,990	45,575	37,348
Property operating expenses	2,136	718	4,898
Depreciation and amortization	8,732	7,215	7,640
Provision for loss sharing (net of recoveries)	1,862	(6,167)	14,822
Provision for credit losses (net of recoveries)	21,169	(21,113)	61,110
Litigation settlement	7,350	—	—
Total other expenses	<u>257,064</u>	<u>198,024</u>	<u>270,198</u>
Income before extinguishment of debt, sale of real estate, income from equity affiliates and income taxes	361,997	389,206	164,310
Loss on extinguishment of debt	(4,933)	(3,374)	(3,546)
Gain (loss) on sale of real estate	—	3,693	(375)
Income from equity affiliates	14,247	34,567	76,161
Provision for income taxes	(17,484)	(46,285)	(40,393)
Net income	<u>353,827</u>	<u>377,807</u>	<u>196,157</u>
Preferred stock dividends	40,954	21,888	7,554
Net income attributable to noncontrolling interest	28,044	38,507	25,208
Net income attributable to common stockholders	<u>\$ 284,829</u>	<u>\$ 317,412</u>	<u>\$ 163,395</u>
Basic earnings per common share	<u>\$ 1.72</u>	<u>\$ 2.30</u>	<u>\$ 1.44</u>
Diluted earnings per common share	<u>\$ 1.67</u>	<u>\$ 2.28</u>	<u>\$ 1.41</u>
Weighted average shares outstanding:			
Basic	<u>165,355,167</u>	<u>137,830,691</u>	<u>113,811,471</u>
Diluted	<u>199,112,630</u>	<u>156,089,595</u>	<u>133,969,296</u>

See Notes to Consolidated Financial Statements.

ARBOR REALTY TRUST, INC.
CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY
(\$ in thousands, except shares)

	Preferred Stock Shares	Preferred Stock Value	Common Stock Shares	Common Stock Par Value	Additional Paid-in Capital	(Accumulated Deficit) / Retained Earnings	Total Arbor Realty Trust, Inc. Stockholders' Equity	Noncontrolling Interest	Total Equity
Balance — January 1, 2020	24,195,594	\$ 89,501	109,706,214	\$ 1,097	\$ 1,154,932	\$ (85,026)	\$ 1,160,504	\$ 166,916	\$ 1,327,420
Issuance of common stock	—	—	14,790,121	148	183,287	—	183,435	—	183,435
Repurchase of common stock	—	—	(2,285,178)	(23)	(21,508)	—	(21,531)	—	(21,531)
Issuance of common stock from convertible debt	—	—	368,498	4	90	—	94	—	94
Stock-based compensation, net	—	—	601,518	6	2,446	—	2,452	—	2,452
Distributions - common stock	—	—	—	—	—	(141,801)	(141,801)	—	(141,801)
Distributions - preferred stock	—	—	—	—	—	(7,564)	(7,564)	—	(7,564)
Distributions - noncontrolling interest	—	—	—	—	—	—	—	(23,744)	(23,744)
Redemption of OP Units	(2,923,461)	(29)	—	—	(2,138)	—	(2,167)	(30,066)	(32,233)
Net income	—	—	—	—	—	170,949	170,949	25,208	196,157
Balance—December 31, 2020	21,272,133	89,472	123,181,173	1,232	1,317,109	(63,442)	1,344,371	138,314	1,482,685
Issuance of common stock	—	—	29,140,369	291	514,302	—	514,593	—	514,593
Repurchase of common stock	—	—	(1,962,499)	(19)	(34,385)	—	(34,404)	—	(34,404)
Issuance of common stock from convertible debt	—	—	386,459	4	(4)	—	—	—	—
Issuance of Series D preferred stock	9,200,000	222,438	—	—	—	—	222,438	—	222,438
Issuance of Series E preferred stock	5,750,000	138,886	—	—	—	—	138,886	—	138,886
Issuance of Series F preferred stock	8,050,000	194,675	—	—	—	—	194,675	—	194,675
Redemption of preferred stock	(3,711,500)	(89,296)	—	—	—	(3,493)	(92,789)	—	(92,789)
Stock-based compensation, net	—	—	616,679	6	891	—	897	—	897
Distributions - common stock	—	—	—	—	—	(191,423)	(191,423)	—	(191,423)
Distributions - preferred stock	—	—	—	—	—	(18,410)	(18,410)	—	(18,410)
Distributions - noncontrolling interest	—	—	—	—	—	—	—	(23,366)	(23,366)
Redemption of OP Units	(1,235,538)	(12)	—	—	—	—	(12)	(21,593)	(21,605)
Net income	—	—	—	—	—	339,300	339,300	38,507	377,807
Balance—December 31, 2021	39,325,095	556,163	151,362,181	1,514	1,797,913	62,532	2,418,122	131,862	2,549,984
Cummulative-effect adjustment (Note 2)	—	—	—	—	(8,684)	5,612	(3,072)	625	(2,447)
Balance - January 1, 2022 (adjusted for adoption of ASU 2020-06)	39,325,095	556,163	151,362,181	1,514	1,789,229	68,144	2,415,050	132,487	2,547,537
Issuance of common stock	—	—	26,335,788	263	408,472	—	408,735	—	408,735
Issuance of Series F preferred stock	3,292,000	77,522	—	—	—	—	77,522	—	77,522
Stock-based compensation, net	—	—	532,553	5	6,780	—	6,785	—	6,785
Distributions - common stock	—	—	—	—	—	(255,913)	(255,913)	—	(255,913)
Distributions - preferred stock	—	—	—	—	—	(40,965)	(40,965)	—	(40,965)
Distributions - noncontrolling interest	—	—	—	—	—	—	—	(25,103)	(25,103)
Redemption of operating partnership units	(31,506)	(1)	—	—	—	—	(1)	(545)	(546)
Net income	—	—	—	—	—	325,783	325,783	28,044	353,827
Balance—December 31, 2022	42,585,589	\$ 633,684	178,230,522	\$ 1,782	\$ 2,204,481	\$ 97,049	\$ 2,936,996	\$ 134,883	\$ 3,071,879

See Notes to Consolidated Financial Statements.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Year Ended December 31,		
	2022	2021	2020
Operating activities:			
Net income	\$ 353,827	\$ 377,807	\$ 196,157
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	8,732	7,215	7,640
Stock-based compensation	14,973	9,929	9,046
Amortization and accretion of interest and fees, net	(13,547)	(2,487)	2,964
Amortization of capitalized mortgage servicing rights	59,876	58,615	49,222
Originations of loans held-for-sale	(4,788,202)	(6,461,023)	(6,709,375)
Proceeds from sales of loans held-for-sale, net of gain on sale	5,438,623	6,415,169	6,587,728
Mortgage servicing rights	(69,346)	(130,230)	(165,517)
Write-off of capitalized mortgage servicing rights from payoffs	44,502	32,741	16,757
Provision for loss sharing (net of recoveries)	1,862	(6,167)	14,822
Provision for credit losses (net of recoveries)	21,169	(21,113)	61,110
Net (charge-offs) recoveries for loss sharing obligations	(758)	(2,072)	427
Deferred tax (benefit) provision	(1,741)	10,892	4,726
Income from equity affiliates	(14,247)	(34,567)	(76,161)
Distributions from operations of equity affiliates	16,594	32,953	44,579
Loss on extinguishment of debt	4,933	3,374	3,546
Payoffs and paydowns of loans held-for-sale	58,751	2,425	179
Loss on sale of loans	11,180	—	—
Change in fair value of held-for-sale loans	15,703	—	—
Litigation settlement	7,350	—	—
(Gain) loss on real estate	—	(3,693)	375
Changes in operating assets and liabilities	(70,585)	(72,921)	6,940
Net cash provided by operating activities	<u>1,099,649</u>	<u>216,847</u>	<u>55,165</u>
Investing Activities:			
Loans and investments funded, originated and purchased, net	(5,955,061)	(9,209,475)	(2,376,233)
Payoffs and paydowns of loans and investments	3,423,498	2,370,570	1,243,694
Proceeds from sale of loans and investments	397,338	127,700	—
Deferred fees	57,098	72,182	18,766
Contributions to equity affiliates	(17,809)	(48,071)	(892)
Distributions from equity affiliates	26,008	34,283	—
Purchase of securities held-to-maturity, net	(27,598)	(53,511)	(37,926)
Payoffs and paydowns of securities held-to-maturity	19,030	13,317	10,158
Due to borrowers and reserves	(239,626)	(57,249)	(32,925)
Proceeds from sale of available-for-sale securities	—	—	9,995
Investments in real estate, net	—	—	(131)
Proceeds from sale of real estate, net	—	—	8,870
Net cash used in investing activities	<u>(2,317,122)</u>	<u>(6,750,254)</u>	<u>(1,156,624)</u>
Financing activities:			
Proceeds from credit and repurchase facilities	11,536,220	15,688,353	12,986,256
Paydowns and payoffs of credit and repurchase facilities	(12,153,215)	(13,433,376)	(12,428,681)
Proceeds from issuance of securitized debt	2,762,502	4,281,512	668,000
Payoffs and paydowns of securitized debt	(801,141)	(889,150)	(283,125)
Proceeds from issuance of common stock	408,735	514,593	183,585
Proceeds from issuance of preferred stock	77,522	555,999	—
Proceeds from issuance of senior unsecured notes	437,500	625,000	345,750
Payoffs and paydowns of senior unsecured notes	(312,920)	—	—
Redemption of OP Units	(546)	(21,605)	(32,233)
Payments of withholding taxes on net settlement of vested stock	(8,188)	(9,032)	(6,594)
Repurchase of common stock	—	(34,404)	(21,531)
Distributions to stockholders	(321,739)	(227,062)	(173,109)
Payment of deferred financing costs	(50,362)	(56,060)	(18,087)
Redemption of preferred stock	—	(92,789)	—
Extinguishment of convertible senior unsecured notes	—	(14,300)	—
Payoff of debt fund	—	—	(70,000)
Settlements of convertible senior unsecured notes	—	—	(22,336)
Net cash provided by financing activities	<u>1,574,368</u>	<u>6,887,679</u>	<u>1,127,895</u>
Net increase in cash, cash equivalents and restricted cash	<u>356,895</u>	<u>354,272</u>	<u>26,436</u>
Cash, cash equivalents and restricted cash at beginning of period	<u>891,270</u>	<u>536,998</u>	<u>510,562</u>
Cash, cash equivalents and restricted cash at end of period	<u>\$ 1,248,165</u>	<u>\$ 891,270</u>	<u>\$ 536,998</u>

See Notes to Consolidated Financial Statements.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS (continued)
(in thousands)

	Year Ended December 31,		
	2022	2021	2020
Reconciliation of cash, cash equivalents and restricted cash:			
Cash and cash equivalents at beginning of period	\$ 404,580	\$ 339,528	\$ 299,687
Restricted cash at beginning of period	486,690	197,470	210,875
Cash, cash equivalents and restricted cash at beginning of period	<u>\$ 891,270</u>	<u>\$ 536,998</u>	<u>\$ 510,562</u>
Cash and cash equivalents at end of period	\$ 534,357	\$ 404,580	\$ 339,528
Restricted cash at end of period	713,808	486,690	197,470
Cash, cash equivalents and restricted cash at end of period	<u>\$ 1,248,165</u>	<u>\$ 891,270</u>	<u>\$ 536,998</u>
Supplemental cash flow information:			
Cash used to pay interest	\$ 486,826	\$ 175,912	\$ 144,968
Cash used to pay taxes	27,560	37,797	35,282
Supplemental schedule of non-cash investing and financing activities:			
Investment in real estate, net	31,200	—	—
Distributions accrued on preferred stock	7,010	6,767	629
Cummulative-effect adjustment (adoption of convertible debt standard)	2,447	—	—
Loans transferred from loans and investment, net to loans held-for-sale	—	65,144	—
Cummulative-effect adjustment (adoption of credit loss standard)	—	—	28,607
Settlements of convertible senior unsecured notes	—	—	4,778
Fair value of conversion feature of convertible senior unsecured notes	—	—	94
Issuance of common stock from convertible debt	—	—	90

See Notes to Consolidated Financial Statements.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 1 — Description of Business

Arbor is a Maryland corporation formed in 2003. We are a nationwide REIT and direct lender, providing loan origination and servicing for commercial real estate assets. We operate through two business segments: our Structured Business and our Agency Business.

Through our Structured Business, we invest in a diversified portfolio of structured finance assets in the multifamily, SFR and commercial real estate markets, primarily consisting of bridge loans, in addition to mezzanine loans, junior participating interests in first mortgages and preferred and direct equity. We also invest in real estate-related joint ventures and may directly acquire real property and invest in real estate-related notes and certain mortgage-related securities.

Through our Agency Business, we originate, sell and service a range of multifamily finance products through Fannie Mae and Freddie Mac, Ginnie Mae, FHA and HUD. We retain the servicing rights and asset management responsibilities on substantially all loans we originate and sell under the GSE and HUD programs. We are an approved Fannie Mae DUS lender nationally, a Freddie Mac Multifamily Conventional Loan lender, seller/servicer, in New York, New Jersey and Connecticut, a Freddie Mac affordable, manufactured housing, senior housing and SBL lender, seller/servicer, nationally and a HUD MAP and LEAN senior housing/healthcare lender nationally. We also originate and service permanent financing loans underwritten using the guidelines of our existing agency loans sold to the GSEs, which we refer to as “Private Label” loans and originate and sell finance products through CMBS programs. We pool and securitize the Private Label loans and sell certificates in the securitizations to third-party investors, while retaining the servicing rights and the highest risk bottom tranche certificate of the securitization.

Substantially all of our operations are conducted through our operating partnership, ARLP, for which we serve as the indirect general partner, and ARLP’s subsidiaries. We are organized to qualify as a REIT for U.S. federal income tax purposes. A REIT is generally not subject to federal income tax on that portion of its REIT-taxable income that is distributed to its stockholders, provided that at least 90% of taxable income is distributed and provided that certain other requirements are met. Certain of our assets that produce non-qualifying REIT income, primarily within the Agency Business, are operated through TRS entities, which are part of our TRS Consolidated Group and are subject to U.S. federal, state and local income taxes. In general, our TRS entities may hold assets that the REIT cannot hold directly and may engage in real estate or non-real estate -related business.

Note 2 — Basis of Presentation and Significant Accounting Policies

Basis of Presentation

The consolidated financial statements and accompanying notes have been prepared in accordance with GAAP. In our opinion, all adjustments considered necessary for a fair presentation of our financial position, results of operations and cash flows have been included and are of a normal and recurring nature.

Principles of Consolidation

The consolidated financial statements include our financial statements and the financial statements of our wholly owned subsidiaries, partnerships and other joint ventures in which we own a controlling interest, including variable interest entities (“VIEs”) of which we are the primary beneficiary. Entities in which we have a significant influence are accounted for under the equity method. Our VIEs are described in Note 15. All significant intercompany transactions and balances have been eliminated in consolidation.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Use of Estimates

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that could materially affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates. The ongoing effects of the COVID-19 pandemic have caused significant disruptions to the U.S. and global economies. Although vaccine availability and usage have continued to increase, which has led to less negative short-term effects, such as travel bans, quarantines, layoffs and shutdowns, the ongoing longer-term macroeconomic effects on inflation, interest rates, capital markets, labor shortages, property values and global supply chains continue to negatively impact many industries, including the U.S. commercial real estate market. In addition, new strains of COVID-19 continue to emerge, which may cause governments and businesses to re-impose aggressive measures to help slow its spread, making the future impact difficult to predict. The ultimate impact of COVID-19 on the economy, including rising inflation, increasing interest rates, tightening of capital markets and reduced property values, both globally and to our business, makes any estimate or assumption at December 31, 2022 inherently less certain.

Significant Accounting Policies

Cash and Cash Equivalents. All highly liquid investments with original maturities of three months or less are considered to be cash equivalents. We place our cash and cash equivalents in high quality financial institutions. The consolidated account balances at each institution periodically exceed FDIC insurance coverage limits and we believe that this risk is not significant.

Loans, Investments and Securities. Loans held-for-investment are intended to be held-to-maturity and, accordingly, are carried at cost, net of unamortized loan origination costs and fees, loan purchase discounts, and net of the allowance for credit losses. We invest in preferred equity interests that, in some cases, allow us to participate in a percentage of the underlying property's cash flows from operations and proceeds from a sale or refinancing. At the inception of each such investment, we determine whether such investment should be accounted for as a loan, equity interest or as real estate. To date, we have determined that all such investments are properly accounted for and reported as loans.

At the time of purchase, we designate a debt security as available-for-sale, held-to-maturity, or trading depending on our ability and intent for the security. Securities available-for-sale, which is included as a component of other assets in the consolidated balance sheets, is reported at fair value with the fluctuations in fair value recognized through earnings. Held-to-maturity securities are carried at cost net of any unamortized premiums or discounts, which are amortized or accreted over the life of the securities. For securities classified as held-to-maturity, an evaluation is performed as to whether a decline in fair value below the amortized cost basis is other-than-temporary.

The determination of other-than-temporary impairment is a subjective process requiring judgments and assumptions and is not necessarily intended to indicate a permanent decline in value. The process includes, but is not limited to, assessment of recent market events and prospects for near-term recovery, assessment of cash flows, internal review of the underlying assets securing the investments, credit of the issuer and the rating of the security, as well as our ability and intent to hold the investment to maturity. We closely monitor market conditions on which we base such decisions.

Allowance for Credit Losses. We estimate allowances for credit losses on our structured loans and investments (including unfunded loan commitments), loss-sharing obligations related to the Fannie Mae DUS program and our held-to-maturity debt securities under CECL based on current expected credit losses for the life of the loan and investment. Our estimation of credit losses utilizes information obtained from internal and external sources relating to past events, current conditions and reasonable and supportable forecasts about the future. We have licensed a third-party model to assist with the measurement of expected credit losses, which utilizes incurred losses inherent in the portfolio. The loss factors are determined through the generation of probability of defaults and loss given defaults for similar loans with similar credit. These results require a significant amount of judgment applied in selecting inputs and analyzing the results produced by the models to determine the allowance for credit losses. Changes in such estimates can significantly affect our expected credit losses.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Our method for calculating the estimate of expected credit loss considers historical experience and current conditions for similar loans and reasonable and supportable forecasts about the future. The reasonable and supportable forecast period is determined based on our assessment of the most likely scenario of assumptions and plausible outcomes for the U.S. economy, level of historical loss forecast estimates, material changes in growth and credit strategy and other factors that may affect our loss experience. We regularly evaluate the reasonable and supportable forecast period to determine if a change is needed.

Beyond our reasonable and supportable forecast period, we generally revert to historical loss information over the remaining loan/asset period, taken from a period that most accurately reflects the expectation of conditions expected to exist during the period of reversion. We may adjust historical loss information for differences in risk that may not reflect the characteristics of our current portfolio, including, but not limited to, loan-to-value and debt service coverage ratios, among other relevant factors. The method of reversion selected represents the best estimate of the collectability of the investments and is reevaluated each reporting period. We generally expect to use an average historical loss for reversion, utilizing an immediate or straight-line method for the remaining life of the investments.

We also perform a qualitative assessment beyond model estimates and apply qualitative adjustments as necessary. Our qualitative analysis includes a review of data that may directly impact our estimates including internal and external information about the loan or property including current market conditions, asset specific conditions, property operations or borrower/sponsor details (i.e., refinance, sale, bankruptcy) which allows us to determine the amount of the expected loss more accurately and reasonably for these investments. We also evaluate the contractual life of our assets to determine if changes are needed for contractual extension options, renewals, modifications, and prepayments.

To the extent possible, we estimate our allowance for credit losses using a pooling approach for homogeneous assets with similar risk characteristics with the goal of enhancing the precision of their estimate. If particular assets no longer display risk characteristics that are similar to those of the pool, we may decide to revise our pools or perform an individual assessment of expected credit losses. If it is determined that a foreclosure is probable, or we expect repayment through the operation or sale of the collateral and the borrower is experiencing financial difficulty, we calculate expected credit losses based on the fair value of the collateral as of the reporting date.

During the loan review process, if we determine that it is probable that we will be unable to collect all amounts due for both principal and interest according to the contractual terms of a loan, we evaluate whether that loan is impaired. We consider the capitalization and market discount rates, as well as the borrower's operating income and cash flows, in estimating the value of the underlying collateral when determining if a loan is impaired. We may also obtain a third-party appraisal, which may value the collateral through an "as-is" or "stabilized value" methodology. Such appraisals may be used as an additional source of valuation information only and no adjustments are made to appraisals. If, upon completion of the valuation, the fair value of the underlying collateral securing the impaired loan is less than the net carrying value of the loan, we record a specific allowance for credit losses with a corresponding charge to the provision for credit losses and remove the impaired loan from the CECL analysis described above.

If a loan modification constitutes a concession whereas we do not receive ample consideration in return for the modification, and the borrower is experiencing financial difficulties and cannot repay the loan under the current terms, then the modification is considered by us to be a troubled debt restructuring. We record interest on modified loans on an accrual basis to the extent the modified loan is contractually current. The allowance for credit losses on a troubled debt restructuring is measured using the same method as all other loans held for investment.

Charge-offs to the allowance for credit losses occur when losses are confirmed through the receipt of cash or other consideration from the completion of a sale; when a modification or restructuring takes place in which we grant a concession to a borrower or agree to a discount in full or partial satisfaction of the loan; when we take ownership and control of the underlying collateral in full satisfaction of the loan; when loans are reclassified as other investments; or when significant collection efforts have ceased and it is highly likely that a loss has been realized.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Loss on restructured loans is recorded when we have granted a concession to the borrower in the form of principal forgiveness related to the payoff or the substitution or addition of a new debtor for the original borrower or when we incur costs on behalf of the borrower related to the modification, payoff or the substitution or addition of a new debtor for the original borrower. When a loan is restructured, we record our investment at net realizable value, taking into account the cost of all concessions at the date of restructuring. In addition, a gain or loss may be recorded upon the sale of a loan to a third-party in the consolidated statements of income in the period in which the loan was sold.

Loans Held-for-Sale, Net. Loans held-for-sale, net represents our Agency Business commercial real estate loans originated and sold under the GSE and HUD programs, which are generally transferred or sold within 60 days of loan origination, as well as our Private Label loans, which are generally sold and securitized within 180 days of loan origination. Such loans are reported at the lower of cost or market on an aggregate basis and include the value allocated to the associated future MSR. During the period prior to its sale, interest income on a loan held-for-sale is calculated in accordance with the terms of the individual loan and the loan origination fees and direct loan origination costs are deferred until the loan is sold. All of our held-for-sale loans are financed with matched borrowings from credit facilities contracted to finance such loans. Interest income and expense are earned or incurred after a loan is closed and before a loan is sold.

Transfers of financial assets are accounted for as sales when control over the assets has been surrendered. Control over transferred assets is deemed to be surrendered when (1) the assets have been isolated, put presumptively beyond the reach of the entity, even in bankruptcy, (2) the transferee (or if the transferee is an entity whose sole purpose is to engage in securitization and the entity is constrained from pledging or exchanging the assets it receives, each third-party holder of its beneficial interests) has the right to pledge or exchange the transferred financial assets, and (3) we or our agents do not maintain effective control over the transferred financial assets or third-party beneficial interest related to those transferred assets through an agreement to repurchase them before their maturity. We have determined that all loans sold have met these specific conditions and account for all transfers of mortgage loans as completed sales.

Allowance for Loss-Sharing Obligations. When a loan is sold under the Fannie Mae DUS program, we undertake an obligation to partially guarantee the performance of the loan. Generally, we are responsible for losses equal to the first 5% of the UPB and a portion of any additional losses to an overall maximum of 20% of the original principal balance. Fannie Mae bears any remaining loss. In addition, under the terms of the master loss-sharing agreement with Fannie Mae, we are responsible for funding 100% of mortgage delinquencies (principal and interest) and servicing advances (taxes, insurance and foreclosure costs) until the amounts advanced exceed 5% of the UPB at the date of default. Thereafter, we may request interim loss-sharing adjustments which allow us to fund 25% of such advances until final settlement.

At inception, a liability for the fair value of the obligation undertaken in issuing the guaranty is recognized. In determining the fair value of the guaranty obligation, we consider the risk profile of the collateral and the historical loss experience in our portfolio. The guaranty obligation is removed only upon either the expiration or settlement of the guaranty.

We evaluate the allowance for loss-sharing obligations by monitoring the performance of each loss-sharing loan for events or conditions that may signal a potential default. Historically, initial loss recognition occurs at or before a loan becomes 60 days delinquent. In instances where payment under the guaranty on a loan is determined to be probable and estimable (as the loan is probable of, or is, in foreclosure), we record a liability for the estimated allowance for loss-sharing (a “specific reserve”) by transferring the guarantee obligation recorded on the loan to the specific reserve with any adjustments to this reserve amount recorded in provision for loss sharing in the statements of income. The amount of the allowance considers our assessment of the likelihood of repayment by the borrower or key principal(s), the risk characteristics of the loan, the loan’s risk rating, historical loss experience, adverse situations affecting individual loans, the estimated disposition value of the underlying collateral, and the level of risk sharing. We regularly monitor the specific reserves and update loss estimates as current information is received.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Capitalized Mortgage Servicing Rights. We recognize, as separate assets, rights to service mortgage loans for others, including such rights from our origination of mortgage loans sold with the servicing rights retained, as well as rights associated with acquired MSR. Income from MSR related to loans we originate are recognized when we record a derivative asset upon the commitment to originate a loan with a borrower and sell the loan to an investor. This commitment asset is recognized at fair value based on the discounted expected net cash flows associated with the servicing of the loan. When a mortgage loan we originate is sold, we retain the right to service the loan and recognize the MSR at the initial capitalized valuation. We amortize our MSR using the amortization method, which requires the MSR to be amortized over the period of estimated net servicing income or loss and that the servicing assets or liabilities be assessed for impairment, or increased obligation, based on the fair value at each reporting date. Amortization of MSR is recorded as a reduction of servicing revenues, net in the consolidated statements of income. The following assumptions were used in calculating the fair value of our MSR for the periods presented:

Key rates: We used discount rates ranging from 8% to 13%, representing a weighted average discount rate of 12%, based on our best estimate of market discount rates to determine the present value of MSR.

Servicing Cost: A market participant's estimated future cost to service the loan for the estimated life of the MSR is subtracted from the estimated future cash flows.

Estimated Life: We estimate the life of our MSR based upon the stated yield maintenance and/or prepayment protection term of the underlying loan and are reduced using prepayment rates that consider the note rate of the loan and the expiration of various types of prepayment penalty and/or lockout provisions prior to that stated maturity date.

MSR are initially recorded at fair value and are carried at amortized cost. The fair value of MSR from loans we originate and sell are estimated considering market prices for similar MSR, when available, and by estimating the present value of the future net cash flows of the capitalized MSR, net of adequate compensation for servicing. Adequate compensation is based on the market rate of similar servicing contracts. The fair value of MSR acquired approximate the purchase price paid.

We evaluate the MSR portfolio for impairment on a quarterly basis based on the difference between the aggregate carrying amount of the MSR and their aggregate fair value. We engage an independent third-party valuation expert to assist in determining an estimated fair value of our MSR portfolio on a quarterly basis. For purposes of impairment evaluation, the MSR are stratified based on predominant risk characteristics of the underlying loans, which we have identified as loan type, note rate and yield maintenance provisions. To the extent that the carrying value of the MSR exceeds fair value, a valuation allowance is established.

We record write-offs of MSR related to loans that were repaid prior to their expected maturity and loans that have defaulted and determined to be unrecoverable. When this occurs, the write-off is recorded as a direct write-down to the carrying value of MSR and is included as a component of servicing revenue, net in the consolidated statements of income. This direct write-down permanently reduces the carrying value of the MSR, precluding recognition of subsequent recoveries. For loans that payoff prior to maturity, we may collect a prepayment fee which is included as a component of servicing revenue, net.

Investments in Equity Affiliates. We invest in joint ventures that are formed to invest in real estate related assets or businesses. These joint ventures are not majority owned or controlled by us or are VIEs for which we are not the primary beneficiary, and are not consolidated in our financial statements. These investments are recorded under either the equity or cost method of accounting as deemed appropriate. We evaluate these investments for impairment whenever events or changes in circumstances indicate that the carrying amounts of such investments may not be recoverable. We recognize an impairment loss if the estimated fair value of the investment is less than its carrying amount and we determine that the impairment is other-than-temporary. We record our share of the net income and losses from the underlying properties of our equity method investments and any other-than-temporary impairment on these investments as income or losses from equity affiliates in the consolidated statements of income.

Goodwill and Other Intangible Assets. Significant judgement is required to estimate the fair value of intangible assets and in assigning their estimated useful lives. Accordingly, we typically seek the assistance of independent third-party valuation specialists for significant intangible assets. The fair value estimates are based on available historical information and on future expectations and assumptions we deem reasonable.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

We generally use an income-based valuation method to estimate the fair value of intangible assets, which discounts expected future cash flows to present value using estimates and assumptions we deem reasonable.

Determining the estimated useful lives of intangible assets also requires judgment. Certain intangible assets, such as GSE licenses, have been deemed to have indefinite lives while other intangible assets, such as broker and borrower relationships and above/below market rent have been deemed to have finite lives. Our assessment as to which intangible assets are deemed to have finite or indefinite lives is based on several factors including economic barriers of entry for the acquired product lines, scarcity of available GSE licenses, retention trends and our operating plans, among other factors.

Goodwill and indefinite-lived intangible assets are not amortized, while finite-lived intangible assets are amortized over their estimated useful lives on a straight-line basis. Indefinite-lived intangible assets, including goodwill, are tested for impairment whenever events or changes in circumstances indicate that the carrying value of such assets may not be recoverable. In addition, with respect to goodwill, an impairment analysis is performed at least annually. We have elected to make the first day of our fiscal fourth quarter the annual impairment assessment date for goodwill. We first assess qualitative factors to determine whether it is more likely than not that the fair value is less than the carrying value. If, based on that assessment, we believe it is more likely than not that the fair value is less than the carrying value, then a two-step goodwill impairment test is performed. Based on the impairment analysis performed as of October 1, 2022, there were no indicators that the indefinite-lived intangible assets, including goodwill, were impaired and there were no events or changes in circumstances indicating impairment at December 31, 2022.

Real Estate Owned and Held-For-Sale. Real estate acquired is recorded at its estimated fair value at acquisition and is shown net of accumulated depreciation and impairment charges. Costs incurred in connection with the acquisition of a property are capitalized. Real estate acquired is recorded in other assets on our consolidated balance sheets.

We allocate the purchase price of our real estate acquisitions to land, building, tenant improvements, origination asset of the in-place leases, intangibles for the value of any above or below market leases at fair value and to any other identified intangible assets or liabilities. We amortize the value allocated to in-place leases over the remaining lease term, which is reported in depreciation and amortization expense on our consolidated statements of income. The value allocated to above or below market leases are amortized over the remaining lease term as an adjustment to rental income.

Real estate assets are depreciated using the straight-line method over their estimated useful lives. Ordinary repairs and maintenance which are not reimbursed by the tenants are expensed as incurred. Major replacements and betterments which improve or extend the life of the asset are capitalized and depreciated over their estimated useful life.

Our properties are reviewed for impairment each quarter if events or circumstances change indicating that the carrying amount of an asset may not be recoverable. We recognize impairment if the undiscounted estimated cash flows to be generated by an asset is less than the carrying amount of such asset. Measurement of impairment is based on the asset's estimated fair value. In evaluating for impairment, many factors are considered, including estimated current and expected operating cash flows from the property during the projected holding period, costs necessary to extend the life or improve the asset, expected capitalization rates, projected stabilized net operating income, selling costs, and the ability to hold and dispose of the asset in the ordinary course of business. Impairment charges may be necessary in the event discount rates, capitalization rates, lease-up periods, future economic conditions, and other relevant factors vary significantly from those assumed in valuing the property.

Real estate is classified as held-for-sale when we commit to a plan of sale, the asset is available for immediate sale, there is an active program to locate a buyer, and it is probable the sale will be completed within one year. Real estate assets that are expected to be disposed of are valued at the lower of the asset's carrying amount or its fair value less costs to sell.

We recognize sales of real estate properties upon closing. Payments received from purchasers prior to closing are recorded as deposits. Gain on real estate sold is recognized when the collectability of the sale price is reasonably assured, we are not obligated to perform significant activities after the sale and when control of the asset transfers to the buyer. A gain may be deferred in whole or in part until collectability of the sales price is reasonably assured and the earnings process is complete.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Hedging Activities and Derivatives. We measure derivative instruments at fair value and record them as assets or liabilities. Fair value adjustments will affect either accumulated other comprehensive income until the hedged item is recognized in earnings, or net income depending on whether the derivative instrument qualifies as a hedge for accounting purposes and, if so, the nature of the hedging activity. We use derivatives for hedging purposes rather than trading or speculation. Fair values are estimated based on current market data from financial sources that trade such instruments and are based on prevailing market data and derived from third-party proprietary models based on well recognized financial principles and reasonable estimates about relevant future market conditions.

The accounting for changes in the fair value of derivatives depends on the intended use of the derivative, whether we have elected to designate a derivative in a hedging relationship and apply hedge accounting and whether the hedging relationship has satisfied the criteria necessary to apply hedge accounting. Derivatives designated and qualifying as a hedge of the exposure to changes in the fair value of an asset, liability, or firm commitment attributable to a particular risk, such as interest rate risk, are considered fair value hedges. Derivatives designated and qualifying as a hedge of the exposure to variability in expected future cash flows, or other types of forecasted transactions, are considered cash flow hedges. Hedge accounting generally provides for the matching of the timing of gain or loss recognition on the hedging instrument with the recognition of the changes in the fair value of the hedged asset or liability that are attributable to the hedged risk in a fair value hedge or the earnings effect of the hedged forecasted transactions in a cash flow hedge. These derivative instruments must be effective in reducing risk exposure to qualify for hedge accounting. When the terms of an underlying transaction are modified, or when the underlying hedged item ceases to exist, all changes in the fair value of the instrument are marked-to-market with changes in value included in net income for each period until the derivative instrument matures or is settled. Any derivative instrument used for risk management that does not meet the hedging criteria is marked-to-market with the changes in value included in earnings. In cases where a derivative instrument is terminated early, any gain or loss is generally amortized over the remaining life of the hedged item. We may also enter into derivative contracts that are intended to economically hedge certain risks, even though hedge accounting does not apply, or we elect not to apply hedge accounting. The ineffective portion of a derivative's change in fair value is recognized immediately in earnings.

In connection with our interest rate risk management, we may hedge a portion of our interest rate risk by entering into derivative instrument contracts to manage differences in the amount, timing, and duration of our expected cash receipts and our expected cash payments principally related to our investments and borrowings. Our objectives in using interest rate derivatives are to add stability to interest income and to manage our exposure to interest rate movements. To accomplish this objective, we have used, and may again in the future, use interest rate swaps as part of our interest rate risk management strategy. Interest rate swaps designated as cash flow hedges involve the receipt of variable-rate amounts from a counterparty in exchange for us making fixed-rate payments over the life of the agreements without exchange of the underlying notional amount.

Our rate lock and forward sales commitments associated with the Agency Business meet the definition of a derivative and are recorded at fair value. The estimated fair value of rate lock commitments includes the effects of interest rate movements as well as the fair value of the expected net cash flows associated with the servicing of the loan which is recorded as income from MSR in the consolidated statements of income. The estimated fair value of forward sale commitments includes the effects of interest rate movements between the trade date and balance sheet date.

Our Swaps associated with (1) our held-for-sale Agency Business Private Label loans, and (2) our Structured Business SFR loans, do not meet the criteria for hedge accounting and are tied to the five-year and ten-year swap rates. Our Swaps are cleared by a central clearing house and variation margin payments (made in cash) are treated as a legal settlement of the derivative itself, as opposed to a pledge of collateral. Realized and unrealized gains and losses related to our Swaps are recorded through earnings.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Revenue Recognition. Interest income is recognized on the accrual basis as it is earned. In certain instances, the borrower pays an additional amount of interest at the time the loan is closed, an origination fee, a prepayment fee and/or deferred interest upon maturity. In some cases, interest income may also include the amortization or accretion of premiums and discounts arising from the purchase or origination of the loan or security. This additional income, net of any direct loan origination costs incurred, is deferred and accreted into interest income on an effective yield or “interest” method adjusted for actual prepayment activity over the life of the related loan or security as a yield adjustment. Income recognition is suspended for loans when, in our opinion, a full recovery of all contractual principal and/or interest is not probable. Income recognition is resumed when the loan becomes contractually current, and performance is resumed. We record interest income on certain impaired loans to the extent cash is received, as the borrower continues to make interest payments. We record loan loss reserves related to these loans when it is deemed that full recovery of principal and accrued interest is not probable.

Several of our loans provide for accrual of interest at specified rates, which differ from current payment terms. Interest is recognized on such loans at the accrual rate subject to our determination that accrued interest and outstanding principal are ultimately collectible, based on the underlying collateral and operations of the asset. If we cannot make this determination, interest income above the current pay rate is recognized only upon actual receipt.

Given the transitional nature of some of our real estate loans, we may require funds to be placed into an interest reserve, based on contractual requirements, to cover debt service costs. We will analyze these interest reserves on a periodic basis and determine if any additional interest reserves are needed. Recognition of income on loans with funded interest reserves are accounted for in the same manner as loans without funded interest reserves. We do not recognize interest income on loans in which the borrower has failed to make the contractual interest payment due or has not replenished the interest reserve account. Income from non-performing loans is generally recognized on a cash basis only to the extent it is received. Full income recognition will resume when the loan becomes contractually current, and performance has recommenced.

Additionally, interest income is recorded when earned from equity participation interests, referred to as equity kickers. These equity kickers have the potential to generate additional revenues to us as a result of excess cash flow distributions and/or as appreciated properties are sold or refinanced.

Gain on sales, including fee-based services, net — Gain on sales, including fee-based services, net includes commitment fees, broker fees, loan assumption fees, loan origination fees and gains on sale of loans of our Agency Business. In some instances, the borrower pays an additional amount of interest at the time the loan is closed, an origination fee, net of any direct loan origination costs incurred, which is recognized upon the sale of the loan. Revenue recognition occurs when the related services are performed, unless significant contingencies exist, and for the sale of loans, when all the incidence of ownership passes to the buyer. Interest income is recognized on the accrual basis as it is earned from loans held-for-sale.

Property operating income — Property operating income represents income associated with the operations of commercial real estate properties classified as real estate owned and included in other assets on our consolidated balance sheets. We recognize revenue for these activities when the fees are fixed or determinable, or are evidenced by an arrangement, collection is reasonably assured and the services under the arrangement have been provided.

Other income, net — Other income, net represents loan structuring, modification and defeasance, as well as broker fees and miscellaneous asset management fees associated with our loan and investment portfolio. We recognize these forms of income when the fees are fixed or determinable, are evidenced by an arrangement, collection is reasonably assured and the services under the arrangement have been provided.

Leases. We determine if an arrangement is a lease at inception. Our right to use an underlying asset for the lease term is recorded as an operating lease right-of-use (“ROU”) asset and our obligation to make lease payments arising from the lease is recorded as a lease liability. Operating lease ROU assets and lease liabilities are included in other assets and other liabilities, respectively, in our consolidated balance sheets. Operating lease ROU assets and liabilities are recognized at commencement date based on the present value of lease payments over the lease term. Our leases do not provide an implicit rate; therefore, we use our incremental borrowing rate in determining the present value of lease payments. Our lease terms may include options to extend or terminate the lease when it is reasonably certain that we will exercise that option. Lease expense for lease payments is recognized on a straight-line basis over the lease term. Leases with an initial term of twelve months or less are expensed as incurred.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Stock-Based Compensation. We grant stock awards to certain of our employees and directors, consisting of shares of our common stock that vest immediately or annually over a multi-year period, subject to the recipient's continued service to us. We record stock-based compensation expense at the grant date fair value of the related stock-based award at the grant date (for the portion that vests immediately) or ratably over the respective vesting periods. Dividends are paid on restricted stock as dividends are paid on shares of our common stock whether or not they are vested. Stock-based compensation is disclosed in our consolidated statements of income under "employee compensation and benefits" for employees and under "selling and administrative" expense for non-employees and the Board of Directors.

Income Taxes. We organize and conduct our operations to qualify as a REIT and to comply with the provisions of the Internal Revenue Code with respect thereto. A REIT is generally not subject to federal income tax on its REIT-taxable income that is distributed to its stockholders, provided that at least 90% of its REIT-taxable income is distributed and provided that certain other requirements are met. Certain REIT income may be subject to state and local income taxes.

The Agency Business mainly operates through a TRS, which is a part of our TRS Consolidated Group and is subject to U.S. federal, state and local income taxes. In general, our TRS entities may hold assets that the REIT cannot hold directly and may engage in real estate or non-real estate-related business. Current and deferred taxes are recorded on the portion of earnings (losses) recognized by us with respect to our interest in TRSs. Deferred income tax assets and liabilities are calculated based on temporary differences between our GAAP consolidated financial statements and the federal, state, local tax basis of assets and liabilities as of the consolidated balance sheets. We evaluate the realizability of our deferred tax assets (e.g., net operating loss and capital loss carryforwards) and recognize a valuation allowance if, based on the available evidence, it is more likely than not that some portion or all our deferred tax assets will not be realized. When evaluating the realizability of our deferred tax assets, we consider estimates of expected future taxable income, existing and projected book/tax differences, tax planning strategies available and the general and industry specific economic outlook.

We periodically evaluate tax positions to determine whether it is more likely than not that such positions would be sustained upon examination by a tax authority for all open tax years, as defined by the statute of limitations, based on their technical merits. We report interest and penalties related to tax uncertainties as a component of the income tax provision.

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

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Recently Adopted Accounting Pronouncements

Description	Adoption Date	Effect on Financial Statements
In August 2020, the FASB issued Accounting Standards Update (“ASU”) 2020-06, Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity’s Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity’s Own Equity (“ASU 2020-06”). Upon adoption of this guidance, convertible debt proceeds will no longer be allocated between debt and equity components, reducing the unamortized debt discount and lowering interest expense. This guidance also changes the method used to calculate diluted EPS when an instrument may be settled in cash or shares, if the effect is dilutive.	First quarter of 2022	We adopted this guidance on January 1, 2022 using the modified retrospective method of transition. Upon adoption, we reclassified the remaining equity component from equity to our convertible senior unsecured notes liability and ceased amortization of the debt discount through interest expense. Additionally, this guidance and the adoption method chosen requires the use of the if-converted method for the diluted net income per share calculation for our convertible instruments on a retrospective basis, regardless of our settlement intent. The adoption of this guidance resulted in a \$2.5 million increase to the carrying value of our convertible debt, an \$8.7 million decrease to additional paid-in capital and a \$5.6 million increase to retained earnings at January 1, 2022. Additionally, the adoption of this guidance reduced our diluted EPS for the year ended December 31, 2022 by \$0.05 per share, mainly due to the assumption that we will redeem the principal balance with common stock.

Recently Issued Accounting Pronouncements

Description	Effective Date	Effect on Financial Statements
In March 2022, the FASB issued ASU 2022-02, Financial Instruments—Credit Losses (Topic 326): Troubled Debt Restructurings and Vintage Disclosures. This guidance eliminates the accounting guidance on troubled debt restructurings and amends existing disclosures, including the requirement to disclose current period gross write-offs by year of origination. The guidance also updates the requirements related to accounting for credit losses and adds enhanced disclosures for creditors with respect to loan refinancings and restructurings for borrowers experiencing financial difficulty.	First quarter of 2023, with early adoption permitted	We have not early adopted this guidance and will make all the necessary additional disclosure requirements once adopted. The adoption of this guidance is not expected to have a material impact on our consolidated financial statements.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Note 3 — Loans and Investments

Our Structured Business loan and investment portfolio consists of (\$ in thousands):

	December 31, 2022	Percent of Total	Loan Count	Wtd. Avg. Pay Rate (1)	Wtd. Avg. Remaining Months to Maturity	Wtd. Avg. First Dollar LTV Ratio (2)	Wtd. Avg. Last Dollar LTV Ratio (3)
Bridge loans (4)	\$ 14,096,054	98 %	692	8.17 %	19.8	0 %	76 %
Mezzanine loans	213,499	1 %	44	8.13 %	63.1	42 %	77 %
Preferred equity investments	110,725	1 %	8	7.63 %	39.2	46 %	79 %
Other loans (5)	35,845	<1 %	3	8.76 %	32.8	0 %	58 %
	<u>14,456,123</u>	<u>100 %</u>	<u>747</u>	<u>8.17 %</u>	<u>20.6</u>	<u>1 %</u>	<u>76 %</u>
Allowance for credit losses	(132,559)						
Unearned revenue	(68,890)						
Loans and investments, net	<u>\$ 14,254,674</u>						
	December 31, 2021						
Bridge loans (4)	\$ 11,750,710	97 %	528	4.19 %	23.8	0 %	76 %
Mezzanine loans	223,378	2 %	39	7.32 %	56.3	34 %	84 %
Preferred equity investments	155,513	1 %	11	5.57 %	38.0	58 %	87 %
Other loans (5)	29,394	<1 %	2	4.63 %	48.1	0 %	67 %
	<u>12,158,995</u>	<u>100 %</u>	<u>580</u>	<u>4.26 %</u>	<u>24.6</u>	<u>1 %</u>	<u>76 %</u>
Allowance for credit losses	(113,241)						
Unearned revenue	(64,706)						
Loans and investments, net	<u>\$ 11,981,048</u>						

- (1) “Weighted Average Pay Rate” is a weighted average, based on the UPB of each loan in our portfolio, of the interest rate required to be paid monthly as stated in the individual loan agreements. Certain loans and investments that require an accrual rate to be paid at maturity are not included in the weighted average pay rate as shown in the table.
- (2) The “First Dollar Loan-to-Value (“LTV”) Ratio” is calculated by comparing the total of our senior most dollar and all senior lien positions within the capital stack to the fair value of the underlying collateral to determine the point at which we will absorb a total loss of our position.
- (3) The “Last Dollar LTV Ratio” is calculated by comparing the total of the carrying value of our loan and all senior lien positions within the capital stack to the fair value of the underlying collateral to determine the point at which we will initially absorb a loss.
- (4) At December 31, 2022 and 2021, bridge loans included 241 and 120, respectively, of SFR loans with a total gross loan commitment of \$1.57 billion and \$804.6 million, respectively, of which \$927.4 million and \$408.2 million, respectively, was funded.
- (5) At December 31, 2022 and 2021, other loans included 3 and 2 variable rate SFR permanent loans, respectively.

Concentration of Credit Risk

We are subject to concentration risk in that, at December 31, 2022, the UPB related to 38 loans with five different borrowers represented 11% of total assets. At December 31, 2021, the UPB related to 31 loans with five different borrowers represented 11% of total assets. During both 2022 and 2021, no single loan or investment represented more than 10% of our total assets and no single investor group generated over 10% of our revenue. See Note 18 for details on our concentration of related party loans and investments.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

We assign a credit risk rating of pass, pass/watch, special mention, substandard or doubtful to each loan and investment, with a pass rating being the lowest risk and a doubtful rating being the highest risk. Each credit risk rating has benchmark guidelines that pertain to debt-service coverage ratios, LTV ratios, borrower strength, asset quality, and funded cash reserves. Other factors such as guarantees, market strength, and remaining loan term and borrower equity are also reviewed and factored into determining the credit risk rating assigned to each loan. This metric provides a helpful snapshot of portfolio quality and credit risk. All portfolio assets are subject to, at a minimum, a thorough quarterly financial evaluation in which historical operating performance and forward-looking projections are reviewed, however, we maintain a higher level of scrutiny and focus on loans that we consider “high risk” and that possess deteriorating credit quality.

Generally speaking, given our typical loan profile, risk ratings of pass, pass/watch and special mention suggest that we expect the loan to make both principal and interest payments according to the contractual terms of the loan agreement. A risk rating of substandard indicates we anticipate the loan may require a modification of some kind. A risk rating of doubtful indicates we expect the loan to underperform over its term, and there could be loss of interest and/or principal. Further, while the above are the primary guidelines used in determining a certain risk rating, subjective items such as borrower strength, market strength or asset quality may result in a rating that is higher or lower than might be indicated by any risk rating matrix.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

A summary of the loan portfolio's internal risk ratings and LTV ratios by asset class at December 31, 2022 is as follows (\$ in thousands):

Asset Class / Risk Rating	UPB by Origination Year					Prior	Total	Wtd. Avg. First Dollar LTV Ratio	Wtd. Avg. Last Dollar LTV Ratio
	2022	2021	2020	2019	2018				
Multifamily:									
Pass	\$ 468,655	\$ 744,231	\$ 10,135	\$ —	\$ —	\$ 20,300	\$ 1,243,321		
Pass/Watch	3,163,624	3,385,114	523,057	335,573	41,650	—	7,449,018		
Special Mention	1,193,665	2,843,508	34,575	7,285	—	7,594	4,086,627		
Substandard	—	255,779	26,700	22,975	32,500	—	337,954		
Total Multifamily	\$ 4,825,944	\$ 7,228,632	\$ 594,467	\$ 365,833	\$ 74,150	\$ 27,894	\$ 13,116,920	1 %	77 %
Single-Family Rental:									
							Percentage of portfolio	91 %	
Pass	\$ 18,113	\$ 34,871	\$ 3,118	\$ —	\$ —	\$ —	\$ 56,102		
Pass/Watch	428,000	272,356	99,615	20,965	—	—	820,936		
Special Mention	18,344	37,978	29,858	—	—	—	86,180		
Total Single-Family Rental	\$ 464,457	\$ 345,205	\$ 132,591	\$ 20,965	\$ —	\$ —	\$ 963,218	0 %	64 %
Land:									
							Percentage of portfolio	7 %	
Special Mention	\$ —	\$ —	\$ 8,100	\$ —	\$ —	\$ —	\$ 8,100		
Substandard	—	—	—	—	—	—	127,928		
Total Land	\$ —	\$ —	\$ 8,100	\$ —	\$ —	\$ —	\$ 127,928	0 %	97 %
Office:									
							Percentage of portfolio	1 %	
Pass/Watch	\$ —	\$ —	\$ 35,410	\$ —	\$ —	\$ —	\$ 35,410		
Special Mention	—	—	—	—	44,625	—	44,625		
Total Office	\$ —	\$ —	\$ 35,410	\$ —	\$ 44,625	\$ —	\$ 80,035	0 %	88 %
Healthcare:									
							Percentage of portfolio	1 %	
Pass/Watch	\$ —	\$ —	\$ —	\$ 51,069	\$ —	\$ —	\$ 51,069		
Special Mention	—	—	—	14,558	—	—	14,558		
Total Healthcare	\$ —	\$ —	\$ —	\$ 65,627	\$ —	\$ —	\$ 65,627	0 %	70 %
Hotel:									
							Percentage of portfolio	<1 %	
Pass	\$ —	\$ —	\$ —	\$ 40,850	\$ —	\$ —	\$ 40,850		
Total Hotel	\$ —	\$ —	\$ —	\$ 40,850	\$ —	\$ —	\$ 40,850	0 %	70 %
Retail:									
							Percentage of portfolio	<1 %	
Pass	\$ —	\$ —	\$ —	\$ 4,000	\$ —	\$ —	\$ 4,000		
Substandard	—	—	—	—	18,600	3,445	22,045		
Total Retail	\$ —	\$ —	\$ —	\$ 4,000	\$ 18,600	\$ 3,445	\$ 26,045	12 %	71 %
Student Housing:									
							Percentage of portfolio	<1 %	
Pass/Watch	\$ —	\$ 25,700	\$ —	\$ —	\$ —	\$ —	\$ 25,700		
Total Student Housing	\$ —	\$ 25,700	\$ —	\$ —	\$ —	\$ —	\$ 25,700	0 %	69 %
Other:									
							Percentage of portfolio	<1 %	
Doubtful	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 1,700	\$ 1,700		
Total Other	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 1,700	\$ 1,700	63 %	63 %
							Percentage of portfolio	<1 %	
Grand Total	\$ 5,290,401	\$ 7,599,537	\$ 770,568	\$ 497,275	\$ 137,375	\$ 160,967	\$ 14,456,123	1 %	76 %

Geographic Concentration Risk

At December 31, 2022, underlying properties in Texas and Florida represented 22% and 14%, respectively, of the outstanding balance of our loan and investment portfolio. At December 31, 2021, underlying properties in Texas and Florida represented 19% and 12%, respectively, of the outstanding balance of our loan and investment portfolio. No other state represented 10% or more of the total loan and investment portfolio.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Allowance for Credit Losses

A summary of the changes in the allowance for credit losses is as follows (in thousands):

	Year Ended December 31, 2022								
	Land	Multifamily	Office	Retail	Student Housing	Healthcare	Hotel	Other	Total
Allowance for credit losses:									
Beginning balance	\$ 77,970	\$ 18,707	\$ 8,073	\$ 5,819	\$ 636	\$ 8	\$ 8	\$ 2,020	\$ 113,241
Provision for credit losses (net of recoveries)	98	19,254	89	—	(598)	8	6	461	19,318
Ending balance	<u>\$ 78,068</u>	<u>\$ 37,961</u>	<u>\$ 8,162</u>	<u>\$ 5,819</u>	<u>\$ 38</u>	<u>\$ 16</u>	<u>\$ 14</u>	<u>\$ 2,481</u>	<u>\$ 132,559</u>
	Year Ended December 31, 2021								
Allowance for credit losses:									
Beginning balance	\$ 78,150	\$ 36,468	\$ 1,846	\$ 13,861	\$ 4,078	\$ 3,880	\$ 7,759	\$ 2,287	\$ 148,329
Provision for credit losses (net of recoveries)	(180)	(17,761)	6,227	(42)	(3,442)	(1,099)	(7,751)	(267)	(24,315)
Charge-offs	—	—	—	(8,000)	—	(2,773)	—	—	(10,773)
Ending balance	<u>\$ 77,970</u>	<u>\$ 18,707</u>	<u>\$ 8,073</u>	<u>\$ 5,819</u>	<u>\$ 636</u>	<u>\$ 8</u>	<u>\$ 8</u>	<u>\$ 2,020</u>	<u>\$ 113,241</u>
	Year Ended December 31, 2020								
Allowance for credit losses:									
Beginning balance, prior to adoption of CECL	\$ 67,869	\$ —	\$ 1,500	\$ —	\$ —	\$ —	\$ —	\$ 1,700	\$ 71,069
Impact of adopting CECL - January 1, 2020	77	16,322	287	335	68	64	29	112	17,294
Provision for credit losses (net of recoveries)	10,204	20,146	59	13,526	4,010	3,816	7,730	475	59,966
Ending balance	<u>\$ 78,150</u>	<u>\$ 36,468</u>	<u>\$ 1,846</u>	<u>\$ 13,861</u>	<u>\$ 4,078</u>	<u>\$ 3,880</u>	<u>\$ 7,759</u>	<u>\$ 2,287</u>	<u>\$ 148,329</u>

During 2022, we recorded a \$19.3 million provision for credit losses, which was net of a \$1.5 million loan loss recovery for a loan that paid off during 2022. The increase in the provision for credit losses during 2022 was primarily attributable to an increase in our loans and investments balance as a result of portfolio growth and the impact of rising interest rates, inflation and economic forecasts. Our estimate of allowance for credit losses on our structured loans and investments, including related unfunded loan commitments, was based on a reasonable and supportable forecast period that reflects recent observable data, including an increase in interest rates, higher unemployment forecasts, and rising inflation, partially offset by increasing property values and other market factors, including continued optimism of COVID-19.

The expected credit losses over the contractual period of our loans also include the obligation to extend credit through our unfunded loan commitments. Our current expected credit loss (“CECL”) allowance for unfunded loan commitments is adjusted quarterly and corresponds with the associated outstanding loans. At December 31, 2022 and 2021, we had outstanding unfunded commitments of \$1.15 billion and \$975.2 million, respectively, that we are obligated to fund as borrowers meet certain requirements.

At December 31, 2022 and 2021, accrued interest receivable related to our loans totaling \$108.5 million and \$58.3 million, respectively, was excluded from the estimate of credit losses and is included in other assets on the consolidated balance sheets.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

All of our structured loans and investments are secured by real estate assets or by interests in real estate assets, and, as such, the measurement of credit losses may be based on the difference between the fair value of the underlying collateral and the carrying value of the assets as of the period end. A summary of our specific loans considered impaired by asset class is as follows (\$ in thousands):

Asset Class	December 31, 2022				
	UPB (1)	Carrying Value	Allowance for Credit Losses	Wtd. Avg. First Dollar LTV Ratio	Wtd. Avg. Last Dollar LTV Ratio
Land	\$ 134,215	\$ 127,868	\$ 77,869	0 %	99 %
Retail	22,045	17,563	5,817	14 %	79 %
Commercial	1,700	1,700	1,700	63 %	63 %
Total	<u>\$ 157,960</u>	<u>\$ 147,131</u>	<u>\$ 85,386</u>	<u>3 %</u>	<u>96 %</u>

Asset Class	December 31, 2021				
	UPB (1)	Carrying Value	Allowance for Credit Losses	Wtd. Avg. First Dollar LTV Ratio	Wtd. Avg. Last Dollar LTV Ratio
Land	\$ 134,215	\$ 127,868	\$ 77,869	0 %	99 %
Retail	22,045	17,291	5,817	14 %	77 %
Office	1,980	1,980	1,500	0 %	51 %
Commercial	1,700	1,700	1,700	63 %	63 %
Total	<u>\$ 159,940</u>	<u>\$ 148,839</u>	<u>\$ 86,886</u>	<u>3 %</u>	<u>95 %</u>

(1) Represents the UPB of seven and eight impaired loans (less unearned revenue and other holdbacks and adjustments) by asset class at December 31, 2022 and 2021, respectively.

There were no loans for which the fair value of the collateral securing the loan was less than the carrying value of the loan for which we had not recorded a provision for credit loss at December 31, 2022, 2021 and 2020.

At December 31, 2022, four loans with an aggregate net carrying value of \$2.6 million, net of related loan loss reserves of \$5.1 million, were classified as non-performing and, at December 31, 2021, three loans with an aggregate net carrying value of \$20.1 million, net of related loan loss reserves of \$2.6 million, were classified as non-performing. Income from non-performing loans is generally recognized on a cash basis when it is received. Full income recognition will resume when the loan becomes contractually current, and performance has recommenced.

A summary of our non-performing loans by asset class is as follows (in thousands):

Asset Class	December 31, 2022			December 31, 2021		
	UPB	Less Than 90 Days Past Due	Greater Than 90 Days Past Due	UPB	Less Than 90 Days Past Due	Greater Than 90 Days Past Due
Multifamily	\$ 2,605	\$ —	\$ 2,605	\$ —	\$ —	\$ —
Retail	3,445	—	3,445	920	—	920
Commercial	1,700	—	1,700	1,700	—	1,700
Student Housing	—	—	—	21,500	—	21,500
Total	<u>\$ 7,750</u>	<u>\$ —</u>	<u>\$ 7,750</u>	<u>\$ 24,120</u>	<u>\$ —</u>	<u>\$ 24,120</u>

In addition, we have six loans with a carrying value totaling \$121.4 million at December 31, 2022, that are collateralized by a land development project. The loans do not carry a current pay rate of interest, however, five of the loans with a carrying value totaling \$112.0 million entitle us to a weighted average accrual rate of interest of 7.91%. In 2008, we suspended the recording of the accrual rate of interest on these loans, as they were impaired and we deemed the collection of this interest to be doubtful. At both December 31, 2022 and 2021, we had a cumulative allowance for credit losses of \$71.4 million related to these loans. The loans are subject to certain risks associated with a development project including, but not limited to, availability of construction financing, increases in projected construction costs, demand for the development's outputs upon completion of the project, and litigation risk. Additionally, these loans were not classified as non-performing as the borrower is compliant with all of the terms and conditions of the loans.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

At both December 31, 2022 and 2021, we had no loans contractually past due 90 days or more that are still accruing interest. During both 2022 and 2021, there was no interest income recognized on nonaccrual loans.

In 2022, we sold 4 bridge loans with an aggregate UPB of \$296.9 million at par less shared loan origination fees and selling costs totaling \$2.0 million and released \$78.0 million of capital to be used for future investments. The shared loan origination fees and selling costs were recorded as an unrealized impairment loss and included in other income, net on the consolidated statements of income. We have retained the right to service these loans.

During 2022, we sold a bridge loan and mezzanine loans totaling \$110.5 million, that were collateralized by a land development project, at a discount for \$102.2 million. In connection with this transaction, we released \$66.3 million of capital to be used for future investments and recorded a \$9.2 million loss (including fees and expenses), which was included in other income, net on the consolidated statements of income. We have the potential to recover up to \$2.8 million depending on the future performance of the loan.

In 2020, we entered into a loan modification agreement on a \$26.5 million bridge loan with an interest rate of LIBOR plus 6.00% with a 2.375% LIBOR floor and a \$6.1 million mezzanine loan with a fixed rate of 12% collateralized by a retail property to: (1) reduce the interest rate on both loans to the greater of: (i) LIBOR plus 5.50% and (ii) 6.50%, and (2) to extend the maturity three years to December 2024. A portion of the foregoing interest equal to 2.00% was deferred to payoff and would have been waived if the loan was paid off by December 31, 2022, which did not take place. The loan modification agreement also included a \$6.0 million required principal paydown, which occurred at the closing of the modification transaction, and an \$8.0 million principal reduction once the borrower deposited an additional reserve of \$4.6 million, which took place in 2021 and was charged-off against the previously recorded allowance for credit losses.

In 2019, we purchased \$50.0 million of a \$110.0 million bridge loan, which was collateralized by a hotel property and scheduled to mature in December 2022. In 2020, we recorded a \$7.5 million allowance for credit losses due to a reduction in the appraised value of the property. In 2020, we purchased the remaining \$60.0 million bridge loan at a discount for \$39.9 million, which we determined had experienced a more than insignificant deterioration in credit quality since origination and, therefore, deemed to be a purchased loan with credit deterioration. The \$20.1 million discount was classified as a noncredit discount and no portion of the discount was allocated to allowance for credit losses at the date of purchase, since the appraised value of the property was greater than the purchase price. Shortly after the purchase, we entered into a forbearance agreement with the borrower to temporarily reduce the interest rate from LIBOR plus 3.00% with a 1.50% LIBOR floor to a pay rate of 1.00% and to include a \$10.0 million principal reduction if the loan is paid off by March 2, 2021. In 2021, we entered into a second forbearance agreement that temporarily eliminated the pay rate, extended the principal reduction payoff deadline to June 30, 2021 and increased the interest rate to an unaccrued default rate of 9.50%, which was deferred until payoff. In June 2021, we received \$95.0 million for full satisfaction of these loans, reversed the \$7.5 million allowance for credit losses and recorded interest income of \$3.5 million.

These two loan modifications were deemed troubled debt restructurings. There were no other loan modifications, refinancing's and/or extensions during 2022 or 2021 that were considered troubled debt restructurings.

Given the transitional nature of some of our real estate loans, we may require funds to be placed into an interest reserve, based on contractual requirements, to cover debt service costs. At December 31, 2022 and 2021, we had total interest reserves of \$123.7 million and \$87.4 million, respectively, on 480 loans and 328 loans, respectively, with an aggregate UPB of \$7.70 billion and \$5.75 billion, respectively.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Note 4 — Loans Held-for-Sale, Net

Our GSE loans held-for-sale are typically sold within 60 days of loan origination, while our non-GSE loans are generally expected to be sold and securitized within 180 days of loan origination. Loans held-for-sale, net consists of the following (in thousands):

	December 31, 2022	December 31, 2021
Fannie Mae	\$ 173,020	\$ 392,876
Private Label	152,735	507,918
FHA	21,021	54,532
SFR - Fixed Rate	12,352	9,352
Freddie Mac	8,938	112,561
	<u>368,066</u>	<u>1,077,239</u>
Fair value of future MSR	5,557	19,318
Unrealized impairment loss	(15,703)	—
Unearned discount	(3,850)	(2,948)
Loans held-for-sale, net	<u>\$ 354,070</u>	<u>\$ 1,093,609</u>

During 2022, 2021 and 2020, we sold \$5.44 billion, \$6.42 billion and \$6.59 billion, respectively, of loans held-for-sale. Included in the total loans sold during 2022 and 2021 were Private Label loans totaling \$489.3 million and \$985.1 million, respectively, which were sold to unconsolidated affiliates of ours who securitized the loans. We retained the most subordinate class of certificates in these securitizations totaling \$43.4 million and \$85.7 million, respectively, in satisfaction of credit risk retention requirements (see Note 7 for details), and we are also the primary servicer of the mortgage loans.

We determined that the fair value of certain loans held-for-sale were below their carrying values and, based on the fair value analysis performed, recorded unrealized impairment losses of \$15.7 million during 2022 which was included in other income, net on the consolidated statements of income.

At December 31, 2022 and 2021, there were no loans held-for-sale that were 90 days or more past due, and there were no loans held-for-sale that were placed on a non-accrual status.

Note 5 — Capitalized Mortgage Servicing Rights

Our capitalized MSRs reflect commercial real estate MSRs derived primarily from loans sold in our Agency Business or acquired MSRs. The weighted average estimated life remaining of our MSRs was 8.6 years and 8.5 years at December 31, 2022 and 2021, respectively.

A summary of our capitalized MSR activity is as follows (in thousands):

	Year Ended December 31, 2022			Year Ended December 31, 2021		
	Originated	Acquired	Total	Originated	Acquired	Total
Beginning balance	\$ 395,573	\$ 27,161	\$ 422,734	\$ 336,466	\$ 43,508	\$ 379,974
Additions	83,115	—	83,115	134,116	—	134,116
Amortization	(53,449)	(6,427)	(59,876)	(47,845)	(10,770)	(58,615)
Write-downs and payoffs	(38,361)	(6,141)	(44,502)	(27,164)	(5,577)	(32,741)
Ending balance	<u>\$ 386,878</u>	<u>\$ 14,593</u>	<u>\$ 401,471</u>	<u>\$ 395,573</u>	<u>\$ 27,161</u>	<u>\$ 422,734</u>

We collected prepayment fees totaling \$48.2 million and \$38.2 million during 2022 and 2021, respectively, which are included as a component of servicing revenue, net on the consolidated statements of income. At December 31, 2022 and 2021, we had no valuation allowance recorded on any of our MSRs.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

The expected amortization of capitalized MSRs recorded at December 31, 2022 is as follows (in thousands):

Year	Amortization
2023	\$ 61,024
2024	59,025
2025	55,033
2026	49,121
2027	44,287
Thereafter	132,981
Total	\$ 401,471

Based on scheduled maturities, actual amortization may vary from these estimates.

Note 6 – Mortgage Servicing

Product and geographic concentrations that impact our servicing revenue are as follows (\$ in thousands):

December 31, 2022				
Product Concentrations			Geographic Concentrations	
Product	UPB (1)	% of Total	State	UPB % of Total
Fannie Mae	\$ 19,038,124	68 %	Texas	11 %
Freddie Mac	5,153,207	18 %	New York	11 %
Private Label	2,074,859	8 %	California	8 %
FHA	1,155,893	4 %	North Carolina	8 %
Bridge (2)	301,182	1 %	Georgia	6 %
SFR - Fixed Rate	274,764	1 %	Florida	5 %
Total	\$ 27,998,029	100 %	New Jersey	5 %
			Illinois	4 %
			Other (3)	42 %
			Total	100 %
December 31, 2021				
Fannie Mae	\$ 19,127,397	71 %	Texas	12 %
Freddie Mac	4,943,905	18 %	New York	11 %
Private Label	1,711,326	6 %	North Carolina	9 %
FHA	985,063	4 %	California	8 %
SFR - Fixed Rate	191,698	1 %	Georgia	6 %
Total	\$ 26,959,389	100 %	Florida	6 %
			New Jersey	6 %
			Other (3)	42 %
			Total	100 %

(1) Excludes loans which we are not collecting a servicing fee.

(2) Represents four bridge loans sold by our Structured Business that we are servicing, see Note 3 for details.

(3) No other individual state represented 4% or more of the total.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

At December 31, 2022 and 2021, our weighted average servicing fee was 41.1 basis points and 44.9 basis points, respectively. At December 31, 2022 and 2021, we held total escrow balances of \$1.25 billion and \$1.40 billion, respectively, which is not reflected in our consolidated balance sheets. Of the total escrow balances, we held \$677.4 million and \$682.5 million at December 31, 2022 and 2021, respectively, related to loans we are servicing within our Agency Business. These escrows are maintained in separate accounts at several federally insured depository institutions, which may exceed FDIC insured limits. We earn interest income on the total escrow deposits, generally based on a market rate of interest negotiated with the financial institutions that hold the escrow deposits. Interest earned on total escrows, net of interest paid to the borrower, was \$24.4 million, \$4.2 million and \$7.1 million during 2022, 2021 and 2020, respectively, and is a component of servicing revenue, net in the consolidated statements of income.

Note 7 – Securities Held-to-Maturity

Agency Private Label Certificates. In connection with our Private Label securitizations, we retain the most subordinate class of the APL certificates in satisfaction of credit risk retention requirements. At December 31, 2022, we retained APL certificates with an initial face value of \$192.8 million, which were purchased at a discount for \$119.0 million. These certificates are collateralized by 5-year to 10-year fixed rate first mortgage loans on multifamily properties, bear interest at an initial weighted average variable rate of 3.94% and have an estimated weighted average remaining maturity of 7.5 years. The weighted average effective interest rate was 8.85% and 9.11% at December 31, 2022 and 2021, respectively, including the accretion of a portion of the discount deemed collectible. Approximately \$6.7 million is estimated to mature after one year through five years and \$186.1 million is estimated to mature after five years through ten years.

Agency B Piece Bonds. Freddie Mac may choose to hold, sell or securitize loans we sell to them under the Freddie Mac SBL program. As part of the securitizations under the SBL program, we have the ability to purchase the B Piece bond through a bidding process, which represents the bottom 10%, or highest risk, of the securitization. At December 31, 2022, we retained 49%, or \$106.2 million initial face value, of seven B Piece bonds, which were purchased at a discount for \$74.7 million, and sold the remaining 51% to a third party. These securities are collateralized by a pool of multifamily mortgage loans, bear interest at an initial weighted average variable rate of 3.74% and have an estimated weighted average remaining maturity of 6.2 years. The weighted average effective interest rate was 12.20% and 11.32% at December 31, 2022 and 2021, respectively, including the accretion of a portion of the discount deemed collectible. Approximately \$7.5 million is estimated to mature within one year, \$16.4 million is estimated to mature after one year through five years, \$0.5 million is estimated to mature after five years through ten years and \$17.1 million is estimated to mature after ten years.

A summary of our securities held-to-maturity is as follows (in thousands):

	Face Value	Net Carrying Value	Unrealized Gain (Loss)	Estimated Fair Value	Allowance for Credit Losses
December 31, 2022					
APL certificates	\$ 192,791	\$ 123,475	\$ (13,348)	\$ 110,127	\$ 2,783
B Piece bonds	41,464	33,072	1,372	34,444	370
Total	<u>\$ 234,255</u>	<u>\$ 156,547</u>	<u>\$ (11,976)</u>	<u>\$ 144,571</u>	<u>\$ 3,153</u>
December 31, 2021					
APL certificates	\$ 149,368	\$ 92,869	\$ 5,007	\$ 97,876	\$ 1,422
B Piece bonds	61,360	47,615	4,420	52,035	331
Total	<u>\$ 210,728</u>	<u>\$ 140,484</u>	<u>\$ 9,427</u>	<u>\$ 149,911</u>	<u>\$ 1,753</u>

A summary of the changes in the allowance for credit losses for our securities held-to-maturity is as follows (in thousands):

	Year Ended December 31, 2022		
	APL Certificates	B Piece Bonds	Total
Beginning balance	\$ 1,422	\$ 331	\$ 1,753
Provision for credit loss expense/(reversal)	1,361	39	1,400
Ending balance	<u>\$ 2,783</u>	<u>\$ 370</u>	<u>\$ 3,153</u>

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

The allowance for credit losses on our held-to-maturity securities was estimated on a collective basis by major security type and was based on a reasonable and supportable forecast period and a historical loss reversion for similar securities. The issuers continue to make timely principal and interest payments and we continue to accrue interest on all our securities. At December 31, 2022, no other-than-temporary impairment was recorded on our held-to-maturity securities.

We recorded interest income (including the amortization of discount) related to these investments of \$18.6 million, \$13.2 million and \$9.7 million during 2022, 2021 and 2020, respectively.

Note 8 —Investments in Equity Affiliates

We account for all investments in equity affiliates under the equity method. A summary of these investments is as follows (in thousands):

Equity Affiliates	Investments in Equity Affiliates at		UPB of Loans to
	December 31, 2022	December 31, 2021	Equity Affiliates at December 31, 2022
Arbor Residential Investor LLC	\$ 46,951	\$ 65,756	\$ —
AMAC Holdings III LLC	15,825	13,772	—
Fifth Wall Ventures	13,584	5,409	—
Lightstone Value Plus REIT L.P.	1,895	1,895	—
Docsumo Pte. Ltd.	450	—	—
JT Prime	425	425	—
North Vermont Avenue	—	2,419	—
West Shore Café	—	—	1,688
Lexford Portfolio	—	—	—
East River Portfolio	—	—	—
Total	\$ 79,130	\$ 89,676	\$ 1,688

Arbor Residential Investor LLC (“ARI”). We invested \$9.6 million for a 50% interest in ARI, with our former manager (ACM) holding the remaining 50%. ARI was formed to hold a 50% interest in Wakefield Investment Holdings LLC (“Wakefield”), an entity that was formed with a third party to hold a controlling interest (65%) in a residential mortgage banking business. ARI has no other assets, liabilities or activity other than its investment in Wakefield. At December 31, 2022, our indirect interest in this business was 12.3%. The allocation of income is based on the underlying agreements, which may be different than our indirect interest, and was 9.2% at December 31, 2022. We account for our ownership interest in ARI under the equity method of accounting and ARI accounts for its ownership interest in Wakefield under the equity method of accounting. During 2022, 2021 and 2020, we recorded income of \$4.9 million, \$34.6 million and \$75.7 million, respectively, to income from equity affiliates in the consolidated statements of income. We also received \$23.8 million and \$28.0 million in cash distributions from this investment during 2022 and 2021, respectively, which were classified as returns of capital. We have included the financial statements of Wakefield in this report.

AMAC III. We committed to a \$30.0 million investment (of which \$25.2 million was funded at December 31, 2022) for an 18% interest in a multifamily-focused commercial real estate investment fund that is sponsored and managed by our chief executive officer and one of his immediate family members. During 2022, 2021 and 2020, we recorded a loss associated with this investment of \$2.4 million, \$1.3 million and \$0.9 million, respectively. During 2022 and 2021, we made contributions of \$4.9 million and \$8.6 million, respectively, and received cash distributions totaling \$0.5 million and \$3.8 million, respectively, which were classified as returns of capital, related to this investment.

Fifth Wall. We committed to a \$25.0 million investment (of which \$15.2 million was funded at December 31, 2022) for a 7.6% interest in two related private equity funds whose investment objective is to invest primarily in technology, technology-enabled or technology-related companies that are relevant or complementary to the build environment, including real estate or real estate related industries. We have no role in the management of the investment funds. During 2022 and 2021, we made contributions of \$9.7 million and \$5.4 million, respectively, and, during 2022 we received cash distributions totaling \$1.6 million, which were classified as returns of capital, related to this investment. Operating results from this investment were de minimis for all periods presented.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Lightstone Value Plus REIT L.P. / JT Prime. We own a \$1.9 million interest in a joint venture that holds common operating partnership units of Lightstone Value Plus REIT L.P. (“Lightstone”). We also own a 50% noncontrolling interest in a joint venture, JT Prime, which holds common operating partnership units of Lightstone at a carrying value of \$0.4 million. Operating results from these investments were de minimis for all periods presented.

Docsumo Pte. Ltd. (“Docsumo”). During 2022, we invested \$0.5 million for a noncontrolling interest in Docsumo, a startup company that converts unstructured documents, such as bank statements and pay stubs, to accurate structured data and checks documents for fraud, such as photoshopped layers and font changes, using artificial intelligence. Operating results from this investment were de minimis.

North Vermont Avenue. We invested \$2.4 million for an initial 85% noncontrolling interest in a joint venture that acquired three parcels of land with multiple structures, with the intent to tear down the existing structures and construct a new 202-unit multifamily complex with ground floor retail. Operating results from this investment were de minimis for all periods presented. During 2022, we determined that this investment exhibited indicators of impairment and, as a result of an impairment analysis performed, we recorded an other-than-temporary impairment of \$2.4 million to income from equity affiliates in the consolidated statement of income for the full carrying amount of this investment.

West Shore Café. We own a 50% noncontrolling interest in the West Shore Lake Café, a restaurant/inn lakefront property in Lake Tahoe, California. We provided a \$1.7 million first mortgage loan to an affiliated entity to acquire property adjacent to the original property, which is scheduled to mature in September 2025 and bears interest at LIBOR plus 4.0%. In 2018, we determined that this investment exhibited indicators of impairment and recorded an other-than-temporary impairment of \$2.2 million for the full carrying amount of this investment and fully reserved the \$1.7 million first mortgage loan. Operating results from this investment were de minimis for all periods presented.

Lexford Portfolio. We own a less than \$0.1 million noncontrolling equity interest in Lexford, a portfolio of multifamily assets. In 2022 and 2020, we received distributions from this investment and recognized income totaling \$11.1 million and \$1.1 million, net of expenses, respectively. As a result of COVID-19, Lexford did not make any distributions to its equity holders in 2021.

East River Portfolio. We invested \$0.1 million for a 5% interest in a joint venture that owns two multifamily properties. The joint venture is comprised of a consortium of investors (which includes, among other unaffiliated investors, certain of our officers, our chief executive officer and certain other related parties) who together own an interest of 95%. Operating results from this investment were de minimis for all periods presented.

Equity Participation Interest. During the first quarter of 2022, we received \$2.6 million from an equity participation interest on a property that was sold and which we had a preferred equity loan that previously paid off.

See Note 18 for details of certain investments described above.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Note 9 — Goodwill and Other Intangible Assets

Goodwill. The goodwill balance at both December 31, 2022 and 2021 was \$56.6 million.

Other Intangible Assets. The following table sets forth the other intangible assets activity (in thousands):

	December 31, 2022			December 31, 2021		
	Gross Carrying Value	Accumulated Amortization	Total	Gross Carrying Value	Accumulated Amortization	Total
Finite-lived intangible assets:						
Broker relationships	\$ 25,000	\$ (20,182)	\$ 4,818	\$ 25,000	\$ (17,057)	\$ 7,943
Borrower relationships	14,400	(9,300)	5,100	14,400	(7,860)	6,540
Below market leases	4,010	(3,485)	525	4,010	(3,359)	651
Infinite-lived intangible assets:						
Fannie Mae DUS license	17,100	—	17,100	17,100	—	17,100
Freddie Mac Program Plus license	8,700	—	8,700	8,700	—	8,700
FHA license	3,200	—	3,200	3,200	—	3,200
	<u>\$ 72,410</u>	<u>\$ (32,967)</u>	<u>\$ 39,443</u>	<u>\$ 72,410</u>	<u>\$ (28,276)</u>	<u>\$ 44,134</u>

The amortization expense recorded for these intangible assets were \$4.7 million, \$4.7 million and \$5.3 million during 2022, 2021 and 2020, respectively.

At December 31, 2022, the weighted average remaining lives of our amortizable finite-lived intangible assets and the estimated amortization expense for each of the next five years are as follows (\$ in thousands):

	Wtd. Avg. Remaining Life (in years)	Estimated Amortization Expense for the Years Ending December 31,				
		2023	2024	2025	2026	2027
Finite-lived intangible assets:						
Broker relationships	1.5	\$ 3,125	\$ 1,693	\$ —	\$ —	\$ —
Borrower relationships	3.5	1,440	1,440	1,440	780	—
Below market leases	4.2	126	126	126	126	21
	<u>2.7</u>	<u>\$ 4,691</u>	<u>\$ 3,259</u>	<u>\$ 1,566</u>	<u>\$ 906</u>	<u>\$ 21</u>

See Note 20 for details of goodwill and other intangible assets by segment.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Note 10 — Debt Obligations

Credit and Repurchase Facilities

Borrowings under our credit and repurchase facilities are as follows (\$ in thousands):

	December 31, 2022				December 31, 2021			
	UPB	Debt Carrying Value(1)	Collateral Carrying Value	Wtd. Avg. Note Rate	UPB	Debt Carrying Value(1)	Collateral Carrying Value	Wtd. Avg. Note Rate
Structured Business								
\$2.5B joint repurchase facility (2)	\$ 1,524,831	\$ 1,516,657	\$ 2,099,447	6.73 %	\$ 1,490,434	\$ 1,486,380	\$ 1,877,930	2.56 %
\$1B repurchase facility (2)	499,891	498,666	703,740	6.39 %	676,608	675,415	937,880	2.04 %
\$500M repurchase facility	155,121	154,653	188,563	7.16 %	—	—	—	—
\$499M repurchase facility (2)(3)	351,056	351,056	504,506	6.64 %	242,034	241,450	289,956	3.04 %
\$450M repurchase facility	344,576	344,237	450,736	6.36 %	397,842	397,272	511,269	1.89 %
\$450M repurchase facility	187,428	186,639	239,678	6.18 %	294,145	293,700	385,337	1.76 %
\$400M credit facility	33,246	33,221	43,238	6.25 %	177,599	177,406	236,538	1.70 %
\$225M credit facility	47,398	47,398	81,119	6.90 %	28,213	27,826	42,270	2.79 %
\$200M repurchase facility	33,155	32,494	47,750	6.95 %	—	—	—	—
\$200M repurchase facility	155,240	154,516	200,099	6.33 %	—	—	—	—
\$156M loan specific credit facilities	156,543	156,107	225,805	6.42 %	153,937	153,727	214,300	3.14 %
\$50M credit facility	29,200	29,194	36,500	6.48 %	29,200	29,194	36,500	2.13 %
\$35M working capital facility	—	—	—	—	—	—	—	—
\$25M credit facility	19,177	18,701	24,572	6.99 %	1,235	1,235	1,900	4.06 %
\$25M credit facility	—	—	—	—	10,285	10,218	14,773	2.38 %
\$1M master security agreement	—	—	—	—	635	635	—	4.01 %
Repurchase facility - securities (2)(4)	12,832	12,832	—	6.99 %	30,849	30,849	—	3.40 %
Structured Business total	<u>\$ 3,549,694</u>	<u>\$ 3,536,371</u>	<u>\$ 4,845,753</u>	<u>6.59 %</u>	<u>\$ 3,533,016</u>	<u>\$ 3,525,307</u>	<u>\$ 4,548,653</u>	<u>2.34 %</u>
Agency Business								
\$750M ASAP agreement	\$ 29,476	\$ 29,476	\$ 30,291	5.21 %	\$ 182,130	\$ 182,130	\$ 182,140	1.40 %
\$500M joint repurchase facility (2)	105,275	104,629	135,641	6.52 %	399,470	395,317	475,360	2.11 %
\$500M repurchase facility	66,866	66,778	66,866	5.73 %	236,527	236,429	236,527	1.58 %
\$200M credit facility	31,519	31,475	33,177	5.76 %	115,351	115,304	115,351	1.60 %
\$150M credit facility	57,974	57,887	57,974	5.76 %	16,657	16,544	16,657	1.51 %
\$50M credit facility	14,671	14,664	14,671	5.65 %	9,295	9,295	9,295	1.40 %
\$1M repurchase facility (2)(3)	534	534	920	6.66 %	1,253	1,253	1,477	3.00 %
Agency Business total	<u>\$ 306,315</u>	<u>\$ 305,443</u>	<u>\$ 339,540</u>	<u>5.96 %</u>	<u>\$ 960,683</u>	<u>\$ 956,272</u>	<u>\$ 1,036,807</u>	<u>1.75 %</u>
Consolidated total	<u>\$ 3,856,009</u>	<u>\$ 3,841,814</u>	<u>\$ 5,185,293</u>	<u>6.54 %</u>	<u>\$ 4,493,699</u>	<u>\$ 4,481,579</u>	<u>\$ 5,585,460</u>	<u>2.21 %</u>

- (1) At December 31, 2022 and 2021, debt carrying value for the Structured Business was net of unamortized deferred finance costs of \$13.3 million and \$7.7 million, respectively, and for the Agency Business was net of unamortized deferred finance costs of \$0.9 million and \$4.4 million, respectively.
- (2) These facilities are subject to margin call provisions associated with changes in interest spreads.
- (3) A portion of this facility was used to finance a fixed rate SFR permanent loan reported through our Agency Business.
- (4) At December 31, 2022 and 2021, this facility was collateralized by B Piece bonds with a carrying value of \$33.1 million and \$47.6 million, respectively.

During 2022, several of our credit and repurchase facilities, in both our Structured Business and Agency Business, converted from a LIBOR-based interest rate to a SOFR-based interest rate for new financings. Existing financings generally remain at a LIBOR-based interest rate.

Usually, our credit and repurchase facilities have extension options that are at the discretion of the banking institutions in which we have long standing relationships with. These facilities typically renew annually and also include a "wind-down" feature.

Joint Repurchase Facility. We have a \$3.00 billion joint repurchase facility, which is shared between the Structured Business and the Agency Business, which matures in March 2024 with a one-year extension option. This facility is used to finance both structured and Private Label loans. The interest rate under the facility is determined on a loan-by-loan basis and may include a floor equal to a pro rata share of the floors included in our originated loans. The facility has a maximum advance rate of 80% on all loans and includes a \$150.0 million over advance available that bears interest at a rate of the applicable benchmark plus 7.00%. The over advance is available through March 2023, was being amortized on a monthly basis and was paid off at December 31, 2022. If the estimated market value of the loans financed in this facility decrease, we may be required to pay down borrowings under this facility.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Structured Business. We utilize credit and repurchase facilities with various financial institutions to finance our loans and investments as described below. Many of these facilities have a maximum advance rate between 75% to 85%, depending on the asset type financed.

At December 31, 2022 and 2021, the weighted average interest rate for the credit and repurchase facilities of our Structured Business, including certain fees and costs, such as structuring, commitment, non-use and warehousing fees, was 6.95% and 2.51%, respectively. The leverage on our loan and investment portfolio financed through our credit and repurchase facilities, excluding the securities repurchase facility, working capital facility and the \$1.0 million master security agreement, was 73% and 77% at December 31, 2022 and 2021, respectively.

We have a \$1.00 billion repurchase facility used to finance loans that matures in December 2023. The interest rate on loans funded after August 30, 2022 is SOFR plus 2.25% with a 0.15% SOFR floor. For existing loans, the interest rate will remain at SOFR plus 2.00% with up to a 0.35% SOFR floor. The interest rate spread increases by 0.20% if the advance rate on a loan exceeds 75%.

We have a \$500.0 million repurchase facility to finance SFR loans that has an interest rate of SOFR plus 3.26% on loans funded after October 13, 2022 and SOFR plus 2.76% on existing loans. The commitment amount under this facility expires six months after the lender provides written notice. We then have an additional six months to repurchase the underlying loans.

We have a \$500.0 million repurchase facility to finance SFR properties that bears interest at a rate of SOFR plus 2.36% with a 0.25% SOFR floor and matures in October 2023.

We have a \$450.0 million repurchase facility to finance bridge loans that matures in March 2023, with three one-year extension options through March 2026. The interest rate on loans funded in 2022 ranges from SOFR plus 1.75% to 2.25% for multifamily and SOFR plus 2.00% to 2.75% for non-multifamily. For existing loans, the interest rates will remain at LIBOR.

We have a \$450.0 million repurchase facility to finance multifamily bridge loans that matures in October 2023, with a one-year extension option. The interest rate for new loans after April 29, 2022 is determined on a loan-by-loan basis based off SOFR.

We have a \$400.0 million credit facility to finance bridge loans that matures in July 2023 and bears interest at a rate ranging from SOFR plus 1.86% to 2.56% depending on the type of loan financed. This facility includes a \$25.0 million sublimit to finance healthcare related loans.

We have a \$225.0 million credit facility to finance SFR properties that bears interest at a rate of SOFR plus 2.55%, with an all-in floor rate range of 3.00% to 4.10%, depending on our deposit balance. The facility matures in October 2023, with a one-year extension option.

We have a \$200.0 million repurchase facility that matures in March 2024, with a one-year extension option. This facility has an interest rate of SOFR plus 2.55%.

We have a \$200.0 million repurchase facility to finance bridge and construction loans that matures in January 2024, with a one-year extension option. This facility has interest rates of SOFR plus 1.75% to 3.50% depending on the type of loan financed with a SOFR floor determined on a loan-by-loan basis.

We have several loan specific credit facilities totaling \$156.5 million used to finance individual bridge loans. The facilities bear interest at rates ranging from LIBOR plus 2.20% to 3.375%, SOFR plus 2.20%, a 3.00% fixed rate, and the greater of the prime rate or 3.25% and mature between May 2023 and August 2025.

We have a \$50.0 million credit facility to finance multifamily loans that bears interest at a rate of SOFR plus 2.10% and matures in April 2023, with two 1-year extension options.

We have a \$35.0 million unsecured working capital line of credit that bears interest at a rate of SOFR plus 3.00%. This line matures in April 2023 and is typically renewed annually.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

We have a \$25.0 million credit facility to finance SFR properties that bears interest at a rate of SOFR plus 2.60%, with an all-in floor rate of 4.25%, and which matures in October 2024.

We have a \$25.0 million credit facility used to purchase loans that bears interest at a rate of SOFR plus 2.35% and matures in February 2023, with a one-year extension option.

We have an uncommitted repurchase facility that is used to finance securities we retained in connection with our CLOs and our purchases of B Piece bonds from SBL program securitizations and SFR bonds. This facility bears interest at rate of SOFR plus 2.60% and has no stated maturity date.

Agency Business. We utilize credit facilities with various financial institutions to finance substantially all of our loans held-for-sale as described below. The financial institutions that provide these facilities generally have a security interest in the underlying mortgage notes that serve as collateral for these facilities.

We have a \$750.0 million ASAP agreement with Fannie Mae providing us with a warehousing credit facility for mortgage loans that are to be sold to Fannie Mae and serviced under the Fannie Mae DUS program. The ASAP agreement is not a committed line, has no expiration date and bears interest at a rate of SOFR plus 1.15% with a 0.25% SOFR floor.

We have a \$500.0 million repurchase facility that bears interest at a rate of SOFR plus 1.375% and matures in November 2023.

We have a \$200.0 million credit facility that bears interest at a rate of SOFR plus 1.46% and matures in March 2023.

We have a \$150.0 million credit facility that bears interest at a rate of SOFR plus 1.46% and matures in July 2023. This facility includes a \$50.0 million sublimit for principal and interest advances we make as the primary servicer to Fannie Mae in connection with potential delinquent loans under the Fannie Mae forbearance program, which bears interest at a rate of SOFR plus 1.86%.

We have a \$50.0 million credit facility that bears interest at a rate of SOFR plus 1.35% and matures in September 2023.

We have a letter of credit facility with a financial institution to secure obligations under the Fannie Mae DUS program and the Freddie Mac SBL program with a total committed amount of up to \$75.0 million. The facility bears interest at a fixed rate of 2.875%, matures in September 2025 and is primarily collateralized by our servicing revenue as approved by Fannie Mae and Freddie Mac. The facility includes a \$5.0 million sublimit for an obligation under the Freddie Mac SBL program. At December 31, 2022, the letters of credit outstanding include \$64.0 million for the Fannie Mae DUS program and \$5.0 million for the Freddie Mac SBL program.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Securitized Debt

We account for securitized debt transactions on our consolidated balance sheet as financing facilities. These transactions are considered VIEs for which we are the primary beneficiary and are consolidated in our financial statements. The investment grade notes and guaranteed certificates issued to third parties are treated as secured financings and are non-recourse to us.

Borrowings and the corresponding collateral under our securitized debt transactions are as follows (\$ in thousands):

	Debt			Collateral (3)		
	Face Value	Carrying Value (1)	Wtd. Avg. Rate (2)	Loans		Cash
				UPB	Carrying Value	Restricted Cash (4)
December 31, 2022						
CLO 19	\$ 872,812	\$ 866,605	6.75 %	\$ 952,268	\$ 947,336	\$ 64,300
CLO 18	1,652,812	1,645,711	6.19 %	1,899,174	1,891,215	85,970
CLO 17	1,714,125	1,707,676	6.16 %	1,911,866	1,904,732	145,726
CLO 16	1,237,500	1,231,887	5.79 %	1,307,244	1,301,794	106,495
CLO 15	674,412	671,532	5.84 %	797,755	795,078	2,861
CLO 14	655,475	652,617	5.80 %	732,247	730,057	37,090
CLO 13	462,769	461,005	6.03 %	552,182	550,924	37,875
CLO 12	379,283	378,331	6.09 %	466,474	465,003	500
Total CLOs	7,649,188	7,615,364	6.10 %	8,619,210	8,586,139	480,817
Q Series securitization	236,878	233,906	6.30 %	315,837	313,965	—
Total securitized debt	<u>\$ 7,886,066</u>	<u>\$ 7,849,270</u>	<u>6.11 %</u>	<u>\$ 8,935,047</u>	<u>\$ 8,900,104</u>	<u>\$ 480,817</u>
December 31, 2021						
CLO 17	\$ 1,714,125	\$ 1,705,549	1.81 %	\$ 1,914,280	\$ 1,903,997	\$ 118,520
CLO 16	1,237,500	1,230,093	1.44 %	1,444,573	1,436,743	—
CLO 15	674,412	669,723	1.49 %	785,761	782,682	15,750
CLO 14	655,475	650,947	1.45 %	717,396	715,154	53,342
CLO 13	668,000	665,006	1.54 %	740,369	738,265	48,543
CLO 12	534,193	531,939	1.62 %	557,249	555,974	35,635
CLO 10	441,000	439,553	1.57 %	485,460	483,995	57,706
Total securitized debt	<u>\$ 5,924,705</u>	<u>\$ 5,892,810</u>	<u>1.59 %</u>	<u>\$ 6,645,088</u>	<u>\$ 6,616,810</u>	<u>\$ 329,496</u>

- (1) Debt carrying value is net of \$36.8 million and \$31.9 million of deferred financing fees at December 31, 2022 and 2021, respectively.
- (2) At December 31, 2022 and 2021, the aggregate weighted average note rate for our CLOs, including certain fees and costs, was 6.32% and 1.86%, respectively, and the Q Series securitization was 6.66% at December 31, 2022.
- (3) At December 31, 2022 and 2021, there were no collateral deemed a “credit risk” as defined by the CLO indentures.
- (4) Represents restricted cash held for principal repayments as well as for reinvestment in the CLOs. Does not include restricted cash related to interest payments, delayed fundings and expenses totaling \$230.0 million and \$133.7 million at December 31, 2022 and 2021, respectively.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

CLO 19. In May 2022, we completed CLO 19, issuing nine tranches of CLO notes through a wholly-owned subsidiary totaling \$1.05 billion. Of the total CLO notes issued, \$872.8 million were investment grade notes issued to third-party investors and \$177.2 million were below investment grade notes retained by us. As of the CLO closing date, the notes were secured by a portfolio of loan obligations with a face value of \$976.9 million, consisting primarily of bridge loans that were contributed from our existing loan portfolio, and cash. The financing has an approximate two-year replacement period that allows the principal proceeds and sale proceeds (if any) of the loan obligations to be reinvested in qualifying replacement loan obligations, subject to the satisfaction of certain conditions set forth in the indenture. Thereafter, the outstanding debt balance will be reduced as loans are repaid. Initially, the proceeds of the issuance of the securities also included \$73.1 million for the purpose of acquiring additional loan obligations for a period of up to 180 days from the CLO closing date, which we subsequently utilized, resulting in the issuer owning loan obligations with a face value of \$1.05 billion, representing leverage of 83%. The notes sold to third parties had an initial weighted average interest rate of 2.36% plus term SOFR and interest payments on the notes are payable monthly.

CLO 18. In February 2022, we completed CLO 18, issuing eight tranches of CLO notes through two wholly-owned subsidiaries totaling \$1.86 billion. Of the total CLO notes issued, \$1.65 billion were investment grade notes issued to third-party investors and \$210.1 million were below investment grade notes retained by us. As of the CLO closing date, the notes were secured by a portfolio of loan obligations with a face value of \$1.70 billion, consisting primarily of bridge loans that were contributed from our existing loan portfolio, and cash. The financing has an approximate two-and-a-half-year replacement period that allows the principal proceeds and sale proceeds (if any) of the loan obligations to be reinvested in qualifying replacement loan obligations, subject to the satisfaction of certain conditions set forth in the indenture. Thereafter, the outstanding debt balance will be reduced as loans are repaid. Initially, the proceeds of the issuance of the securities also included \$347.3 million for the purpose of acquiring additional loan obligations for a period of up to 180 days from the CLO closing date, which we subsequently utilized, resulting in the issuer owning loan obligations with a face value of \$2.05 billion, representing leverage of 81%. We retained a residual interest in the portfolio with a notional amount of \$397.2 million, including the \$210.1 million below investment grade notes. The notes sold to third parties had an initial weighted average interest rate of 1.81% plus compounded SOFR and interest payments on the notes are payable monthly.

CLO 17. In 2021, we completed CLO 17, issuing eight tranches of CLO notes through two wholly-owned subsidiaries totaling \$1.91 billion. Of the total CLO notes issued, \$1.71 billion were investment grade notes issued to third-party investors and \$194.3 million were below investment grade notes retained by us. As of the CLO closing date, the notes were secured by a portfolio of loan obligations with a face value of \$1.79 billion, consisting primarily of bridge loans that were contributed from our existing loan portfolio, and cash. The financing has an approximate two-and-a-half-year replacement period that allows the principal proceeds and sale proceeds (if any) of the loan obligations to be reinvested in qualifying replacement loan obligations, subject to the satisfaction of certain conditions set forth in the indenture. Thereafter, the outstanding debt balance will be reduced as loans are repaid. Initially, the proceeds of the issuance of the securities also included \$315.0 million for the purpose of acquiring additional loan obligations for a period of up to 180 days from the CLO closing date, which we subsequently utilized, resulting in the issuer owning loan obligations with a face value of \$2.10 billion, representing leverage of 82%. We retained a residual interest in the portfolio with a notional amount of \$385.9 million, including the \$194.3 million below investment grade notes. The notes sold to third parties had an initial weighted average interest rate of 1.68% plus one-month LIBOR and interest payments on the notes are payable monthly.

CLO 16. In 2021, we completed CLO 16, issuing eight tranches of CLO notes through two wholly-owned subsidiaries totaling \$1.37 billion. Of the total CLO notes issued, \$1.24 billion were investment grade notes issued to third-party investors and \$135.0 million were below investment grade notes retained by us. As of the CLO closing date, the notes were secured by a portfolio of loan obligations with a face value of \$1.19 billion, consisting primarily of bridge loans that were contributed from our existing loan portfolio, and cash. The financing has an approximate two-and-a-half-year replacement period that allows the principal proceeds and sale proceeds (if any) of the loan obligations to be reinvested in qualifying replacement loan obligations, subject to the satisfaction of certain conditions set forth in the indenture. Thereafter, the outstanding debt balance will be reduced as loans are repaid. Initially, the proceeds of the issuance of the securities also included \$313.0 million for the purpose of acquiring additional loan obligations for a period of up to 180 days from the CLO closing date, which we subsequently utilized, resulting in the issuer owning loan obligations with a face value of \$1.50 billion, representing leverage of 83%. We retained a residual interest in the portfolio with a notional amount of \$262.5 million, including the \$135.0 million below investment grade notes. The notes sold to third parties had an initial weighted average interest rate of 1.31% plus one-month LIBOR and interest payments on the notes are payable monthly.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

CLO 15. In 2021, we completed CLO 15, issuing eight tranches of CLO notes through two wholly-owned subsidiaries totaling \$747.8 million. Of the total CLO notes issued, \$674.4 million were investment grade notes issued to third-party investors and \$73.4 million were below investment grade notes retained by us. As of the CLO closing date, the notes were secured by a portfolio of loan obligations with a face value of \$653.0 million, consisting primarily of bridge loans that were contributed from our existing loan portfolio, and cash. The financing has an approximate two-and-a-half-year replacement period that allows the principal proceeds and sale proceeds (if any) of the loan obligations to be reinvested in qualifying replacement loan obligations, subject to the satisfaction of certain conditions set forth in the indenture. Thereafter, the outstanding debt balance will be reduced as loans are repaid. Initially, the proceeds of the issuance of the securities also included \$162.0 million for the purpose of acquiring additional loan obligations for a period of up to 180 days from the CLO closing date, which we subsequently utilized, resulting in the issuer owning loan obligations with a face value of \$815.0 million, representing leverage of 83%. We retained a residual interest in the portfolio with a notional amount of \$140.6 million, including the \$73.4 million below investment grade notes. The notes sold to third parties had an initial weighted average interest rate of 1.37% plus one-month LIBOR and interest payments on the notes are payable monthly.

CLO 14. In 2021, we completed CLO 14, issuing eight tranches of CLO notes through two wholly-owned subsidiaries totaling \$724.2 million. Of the total CLO notes issued, \$655.5 million were investment grade notes issued to third-party investors and \$68.7 million were below investment grade notes retained by us. As of the CLO closing date, the notes were secured by a portfolio of loan obligations with a face value of \$635.2 million, consisting primarily of bridge loans that were contributed from our existing loan portfolio, and cash. The financing has a two-and-a-half-year replacement period that allows the principal proceeds and sale proceeds (if any) of the loan obligations to be reinvested in qualifying replacement loan obligations, subject to the satisfaction of certain conditions set forth in the indenture. Thereafter, the outstanding debt balance will be reduced as loans are repaid. Initially, the proceeds of the issuance of the securities also included \$149.8 million for the purpose of acquiring additional loan obligations for a period of up to 180 days from the CLO closing date, which we subsequently utilized, resulting in the issuer owning loan obligations with a face value of \$785.0 million, representing leverage of 84%. We retained a residual interest in the portfolio with a notional amount of \$129.5 million, including the \$68.7 million below investment grade notes. The notes sold to third parties had an initial weighted average interest rate of 1.33% plus one-month LIBOR and interest payments on the notes are payable monthly.

CLO 13. In 2020, we completed CLO 13, issuing eight tranches of CLO notes through two wholly-owned subsidiaries totaling \$738.0 million. Of the total CLO notes issued, \$668.0 million were investment grade notes issued to third-party investors and \$70.0 million were below investment grade notes retained by us. As of the CLO closing date, the notes were secured by a portfolio of loan obligations with a face value of \$640.5 million, consisting primarily of bridge loans that were contributed from our existing loan portfolio, and cash. The financing has a three-year replacement period that allows the principal proceeds and sale proceeds (if any) of the loan obligations to be reinvested in qualifying replacement loan obligations, subject to the satisfaction of certain conditions set forth in the indenture. Thereafter, the outstanding debt balance will be reduced as loans are repaid. Initially, the proceeds of the issuance of the securities also included \$159.5 million for the purpose of acquiring additional loan obligations for a period of up to 180 days from the CLO closing date, which we subsequently utilized, resulting in the issuer owning loan obligations with a face value of \$800.0 million, representing leverage of 84%. We retained a residual interest in the portfolio with a notional amount of \$132.0 million, including the \$70.0 million below investment grade notes. The notes sold to third parties had an initial weighted average interest rate of 1.41% plus one-month LIBOR and interest payments on the notes are payable monthly. At December 31, 2022, \$205.2 million has been repaid.

CLO 12. In 2019, we completed CLO 12, issuing eight tranches of CLO notes through two wholly-owned subsidiaries totaling \$585.8 million. Of the total CLO notes issued, \$534.2 million were investment grade notes issued to third-party investors and \$51.6 million were below investment grade notes retained by us. As of the CLO closing date, the notes were secured by a portfolio of loan obligations with a face value of \$510.9 million, consisting primarily of bridge loans that were contributed from our existing loan portfolio, and cash. The financing had a three-year replacement period that allowed the principal proceeds and sale proceeds (if any) of the loan obligations to be reinvested in qualifying replacement loan obligations, subject to the satisfaction of certain conditions set forth in the indenture. Thereafter, the outstanding debt balance is being reduced as loans are repaid. Initially, the proceeds of the issuance of the securities also included \$124.1 million for the purpose of acquiring additional loan obligations for a period of up to 180 days from the CLO closing date, which we subsequently utilized, resulting in the issuer owning loan obligations with a face value of \$635.0 million, representing leverage of 84%. We retained a residual interest in the portfolio with a notional amount of \$100.8 million, including the \$51.6 million below investment grade notes. The notes had an initial weighted average interest rate of 1.50% plus one-month LIBOR and interest payments on the notes are payable monthly. The replacement period for CLO 12 ended in November 2022 and \$154.9 million has been repaid at December 31, 2022.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

CLO 10. In February 2022, we unwound CLO 10, redeeming \$441.0 million of outstanding notes which were repaid primarily from the refinancing of the remaining assets within CLO 18, as well as with cash held by CLO 10, and expensed \$1.4 million of deferred financing fees into loss on extinguishment of debt on the consolidated statements of income.

CLO 11 and CLO 9. In 2021, we unwound both CLO 11 and CLO 9, redeeming \$889.2 million of outstanding notes which were repaid primarily from the refinancing of the remaining assets within CLOs 17 and 14, as well as with cash held by CLOs 11 and 9, and expensed \$3.4 million of deferred financing fees into loss on extinguishment of debt on the consolidated statements of income.

CLO 8. In 2020, we unwound CLO 8 redeeming \$282.9 million of outstanding notes which were repaid primarily from the refinancing of the remaining assets within CLO 13, as well as with cash held by CLO 8, and expensed \$1.5 million of deferred financing fees into loss on extinguishment of debt on the consolidated statements of income.

Freddie Mac Q Series Securitization. In December 2022, we completed our first loan securitization through Freddie Mac’s Q Series securitization program (“Q Series Securitization”), by which we sold to Freddie Mac 11 floating rate loans totaling \$315.8 million that are secured by first priority mortgage liens on 21 multifamily properties that qualify as mission-driven under the Federal Housing Finance Agency guidelines. The Q Series Securitization is represented through a series of pass-through certificates (the “Certificates”) issued under a pooling and servicing agreement. We retained certain subordinate and interest-only classes of the Certificates aggregating \$79.0 million and the remaining Certificates totaling \$236.9 million were purchased by third-party investors, representing leverage of 75%. The Certificates sold to third parties pays interest at a rate of 2.00% plus one-month SOFR, excluding fees and transaction costs, and are payable monthly.

As part of the securitization transaction, we released all mortgage servicing obligations and rights to Freddie Mac who was designated as the master servicer. As master servicer, Freddie Mac appointed us as its subservicer, which includes obligations to collect and remit payments and otherwise administer the underlying loans, and a third-party as the special servicer.

We may, subject to certain limitations, terminate the special servicer, with or without cause, and appoint a successor. In addition, the special servicer must receive our consent prior to certain decisions with respect to a specially serviced mortgage loan.

Senior Unsecured Notes

A summary of our senior unsecured notes is as follows (\$ in thousands):

Senior Unsecured Notes	Issuance Date	Maturity	December 31, 2022			December 31, 2021		
			UPB	Carrying Value (1)	Wtd. Avg. Rate (2)	UPB	Carrying Value (1)	Wtd. Avg. Rate (2)
8.50% Notes (3)	Oct. 2022	Oct. 2027	\$ 150,000	\$ 147,519	8.50 %	\$ —	\$ —	—
5.00% Notes (3)	Dec. 2021	Dec. 2028	180,000	177,450	5.00 %	180,000	177,105	5.00 %
4.50% Notes (3)	Aug. 2021	Sept. 2026	270,000	266,926	4.50 %	270,000	266,090	4.50 %
5.00% Notes (3)	Apr. 2021	Apr. 2026	175,000	172,917	5.00 %	175,000	172,302	5.00 %
8.00% Notes (3)	Apr. 2020	Apr. 2023	70,750	70,613	8.00 %	70,750	70,202	8.00 %
4.50% Notes (3)	Mar. 2020	Mar. 2027	275,000	272,960	4.50 %	275,000	272,477	4.50 %
4.75% Notes (4)	Oct. 2019	Oct. 2024	110,000	109,369	4.75 %	110,000	109,018	4.75 %
5.75% Notes (4)	Mar. 2019	Apr. 2024	90,000	89,514	5.75 %	90,000	89,135	5.75 %
5.625% Notes (4)	Mar. 2018	May 2023	78,850	78,726	5.63 %	125,000	124,216	5.63 %
			<u>\$ 1,399,600</u>	<u>\$ 1,385,994</u>	<u>5.40 %</u>	<u>\$ 1,295,750</u>	<u>\$ 1,280,545</u>	<u>5.05 %</u>

- (1) At December 31, 2022 and 2021, the carrying value is net of deferred financing fees of \$13.6 million and \$15.2 million, respectively.
- (2) At December 31, 2022 and 2021, the aggregate weighted average note rate, including certain fees and costs, was 5.69% and 5.34%, respectively.
- (3) These notes can be redeemed by us prior to three months before the maturity date, at a redemption price equal to 100% of the aggregate principal amount, plus a “make-whole” premium and accrued and unpaid interest. We have the right to redeem the notes within three months prior to the maturity date at a redemption price equal to 100% of the aggregate principal amount, plus accrued and unpaid interest.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

- (4) These notes can be redeemed by us at any time prior to the maturity date, at a redemption price equal to 100% of the aggregate principal amount, plus a “make-whole” premium and accrued and unpaid interest. We have the right to redeem the notes on the maturity date at a redemption price equal to 100% of the aggregate principal amount, plus accrued and unpaid interest.

Except as noted below, we used the proceeds of our senior unsecured debt offerings to make investments and for general corporate purposes.

In October 2022, we issued \$150.0 million aggregate principal amount of 8.50% senior unsecured notes due in 2027 in a private offering. We received net proceeds of \$147.5 million from the issuance, after deducting the underwriting discount and other offering expenses. We used \$47.5 million of the proceeds, which includes accrued interest and other fees, to repurchase a portion of our 5.625% senior unsecured notes.

In 2021, we issued \$180.0 million aggregate principal amount of 5.00% senior unsecured notes due in 2028 in a private offering. We received net proceeds of \$177.2 million from the issuance, after deducting the underwriting discount and other offering expenses.

In 2021, we issued \$270.0 million aggregate principal amount of 4.50% senior unsecured notes due in 2026 in a private offering. We received net proceeds of \$265.8 million from the issuance, after deducting the underwriting discount and other offering expenses.

In 2021, we issued \$175.0 million aggregate principal amount of 5.00% senior unsecured notes due in 2026 in a private offering. We received net proceeds of \$172.3 million from the issuance, after deducting the underwriting discount and other offering expenses.

In 2020, we issued \$70.8 million aggregate principal amount of 8.00% senior unsecured notes due in April 2023 in a private offering. We received total proceeds of \$69.6 million from the issuance, after deducting the underwriting discount and other offering expenses. We used a portion of the proceeds from the issuance to repay secured indebtedness.

In 2020, we issued \$275.0 million aggregate principal amount of 4.50% senior unsecured notes due in March 2027 in a private offering. We received proceeds of \$271.8 million from the issuance, after deducting the underwriting discount and other offering expenses. We used a significant portion of the proceeds to repay secured indebtedness.

In 2019, we issued \$110.0 million aggregate principal amount of 4.75% senior unsecured notes due in October 2024 in a private offering. We received proceeds of \$108.2 million from the issuance, after deducting the underwriting discount and other offering expenses.

In 2019, we issued \$90.0 million aggregate principal amount of 5.75% senior unsecured notes due in April 2024 in a private offering. We received proceeds of \$88.2 million from the issuance, after deducting the underwriting discount and other offering expenses.

In 2018, we issued \$125.0 million aggregate principal amount of 5.625% senior unsecured notes due in May 2023 in a private offering. We received total proceeds of \$122.3 million from the issuance, after deducting the underwriting discount and other offering expenses. We used a significant portion of the proceeds to fully redeem our 7.375% senior unsecured notes. In October 2022, we repaid \$46.2 million of the outstanding principal balance as noted above.

Convertible Senior Unsecured Notes

In August 2022, we issued \$287.5 million in aggregate principal amount of 7.50% convertible senior notes (the “7.50% Convertible Notes”) through a private placement offering. The 7.50% Convertible Notes pay interest semiannually in arrears and are scheduled to mature in August 2025, unless earlier converted or repurchased by the holders pursuant to their terms. The initial conversion rate was 59.8480 shares of common stock per \$1,000 of principal representing a conversion price of \$16.71 per share of common stock. We received proceeds of \$279.3 million, net of discounts and fees. We used \$203.1 million of the net proceeds to repurchase a portion of our 4.75% convertible senior notes (the “4.75% Convertible Notes”), which included \$5.2 million of accrued interest and repurchase premiums, and expensed \$3.3 million of deferred financing fees into loss on extinguishment of debt on the consolidated statements of income. At December 31, 2022, the 7.50% Convertible Notes had a conversion rate of 59.8892 shares of common stock per \$1,000 of principal, which represented a conversion price of \$16.70 per share of common stock.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

In the fourth quarter of 2022, the remaining \$66.1 million principal amount of our 4.75% Convertible Notes matured and were fully settled with cash.

Our convertible senior unsecured notes are not redeemable by us prior to their maturities and are convertible by the holder into, at our election, cash, shares of our common stock or a combination of both, subject to the satisfaction of certain conditions and during specified periods. The conversion rates are subject to adjustment upon the occurrence of certain specified events and the holders may require us to repurchase all, or any portion, of their notes for cash equal to 100% of the principal amount, plus accrued and unpaid interest, if we undergo a fundamental change specified in the agreements.

On January 1, 2022, we adopted ASU 2020-06, see Note 2 for details, which no longer allows for the allocation of proceeds between debt and equity components, eliminates the amortization of the debt discount and requires the if-converted method to calculate diluted EPS, regardless of the settlement intent.

The UPB, unamortized discount and net carrying amount of the liability and equity components of our convertible notes are as follows (in thousands):

Period	UPB	Liability Component		Net Carrying Value	Equity Component
		Unamortized Debt Discount	Unamortized Deferred Financing Fees		Net Carrying Value
December 31, 2022	\$ 287,500	\$ —	\$ 7,144	\$ 280,356	\$ —
December 31, 2021	\$ 264,000	\$ 2,520	\$ 2,095	\$ 259,385	\$ 8,684

During 2022, we incurred interest expense on the notes totaling \$19.8 million, of which \$16.9 million and \$2.9 million related to the cash coupon and deferred financing fees, respectively. During 2021, we incurred interest expense on the notes totaling \$18.6 million, of which \$12.8 million, \$3.2 million and \$2.6 million related to the cash coupon, amortization of the debt discount and of the deferred financing fees, respectively. During 2020, we incurred interest expense on the notes totaling \$20.0 million, of which \$13.4 million, \$3.6 million and \$3.0 million related to the cash coupon, amortization of the debt discount and of the deferred financing fees, respectively. Including the amortization of the deferred financing fees and debt discount, our weighted average total cost of the notes was 8.42% and 6.71% at December 31, 2022 and 2021, respectively, or 5.73% at December 31, 2021, excluding the amortization of the debt discount (which ceased on January 1, 2022 with the adoption of ASU 2020-06).

Junior Subordinated Notes

The carrying values of borrowings under our junior subordinated notes were \$143.1 million and \$142.4 million at December 31, 2022 and 2021, respectively, which is net of a deferred amount of \$9.6 million and \$10.2 million, respectively, (which is amortized into interest expense over the life of the notes) and deferred financing fees of \$1.6 million and \$1.7 million, respectively. These notes have maturities ranging from March 2034 through April 2037 and pay interest quarterly at a floating rate based on LIBOR. The weighted average note rate was 7.65% and 3.03% at December 31, 2022 and 2021, respectively. Including certain fees and costs, the weighted average note rate was 7.74% and 3.12% at December 31, 2022 and 2021, respectively.

Debt Covenants

Credit and Repurchase Facilities and Unsecured Debt. The credit and repurchase facilities and unsecured debt (senior and convertible notes) contain various financial covenants, including, but not limited to, minimum liquidity requirements, minimum net worth requirements, minimum unencumbered asset requirements, as well as certain other debt service coverage ratios, debt to equity ratios and minimum servicing portfolio tests. We were in compliance with all financial covenants and restrictions at December 31, 2022.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
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CLOs. Our CLO vehicles contain interest coverage and asset overcollateralization covenants that must be met as of the waterfall distribution date in order for us to receive such payments. If we fail these covenants in any of our CLOs, all cash flows from the applicable CLO would be diverted to repay principal and interest on the outstanding CLO bonds and we would not receive any residual payments until that CLO regained compliance with such tests. Our CLOs were in compliance with all such covenants at December 31, 2022, as well as on the most recent determination dates in January 2023. In the event of a breach of the CLO covenants that could not be cured in the near-term, we would be required to fund our non-CLO expenses, including employee costs, distributions required to maintain our REIT status, debt costs, and other expenses with (1) cash on hand, (2) income from any CLO not in breach of a covenant test, (3) income from real property and loan assets, (4) sale of assets, or (5) accessing the equity or debt capital markets, if available. We have the right to cure covenant breaches which would resume normal residual payments to us by purchasing non-performing loans out of the CLOs. However, we may not have sufficient liquidity available to do so at such time.

Our CLO compliance tests as of the most recent determination dates in January 2023 are as follows:

<u>Cash Flow Triggers</u>	<u>CLO 12</u>	<u>CLO 13</u>	<u>CLO 14</u>	<u>CLO 15</u>	<u>CLO 16</u>	<u>CLO 17</u>	<u>CLO 18</u>	<u>CLO 19</u>
<u>Overcollateralization (1)</u>								
Current	126.58 %	128.52 %	119.76 %	120.85 %	121.21 %	122.51 %	124.03 %	120.30 %
Limit	117.87 %	118.76 %	118.76 %	119.85 %	120.21 %	121.51 %	123.03 %	119.30 %
Pass / Fail	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
<u>Interest Coverage (2)</u>								
Current	197.05 %	180.22 %	148.34 %	145.30 %	145.55 %	140.69 %	159.15 %	120.12 %
Limit	120.00 %	120.00 %	120.00 %	120.00 %	120.00 %	120.00 %	120.00 %	120.00 %
Pass / Fail	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass

- (1) The overcollateralization ratio divides the total principal balance of all collateral in the CLO by the total principal balance of the bonds associated with the applicable ratio. To the extent an asset is considered a defaulted security, the asset's principal balance for purposes of the overcollateralization test is the lesser of the asset's market value or the principal balance of the defaulted asset multiplied by the asset's recovery rate which is determined by the rating agencies. Rating downgrades of CLO collateral will generally not have a direct impact on the principal balance of a CLO asset for purposes of calculating the CLO overcollateralization test unless the rating downgrade is below a significantly low threshold (e.g., CCC-) as defined in each CLO vehicle.
- (2) The interest coverage ratio divides interest income by interest expense for the classes senior to those retained by us.

Our CLO overcollateralization ratios as of the determination dates subsequent to each quarter are as follows:

<u>Determination (1)</u>	<u>CLO 12</u>	<u>CLO 13</u>	<u>CLO 14</u>	<u>CLO 15</u>	<u>CLO 16</u>	<u>CLO 17</u>	<u>CLO 18</u>	<u>CLO 19</u>
January 2023	126.58 %	128.52 %	119.76 %	120.85 %	121.21 %	122.51 %	124.03 %	120.30 %
October 2022	118.87 %	119.76 %	119.76 %	120.85 %	121.21 %	122.51 %	124.03 %	120.30 %
July 2022	118.87 %	119.76 %	119.76 %	120.85 %	121.21 %	122.51 %	124.03 %	120.30 %
April 2022	118.87 %	119.76 %	119.76 %	120.85 %	121.21 %	122.51 %	124.03 %	—
January 2022	118.87 %	119.76 %	119.76 %	120.85 %	121.21 %	122.51 %	—	—

- (1) This table represents the quarterly trend of our overcollateralization ratio, however, the CLO determination dates are monthly and we were in compliance with this test for all periods presented.

The ratio will fluctuate based on the performance of the underlying assets, transfers of assets into the CLOs prior to the expiration of their respective replenishment dates, purchase or disposal of other investments, and loan payoffs. No payment due under the junior subordinated indentures may be paid if there is a default under any senior debt and the senior lender has sent notice to the trustee. The junior subordinated indentures are also cross-defaulted with each other.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Note 11 — Allowance for Loss-Sharing Obligations

Our allowance for loss-sharing obligations related to the Fannie Mae DUS program is as follows (in thousands):

	<u>Year Ended December 31,</u>	
	<u>2022</u>	<u>2021</u>
Beginning balance	\$ 56,064	\$ 64,303
Provisions for loss sharing	3,592	44
Provisions reversal for loan repayments	(1,730)	(6,211)
Recoveries (charge-offs), net	(758)	(2,072)
Ending balance	<u>\$ 57,168</u>	<u>\$ 56,064</u>

When a loan is sold under the Fannie Mae DUS program, we undertake an obligation to partially guarantee the performance of the loan. A liability is recognized for the fair value of the guarantee obligation undertaken for the non-contingent aspect of the guarantee and is removed only upon either the expiration or settlement of the guarantee. At both December 31, 2022 and 2021, we had \$34.4 million of guarantee obligations included in the allowance for loss-sharing obligations.

In addition to and separately from the fair value of the guarantee, we estimate our allowance for loss-sharing under CECL over the contractual period in which we are exposed to credit risk. The current expected loss related to loss-sharing was based on a collective pooling basis with similar risk characteristics, a reasonable and supportable forecast and a reversion period based on our average historical losses through the remaining contractual term of the portfolio.

When we settle a loss under the DUS loss-sharing model, the net loss is charged-off against the previously recorded loss-sharing obligation. The settled loss is often net of any previously advanced principal and interest payments in accordance with the DUS program, which are reflected as reductions to the proceeds needed to settle losses. At December 31, 2022 and 2021, we had outstanding advances of \$0.8 million and less than \$0.1 million, respectively, which were netted against the allowance for loss-sharing obligations.

At December 31, 2022 and 2021, our allowance for loss-sharing obligations, associated with expected losses under CECL, was \$22.7 million and \$21.7 million, respectively, and represented 0.12% and 0.11%, respectively, of our Fannie Mae servicing portfolio. During 2022, we recorded a \$1.1 million increase in CECL reserves, which included a \$1.2 million recovery for a loan that paid off during the second quarter of 2022.

At December 31, 2022 and 2021, the maximum quantifiable liability associated with our guarantees under the Fannie Mae DUS agreement was \$3.49 billion and \$3.60 billion, respectively. The maximum quantifiable liability is not representative of the actual loss we would incur. We would be liable for this amount only if all of the loans we service for Fannie Mae, for which we retain some risk of loss, were to default and all of the collateral underlying these loans was determined to be without value at the time of settlement.

Note 12 — Derivative Financial Instruments

We enter into derivative financial instruments to manage exposures that arise from business activities resulting in the receipt or payment of future known and uncertain cash amounts, the value of which are determined by interest rates and credit risk. We do not use these derivatives for speculative purposes, but are instead using them to manage our interest rate and credit risk exposure.

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Agency Rate Lock and Forward Sale Commitments. We enter into contractual commitments to originate and sell mortgage loans at fixed prices with fixed expiration dates. The commitments become effective when the borrower “rate locks” a specified interest rate within time frames established by us. All potential borrowers are evaluated for creditworthiness prior to the extension of the commitment. Market risk arises if interest rates move adversely between the time of the rate lock by the borrower and the sale date of the loan to an investor. To mitigate the effect of the interest rate risk inherent in providing rate lock commitments to borrowers under the GSE programs, we enter into a forward sale commitment with the investor simultaneously with the rate lock commitment with the borrower. The forward sale contract locks in an interest rate and price for the sale of the loan. The terms of the contract with the investor and the rate lock with the borrower are matched in substantially all respects, with the objective of eliminating interest rate risk to the extent practical. Sale commitments with the investors have an expiration date that is longer than our related commitments to the borrower to allow, among other things, for closing of the loan and processing of paperwork to deliver the loan into the sale commitment.

These commitments meet the definition of a derivative and are recorded at fair value, including the effects of interest rate movements which are reflected as a component of gain (loss) on derivative instruments, net in the consolidated statements of income. The estimated fair value of rate lock commitments also includes the fair value of the expected net cash flows associated with the servicing of the loan which is recorded as income from MSR in the consolidated statements of income. During 2022, 2021 and 2020, we recorded net losses of \$3.6 million, net losses of \$0.8 million and net gains of \$3.4 million, respectively, from changes in the fair value of these derivatives and \$69.3 million, \$130.2 million and \$165.5 million, respectively, of income from MSR. See Note 13 for details.

Interest Rate and Credit Default Swaps (“Swaps”). We enter into over-the-counter swaps to hedge our interest rate and credit risk exposure inherent in (1) our held-for-sale Agency Business Private Label loans from the time the loans are rate locked until sale or securitization, and (2) our Agency Business SFR – fixed rate loans from the time the loans are originated until the time they can be financed with match term fixed rate securitized debt. Our interest rate swaps typically have a three-month maturity and are tied to the five-year and ten-year swap rates. Our credit default swaps typically have a five-year maturity, are tied to the credit spreads of the underlying bond issuers and we typically hold our position until we price our Private Label loan securitizations. The Swaps do not meet the criteria for hedge accounting, are cleared by a central clearing house and variation margin payments, made in cash, are treated as a legal settlement of the derivative itself as opposed to a pledge of collateral.

During 2022, we recorded realized and unrealized gains of \$26.9 million and \$3.5 million, respectively, to our Agency Business related to our Swaps. During 2021, we recorded realized and unrealized losses of less than \$0.1 million and \$1.5 million, respectively, to our Agency Business related to our Swaps. During 2020, we recorded realized losses of \$3.0 million and unrealized gains of \$0.2 million to our Structured Business and realized losses of \$57.1 million and unrealized losses of \$1.7 million to our Agency Business related to our Swaps. The realized and unrealized gains and losses are recorded in gain (loss) on derivative instruments, net.

A summary of our non-qualifying derivative financial instruments in our Agency Business is as follows (\$ in thousands):

Derivative	December 31, 2022				
	Count	Notional Value	Balance Sheet Location	Fair Value	
				Derivative Assets	Derivative Liabilities
Rate lock commitments	6	\$ 91,472	Other assets/other liabilities	\$ 354	\$ (1,070)
Forward sale commitments	27	294,451	Other assets/other liabilities	1,151	(3,827)
Swaps	1,298	129,800		—	—
		<u>\$ 515,723</u>		<u>\$ 1,505</u>	<u>\$ (4,897)</u>
December 31, 2021					
Rate lock commitments	2	\$ 11,250	Other assets/other liabilities	\$ 295	\$ (33)
Forward sale commitments	55	571,220	Other assets/other liabilities	1,370	(1,449)
Swaps	3,882	388,200		—	—
		<u>\$ 970,670</u>		<u>\$ 1,665</u>	<u>\$ (1,482)</u>

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Note 13 — Fair Value

Fair value estimates are dependent upon subjective assumptions and involve significant uncertainties resulting in variability in estimates with changes in assumptions. The following table summarizes the principal amounts, carrying values and the estimated fair values of our financial instruments (in thousands):

	December 31, 2022			December 31, 2021		
	Principal / Notional Amount	Carrying Value	Estimated Fair Value	Principal / Notional Amount	Carrying Value	Estimated Fair Value
Financial assets:						
Loans and investments, net	\$ 14,456,123	\$ 14,254,674	\$ 14,468,418	\$ 12,158,995	\$ 11,981,048	\$ 12,181,194
Loans held-for-sale, net	368,066	354,070	362,054	1,077,239	1,093,609	1,117,085
Capitalized mortgage servicing rights, net	n/a	401,471	530,913	n/a	422,734	477,323
Securities held-to-maturity, net	234,255	156,547	144,571	210,728	140,484	149,911
Derivative financial instruments	111,950	1,505	1,505	280,654	1,665	1,665
Financial liabilities:						
Credit and repurchase facilities	\$ 3,856,009	\$ 3,841,814	\$ 3,828,192	\$ 4,493,699	\$ 4,481,579	\$ 4,484,107
Securitized debt	7,886,066	7,849,270	7,560,541	5,924,705	5,892,810	5,914,453
Senior unsecured notes	1,399,600	1,385,994	1,262,560	1,295,750	1,280,545	1,301,708
Convertible senior unsecured notes, net	287,500	280,356	287,834	264,000	259,385	294,690
Junior subordinated notes	154,336	143,128	103,977	154,336	142,382	101,698
Derivative financial instruments	273,973	4,897	4,897	301,816	1,482	1,482

Assets and liabilities disclosed at fair value are categorized based upon the level of judgment associated with the inputs used to measure their fair value. Determining which category an asset or liability falls within the hierarchy requires judgment and we evaluate our hierarchy disclosures each quarter. Hierarchical levels directly related to the amount of subjectivity associated with the inputs to fair valuation of these assets and liabilities are as follows:

Level 1—Inputs are unadjusted and quoted prices exist in active markets for identical assets or liabilities, such as government, agency and equity securities.

Level 2—Inputs (other than quoted prices included in Level 1) are observable for the asset or liability through correlation with market data. Level 2 inputs may include quoted market prices for a similar asset or liability, interest rates and credit risk. Examples include non-government securities, certain mortgage and asset-backed securities, certain corporate debt and certain derivative instruments.

Level 3—Inputs reflect our best estimate of what market participants would use in pricing the asset or liability and are based on significant unobservable inputs that require a considerable amount of judgment and assumptions. Examples include certain mortgage and asset-backed securities, certain corporate debt and certain derivative instruments.

The following is a description of the valuation techniques used to measure fair value and the general classification of these instruments pursuant to the fair value hierarchy.

Loans and investments, net. Fair values of loans and investments that are not impaired are estimated using inputs based on direct capitalization rate and discounted cash flow methodologies using discount rates, which, in our opinion, best reflect current market interest rates that would be offered for loans with similar characteristics and credit quality (Level 3). Fair values of impaired loans and investments are estimated using inputs that require significant judgments, which include assumptions regarding discount rates, capitalization rates, creditworthiness of major tenants, occupancy rates, availability of financing, exit plans and other factors (Level 3).

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Loans held-for-sale, net. Consists of originated loans that are generally expected to be transferred or sold within 60 days to 180 days of loan funding, and are valued using pricing models that incorporate observable inputs from current market assumptions or a hypothetical securitization model utilizing observable market data from recent securitization spreads and observable pricing of loans with similar characteristics (Level 2). Fair value includes the fair value allocated to the associated future MSR and is calculated pursuant to the valuation techniques described below for capitalized mortgage servicing rights, net (Level 3).

Capitalized mortgage servicing rights, net. Fair values are estimated using inputs based on discounted future net cash flow methodology (Level 3). The fair value of MSR is estimated using a process that involves the use of independent third-party valuation experts, supported by commercially available discounted cash flow models and analysis of current market data. The key inputs used in estimating fair value include the contractually specified servicing fees, prepayment speed of the underlying loans, discount rate, annual per loan cost to service loans, delinquency rates, late charges and other economic factors.

Securities held-to-maturity, net. Fair values are approximated using inputs based on current market quotes received from financial sources that trade such securities and are based on prevailing market data and, in some cases, are derived from third-party proprietary models based on well recognized financial principles and reasonable estimates about relevant future market conditions (Level 3).

Derivative financial instruments. Fair values of rate lock and forward sale commitments are estimated using valuation techniques, which include internally-developed models developed based on changes in the U.S. Treasury rate and other observable market data (Level 2). The fair value of rate lock commitments includes the fair value of the expected net cash flows associated with the servicing of the loans, see capitalized mortgage servicing rights, net above for details on the applicable valuation technique (Level 3). We also consider the impact of counterparty non-performance risk when measuring the fair value of these derivatives. Given the credit quality of our counterparties, the short duration of interest rate lock commitments and forward sale contracts, and our historical experience, the risk of nonperformance by our counterparties is not significant.

Credit and repurchase facilities. Fair values for credit and repurchase facilities of the Structured Business are estimated using discounted cash flow methodology, using discount rates, which, in our opinion, best reflect current market interest rates for financing with similar characteristics and credit quality (Level 3). The majority of our credit and repurchase facilities for the Agency Business bear interest at rates that are similar to those available in the market currently and fair values are estimated using Level 2 inputs. For these facilities, the fair values approximate their carrying values.

Securitized debt and junior subordinated notes. Fair values are estimated based on broker quotations, representing the discounted expected future cash flows at a yield that reflects current market interest rates and credit spreads (Level 3).

Senior unsecured notes. Fair values are estimated at current market quotes received from active markets when available (Level 1). If quotes from active markets are unavailable, then the fair values are estimated utilizing current market quotes received from inactive markets (Level 2).

Convertible senior unsecured notes, net. Fair values are estimated using current market quotes received from inactive markets (Level 2).

We measure certain financial assets and financial liabilities at fair value on a recurring basis. The fair values of these financial assets and liabilities are determined using the following input levels at December 31, 2022 (in thousands):

	Carrying Value	Fair Value	Fair Value Measurements Using Fair Value Hierarchy		
			Level 1	Level 2	Level 3
Financial assets:					
Derivative financial instruments	\$ 1,505	\$ 1,505	\$ —	\$ 1,151	\$ 354
Financial liabilities:					
Derivative financial instruments	\$ 4,897	\$ 4,897	\$ —	\$ 4,897	\$ —

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

We measure certain financial and non-financial assets at fair value on a nonrecurring basis. The fair values of these financial and non-financial assets, if applicable, were determined using the following input levels at December 31, 2022 (in thousands):

	Net Carrying Value	Fair Value	Fair Value Measurements Using Fair Value Hierarchy		
			Level 1	Level 2	Level 3
Financial assets:					
<i>Impaired loans, net</i>					
Loans held-for-investment (1)	\$ 61,745	\$ 61,745	\$ —	\$ —	\$ 61,745
Loans held-for-sale (2)	134,342	134,342	—	134,342	—
	<u>\$ 196,087</u>	<u>\$ 196,087</u>	<u>\$ —</u>	<u>\$ 134,342</u>	<u>\$ 61,745</u>

- (1) We had an allowance for credit losses of \$85.4 million relating to seven impaired loans with an aggregate carrying value, before loan loss reserves, of \$147.1 million at December 31, 2022.
- (2) We recorded an impairment loss of \$15.7 million related to 13 loans held-for-sale with an aggregate carrying value, before unrealized impairment losses, of \$150.0 million.

Loan impairment assessments. Loans held for investment are intended to be held to maturity and, accordingly, are carried at cost, net of unamortized loan origination costs and fees, loan purchase discounts, and net of the allowance for credit losses, when such loan or investment is deemed to be impaired. We consider a loan impaired when, based upon current information, it is probable that all amounts due for both principal and interest will not be collected according to the contractual terms of the loan agreement. We evaluate our loans to determine if the value of the underlying collateral securing the impaired loan is less than the net carrying value of the loan, which may result in an allowance, and corresponding charge to the provision for credit losses, or an impairment loss. These valuations require significant judgments, which include assumptions regarding capitalization and discount rates, revenue growth rates, creditworthiness of major tenants, occupancy rates, availability of financing, exit plan and other factors.

Loans held-for-sale are generally transferred and sold within 60-180 days of loan origination and are reported at lower of cost or market. We consider a loan classified as held-for-sale impaired if, based on current information, it is probable that we will sell the loan below par, or not be able to collect all principal and interest in accordance with the contractual terms of the loan agreement. These loans are valued using pricing models that incorporate observable inputs from current market assumptions or a hypothetical securitization model utilizing observable market data from recent securitization spreads and observable pricing of loans with similar characteristics.

The tables above and below include all impaired loans, regardless of the period in which the impairment was recognized.

Quantitative information about Level 3 fair value measurements at December 31, 2022 is as follows (\$ in thousands):

	Fair Value	Valuation Techniques	Significant Unobservable Inputs	
Financial assets:				
<u>Impaired loans:</u>				
Land	\$ 50,000	Discounted cash flows	Discount rate	21.50 %
			Revenue growth rate	3.00 %
Retail	11,745	Discounted cash flows	Discount rate	11.25 %
			Capitalization rate	9.25 %
			Revenue growth rate	3.00 %
<u>Derivative financial instruments:</u>				
Rate lock commitments	354	Discounted cash flows	W/A discount rate	13.30 %

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The derivative financial instruments using Level 3 inputs are outstanding for short periods of time (generally less than 60 days). A roll-forward of Level 3 derivative instruments is as follows (in thousands):

	Fair Value Measurements Using Significant Unobservable Inputs for the Year Ended December 31,		
	2022	2021	2020
Derivative assets and liabilities, net			
Beginning balance	\$ 295	\$ 1,967	\$ 1,066
Settlements	(64,896)	(112,836)	(164,654)
Realized gains recorded in earnings	64,601	110,869	163,588
Unrealized gains recorded in earnings	354	295	1,967
Ending balance	<u>\$ 354</u>	<u>\$ 295</u>	<u>\$ 1,967</u>

The components of fair value and other relevant information associated with our rate lock commitments, forward sales commitments and the estimated fair value of cash flows from servicing on loans held-for-sale are as follows (in thousands):

December 31, 2022	Notional/ Principal Amount	Fair Value of Servicing Rights	Interest Rate Movement Effect	Unrealized Impairment Loss	Total Fair Value Adjustment
Rate lock commitments	\$ 91,472	\$ 354	\$ (1,070)	\$ —	\$ (716)
Forward sale commitments	294,451	—	1,070	—	1,070
Loans held-for-sale, net (1)	368,066	5,558	—	(15,703)	(10,145)
Total		<u>\$ 5,912</u>	<u>\$ —</u>	<u>\$ (15,703)</u>	<u>\$ (9,791)</u>

(1) Loans held-for-sale, net are recorded at the lower of cost or market on an aggregate basis and includes fair value adjustments related to estimated cash flows from MSRs.

We measure certain assets and liabilities for which fair value is only disclosed. The fair values of these assets and liabilities are determined using the following input levels at December 31, 2022 (in thousands):

	Carrying Value	Fair Value	Fair Value Measurements Using Fair Value Hierarchy		
			Level 1	Level 2	Level 3
Financial assets:					
Loans and investments, net	\$ 14,254,674	\$ 14,468,418	\$ —	\$ —	\$ 14,468,418
Loans held-for-sale, net	354,070	362,054	—	356,496	5,558
Capitalized mortgage servicing rights, net	401,471	530,913	—	—	530,913
Securities held-to-maturity, net	156,547	144,571	—	—	144,571
Financial liabilities:					
Credit and repurchase facilities	\$ 3,841,814	\$ 3,828,192	\$ —	\$ 305,443	\$ 3,522,749
Securitized debt	7,849,270	7,560,541	—	—	7,560,541
Senior unsecured notes	1,385,994	1,262,560	1,262,560	—	—
Convertible senior unsecured notes, net	280,356	287,834	—	287,834	—
Junior subordinated notes	143,128	103,977	—	—	103,977

Note 14 — Commitments and Contingencies

Impact of COVID-19. The magnitude and duration of COVID-19 and its impact on our business and on our borrowers is uncertain and will mostly depend on future events, which cannot be predicted. As this pandemic continues and if economic conditions deteriorate, it may have long-term impacts on our financial position, results of operations and cash flows. See Item 1A. Risk Factors and Note 2 for further discussion of COVID-19.

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Agency Business Commitments. Our Agency Business is subject to supervision by certain regulatory agencies. Among other things, these agencies require us to meet certain minimum net worth, operational liquidity and restricted liquidity collateral requirements, and compliance with reporting requirements. Our adjusted net worth and liquidity required by the agencies for all periods presented exceeded these requirements.

At December 31, 2022, we were required to maintain at least \$18.5 million of liquid assets in one of our subsidiaries to meet our operational liquidity requirements for Fannie Mae and we had operational liquidity in excess of this requirement.

We are generally required to share the risk of any losses associated with loans sold under the Fannie Mae DUS program and are required to secure this obligation by assigning restricted cash balances and/or a letter of credit to Fannie Mae. The amount of collateral required by Fannie Mae is a formulaic calculation at the loan level by a Fannie Mae assigned tier, which considers the loan balance, risk level of the loan, age of the loan and level of risk-sharing. Fannie Mae requires restricted liquidity for Tier 2 loans of 75 basis points, 15 basis points for Tier 3 loans and 5 basis points for Tier 4 loans, which is funded over a 48-month period that begins upon delivery of the loan to Fannie Mae. A significant portion of our Fannie Mae DUS serviced loans for which we have risk sharing are Tier 2 loans. At December 31, 2022, the restricted liquidity requirement totaled \$64.4 million and was satisfied with a \$64.0 million letter of credit and cash issued to Fannie Mae.

At December 31, 2022, reserve requirements for the Fannie Mae DUS loan portfolio will require us to fund \$37.0 million in additional restricted liquidity over the next 48 months, assuming no further principal paydowns, prepayments, or defaults within our at-risk portfolio. Fannie Mae periodically reassesses these collateral requirements and may make changes to these requirements in the future. We generate sufficient cash flow from our operations to meet these capital standards and do not expect any changes to have a material impact on our future operations; however, future changes to collateral requirements may adversely impact our available cash.

We are subject to various capital requirements in connection with seller/servicer agreements that we have entered into with secondary market investors. Failure to maintain minimum capital requirements could result in our inability to originate and service loans for the respective investor and, therefore, could have a direct material effect on our consolidated financial statements. At December 31, 2022, we met all of Fannie Mae’s quarterly capital requirements and our Fannie Mae adjusted net worth was in excess of the required net worth. We are also subject to capital requirements on an annual basis for Ginnie Mae and FHA, and we believe we have met all requirements at December 31, 2022.

As an approved designated seller/servicer under Freddie Mac’s SBL program, we are required to post collateral to ensure that we are able to meet certain purchase and loss obligations required by this program. Under the SBL program, we are required to post collateral equal to \$5.0 million, which is satisfied with a \$5.0 million letter of credit.

We enter into contractual commitments with borrowers providing rate lock commitments while simultaneously entering into forward sale commitments with investors. These commitments are outstanding for short periods of time (generally less than 60 days) and are described in more detail in Note 12 and Note 13.

Debt Obligations and Operating Leases. At December 31, 2022, the maturities of our debt obligations and the minimum annual operating lease payments under leases with a term in excess of one year are as follows (in thousands):

Year	Debt Obligations	Minimum Annual Operating Lease Payments	Total
2023	\$ 2,660,381	\$ 8,946	\$ 2,669,327
2024	3,233,658	8,881	3,242,539
2025	2,035,226	9,008	2,044,234
2026	4,610,371	9,043	4,619,414
2027	696,707	7,598	704,305
Thereafter	347,168	27,706	374,874
Total	\$ 13,583,511	\$ 71,182	\$ 13,654,693

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At December 31, 2022 and 2021, our leases had remaining lease terms of 0.2 – 10.4 years and 0.1 – 9.0 years, respectively, with a weighted average remaining lease term of 8.2 years for both periods and a weighted average discount rate of 6.8% and 4.0%, respectively. We recorded lease expense of \$9.6 million, \$9.3 million and \$6.2 million during 2022, 2021 and 2020, respectively.

Unfunded Commitments. In accordance with certain structured loans and investments, we have outstanding unfunded commitments of \$1.15 billion at December 31, 2022 that we are obligated to fund as borrowers meet certain requirements. Specific requirements include, but are not limited to, property renovations, building construction and conversions based on criteria met by the borrower in accordance with the loan agreements.

Litigation. We are currently neither subject to any material litigation nor, to the best of our knowledge, threatened by any material litigation other than the following:

In June 2011, three related lawsuits were filed by the Extended Stay Litigation Trust (the “Trust”), a post-bankruptcy litigation trust alleged to have standing to pursue claims that previously had been held by Extended Stay, Inc. and the Homestead Village L.L.C. family of companies (together “ESI”) (formerly Chapter 11 debtors, together the “Debtors”) that have emerged from bankruptcy. Two of the lawsuits were filed in the U.S. Bankruptcy Court for the Southern District of New York, and the third in the Supreme Court of the State of New York, New York County. There were 73 defendants in the three lawsuits, including 55 corporate and partnership entities and 18 individuals. A subsidiary of ours and certain other entities that are affiliates of ours are included as defendants. The New York State Court action was removed to the Bankruptcy Court. Currently, there is just a single case in Bankruptcy Court.

The lawsuits all alleged, as a factual basis and background, certain facts surrounding the June 2007 leveraged buyout of ESI from affiliates of Blackstone Capital. Our subsidiary, Arbor ESH II, LLC, had a \$115.0 million investment in the Series A1 Preferred Units of a holding company of Extended Stay, Inc. The New York State Court action and one of the two federal court actions named as defendants Arbor ESH II, LLC, Arbor Commercial Mortgage, LLC (“ACM”), and ABT-ESI LLC, an entity in which we have a membership interest, among the broad group of defendants. These two actions were commenced by substantially identical complaints. The defendants are alleged, among other things, to have breached fiduciary and contractual duties by causing or allowing the Debtors to pay illegal dividends or other improper distributions of value at a time when the Debtors were insolvent. The Trust also alleges that the defendants aided and abetted, induced, or participated in breaches of fiduciary duty, waste, and unjust enrichment (“Fiduciary Duty Claims”) and name a director of ours, and a former general counsel of ACM, each of whom had served on the Board of Directors of ESI for a period of time. We are defending these two defendants and paying the costs of such defense. On the basis of the foregoing allegations, the Trust has asserted claims under a number of common law theories, seeking the return of assets transferred by the Debtors prior to the Debtors’ bankruptcy filing.

In the third action, filed in Bankruptcy Court, the same plaintiff, the Trust, named ACM and ABT-ESI LLC, together with a number of other defendants, and asserts claims, including constructive and fraudulent conveyance claims, under state and federal statutes, as well as a claim under the Federal Debt Collection Procedure Act.

In June 2013, the Trust filed a motion to amend the lawsuits, to, among other things, (1) consolidate the lawsuits into one lawsuit, (2) remove 47 defendants from the lawsuits, none of whom are related to us, so that there are 26 remaining defendants, including 16 corporate and partnership entities and 10 individuals, and (3) reduce the counts within the lawsuits from over 100 down to 17.

The remaining counts in the Trust’s amended complaint against our affiliates are principally state law claims for breach of fiduciary duties, waste, unlawful dividends and unjust enrichment, and claims under the Bankruptcy Code for avoidance and recovery actions, among others. The Bankruptcy Court granted the motion to amend and the amended complaint has been filed. The amended complaint seeks approximately \$139.0 million in the aggregate, plus interest from the date of the alleged unlawful transfers, from director designees, portions of which are also sought from our affiliates as well as from unaffiliated defendants.

We moved to dismiss the referenced remaining actions in December 2013.

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After supplemental briefing and multiple adjourned conferences, in August 2020, the Court issued a decision granting our motion to dismiss in part, dismissing 9 of the 17 counts. The Court permitted claims against director designees to proceed on theories of authorization of illegal dividends and breach of fiduciary duty. The Court permitted claims against the defendant entities, including our affiliated entities, to proceed on theories of constructive fraudulent transfer and fraudulent transfer under state and federal law. Moreover, the Court affirmatively dismissed four counts against the defendant entities to the extent they are based on distributions from certain so-called LIBOR Floor Certificates. According to the amended complaint, the total LIBOR Floor Certificate transfers were \$74.0 million in value. As a result, with what remains of the amended complaint, total possible liability against the affiliated entities has correspondingly fallen, whereas total possible liability against the director designees remains at approximately \$139.0 million.

Since the Court's decision in August 2020, the parties have engaged in extensive discovery. In early December 2022, the plaintiff and certain co-defendants, including our affiliates, commenced discussions regarding a possible settlement of the litigation and in late December 2022, those parties reached an agreement in principal to settle the litigation. As part of the agreement, we agreed to pay \$7.4 million to the plaintiff, and we have accrued that amount in our December 31, 2022 financial statements. As of the date of this report, the parties are negotiating the settlement documents and the settlement will be subject to the approval of the United States Bankruptcy Court of the Southern District of New York. As part of the settlement, we expect to secure certain rights against those co-defendants who have not agreed to participate in the settlement, however, we can give no assurances that will we be successful in our efforts to recover any part of the amount we have accrued.

Due to Borrowers. Due to borrowers represents borrowers' funds held by us to fund certain expenditures or to be released at our discretion upon the occurrence of certain pre-specified events, and to serve as additional collateral for borrowers' loans. While retained, these balances earn interest in accordance with the specific loan terms they are associated with.

Note 15 — Variable Interest Entities

Our involvement with VIEs primarily affects our financial performance and cash flows through amounts recorded in interest income, interest expense, provision for loan losses and through activity associated with our derivative instruments.

Consolidated VIEs. We have determined that our operating partnership, ARLP, and our CLO and Q Series securitization entities ("Securitization Entities") are VIEs, which we consolidate. ARLP was already consolidated in our financial statements, therefore, the identification of this entity as a VIE had no impact on our consolidated financial statements.

Our Securitization Entities invest in real estate and real estate-related securities and are financed by the issuance of debt securities. We believe we hold the power necessary to direct the most significant economic activities of those entities. We also have exposure to losses to the extent of our equity interests, and rights to waterfall payments in excess of required payments to bond investors. As a result of consolidation, equity interests have been eliminated, and the consolidated balance sheets reflect both the assets held and debt issued to third parties by the Securitization Entities, prior to the unwind. Our operating results and cash flows include the gross asset and liability amounts related to the Securitization Entities as opposed to our net economic interests in those entities.

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The assets and liabilities related to these consolidated Securitization Entities are as follows (in thousands):

	December 31, 2022	December 31, 2021
Assets:		
Restricted cash	\$ 710,775	\$ 466,523
Loans and investments, net	8,900,104	6,616,809
Other assets	174,382	61,474
Total assets	\$ 9,785,261	\$ 7,144,806
Liabilities:		
Securitized debt	\$ 7,849,270	\$ 5,892,810
Other liabilities	26,754	9,813
Total liabilities	\$ 7,876,024	\$ 5,902,623

Assets held by the Securitization Entities are restricted and can only be used to settle obligations of those entities. The liabilities of the Securitization Entities are non-recourse to us and can only be satisfied from each respective asset pool. See Note 10 for details. We are not obligated to provide, have not provided, and do not intend to provide financial support to any of the Securitization Entities.

Unconsolidated VIEs. We determined that we are not the primary beneficiary of 29 VIEs in which we have a variable interest at December 31, 2022 because we do not have the ability to direct the activities of the VIEs that most significantly impact each entity's economic performance.

A summary of our variable interests in identified VIEs, of which we are not the primary beneficiary, at December 31, 2022 is as follows (in thousands):

Type	Carrying Amount (1)
Loans	\$ 446,932
APL certificates	126,258
B Piece bonds	33,442
Equity investments	20,194
Agency interest only strips	237
Total	\$ 627,063

(1) Represents the carrying amount of loans and investments before reserves. At December 31, 2022, \$127.9 million of loans to VIEs had corresponding specific loan loss reserves of \$77.9 million. The maximum loss exposure at December 31, 2022 would not exceed the carrying amount of our investment.

These unconsolidated VIEs have exposure to real estate debt of approximately \$4.01 billion at December 31, 2022.

Note 16 — Equity

Preferred Stock. In the first quarter of 2022, we completed a public offering of an additional 3,292,000 shares of 6.25% Series F fixed-to-floating rate cumulative redeemable preferred stock, generating net proceeds of \$77.1 million after deducting the underwriting discount and other offering expenses. The additional shares issued have the same terms as the original issuance.

During 2021, we completed the public offerings of 8,050,000 shares of 6.25% Series F fixed-to-floating rate cumulative redeemable preferred stock, 5,750,000 shares of 6.25% Series E cumulative redeemable preferred stock, and 9,200,000 shares of 6.375% Series D cumulative redeemable preferred stock. The Series F, Series E and Series D preferred stock are not redeemable by us prior to October 12, 2026, August 11, 2026 and June 2, 2026, respectively.

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Common Stock. In November 2022, we amended the equity distribution agreement with JMP Securities LLC ("JMP"). In accordance with the terms of the amendment, we may offer and sell up to 25,000,000 shares of our common stock in "At-The-Market" equity offerings through JMP by means of ordinary brokers' transactions or otherwise at market prices prevailing at the time of sale, or at negotiated prices. During 2022, we sold 18,860,788 shares of our common stock for net proceeds of \$285.0 million. At December 31, 2022, we had 18,290,000 shares available under the amended agreement.

In the first quarter of 2022, we completed a public offering of 7,475,000 shares of our common stock (including the full exercise of the overallotment) for \$16.57 per share and received net proceeds of \$123.7 million after deducting the underwriter's discount and other offering expenses. The proceeds from this offering were used to make investments related to our business and for general corporate purposes.

We maintain a share repurchase program providing for the repurchase of up to \$100.0 million of our outstanding common stock. The repurchase of our common stock may be made from time to time in the open market, in privately negotiated transactions or in compliance with a Rule 10b5-1 plan based on our stock price, general market conditions, applicable legal requirements and other factors. The program may be discontinued or modified at any time. We did not repurchase shares of our common stock under this program during 2022. At December 31, 2022, there was \$96.1 million available for repurchase under this program.

Noncontrolling Interest. Noncontrolling interest relates to the OP Units issued to satisfy a portion of the purchase price in connection with the Acquisition. Each of these OP Units are paired with one share of our special voting preferred shares having a par value of \$0.01 per share and is entitled to one vote each on any matter submitted for stockholder approval. The OP Units are entitled to receive distributions if and when our Board of Directors authorizes and declares common stock distributions. The OP Units are also redeemable for cash, or at our option, for shares of our common stock on a one-for-one basis. At December 31, 2022, there were 16,293,589 OP Units outstanding, which represented 8.4% of the voting power of our outstanding stock.

Distributions. Dividends declared (on a per share basis) for the year ended December 31, 2022 are as follows:

Common Stock		Preferred Stock			
Declaration Date	Dividend	Declaration Date	Dividend		
			Series D	Series E	Series F
February 16, 2022	\$ 0.37	January 3, 2022	\$ 0.3984375	\$ 0.390625	\$ 0.46875
May 4, 2022	\$ 0.38	April 1, 2022	\$ 0.3984375	\$ 0.390625	\$ 0.390625
July 27, 2022	\$ 0.39	July 1, 2022	\$ 0.3984375	\$ 0.390625	\$ 0.390625
November 2, 2022	\$ 0.40	September 30, 2022	\$ 0.3984375	\$ 0.390625	\$ 0.390625

Common Stock – On February 15, 2023, the Board of Directors declared a cash dividend of \$0.40 per share of common stock. The dividend is payable on March 17, 2023 to common stockholders of record as of the close of business on March 3, 2023.

Preferred Stock – On January 3, 2023, the Board of Directors declared cash dividends of \$0.3984375 per share of Series D preferred stock and \$0.390625 per share of both Series E and Series F preferred stock. These amounts reflect dividends from October 30, 2022 through January 29, 2023 and are payable on January 31, 2023 to preferred stockholders of record on January 15, 2023.

We have determined that 100% of the common stock and preferred stock dividends paid during 2022, 2021 and 2020 represented ordinary income to our stockholders for income tax purposes. For stockholders that may be required to report excess inclusion income to the Internal Revenue Service, we will not pass through any excess inclusion income to our stockholders for 2022. As a result, no portion of the 2022 dividends should be treated as excess inclusion income for federal income tax purposes.

Deferred Compensation. We have a stock incentive plan under which the Board of Directors has the authority to issue shares of stock to certain employees, officers and directors.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

During 2022, we issued 652,596 shares of restricted common stock to our employees and members of our Board of Directors under the 2020 Amended Omnibus Stock Incentive Plan (the “2020 Plan”) with a total grant date fair value of \$11.1 million, of which: (1) 232,899 shares with a grant date fair value of \$4.0 million were fully vested on the grant date; (2) 217,840 shares with a grant date fair value of \$3.7 million will vest in 2023; (3) 181,968 shares with a grant date fair value of \$3.1 million will vest in 2024; (4) 9,951 shares with a grant date fair value of \$0.2 million will vest in 2025; and (5) 9,938 shares with a grant date fair value of \$0.2 million will vest in 2026. We issued 25,012 fully vested restricted stock units (“RSUs”) with a grant date fair value of \$0.4 million to certain members of our Board of Directors and 189,873 RSUs with a grant date fair value of \$3.3 million that vest in full in the first quarter of 2025 to our chief executive officer. The individuals decided to defer the receipt of the common stock, to which the RSUs are converted into, to a future date. The deferred awards have no voting rights and are eligible to receive dividend equivalents equal to the dividends on our common stock as, and when, declared by our Board of Directors.

In 2021, we issued 384,758 shares of restricted common stock to our employees and members of our Board of Directors under the 2020 Plan with a total grant date fair value of \$6.4 million, of which: (1) 144,951 shares with a grant date fair value of \$2.4 million vested on the grant date; (2) 101,475 shares with a grant date fair value of \$1.7 million vested in 2022; (3) 88,788 shares with a grant date fair value of \$1.5 million will vest in 2023; (4) 25,479 shares with a grant date fair value of \$0.4 million will vest in 2024; and (5) 24,065 shares with a grant date fair value of \$0.4 million will vest in 2025. In April 2021, we granted our chief executive officer 184,729 shares of restricted common stock with a grant date fair value of \$3.1 million that vest in full in April 2024. In July 2021, we granted our chief executive officer 165,746 shares of performance based restricted stock with a grant date fair value of \$3.0 million, which vest in full in July 2024.

In 2020, we granted 314,957 shares of restricted common stock with a total grant date fair value of \$3.4 million to our employees. One third of the shares vested as of the grant date and one third vested on each of the first and second anniversaries of the grant date. In 2020, we granted 52,735 shares of fully vested common stock with a grant date fair value of \$0.5 million to members of our Board of Directors. In 2020, we granted our chief executive officer 45,928 shares of restricted common stock with a grant date fair value of \$0.5 million and 275,569 of performance-based restricted stock units with a grant date fair value of \$0.1 million. One quarter of the restricted common stock vest on the grant date and one quarter vest on each of the first, second and third anniversaries of the grant date. The performance-based restricted stock units vest at the end of a four-year performance period based on our achievement of certain total stockholder return objectives. In 2020, we also granted our chief executive officer 313,152 shares of performance-based restricted stock with a grant date fair value of \$2.9 million as a result of achieving goals related to the integration of the Acquisition. The performance-based restricted stock vest in full three years after the grant date.

In 2022, 2021 and 2020, previously granted performance-based restricted stock units of 381,503 units, 448,980 units and 421,348 units, respectively, fully vested based on achieving the performance objectives for the four-year periods ended December 31, 2021, 2020 and 2019, respectively. The 381,503 units, 448,980 units and 421,348 units vested in full and were net settled for 186,772 shares, 229,083 shares and 215,014 shares, respectively, of common stock in 2022, 2021 and 2020, respectively. In addition, 246,508 shares, 294,985 shares and 357,569 shares of performance-based restricted stock granted in 2019, 2018 and 2017, respectively, vested in 2022, 2021 and 2020, respectively, which were net settled for 120,665 shares, 150,530 shares and 182,467 shares, respectively, of common stock.

During 2022, 2021 and 2020, we recorded total stock-based compensation expense of \$14.2 million, \$9.3 million and \$8.6 million, respectively, to employee compensation and benefits and \$0.8 million, \$0.6 million and \$0.5 million, respectively, to selling and administrative expense.

During 2022, a total of 1,070,248 shares of restricted stock and restricted stock units vested with a grant date fair value of \$12.0 million.

At December 31, 2022 and 2021, there were 1,389,427 shares and 1,257,199 shares, respectively, of unvested restricted common stock with a grant date fair value of \$21.3 million and \$17.1 million, respectively.

At December 31, 2022, total unrecognized compensation cost related to unvested restricted common stock was \$9.0 million, which is expected to be recognized ratably over the remaining weighted-average vesting period of 1.9 years.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Earnings Per Share. Basic EPS is calculated by dividing net income (loss) attributable to common stockholders by the weighted average number of shares of common stock outstanding during each period inclusive of unvested restricted stock with full dividend participation rights. Diluted EPS is calculated by dividing net income (loss) by the weighted average number of shares of common stock outstanding, plus the additional dilutive effect of common stock equivalents during each period. Our common stock equivalents include the weighted average dilutive effect of restricted stock units granted to our chief executive officer, OP Units and convertible senior unsecured notes.

A reconciliation of the numerator and denominator of our basic and diluted EPS computations (\$ in thousands, except share and per share data) is as follows:

	Year Ended December 31,					
	2022		2021		2020	
	Basic	Diluted	Basic	Diluted	Basic	Diluted
Net income attributable to common stockholders (1)	\$ 284,829	\$ 284,829	\$ 317,412	\$ 317,412	\$ 163,395	\$ 163,395
Net income attributable to noncontrolling interest (2)	—	28,044	—	38,507	—	25,208
Interest expense on convertible notes (3)	—	20,166	—	—	—	—
Net income attributable to common stockholders and noncontrolling interest	<u>\$ 284,829</u>	<u>\$ 333,039</u>	<u>\$ 317,412</u>	<u>\$ 355,919</u>	<u>\$ 163,395</u>	<u>\$ 188,603</u>
Weighted average shares outstanding	165,355,167	165,355,167	137,830,691	137,830,691	113,811,471	113,811,471
Dilutive effect of OP Units (2)	—	16,304,638	—	16,818,722	—	19,395,691
Dilutive effect of convertible notes (3)	—	16,900,204	—	506,949	—	43,487
Dilutive effect of restricted stock units (4)	—	552,621	—	933,233	—	718,647
Weighted average shares outstanding	<u>165,355,167</u>	<u>199,112,630</u>	<u>137,830,691</u>	<u>156,089,595</u>	<u>113,811,471</u>	<u>133,969,296</u>
Net income per common share (1)	<u>\$ 1.72</u>	<u>\$ 1.67</u>	<u>\$ 2.30</u>	<u>\$ 2.28</u>	<u>\$ 1.44</u>	<u>\$ 1.41</u>

- (1) Net of preferred stock dividends.
- (2) We consider OP Units to be common stock equivalents as the holders have voting rights, the right to distributions and the right to redeem the OP Units for the cash value of a corresponding number of shares of common stock or a corresponding number of shares of common stock, at our election.
- (3) Beginning January 1, 2022, the effective date we adopted ASU 2020-06, we started utilizing the if-converted method of calculating EPS to reflect the impact of our convertible senior notes. For 2021 and 2020, the convertible senior notes impacted diluted EPS if the average price of our common stock exceeded the conversion price, as calculated in accordance with the terms of the indenture. See Note 2 for details.
- (4) Our chief executive officer was granted restricted stock units, which vest at the end of a four-year performance period based upon our achievement of total stockholder return objectives.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Note 17 — Income Taxes

We are organized and conduct our operations to qualify as a REIT and to comply with the provisions of the Internal Revenue Code. A REIT is generally not subject to federal income tax on its REIT-taxable income that is distributed to its stockholders, provided that at least 90% of its REIT-taxable income is distributed and provided that certain other requirements are met. Certain REIT income may be subject to state and local income taxes. We did not have any REIT-federal taxable income, net of dividends paid and net operating loss deductions, for 2022, 2021 and 2020, and therefore, have not provided for REIT federal income tax expense in either year. We have elected to retain excess inclusion income rather than passing it through to our stockholders. In 2022, 2021 and 2020, the REIT incurred no state income tax expense.

Certain of our assets and operations that would not otherwise comply with the REIT requirements, such as the Agency Business and our residential mortgage banking joint venture, are owned or conducted through our taxable REIT subsidiaries (the “TRS Consolidated Group”), the majority of the income of which is subject to U.S. federal, state and local income taxes. The TRS Consolidated Group had no federal net operating losses remaining from prior years. For 2022, 2021 and 2020, we recorded a provision for income taxes related to the assets held in the TRS Consolidated Group and the REIT in the amount of \$17.5 million, \$46.3 million and \$40.4 million, respectively. In 2022, the change in the valuation allowance previously recorded at the TRS Consolidated Group on the deferred tax assets was due to the impact of state tax rate changes. In 2021, a \$0.1 million valuation allowance previously recorded at the TRS Consolidated Group on the deferred tax assets subject to loss limitation rules was released. In 2020, the change in valuation allowance was due to the impact of state tax rate changes.

A summary of our pre-tax GAAP income is as follows (in thousands):

	Year Ended December 31,		
	2022	2021	2020
Pre-tax GAAP income:			
REIT	\$ 303,320	\$ 239,356	\$ 78,320
TRS Consolidated Group	67,991	184,736	158,230
Total pre-tax GAAP income	<u>\$ 371,311</u>	<u>\$ 424,092</u>	<u>\$ 236,550</u>

Our provision for income taxes is comprised as follows (in thousands):

	Year Ended December 31,		
	2022	2021	2020
Current tax provision:			
Federal	\$ 14,167	\$ 27,454	\$ 27,284
State	5,058	7,939	8,383
Total	<u>19,225</u>	<u>35,393</u>	<u>35,667</u>
Deferred tax (benefit) provision :			
Federal	\$ (1,373)	\$ 8,287	\$ 3,932
State	(370)	2,744	780
Valuation allowance	2	(139)	14
Total	<u>(1,741)</u>	<u>10,892</u>	<u>4,726</u>
Total income tax expense	<u>\$ 17,484</u>	<u>\$ 46,285</u>	<u>\$ 40,393</u>

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

A reconciliation of our effective income tax rate as a percentage of pre-tax income to the U.S. federal statutory rate is as follows:

	Year Ended December 31,		
	2022	2021	2020
U.S. federal statutory rate	21.0 %	21.0 %	21.0 %
REIT non-taxable income	(17.2)%	(11.9)%	(7.0)%
State and local income taxes, net of federal tax benefit	1.0 %	2.0 %	3.0 %
Other	(0.1)%	(0.2)%	— %
Effective income tax rate	4.7 %	10.9 %	17.0 %

The significant components of our deferred tax assets and liabilities of our TRS Consolidated Group are as follows (in thousands):

	December 31,	
	2022	2021
Deferred tax assets:		
Expenses not currently deductible	\$ 22,755	\$ 25,542
Loan loss reserves	7,159	7,110
Net operating and capital loss carryforwards	454	468
Valuation allowance	(294)	(292)
Other	441	372
Deferred tax assets, net	\$ 30,515	\$ 33,200
Deferred tax liabilities:		
Mortgage servicing rights	\$ 26,975	\$ 28,672
Intangibles	6,457	7,243
Interest in equity affiliates—net	6,237	8,179
Deferred tax liabilities, net	\$ 39,669	\$ 44,094

At December 31, 2022, our TRS Consolidated Group, had approximately \$30.5 million of deferred tax assets, net of a \$0.3 million valuation allowance. The deferred tax assets consist of expenses not currently deductible, loan loss reserves, net operating loss and capital loss carryforwards. Our TRS Consolidated Group's deferred tax assets are offset by approximately \$39.7 million in deferred tax liabilities consisting of timing differences from mortgage servicing rights, intangibles and investments in equity affiliates.

At December 31, 2021, our TRS Consolidated Group, had \$33.2 million of deferred tax assets, net of a \$0.3 million valuation allowance. The deferred tax assets consist of expenses not currently deductible, loan loss reserves and net operating loss and capital loss carryforwards. Our TRS Consolidated Group's deferred tax assets are offset by \$44.1 million in deferred tax liabilities consisting of timing differences from mortgage servicing rights, intangibles and investments in equity affiliates.

At both December 31, 2022 and 2021, the REIT (excluding the TRS Consolidated Group) had no federal net operating loss carryforwards and no capital loss carryforwards.

At both December 31, 2022 and 2021, the TRS Consolidated Group had no federal net operating loss carryforwards remaining and capital loss carryforwards of \$1.1 million, which will expire through 2023.

At both December 31, 2022 and 2021, the TRS Consolidated Group had state net operating loss carryforwards of \$0.2 million, which will begin to expire in 2036.

The TRS Consolidated Group is currently under audit in certain state and local jurisdictions for tax years 2017-2020. While the impact of the current income tax examinations was undetermined, it is not expected to be material to our consolidated financial statements.

We have assessed our tax positions for all open years, which includes 2017-2022, and have concluded that there were no material uncertainties to be recognized. We have not recognized any interest and penalties related to tax uncertainties for the years ended 2017 through 2022.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Note 18 — Agreements and Transactions with Related Parties

Support Agreement and Employee Secondment Agreement. We have a support agreement and a secondment agreement with ACM and certain of its affiliates and certain affiliates of a relative of our chief executive officer (“Service Recipients”) where we provide support services and seconded employees to the Service Recipients. The Service Recipients reimburse us for the costs of performing such services and the cost of the seconded employees. During 2022, 2021 and 2020, we incurred \$3.3 million, \$3.2 million and \$2.4 million, respectively, of costs for services provided and employees seconded to the Service Recipients, all of which are reimbursable to us and included in due from related party on the consolidated balance sheets.

Other Related Party Transactions. Due from related party was \$77.4 million and \$84.3 million at December 31, 2022 and 2021, respectively, which consisted primarily of amounts due from our affiliated servicing operations related to real estate transactions closing at the end of 2022 and 2021 and amounts due from ACM for costs incurred in connection with the support and secondment agreements described above.

Due to related party was \$12.4 million and \$26.6 million at December 31, 2022 and 2021, respectively, and consisted of loan payoffs, holdbacks and escrows to be remitted to our affiliated servicing operations related to real estate transactions.

In July 2022, we purchased a \$46.2 million bridge loan originated by ACM at par (none of which was funded at December 31, 2022) for an SFR build-to-rent construction project. A consortium of investors (which includes, among other unaffiliated investors, certain of our officers with a minority ownership interest) owns 70% of the borrowing entity and an entity indirectly owned and controlled by an immediate family member of our chief executive officer owns 10% of the borrowing entity. The loan has an interest rate of SOFR plus 5.50% and is scheduled to mature in March 2025.

In April 2022, we committed to fund a \$67.1 million bridge loan (none of which was funded at December 31, 2022) in an SFR build-to-rent construction project. An entity owned by an immediate family member of our chief executive officer also made an equity investment in the project and owns a 2.25% equity interest in the borrowing entity. The bridge loan has an interest rate of SOFR plus 4.625% with a SOFR floor of 0.25% and matures in May 2025. Interest income recorded from this loan was \$0.1 million for 2022.

In February 2022, we committed to fund a \$39.4 million bridge loan (none of which was funded at December 31, 2022) in an SFR build-to-rent construction project. An entity owned by an immediate family member of our chief executive officer also made an equity investment in the project and owns a 2.25% equity interest in the borrowing entity. The bridge loan has an interest rate of LIBOR plus 4.00% with a LIBOR floor of 0.25% and matures in March 2025. Interest income recorded from this loan was \$0.1 million for 2022.

In 2021, we invested \$4.2 million for 49.3% interest in a limited liability company (“LLC”) which purchased a retail property for \$32.5 million and assumed an existing \$26.0 million CMBS loan. A portion of the property can potentially be converted to office space, of which we obtain the right to occupy, in part. An entity owned by an immediate family member of our chief executive officer also made an investment in the LLC for a 10.0% ownership, is the managing member and holds the right to purchase our interest in the LLC.

In 2021, we originated a \$63.4 million bridge loan to a third-party to purchase a multifamily property from a multifamily-focused commercial real estate investment fund sponsored and managed by our chief executive officer and one of his immediate family members, which fund has no continued involvement with the property following the purchase. The loan has an interest rate of LIBOR plus 3.75% with a LIBOR floor of 0.25% and matures in March 2024. Interest income recorded from this loan was \$3.7 million and \$2.1 million for 2022 and 2021, respectively.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

In 2020, we committed to fund a \$32.5 million bridge loan which was upsized to \$41.5 million in September 2022, (\$12.3 million was funded at December 31, 2022) and made a \$3.5 million preferred equity investment in an SFR build-to-rent construction project. An entity owned by an immediate family member of our chief executive officer also made an equity investment in the project and owns a 21.8% equity interest in the borrowing entity. The bridge loan has an interest rate of LIBOR plus 5.5% with a LIBOR floor of 0.75%, the preferred equity investment has a 12.0% fixed rate and both loans mature in October 2023. Interest income recorded from these loans was \$1.3 million, \$0.5 million and less than \$0.1 million for 2022, 2021 and 2020, respectively.

In 2020, we committed to fund a \$30.5 million bridge loan, which was upsized to \$38.8 million in September 2022, and we made a \$4.6 million preferred equity investment in a SFR build-to-rent construction project. ACM and an entity owned by an immediate family member of our chief executive officer also made equity investments in the project and own an 18.9% equity interest in the borrowing entity. The bridge loan (\$17.6 million was funded at December 31, 2022) has an interest rate of LIBOR plus 5.5% with a LIBOR floor of 0.75% and matures in May 2023 and the preferred equity investment has a 12.0% fixed rate and matures in April 2023. Interest income recorded from these loans was \$1.6 million, \$0.6 million and \$0.1 million for 2022, 2021 and 2020, respectively.

In 2020, we originated a \$14.8 million Private Label loan and a \$3.4 million mezzanine loan on two multifamily properties owned in part by a consortium of investors (which includes, among other unaffiliated investors, certain of our officers and our chief executive officer) which owns a 50% interest in the borrowing entity. The Private Label loan bears interest at a 3.1% fixed rate and the mezzanine loan bears interest at a 9.0% fixed rate and both loans mature in April 2030. In 2020, we sold the Private Label loan to an unconsolidated affiliate of ours. Interest income recorded from the mezzanine loan was \$0.3 million for all periods presented.

We have a \$35.0 million bridge loan and a \$9.6 million preferred equity interest on an office building. The property is controlled by a third party. The day-to-day operations are currently being managed by an immediate family member, or one of his affiliated entities, of our chief executive officer. In September 2021, we entered into a forbearance agreement with the borrower on the outstanding bridge loan to defer all interest owed until maturity or early payoff. Interest income recorded from these loans was \$1.3 million and \$1.6 million for 2021 and 2020, respectively.

In certain instances, our business requires our executives to charter privately owned aircraft in furtherance of our business. We have an aircraft time-sharing agreement with an entity controlled by our chief executive officer that owns a private aircraft. Pursuant to the agreement, we reimburse the aircraft owner for the required costs under Federal Aviation Administration regulations for the flights our executives' charter. During 2022, 2021 and 2020, we reimbursed the aircraft owner \$1.1 million, \$0.2 million and \$0.5 million, respectively, for the flights chartered by our executives pursuant the agreement.

In 2019, we, along with ACM, certain executives of ours and a consortium of independent outside investors, formed AMAC III, a multifamily-focused commercial real estate investment fund sponsored and managed by our chief executive officer and one of his immediate family members. We committed to a \$30.0 million investment (\$25.2 million was funded at December 31, 2022) for an 18% interest in AMAC III. During 2022, 2021 and 2020, we received cash distributions totaling \$0.5 million, \$3.8 million and \$0.1 million, respectively, and recorded a loss of \$2.4 million, \$1.3 million and \$0.9 million, respectively, associated with this investment. In 2019, AMAC III originated a \$7.0 million mezzanine loan to a borrower with which we have an outstanding \$34.0 million bridge loan. In 2020, for full satisfaction of the mezzanine loan, AMAC III became the owner of the property. Also in 2020, the \$34.0 million bridge loan was refinanced with a \$35.4 million bridge loan, which bears interest at a rate of LIBOR plus 3.5 % and matures in August 2023. We also originated a \$15.6 million Private Label loan in 2019 to a borrower which is 100% owned by AMAC III, which bears interest at a 3.735% fixed rate and matures in January 2030. In 2020, we sold the Private Label loan to an unconsolidated affiliate of ours. Interest income recorded from the bridge loan was \$1.9 million, \$1.3 million and \$1.9 million for 2022, 2021 and 2020, respectively.

In 2018, we originated a \$21.7 million bridge loan on a multifamily property owned in part by a consortium of investors (which includes, among other unaffiliated investors, certain of our officers and our chief executive officer) which owns 75% in the borrowing entity. The loan has an interest rate of LIBOR plus 4.75% with a LIBOR floor of 0.25% and matures in August 2023. Interest income recorded from this loan was \$1.4 million, \$1.3 million and \$1.4 million for 2022, 2021 and 2020, respectively.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

In 2017, we originated two bridge loans totaling \$28.0 million on two multifamily properties owned in part by a consortium of investors (which includes, among other unaffiliated investors, certain of our officers and our chief executive officer) which owns 45% of the borrowing entity. The loans had an interest rate of LIBOR plus 5.25% with LIBOR floors ranging from 1.24% to 1.54% and were scheduled to mature in 2020. The borrower refinanced these loans with a \$31.1 million bridge loan we originated in 2019 with an interest rate of LIBOR plus 4.0%, a LIBOR floor of 1.8%, which was scheduled to mature in October 2022. In May 2022, these loans paid off in full. Interest income recorded from this loan was \$0.8 million for 2022 and \$1.9 million for both 2021 and 2020.

In 2017, we originated a \$46.9 million Fannie Mae loan on a multifamily property owned in part by a consortium of investors (which includes, among other unaffiliated investors, certain of our officers) which owns a 17.6% interest in the borrowing entity. We carry a maximum loss-sharing obligation with Fannie Mae on this loan of up to 5% of the original UPB. Servicing revenue recorded from this loan was less than \$0.1 million for all periods presented.

In 2017, Ginkgo Investment Company LLC (“Ginkgo”), of which one of our directors is a 33% managing member, purchased a multifamily apartment complex which assumed an existing \$8.3 million Fannie Mae loan that we service. Ginkgo subsequently sold the majority of its interest in this property and owned a 3.6% interest at December 31, 2022. We carry a maximum loss-sharing obligation with Fannie Mae on this loan of up to 20% of the original UPB. Upon the sale, we received a 1% loan assumption fee which was governed by existing loan agreements that were in place when the loan was originated in 2015, prior to such purchase. Servicing revenue recorded from this loan was less than \$0.1 million for all periods presented.

In 2016, we originated \$48.0 million of bridge loans on six multifamily properties owned in part by a consortium of investors (which includes, among other unaffiliated investors, certain of our officers and our chief executive officer) which owns interests ranging from 10.5% to 12.0% in the borrowing entities. The loans had an interest rate of LIBOR plus 4.5% with a LIBOR floor of 0.25% and were scheduled to mature in 2019. In 2017, a \$6.8 million loan on one property paid off in full and in 2018 four additional loans totaling \$28.3 million paid off in full. In 2019, \$10.9 million of the \$12.9 million remaining bridge loan paid off, with the \$2.0 million remaining UPB converting to a mezzanine loan with a fixed interest rate of 10.0% and a January 2024 maturity. Interest income recorded from the mezzanine loan was \$0.2 million for all period presented.

In 2015, we invested \$9.6 million for 50% of ACM’s indirect interest in a joint venture with a third party that was formed to invest in a residential mortgage banking business. At December 31, 2022, we had an indirect interest of 12.3% in this entity. We recorded income from equity affiliates related to this investment of \$4.9 million, \$34.6 million and \$75.7 million for 2022, 2021 and 2020, respectively. During 2022 and 2021, we also received cash distributions totaling \$23.8 million and \$28.0 million, respectively, from this investment, which were classified as returns of capital.

Interest income recorded from loans that were paid off prior to 2022 totaled \$0.5 million and \$3.4 million for 2021 and 2020, respectively.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

We, along with an executive officer of ours and a consortium of independent outside investors, hold equity investments in a portfolio of multifamily properties referred to as the “Lexford” portfolio, which is managed by an entity owned primarily by a consortium of affiliated investors, including our chief executive officer and an executive officer of ours. Based on the terms of the management contract, the management company is entitled to 4.75% of gross revenues of the underlying properties, along with the potential to share in the proceeds of a sale or restructuring of the debt. In 2018, the owners of Lexford restructured part of its debt and we originated 12 bridge loans totaling \$280.5 million, which were used to repay in full certain existing mortgage debt and to renovate 72 multifamily properties included in the portfolio. The loans were originated in 2018, had interest rates of LIBOR plus 4.0% and were scheduled to mature in June 2021. During 2019, the borrower made payoffs and partial paydowns of principal totaling \$250.0 million and in 2020, the remaining balance of the loans were refinanced with a \$34.6 million Private Label loan, which bears interest at a fixed rate of 3.3% and matures in March 2030. In 2020, we sold the Private Label loan to an unconsolidated affiliate of ours. Interest income recorded from these loans totaled \$0.5 million during 2020. Further, as part of this 2018 restructuring, \$50.0 million in unsecured financing was provided by an unsecured lender to certain parent entities of the property owners. ACM owns slightly less than half of the unsecured lender entity and, therefore, provided slightly less than half of the unsecured lender financing. In addition, in connection with our equity investment, we received distributions totaling \$11.1 million and \$1.1 million during 2022 and 2020, respectively, which were recorded as income from equity affiliates. Separate from the loans we originated in 2018, we provide limited (“bad boy”) guarantees for certain other debt controlled by Lexford. The bad boy guarantees may become a liability for us upon standard “bad” acts such as fraud or a material misrepresentation by Lexford or us. At December 31, 2022, this debt had an aggregate outstanding balance of \$582.8 million and is scheduled to mature through 2029.

Several of our executives, including our chief financial officer, senior counsel and our chairman, chief executive officer and president, hold similar positions for ACM. Our chief executive officer and his affiliated entities (“the Kaufman Entities”) together beneficially own approximately 35% of the outstanding membership interests of ACM and certain of our employees and directors also hold an ownership interest in ACM. Furthermore, one of our directors serves as the trustee and co-trustee of two of the Kaufman Entities that hold membership interests in ACM. At December 31, 2022, ACM holds 2,535,870 shares of our common stock and 10,615,085 OP Units, which represents approximately 7% of the voting power of our outstanding stock. Our Board of Directors approved a resolution under our charter allowing our chief executive officer and ACM, (which our chief executive officer has a controlling equity interest in), to own more than the 5% ownership interest limit of our common stock as stated in our amended charter.

Note 19 — Employee Benefits

401(k). We have a 401(k) defined contribution plan (the “401(k) Plan”) which is available to all employees who have completed six months of continuous service. The 401(k) Plan matches 25% of the first 6% of each employee’s contribution. We have the option to increase the employer match based on our operating results. In 2022, we recorded \$1.6 million and, in both 2021 and 2020, we recorded \$0.8 million of expenses associated with the 401(k) Plan, which is included in employee compensation and benefits in our consolidated statements of income.

Deferred Compensation. We have a non-qualified deferred compensation plan (the “Deferred Comp Plan”) which is offered to certain full-time employees and is subject to the rules of section 409(a) of the Internal Revenue Code. The Deferred Comp Plan can be modified or discontinued at any time. All eligible participating employees may defer a portion of their compensation and, depending on the participant eligibility requirements met, we are contractually obligated to: (1) match the contribution, as specified in the Deferred Comp Plan, and fund such amounts upon vesting and an election by participants to redeem their interests; and/or (2) supply additional life insurance benefits. All employee deferrals vest immediately and the matching contributions, where applicable, vest over a nine-year period beginning after year five. For 2022, 2021 and 2020, there were \$3.3 million, \$2.2 million and \$1.8 million, respectively, of employee deferrals. At December 31, 2022 and 2021, we had recorded liabilities totaling \$28.7 million and \$25.5 million, respectively, and assets of \$24.7 million and \$21.1 million, respectively, related to the Deferred Comp Plan, which is included in other liabilities and other assets, respectively, in our consolidated balance sheets.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Note 20 — Segment Information

The summarized statements of income and balance sheet data, as well as certain other data, by segment are included in the following tables (\$ in thousands). Specifically identifiable costs are recorded directly to each business segment. For items not specifically identifiable, costs have been allocated between the business segments using the most meaningful allocation methodologies, which was predominately direct labor costs (i.e., time spent working on each business segment). Such costs include, but are not limited to, compensation and employee related costs, selling and administrative expenses and stock-based compensation.

	Year Ended December 31, 2022			
	Structured Business	Agency Business	Other / Eliminations (1)	Consolidated
Interest income	\$ 903,622	\$ 44,779	\$ —	\$ 948,401
Interest expense	538,659	18,958	—	557,617
Net interest income	364,963	25,821	—	390,784
Other revenue:				
Gain on sales, including fee-based services, net	—	55,816	—	55,816
Mortgage servicing rights	—	69,346	—	69,346
Servicing revenue	—	152,068	—	152,068
Amortization of MSRs	—	(59,876)	—	(59,876)
Property operating income	1,877	—	—	1,877
Gain on derivative instruments, net	—	26,609	—	26,609
Other income, net	(2,360)	(15,203)	—	(17,563)
Total other revenue	(483)	228,760	—	228,277
Other expenses:				
Employee compensation and benefits	56,032	105,793	—	161,825
Selling and administrative	26,059	27,931	—	53,990
Property operating expenses	2,136	—	—	2,136
Depreciation and amortization	4,041	4,691	—	8,732
Provision for loss sharing (net of recoveries)	—	1,862	—	1,862
Provision for credit losses (net of recoveries)	19,770	1,399	—	21,169
Litigation settlement	7,350	—	—	7,350
Total other expenses	115,388	141,676	—	257,064
Income before extinguishment of debt, income from equity affiliates and income taxes	249,092	112,905	—	361,997
Loss on extinguishment of debt	(4,933)	—	—	(4,933)
Income from equity affiliates	14,247	—	—	14,247
Provision for income taxes	(821)	(16,663)	—	(17,484)
Net income	257,585	96,242	—	353,827
Preferred stock dividends	40,954	—	—	40,954
Net income attributable to noncontrolling interest	—	—	28,044	28,044
Net income attributable to common stockholders	\$ 216,631	\$ 96,242	\$ (28,044)	\$ 284,829

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

	Year Ended December 31, 2021			
	Structured Business	Agency Business	Other / Eliminations (1)	Consolidated
Interest income	\$ 427,039	\$ 39,048	\$ —	\$ 466,087
Interest expense	194,435	17,570	—	212,005
Net interest income	232,604	21,478	—	254,082
Other revenue:				
Gain on sales, including fee-based services, net	—	123,037	—	123,037
Mortgage servicing rights	—	130,230	—	130,230
Servicing revenue	—	133,429	—	133,429
Amortization of MSRs	—	(58,615)	—	(58,615)
Property operating income	185	—	—	185
Loss on derivative instruments, net	—	(2,684)	—	(2,684)
Other income, net	7,491	75	—	7,566
Total other revenue	7,676	325,472	—	333,148
Other expenses:				
Employee compensation and benefits	51,225	120,571	—	171,796
Selling and administrative	21,064	24,511	—	45,575
Property operating expenses	718	—	—	718
Depreciation and amortization	2,524	4,691	—	7,215
Provision for loss sharing (net of recoveries)	—	(6,167)	—	(6,167)
Provision for credit losses (net of recoveries)	(21,223)	110	—	(21,113)
Total other expenses	54,308	143,716	—	198,024
Income before extinguishment of debt, sale of real estate, income from equity affiliates and income taxes	185,972	203,234	—	389,206
Loss on extinguishment of debt	(3,374)	—	—	(3,374)
Sale of real estate	2,466	1,227	—	3,693
Income from equity affiliates	34,567	—	—	34,567
Provision for income taxes	(5,940)	(40,345)	—	(46,285)
Net income	213,691	164,116	—	377,807
Preferred stock dividends	21,888	—	—	21,888
Net income attributable to noncontrolling interest	—	—	38,507	38,507
Net income attributable to common stockholders	\$ 191,803	\$ 164,116	\$ (38,507)	\$ 317,412

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

	Year Ended December 31, 2020			
	Structured Business	Agency Business	Other / Eliminations (1)	Consolidated
Interest income	\$ 305,893	\$ 33,572	\$ —	\$ 339,465
Interest expense	150,964	18,252	—	169,216
Net interest income	154,929	15,320	—	170,249
Other revenue:				
Gain on sales, including fee-based services, net	—	94,607	—	94,607
Mortgage servicing rights	—	165,517	—	165,517
Servicing revenue	—	103,607	—	103,607
Amortization of MSR's	—	(49,222)	—	(49,222)
Property operating income	3,976	—	—	3,976
Loss on derivative instruments, net	(2,859)	(55,476)	—	(58,335)
Other income, net	4,052	57	—	4,109
Total other revenue	5,169	259,090	—	264,259
Other expenses:				
Employee compensation and benefits	40,292	104,088	—	144,380
Selling and administrative	15,706	21,642	—	37,348
Property operating expenses	4,898	—	—	4,898
Depreciation and amortization	2,391	5,249	—	7,640
Provision for loss sharing (net of recoveries)	—	14,822	—	14,822
Provision for credit losses (net of recoveries)	59,967	1,143	—	61,110
Total other expenses	123,254	146,944	—	270,198
Income before extinguishment of debt, sale of real estate, income from equity affiliates and income taxes	36,844	127,466	—	164,310
Loss on extinguishment of debt	(3,546)	—	—	(3,546)
(Loss) gain on sale of real estate	(878)	503	—	(375)
Income from equity affiliates	76,161	—	—	76,161
Provision for income taxes	(14,303)	(26,090)	—	(40,393)
Net income	94,278	101,879	—	196,157
Preferred stock dividends	7,554	—	—	7,554
Net income attributable to noncontrolling interest	—	—	25,208	25,208
Net income attributable to common stockholders	<u>\$ 86,724</u>	<u>\$ 101,879</u>	<u>\$ (25,208)</u>	<u>\$ 163,395</u>

(1) Includes income allocated to the noncontrolling interest holders not allocated to the two reportable segments.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

	December 31, 2022		
	Structured Business	Agency Business	Consolidated
Assets:			
Cash and cash equivalents	\$ 200,514	\$ 333,843	\$ 534,357
Restricted cash	713,615	193	713,808
Loans and investments, net	14,254,674	—	14,254,674
Loans held-for-sale, net	—	354,070	354,070
Capitalized mortgage servicing rights, net	—	401,471	401,471
Securities held-to-maturity, net	—	156,547	156,547
Investments in equity affiliates	79,130	—	79,130
Goodwill and other intangible assets	12,500	83,569	96,069
Other assets and due from related party	367,837	81,022	448,859
Total assets	\$ 15,628,270	\$ 1,410,715	\$ 17,038,985
Liabilities:			
Debt obligations	\$ 13,195,120	\$ 305,442	\$ 13,500,562
Allowance for loss-sharing obligations	—	57,168	57,168
Other liabilities and due to related parties	299,559	109,817	409,376
Total liabilities	\$ 13,494,679	\$ 472,427	\$ 13,967,106
December 31, 2021			
Assets:			
Cash and cash equivalents	\$ 142,771	\$ 261,809	\$ 404,580
Restricted cash	468,013	18,677	486,690
Loans and investments, net	11,981,048	—	11,981,048
Loans held-for-sale, net	—	1,093,609	1,093,609
Capitalized mortgage servicing rights, net	—	422,734	422,734
Securities held-to-maturity, net	—	140,484	140,484
Investments in equity affiliates	89,676	—	89,676
Goodwill and other intangible assets	12,500	88,260	100,760
Other assets and due from related party	285,600	68,664	354,264
Total assets	\$ 12,979,608	\$ 2,094,237	\$ 15,073,845
Liabilities:			
Debt obligations	\$ 11,100,429	\$ 956,272	\$ 12,056,701
Allowance for loss-sharing obligations	—	56,064	56,064
Other liabilities and due to related parties	278,726	132,370	411,096
Total liabilities	\$ 11,379,155	\$ 1,144,706	\$ 12,523,861

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

	Year Ended December 31,		
	2022	2021	2020
Origination Data:			
<u>Structured Business</u>			
Bridge loans (1)	\$ 6,082,041	\$ 9,490,402	\$ 2,312,061
Mezzanine / Preferred Equity	69,606	203,875	76,722
SFR - Permanent loans	—	26,238	44,896
Total new loan originations	<u>\$ 6,151,647</u>	<u>\$ 9,720,515</u>	<u>\$ 2,433,679</u>
 (1) 2022 and 2021 includes 132 and 103 SFR loans, respectively, with a UPB of \$613.8 million and \$389.2 million, respectively. During 2022, 2021 and 2020, we committed to fund SFR loans totaling \$1.08 billion, \$729.5 million and \$261.5 million, respectively.			
Loan runoff	\$ 3,818,554	\$ 2,516,771	\$ 1,208,071
<u>Agency Business</u>			
<i>Origination Volumes by Investor:</i>			
Fannie Mae	\$ 2,919,566	\$ 3,389,312	\$ 5,041,925
Freddie Mac	1,353,001	1,016,142	960,508
Private Label	217,542	1,436,853	382,191
FHA	188,394	430,320	327,345
SFR - Fixed Rate	89,683	136,931	—
Total	<u>\$ 4,768,186</u>	<u>\$ 6,409,558</u>	<u>\$ 6,711,969</u>
Total loan commitment volume	<u>\$ 5,146,718</u>	<u>\$ 6,347,752</u>	<u>\$ 6,810,666</u>
<u>Agency Business Loan Sales Data:</u>			
Fannie Mae	\$ 3,139,414	\$ 3,675,763	\$ 4,771,113
Freddie Mac	1,456,595	1,081,702	816,802
Private Label	515,086	985,094	727,154
FHA	241,457	480,275	272,659
SFR - Fixed Rate	86,071	192,335	—
Total	<u>\$ 5,438,623</u>	<u>\$ 6,415,169</u>	<u>\$ 6,587,728</u>
Sales margin (fee-based services as a % of loan sales) (1)	<u>1.34 %</u>	<u>1.92 %</u>	<u>1.44 %</u>
MSR rate (MSR income as a % of loan commitments)	<u>1.35 %</u>	<u>2.05 %</u>	<u>2.43 %</u>

(1) 2022 includes \$17.1 million of gains recognized on Swaps related to the Private Label loans sold in the three months ended March 31, 2022, which is included in gain (loss) on derivative instruments, net in the consolidated statements of income.

	December 31, 2022		
	Servicing Portfolio UPB	Wtd. Avg. Servicing Fee Rate (basis points)	Wtd. Avg. Life of Servicing Portfolio (years)
Key Servicing Metrics for Agency Business:			
Fannie Mae	\$ 19,038,124	50.2	8.0
Freddie Mac	5,153,207	25.0	9.0
Private Label	2,074,859	18.5	7.6
FHA	1,155,893	14.9	19.5
Bridge	301,182	12.5	1.7
SFR - Fixed Rate	274,764	19.8	6.0
Total	<u>\$ 27,998,029</u>	<u>41.1</u>	<u>8.6</u>
December 31, 2021			
Fannie Mae	\$ 19,127,397	53.5	8.0
Freddie Mac	4,943,905	27.1	9.3
Private Label	1,711,326	20.0	8.3
FHA	985,063	15.4	21.0
SFR - Fixed Rate	191,698	20.0	6.5
Total	<u>\$ 26,959,389</u>	<u>44.9</u>	<u>8.8</u>

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
SCHEDULE IV — LOANS AND OTHER LENDING INVESTMENTS
(\$ in thousands)

Type	Location	Periodic Payment Terms (1)	Maturity Date (2)	Interest Pay Rate Index (3)	Prior Liens	Face Amount (4)	Carrying Amount (5)	Carrying Amount Subject to Delinquent Interest	
Bridge Loans:									
Bridge loans less than 3% of carrying amount of total loans (6):									
Multifamily	Various	IO / PI	2023 - 2026	L+ 2.50% to 6.75% L Floor 0.10% to 2.50% SOFR+ 2.65% to 5.00% SOFR Floor 0.10% to 4.32% Fixed 3.83% to 12.00%	\$ —	\$ 12,830,999	\$ 12,744,463	\$ —	
Single-Family Rental	Various	IO / PI	2023 - 2026	L+ 3.50% to 6.75% L Floor 0.25% to 2.25% SOFR+ 2.65% to 6.25% SOFR Floor 0.10% to 4.33%	—	927,373	916,498	—	
Land	CA	IO	2023 - 2025	L+ 4.00% L Floor 0.15% Fixed 0.00%	—	118,595	40,726	—	
Office	NY	IO	2023	L+ 3.50% L Floor 0.29%	—	70,410	69,948	—	
Healthcare	AL	IO / PI	2023	L+ 5.00% to 5.35% L Floor 2.15% to 2.63%	—	65,627	65,610	—	
Hotel	NY	IO / PI	2023	L+ 4.50%	—	40,850	40,836	—	
Student Housing	NC	IO	2023	L+ 4.50% L Floor 0.25% to 2.25%	—	25,700	25,589	—	
Retail	Various	IO	2024	L+ 3.50% to 4.00% L Floor 1.00% to 2.50%	—	16,500	14,113	—	
Total Bridge Loans less than 3% of carrying amount of total loans						—	14,096,054	13,917,783	—
Total Bridge Loans						—	14,096,054	13,917,783	—

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
SCHEDULE IV — LOANS AND OTHER LENDING INVESTMENTS (Continued)
(\$ in thousands)

Type	Location	Periodic Payment Terms (1)	Maturity Date (2)	Interest Pay Rate Index (3)	Prior Liens	Face Amount (4)	Carrying Amount (5)	Carrying Amount Subject to Delinquent Interest
Mezzanine Loans:								
Mezzanine loans less than 3% of carrying amount of total loans (6):								
Multifamily	Various	IO / PI	2023 - 2033	Fixed 3.50% to 13.00%	880,697	194,621	187,333	—
Land	CA	IO	2023	Fixed 0.00%	—	9,333	9,333	—
Retail	Various	IO	2024	L+ 3.50%	30,389	9,545	6,100	—
				L Floor 1.00%				
				Fixed 12.00%				
Total Mezzanine Loans					<u>911,086</u>	<u>213,499</u>	<u>202,766</u>	<u>—</u>
Preferred Equity Investments:								
Preferred equity investments less than 3% of carrying amount of total loans (6):								
(6): Multifamily	Various	IO / PI	2023 - 2033	Fixed 4.00% to 13.00%	409,699	91,300	88,695	—
Office	NY	IO	2027	Fixed 0.00%	—	9,625	1,925	—
Land	TX	IO	2023	Fixed 12.00%	—	8,100	7,882	—
Commercial	NY	IO	2023	Fixed 6.00%	29,792	1,700	—	—
Total Preferred Equity Investments					<u>439,491</u>	<u>110,725</u>	<u>98,502</u>	<u>—</u>
Other Loans:								
Other loans less than 3% of carrying amount of total loans (6):								
Single-Family Rental	Various	IO / PI	2024 - 2026	L + 3.98% to 4.90%	—	35,845	35,623	—
				L Floor 0.25%				
					<u>—</u>	<u>35,845</u>	<u>35,623</u>	<u>—</u>
Total Loans					<u>\$ 1,350,577</u>	<u>\$ 14,456,123</u>	<u>\$ 14,254,674</u>	<u>\$ —</u>

- (1) IO = Interest Only, PI = Principal and Interest, L = LIBOR.
- (2) Maturity date does not include possible extensions.
- (3) References to LIBOR are to one-month LIBOR unless specifically stated otherwise.
- (4) During 2022, \$1.68 billion of loans were extended.
- (5) The federal income tax basis is approximately \$14.46 billion.
- (6) Individual loans each have a carrying value less than 3% of total loans.

ARBOR REALTY TRUST, INC. AND SUBSIDIARIES
SCHEDULE IV – LOANS AND OTHER LENDING INVESTMENTS (Continued)

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

	Year Ended December 31,		
	2022	2021	2020
Balance at beginning of year	\$ 11,981,048	\$ 5,285,868	\$ 4,189,960
Additions during period:			
New loan originations	6,151,647	9,720,515	2,433,679
Funding of unfunded loan commitments (1)	381,831	200,694	133,244
Accretion of unearned revenue	37,468	25,618	13,590
Recoveries of reserves	1,500	24,315	75
Loan charge-offs	—	10,773	—
Deductions during period:			
Loan payoffs and paydowns	(3,818,554)	(2,516,771)	(1,243,694)
Unfunded loan commitments (1)	(376,404)	(623,639)	(127,758)
Unearned revenue and costs	(51,808)	(69,528)	(35,893)
Reclassification to real estate owned	(31,200)	(880)	—
Provision for loan losses	(20,818)	—	(77,335)
Reclassification to held-for-sale loans	(36)	(65,144)	—
Use of loan charge-offs	—	(10,773)	—
Balance at end of year	<u>\$ 14,254,674</u>	<u>\$ 11,981,048</u>	<u>\$ 5,285,868</u>

- (1) In accordance with certain loans and investments, we have outstanding unfunded commitments that we are obligated to fund as the borrowers meet certain requirements. Specific requirements include, but are not limited to, property renovations, building construction and conversions based on criteria met by the borrower in accordance with the loan agreements.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.

Item 9A. Controls and Procedures

Management, with the participation of our chief executive officer and chief financial officer, has evaluated the effectiveness of our disclosure controls and procedures at December 31, 2022. Based on this evaluation, our chief executive officer and chief financial officer have concluded that our disclosure controls and procedures were effective at December 31, 2022.

No change in internal control over financial reporting occurred during the quarter ended December 31, 2022 that has materially affected, or is reasonably likely to materially affect, internal controls over financial reporting.

Management's Report on Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act as a process designed by, or under the supervision of, the principal executive and principal financial officer and effected by the Board of Directors, management and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP and includes those policies and procedures that: (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of our assets; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that our receipts and expenditures are being made only in accordance with the authorization of our management and directors; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatement. Projections of any evaluation of effectiveness to future periods are subject to the risks that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

We assessed the effectiveness of our internal control over financial reporting at December 31, 2022. In making this assessment, we used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control—Integrated Framework (2013 Framework). Based on this assessment, we concluded that, at December 31, 2022, our internal control over financial reporting was effective.

Our independent registered public accounting firm has issued a report on management's assessment of our internal control over financial reporting, which is included herein.

Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Arbor Realty Trust, Inc. and Subsidiaries

Opinion on Internal Control Over Financial Reporting

We have audited Arbor Realty Trust, Inc. and Subsidiaries' internal control over financial reporting as of December 31, 2022, based on criteria established in the Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework), (the COSO criteria). In our opinion, Arbor Realty Trust, Inc. and Subsidiaries (the Company) maintained, in all material respects, effective internal control over financial reporting as of December 31, 2022, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (the PCAOB), the consolidated balance sheets of the Company as of December 31, 2022 and 2021, the related consolidated statements of income, changes in equity and cash flows for each of the three years in the period ended December 31, 2022, and the related notes and financial statement schedule listed in the Index at Item 15(a) and our report dated February 17, 2023 expressed an unqualified opinion thereon.

Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects.

Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ Ernst & Young LLP

New York, New York
February 17, 2023

Item 9B. Other Information

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

Based solely on our review of the copies of such forms received by it, or written representations from certain reporting persons that no filings were required for those persons, we believe that during and with respect to the fiscal year ended December 31, 2022 all filings required by Section 16(a) of the Exchange Act were made timely.

The information regarding our directors and executive officers set forth under the captions “Board of Directors” and “Executive Officers” of the 2023 Proxy Statement is incorporated herein by reference.

The information regarding our code of ethics for our chief executive and other senior financial officers under the caption “Senior Officer Code of Ethics and Code of Business Conduct and Ethics” of the 2023 Proxy Statement is incorporated herein by reference.

The information regarding our corporate governance under the caption “Board Committees” in the 2023 Proxy Statement is incorporated herein by reference.

Item 11. Executive Compensation

The information contained in the section captioned “Executive Compensation” of the 2023 Proxy Statement is incorporated herein by reference.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The information contained in the section captioned “Security Ownership of Certain Beneficial Owners and Management” of the 2023 Proxy Statement is incorporated herein by reference.

Item 13. Certain Relationships and Related Transactions, and Director Independence

The information contained in the sections captioned “Certain Relationships and Related Transactions” and “Director Independence” of the 2023 Proxy Statement is incorporated herein by reference.

Item 14. Principal Accountant Fees and Services

The information regarding our independent accountants’ fees and services in the sections captioned “Independent Accountants’ Fees” and “Audit Committee Pre-Approval Policy” of the 2023 Proxy Statement is incorporated herein by reference.

PART IV

Item 15. Exhibits and Financial Statement Schedules

(a) and (c) Financial Statements and Schedules.

See the index to the consolidated financial statements and schedules included in Item 8 of this report.

(b) Exhibits.

Exhibit #	Description	Form	Exhibit #	Filing Date
3.1	Articles of Incorporation of Arbor Realty Trust, Inc.	S-11	3.1	11/13/2003
3.2	Articles of Amendment to Articles of Incorporation of Arbor Realty Trust, Inc.	10-Q	3.2	8/7/2007
3.3	Articles Supplementary of Arbor Realty Trust, Inc.	S-11	3.2	11/13/2003
3.4	Articles Supplementary of 6.375% Series D Cumulative Redeemable Preferred Stock.	8-A	3.7	6/2/2021
3.5	Articles Supplementary of 6.25% Series E Cumulative Redeemable Preferred Stock.	8-A	3.5	8/11/2021
3.6	Articles Supplementary of 6.25% Series F Fixed-to-Floating Rate Cumulative Redeemable Preferred Stock.	8-A	3.6	10/12/2021
3.7	New Articles Supplementary classifying 3,565,000 shares of 6.25% Series F Cumulative Redeemable Preferred Stock	8-K	3.2	2/7/2022
3.8	Articles Supplementary designating Special Voting Preferred Stock.	8-K	3.1	7/15/2016
3.9	Amended and Restated Bylaws of Arbor Realty Trust, Inc.			
4.1	Form of Certificate for Common Stock.	S-11/A		12/31/2003
4.2	Specimen 6.375% Series D Cumulative Redeemable Preferred Stock Certificate.	8-A	4.1	6/2/2021
4.3	Specimen 6.25% Series E Cumulative Redeemable Preferred Stock Certificate.	8-A	4.1	8/11/2021
4.4	Specimen 6.25% Series F Fixed-to-Floating Rate Cumulative Redeemable Preferred Stock Certificate.	8-A	4.1	10/12/2021
4.5	Indenture, dated March 13, 2018, between Arbor Realty Trust, Inc. and U.S. Bank National Association, as trustee.	8-K	4.1	3/13/2018
4.6	Indenture, dated July 3, 2018, between Arbor Realty Trust, Inc. and U.S. Bank National Association, as trustee.	8-K	4.1	7/3/2018
4.7	Indenture, dated July 20, 2018, between Arbor Realty Trust, Inc. and U.S. Bank National Association, as trustee.	8-K	4.1	7/20/2018
4.8	Indenture, dated November 12, 2019, between Arbor Realty Trust, Inc. and U.S. Bank National Association, as trustee.	8-K	4.1	11/12/2019
4.9	Indenture, dated as of April 30, 2021, between Arbor Realty Trust, Inc. and UMB Bank, NA, as trustee.	8-K	4.1	5/4/2021
4.10	Indenture, dated as of August 5, 2022, between Arbor Realty Trust, Inc. and U.S. Bank Trust Company, National Association, as trustee.	8-K	4.1	8/5/2022
4.11	Form of 5.00% Senior Note due 2026 (included in Exhibit 4.9).			
4.12	Description of securities of Arbor Realty Trust, Inc.	10-K	4.13	2/14/2020
4.13	Form of 7.50% Convertible Senior Notes due 2025 (included in Exhibit 4.10).			
4.14	Indenture, dated as of October 11, 2022, among Arbor Realty SR, Inc., Arbor Realty Trust, Inc. and UMB Bank, N.A., as trustee.	8-K	4.1	10/11/2022
4.15	Form of 8.50% Senior Notes due 2027 (included in Exhibit 4.14).			

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Exhibit #	Description	Form	Exhibit #	Filing Date
10.1	Non-Competition Agreement, dated July 14, 2016, by and among Arbor Realty Trust, Inc., Arbor Realty Limited Partnership, Arbor Commercial Mortgage, LLC and Ivan Kaufman.	8-K	10.3	7/15/2016
10.2	Registration Rights Agreement, dated July 1, 2003, between Arbor Realty Trust, Inc. and Arbor Commercial Mortgage, LLC.	S-11	10.6	11/13/2003
10.3	Form of Restricted Stock Agreement.	S-11	10.9	11/13/2003
10.4	Benefits Participation Agreement, dated July 1, 2003, between Arbor Realty Trust, Inc. and Arbor Management, LLC.	S-11	10.10	11/13/2003
10.5	Junior Subordinated Indenture, dated May 6, 2009, between Arbor Realty SR, Inc. and The Bank of New York Mellon Trust Company, National Association, as Trustee relating to \$29,400,000 aggregate principal amount of Junior Subordinated Notes due 2034.	10-Q	10.30	5/11/2009
10.6	Junior Subordinated Indenture, dated May 6, 2009, between Arbor Realty SR, Inc. and The Bank of New York Mellon Trust Company, National Association, as Trustee relating to \$168,000,000 aggregate principal amount of Junior Subordinated Notes due 2034.	10-Q	10.31	5/11/2009
10.7	Junior Subordinated Indenture, dated May 6, 2009, among Arbor Realty SR, Inc., Arbor Realty Trust, Inc., as Guarantor, and Wilmington Trust Company, as Trustee, relating to \$21,224,000 aggregate principal amount of Junior Subordinated Notes due 2035.	10-Q	10.32	5/11/2009
10.8	Junior Subordinated Indenture, dated May 6, 2009, among Arbor Realty SR, Inc., Arbor Realty Trust, Inc., as Guarantor, and Wilmington Trust Company, as Trustee, relating to \$2,632,000 aggregate principal amount of Junior Subordinated Notes due 2036.	10-Q	10.33	5/11/2009
10.9	Junior Subordinated Indenture, dated May 6, 2009, among Arbor Realty SR, Inc., Arbor Realty Trust, Inc., as Guarantor, and Wilmington Trust Company, as Trustee, relating to \$47,180,000 aggregate principal amount of Junior Subordinated Notes due 2037.	10-Q	10.34	5/11/2009
10.10	Amended and restated Annual Incentive Agreement, dated March 31, 2017, by and between Arbor Realty Trust, Inc. and Ivan Kaufman.	10-Q	10.4	5/5/2017
10.11	First Amendment to Amended and restated Annual Incentive Agreement, dated October 31, 2018, by and between Arbor Realty Trust, Inc. and Ivan Kaufman.	10-K	10.12	2/15/2019
10.12	Second amended and restated Annual Incentive Agreement, dated April 22, 2021, by and between Arbor Realty Trust, Inc. and Ivan Kaufman.	10-Q	10.1	7/30/2021
10.13	Asset Purchase Agreement, dated February 25, 2016, by and among Arbor Realty Trust, Inc., Arbor Realty Limited Partnership, ARSR Acquisition Company, LLC, Arbor Commercial Funding, LLC and Arbor Commercial Mortgage, LLC (the schedules are omitted pursuant to Item 601(b)(2) of Regulation S-K).	8-K	2.1	3/2/2016
10.14	Voting and Standstill Agreement, dated February 25, 2016, by and among Arbor Realty Trust, Inc., Arbor Commercial Mortgage, LLC, Arbor Commercial Funding, LLC and the other Persons whose names appear on the signature pages hereto.	8-K	10.1	3/2/2016
10.15	Option Agreement, dated July 14, 2016, by and among Arbor Realty Trust, Inc., Arbor Realty Limited Partnership, Arbor Realty SR, Inc. and Arbor Commercial Mortgage, LLC.	8-K	10.1	7/15/2016

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Exhibit #	Description	Form	Exhibit #	Filing Date
10.16	Amendment No. 1 to the Option Agreement, dated May 9, 2017, by and among Arbor Realty Trust, Inc., Arbor Realty Limited Partnership, Arbor Realty SR, Inc. and Arbor Commercial Mortgage, LLC.	8-K	1.1	5/10/2017
10.17	Pairing Agreement, dated July 14, 2016, by and among Arbor Realty Trust, Inc., Arbor Realty Limited Partnership and Arbor Commercial Mortgage, LLC.	8-K	10.5	7/15/2016
10.18	Amended and Restated Limited Liability Company Operating Agreement of ARSR PE, LLC, dated July 14, 2016, by and between Arbor Multifamily Lending, LLC and Arbor Commercial Mortgage, LLC.	8-K	10.6	7/15/2016
10.19	Pooling and Servicing Agreement, dated as of May 1, 2020, by and among Arbor Private Label Depositor, LLC, Midland Loan Services and Wells Fargo Bank, National Association.	10-Q	10.1	7/31/2020
10.20	Pooling and Servicing Agreement, dated as of June 1, 2021, by and among Arbor Private Label Depositor, LLC, Midland Loan Services and Wells Fargo Bank, National Association.	10-Q	10.2	7/30/2021
10.21	Pooling and Servicing Agreement, dated as of February 1, 2022, by and among Arbor Private Label Depositor, LLC, Midland Loan Services, Computershare Trust Company and Wilmington Trust.	10-Q	10.1	5/6/2022
10.22	Form of Registration Rights Agreement relating to the 5.00% Senior Notes due 2026, dated as of April 30, 2021, among Arbor Realty Trust, Inc. and the several purchasers of the Notes party thereto.	8-K	10.1	5/4/2021
10.23	Fourth Amended and Restated Agreement of Limited Partnership of Arbor Realty Limited Partnership, dated June 25, 2021, by and among Arbor Realty GPOP, Inc., Arbor Realty LPOP, Inc., Arbor Commercial Mortgage, LLC and Arbor Realty Trust, Inc.	S-4	10.2	6/28/2021
10.24	First Amendment dated August 25, 2021 to the Fourth Amended and Restated Agreement of Limited Partnership of Arbor Realty Limited Partnership, dated June 25, 2021, by and among Arbor Realty GPOP, Inc., Arbor Realty LPOP, Inc., Arbor Commercial Mortgage, LLC and Arbor Realty Trust, Inc.	10-Q	10.2	10/29/2021
10.25	Second Amendment dated October 12, 2021 to the Fourth Amended and Restated Agreement of Limited Partnership of Arbor Realty Limited Partnership, dated June 25, 2021, by and among Arbor Realty GPOP, Inc., Arbor Realty LPOP, Inc., Arbor Commercial Mortgage, LLC and Arbor Realty Trust, Inc.	10-Q	10.1	10/29/2021
10.26	Third Amendment dated February 7, 2022 to the Fourth Amended and Restated Agreement of Limited Partnership of Arbor Realty Limited Partnership, dated June 25, 2021, by and among Arbor Realty GPOP, Inc., Arbor Realty LPOP, Inc., Arbor Commercial Mortgage, LLC and Arbor Realty Trust, Inc.	10-Q	10.2	5/6/2022
21.1	List of Significant Subsidiaries of Arbor Realty Trust, Inc.			
23.1	Consent of Ernst & Young LLP.			
23.2	Consent of Richey, May & Co., LLP.			
31.1	Certification of Chief Executive Officer pursuant to Exchange Act Rule 13a-14.			
31.2	Certification of Chief Financial Officer pursuant to Exchange Act Rule 13a-14.			

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<u>Exhibit #</u>	<u>Description</u>	<u>Form</u>	<u>Exhibit #</u>	<u>Filing Date</u>
32	Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.			
99.1	Financial statements of Wakefield Investments Holdings LLC.			
101.1	Financial statements from the Annual Report on Form 10-K of Arbor Realty Trust, Inc. for the year ended December 31, 2022, filed on February 17, 2023, formatted in XBRL: (i) Consolidated Balance Sheets, (ii) Consolidated Statements of Income, (iii) Consolidated Statements of Changes in Equity, (iv) Consolidated Statements of Cash Flows, (v) Notes to Consolidated Financial Statements and (vi) Schedule IV.			
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).			

In accordance with Item 601(b)(4)(iii)(A) of Regulation S-K, copies of certain instruments defining the rights of holders of our long-term debt are not filed herewith. Pursuant to this regulation, we hereby agree to furnish a copy of any such instrument to the SEC upon request.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

ARBOR REALTY TRUST, INC.

Date: February 17, 2023

By: /s/ Ivan Kaufman
Name: Ivan Kaufman
Title: Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Ivan Kaufman</u> Ivan Kaufman	Chairman of the Board of Directors, Chief Executive Officer and President (Principal Executive Officer)	February 17, 2023
<u>/s/ Paul Elenio</u> Paul Elenio	Chief Financial Officer (Principal Financial and Accounting Officer)	February 17, 2023
<u>/s/ Kenneth J. Bacon</u> Kenneth J. Bacon	Director	February 17, 2023
<u>/s/ Caryn Effron</u> Caryn Effron	Director	February 17, 2023
<u>/s/ Edward Farrell</u> Edward Farrell	Director	February 17, 2023
<u>/s/ William C. Green</u> William C. Green	Director	February 17, 2023
<u>/s/ Melvin F. Lazar</u> Melvin F. Lazar	Director	February 17, 2023
<u>/s/ Joseph Martello</u> Joseph Martello	Director	February 17, 2023
<u>/s/ Elliot Schwartz</u> Elliot Schwartz	Director	February 17, 2023

**AMENDED AND RESTATED BYLAWS OF
ARBOR REALTY TRUST, INC.
AS OF FEBRUARY 15, 2023**

ARTICLE I.

OFFICES

Section 1. PRINCIPAL OFFICE. The principal office of the Corporation in the State of Maryland shall be located at such place as the Board of Directors may from time to time designate.

Section 2. ADDITIONAL OFFICES. The Corporation may have additional offices, including a principal executive office, at such places as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II.

MEETINGS OF STOCKHOLDERS

Section 1. PLACE. All meetings of stockholders shall be held at the principal executive office of the Corporation or at such other place as shall be set in accordance with these Bylaws and stated in the notice of the meeting. The Board of Directors may determine that a meeting not be held at any place, but instead may be held partially or solely by means of remote communication. In accordance with these Bylaws and subject to any guidelines and procedures adopted by the Board of Directors, stockholders and proxy holders may participate in any meeting of stockholders held by means of remote communication and may vote at such meeting as permitted by Maryland law. Participation in a meeting by these means constitutes presence in person at the meeting.

Section 2. ANNUAL MEETING. An annual meeting of the stockholders for the election of directors and the transaction of any business within the powers of the Corporation shall be held on the date and at the time and place set by the Board of Directors.

Section 3. SPECIAL MEETINGS.

(a) General. The Chairman of the Board of Directors, President, Chief Executive Officer or Board of Directors may call a special meeting of stockholders. Subject to subsection (b) of this Section 3, a special meeting of stockholders shall also be called by the Secretary of the Corporation to act upon any matter that may properly be considered at a meeting of stockholders upon the written request of stockholders entitled to cast not less than a majority of all the votes entitled to be cast on such matter at such meeting.

(b) Stockholder Requested Special Meetings. (1) Any stockholder of record seeking to have stockholders request a special meeting shall, by sending written notice to the Secretary (the "Record Date Request Notice") by registered mail, return receipt requested, request the Board of Directors to fix a record date to determine the stockholders entitled to request a special meeting (the "Request Record Date"). The Record Date Request Notice shall set forth the purpose

of the meeting and the matters proposed to be acted on at it, shall be signed by one or more stockholders of record as of the date of signature (or their agents duly authorized in a writing accompanying the Record Date Request Notice), shall bear the date of signature of each such stockholder (or such agent) and shall set forth all information relating to each such stockholder, each individual whom the stockholder proposes to nominate for election or reelection as a director and each matter proposed to be acted on at the meeting that would be required to be disclosed in connection with the solicitation of proxies for the election of directors or the election of such individual, as applicable, in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such a solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the "Exchange Act"). Upon receiving the Record Date Request Notice, the Board of Directors may fix a Request Record Date. The Request Record Date shall not precede and shall not be more than ten days after the close of business on the date on which the resolution fixing the Request Record Date is adopted by the Board of Directors. If the Board of Directors, within ten days after the date on which a valid Record Date Request Notice is received, fails to adopt a resolution fixing the Request Record Date and make a public announcement of such Request Record Date, the Request Record Date shall be the close of business on the tenth day after the first date on which a Record Date Request Notice is received by the Secretary.

(2) In order for any stockholder to request a special meeting to act on any matter that may properly be considered at a meeting of stockholders, one or more written requests for a special meeting (collectively, the "Special Meeting Request") signed by stockholders of record (or their agents duly authorized in a writing accompanying the request) as of the Request Record Date entitled to cast not less than a majority of all of the votes entitled to be cast on such matter at such meeting (the "Special Meeting Percentage") shall be delivered to the Secretary. In addition, the Special Meeting Request shall set forth the purpose of the meeting and the matters proposed to be acted on at it (which shall be limited to those lawful matters set forth in the Record Date Request Notice received by the Secretary), shall bear the date of signature of each such stockholder (or such agent) signing the Special Meeting Request, shall set forth the name and address, as they appear in the Corporation's books, of each stockholder signing such request (or on whose behalf the Special Meeting Request is signed), the class, series and number of all shares of stock of the Corporation which are owned (beneficially or of record) by each such stockholder, and the nominee holder for, and number of, shares of stock of the corporation owned by such stockholder beneficially but not of record, shall be sent to the Secretary by registered mail, return receipt requested, and shall be received by the Secretary within 60 days after the Request Record Date. Any requesting stockholder (or agent duly authorized in a writing accompanying the revocation of the Special Meeting Request) may revoke his, her or its request for a special meeting at any time by written revocation delivered to the Secretary.

(3) The Secretary shall inform the requesting stockholders of the reasonably estimated cost of preparing and mailing or delivering the notice of the meeting (including the Corporation's proxy materials). The Secretary shall not be required to call a special meeting upon stockholder request and such meeting shall not be held unless, in addition to the documents required by paragraph (2) of this Section 3(b), the Secretary receives payment of such reasonably estimated cost prior to the preparation and mailing or delivery of such notice of the meeting.

(4) Except as provided in the next sentence, any special meeting shall be held at such place, date and time as may be designated by the President, Chief Executive Officer or Board of Directors, whoever has called the meeting. In the case of any special meeting called by the Secretary upon the request of stockholders (a “Stockholder-Requested Meeting”), such meeting shall be held at such place, date and time as may be designated by the Board of Directors; provided, however, that the date of any Stockholder-Requested Meeting shall be not more than 90 days after the record date for such meeting (the “Meeting Record Date”); and provided further that if the Board of Directors fails to designate, within ten days after the date that a valid Special Meeting Request is actually received by the Secretary (the “Delivery Date”), a date and time for a Stockholder-Requested Meeting, then such meeting shall be held at 2:00 p.m., local time, on the 90th day after the Meeting Record Date or, if such 90th day is not a Business Day (as defined below), on the first preceding Business Day; and provided further that in the event that the Board of Directors fails to designate a place for a Stockholder-Requested Meeting within ten days after the Delivery Date, then such meeting shall be held at the principal executive office of the Corporation. In fixing a date for any Stockholder-Requested Meeting, the Board of Directors may consider such factors as it deems relevant, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for the meeting and any plan of the Board of Directors to call an annual meeting or a special meeting. In the case of any Stockholder-Requested Meeting, if the Board of Directors fails to fix a Meeting Record Date that is a date within 30 days after the Delivery Date, then the close of business on the 30th day after the Delivery Date shall be the Meeting Record Date. The Board of Directors may revoke the notice for any Stockholder-Requested Meeting in the event that the requesting stockholders fail to comply with the provisions of paragraph (3) of this Section 3(b).

(5) If written revocations of the Special Meeting Request have been delivered to the Secretary and the result is that stockholders of record (or their agents duly authorized in writing), as of the Request Record Date, entitled to cast less than the Special Meeting Percentage have delivered, and not revoked, requests for a special meeting on the matter to the Secretary, the Secretary shall: (i) if the notice of meeting has not already been delivered, refrain from delivering the notice of the meeting and send to all requesting stockholders who have not revoked such requests written notice of any revocation of a request for a special meeting on the matter, or (ii) if the notice of meeting has been delivered and if the Secretary first sends to all requesting stockholders who have not revoked requests for a special meeting on the matter written notice of any revocation of a request for the special meeting and written notice of the Corporation’s intention to revoke the notice of the meeting or for the chairman of the meeting to adjourn the meeting without action on the matter, (A) the Secretary may revoke the notice of the meeting at any time before ten days before the commencement of the meeting or (B) the chairman of the meeting may call the meeting to order and adjourn the meeting from time to time without acting on the matter. Any request for a special meeting received after a revocation by the Secretary of a notice of a meeting shall be considered a request for a new special meeting.

(6) The Chairman of the Board of Directors, the President or the Board of Directors may appoint regionally or nationally recognized independent inspectors of elections to act as the agent of the Corporation for the purpose of promptly performing a ministerial review of the validity of any purported Special Meeting Request received by the Secretary. For the purpose of permitting the inspectors to perform such review, no such purported Special Meeting Request shall be deemed to have been received by the Secretary until the earlier of (i) five Business Days

after actual receipt by the Secretary of such purported request and (ii) such date as the independent inspectors certify to the Corporation that the valid requests received by the Secretary represent, as of the Request Record Date, stockholders of record entitled to cast not less than the Special Meeting Percentage. Nothing contained in this paragraph (6) shall in any way be construed to suggest or imply that the Corporation or any stockholder shall not be entitled to contest the validity of any request, whether during or after such five Business Day period, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

(7) For purposes of these Bylaws, "Business Day" shall mean any day other than a Saturday, a Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

Section 4. NOTICE. Not less than ten nor more than 90 days before each meeting of stockholders, the Secretary shall give to each stockholder entitled to vote at such meeting and to each stockholder not entitled to vote who is entitled to notice of the meeting notice, in writing or by electronic transmission, stating the time and place of the meeting and, in the case of a special meeting or as otherwise may be required by any statute, the purpose for which the meeting is called, by mail, by presenting it to such stockholder personally, by leaving it at the stockholder's residence or usual place of business, by electronic transmission or by any other means permitted by Maryland law. If mailed, such notice shall be deemed to be given when deposited in the United States mail addressed to the stockholder at the stockholder's address as it appears on the records of the Corporation, with postage thereon prepaid. If transmitted electronically, such notice shall be deemed to be given when transmitted to the stockholder by an electronic transmission to any address or number of the stockholder at which the stockholder receives electronic transmissions. The Corporation may give a single notice to all stockholders who share an address, which single notice shall be effective as to any stockholder at such address, unless such stockholder objects to receiving such single notice or revokes a prior consent to receiving such single notice. Failure to give notice of any meeting to one or more stockholders, or any irregularity in such notice, shall not affect the validity of any meeting fixed in accordance with this Article II or the validity of any proceedings at any such meeting.

Subject to Section 11(a) of this Article II, any business of the Corporation may be transacted at an annual meeting of stockholders without being specifically designated in the notice, except such business as is required by any statute to be stated in such notice. No business shall be transacted at a special meeting of stockholders except as specifically designated in the notice. The Corporation may postpone or cancel a meeting of stockholders by making a public announcement (as defined in Section 11(c)(4) of this Article II) of such postponement or cancellation prior to the meeting. Notice of the date, time and place to which the meeting is postponed shall be given not less than ten days prior to such date and otherwise in the manner set forth in this section.

Section 5. ORGANIZATION AND CONDUCT. Every meeting of stockholders shall be conducted by an individual appointed by the Board of Directors to be chairman of the meeting or, in the absence of such appointment or appointed individual, by the Chairman of the Board of Directors or, in the case of a vacancy in the office or absence of the Chairman of the Board of Directors, by one of the following officers present at the meeting: the Lead Director, if there is one, the President, the Vice Presidents in their order of rank and, within

each rank, in their order of seniority, or, in the absence of such officers, a chairman chosen by the stockholders by the vote of a majority of the votes cast by stockholders present in person or by proxy. The Secretary, or, in the Secretary's absence or a vacancy in the office, an Assistant Secretary, or in the absence of the Secretary and all of the Assistant Secretaries, a person appointed by the Board of Directors or, in the absence of such appointment, a person appointed by the chairman of the meeting shall act as secretary. In the event that the Secretary presides at a meeting of the stockholders, an Assistant Secretary, or in the absence of Assistant Secretaries, an individual appointed by the Board of Directors or the chairman of the meeting, shall record the minutes of the meeting. Even if present at the meeting, the person holding the office named herein may delegate to another person the power to act as chairman or secretary of the meeting. The order of business and all other matters of procedure at any meeting of stockholders shall be determined by the chairman of the meeting. The chairman of the meeting may prescribe such rules, regulations and procedures and take such action as, in the discretion of the chairman and without any action by the stockholders, are appropriate for the proper conduct of the meeting, including, without limitation, (a) restricting admission to the time set for the commencement of the meeting; (b) limiting attendance or participation at the meeting to stockholders of record of the Corporation, their duly authorized proxies and such other individuals as the chairman of the meeting may determine; (c) limiting the time allotted to questions or comments; (d) determining when and for how long the polls should be opened and when the polls should be closed and when announcement of the results should be made; (e) maintaining order and security at the meeting; (f) removing any stockholder or any other individual who refuses to comply with meeting procedures, rules or guidelines as set forth by the chairman of the meeting; (g) concluding a meeting or recessing or adjourning the meeting, whether or not a quorum is present, to a later date and time and at a place either (i) announced at the meeting or (ii) provided at a future time through means announced at the meeting; and (h) complying with any state and local laws and regulations concerning safety and security. Unless otherwise determined by the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with any rules of parliamentary procedure.

Section 6. QUORUM. At any meeting of stockholders, the presence in person or by proxy of stockholders entitled to cast a majority of all the votes entitled to be cast at such meeting on any matter shall constitute a quorum; but this section shall not affect any requirement under any statute or the charter of the Corporation (the "Charter") for the vote necessary for the approval of any matter. If such quorum is not established at any meeting of the stockholders, the chairman of the meeting may adjourn the meeting from time to time to a date not more than 120 days after the original record date without notice other than announcement at the meeting. The date, time and place of the meeting, as reconvened, shall either be (a) announced at the meeting or (b) provided at a future time through means announced at the meeting.

The stockholders present either in person or by proxy, at a meeting which has been duly called and at which a quorum has been established, may continue to transact business until adjournment, notwithstanding the withdrawal from the meeting of enough stockholders to leave fewer than would be required to establish a quorum.

Section 7. VOTING. Each director shall be elected by a majority of the votes cast with respect to that director's election at any meeting of stockholders duly called and at which a quorum is present; provided, however, that if the Secretary of the Corporation determines that

the number of nominees or proposed nominees exceeds the number of directors to be elected at such meeting as of the seventh day preceding the date the Corporation files its definitive proxy statement for such meeting with the Securities and Exchange Commission (regardless of whether or not the proxy statement is thereafter revised or supplemented), then directors shall be elected at such meeting by a plurality of all the votes cast. For purposes of the election of directors, a "majority of the votes cast" means that the number of votes cast "for" a director's election exceeds the number of votes cast "against" the director's election, with abstentions and broker nonvotes not counting as either votes "for" or "against" a director's election. If the directors are to be elected by a plurality of the votes cast pursuant to the provisions of the immediately preceding sentence, stockholders shall not be permitted to vote "against" any one or more nominees but shall only be permitted to vote "for" one or more nominees or withhold their votes with respect to one or more nominees. Each share entitles the holder thereof to vote for as many individuals as there are directors to be elected and for whose election the holder is entitled to vote.

A majority of the votes cast at a meeting of stockholders duly called and at which a quorum is present shall be sufficient to approve any other matter which may properly come before the meeting, unless more than a majority of the votes cast is required by statute or by the Charter. Unless otherwise provided by statute or by the Charter, each outstanding share of stock, regardless of class, entitles the holder thereof to cast one vote on each matter submitted to a vote at a meeting of stockholders. Voting on any question or in any election may be *viva voce* unless the chairman of the meeting shall order that voting be by ballot or otherwise.

Section 8. PROXIES. A holder of record of shares of stock of the Corporation may cast votes in person or by proxy that is (a) executed by the stockholder or by the stockholder's duly authorized agent in any manner permitted by applicable law, (b) compliant with Maryland law and these Bylaws and (c) filed in accordance with the procedures established by the Corporation. Such proxy or evidence of authorization of such proxy shall be filed with the Secretary of the Corporation before or at the meeting. No proxy shall be valid more than eleven months after its date unless otherwise provided in the proxy.

Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for the exclusive use by the Board of Directors.

Section 9. VOTING OF STOCK BY CERTAIN HOLDERS. Stock of the Corporation registered in the name of a corporation, limited liability company, partnership, trust, joint venture, or other entity, if entitled to be voted, may be voted by the president or a vice president, managing member, manager, a general partner or trustee thereof, as the case may be, or a proxy appointed by any of the foregoing individuals, unless some other person who has been appointed to vote such stock pursuant to a bylaw or a resolution of the governing body of such corporation or other entity or agreement of the partners of a partnership presents a certified copy of such bylaw, resolution or agreement, in which case such person may vote such stock. Any trustee or fiduciary, in such capacity, may vote stock registered in such trustee's or fiduciary's name, either in person or by proxy.

Shares of stock of the Corporation directly or indirectly owned by it shall not be voted at any meeting and shall not be counted in determining the total number of outstanding

shares entitled to be voted at any given time, unless they are held by it in a fiduciary capacity, in which case they may be voted and shall be counted in determining the total number of outstanding shares at any given time.

The Board of Directors may adopt by resolution a procedure by which a stockholder may certify in writing to the Corporation that any shares of stock registered in the name of the stockholder are held for the account of a specified person other than the stockholder. The resolution shall set forth the class of stockholders who may make the certification, the purpose for which the certification may be made, the form of certification and the information to be contained in it; if the certification is with respect to a record date, the time after the record date within which the certification must be received by the Corporation; and any other provisions with respect to the procedure which the Board of Directors considers necessary or appropriate. On receipt by the Secretary of the Corporation of such certification, the person specified in the certification shall be regarded as, for the purposes set forth in the certification, the holder of record of the specified stock in place of the stockholder who makes the certification.

Section 10. INSPECTORS. The Board of Directors or the chairman of the meeting may appoint, before or at the meeting, one or more inspectors for the meeting and any successor to the inspector. Except as otherwise provided by the chairman of the meeting, the inspectors, if any, shall (i) determine the number of shares of stock represented at the meeting, in person or by proxy, and the validity and effect of proxies, (ii) receive and tabulate all votes, ballots or consents, (iii) report such tabulation to the chairman of the meeting, (iv) hear and determine all challenges and questions arising in connection with the right to vote, and (v) do such acts as are proper to fairly conduct the election or vote. Each such report shall be in writing and signed by the inspector or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors. The report of the inspector or inspectors on the number of shares represented at the meeting and the results of the voting shall be prima facie evidence thereof.

Section 11. ADVANCE NOTICE OF STOCKHOLDER NOMINEES FOR DIRECTOR AND OTHER STOCKHOLDER PROPOSALS.

(a) Annual Meetings of Stockholders. (1) Nominations of individuals for election to the Board of Directors and the proposal of other business to be considered at an annual meeting of stockholders by the stockholders may only be made (i) pursuant to the Corporation's notice of meeting, (ii) by or at the direction of the Board of Directors or (iii) by any stockholder of the Corporation who was a stockholder of record at the record date set by the Board of Directors for the purpose of determining stockholders entitled to vote at the annual meeting, at the time of giving of notice by the stockholder as provided for in this Section 11(a) and at the time of the annual meeting (and any postponement or adjournment thereof), who is entitled to vote at the meeting in the election of each individual so nominated or on any such other business and who has complied with this Section 11(a).

(2) For any nomination or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of paragraph (a)(1) of this Section 11, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and such other business must otherwise be a proper matter for action by the stockholders. To be

timely, a stockholder's notice shall set forth all information and certifications required under this Section 11 and shall be delivered to the Secretary at the principal executive office of the Corporation not earlier than the 150th day nor later than 5:00 p.m., Eastern Time, on the 120th day prior to the first anniversary of the date of the proxy statement (as defined in Section 11(c)(3) of this Article II) for the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced or delayed by more than 30 days from the first anniversary of the date the preceding year's annual meeting, in order for notice by the stockholder to be timely it must be delivered not earlier than the 150th day prior to the date of such annual meeting and not later than 5:00 p.m., Eastern Time, on the later of the 120th day prior to the date of such annual meeting, as originally convened, or the tenth day following the day on which public announcement of the date of such meeting is first made. The postponement or adjournment of an annual meeting (or the public announcement thereof) shall not commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(3) Such stockholder's notice shall set forth:

(i) as to each individual whom the stockholder proposes to nominate for election or reelection as a director (each, a "Proposed Nominee"), all information relating to the Proposed Nominee that would be required to be disclosed in connection with the solicitation of proxies for the election of the Proposed Nominee as a director in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act;

(ii) as to any other business that the stockholder proposes to bring before the meeting, (A) a description of such business (including the text of any proposal), the stockholder's reasons for proposing such business at the meeting and any material interest in such business of such stockholder or any Stockholder Associated Person (as defined below), individually or in the aggregate, including any anticipated benefit to the stockholder or the Stockholder Associated Person therefrom and (B) any other information relating to such item of business that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies in support of the business proposed to be brought before the meeting pursuant to Regulation 14A (or any successor provision) of the Exchange Act;

(iii) as to the stockholder giving the notice, any Proposed Nominee and any Stockholder Associated Person,

(A) the class, series and number of all shares of stock or other securities of the Corporation (collectively, the "Company Securities"), if any, which are owned (beneficially or of record) by such stockholder, Proposed Nominee or Stockholder Associated Person, the date on which each such Company Security was acquired and the investment intent of such acquisition, and any short interest (including any opportunity to profit or share in any benefit from any decrease in the price of such stock or other security) in any Company Securities of any such person,

(B) the nominee holder for, and number of, any Company Securities owned beneficially but not of record by such stockholder, Proposed Nominee or Stockholder Associated Person,

(C) whether and the extent to which such stockholder, Proposed Nominee or Stockholder Associated Person, directly or indirectly (through brokers, nominees or otherwise), is subject to or during the last six months has engaged in any hedging, derivative or other transaction or series of transactions or entered into any other agreement, arrangement or understanding (including any short interest, any borrowing or lending of securities or any proxy or voting agreement), the effect or intent of which is to (I) manage risk or benefit of changes in the price of Company Securities for such stockholder, Proposed Nominee or Stockholder Associated Person or (II) increase or decrease the voting power of such stockholder, Proposed Nominee or Stockholder Associated Person in the Corporation disproportionately to such person's economic interest in the Company Securities, and

(D) any substantial interest, direct or indirect (including, without limitation, any existing or prospective commercial, business or contractual relationship with the Corporation), by security holdings or otherwise, of such stockholder, Proposed Nominee or Stockholder Associated Person, in the Corporation, other than an interest arising from the ownership of Company Securities where such stockholder, Proposed Nominee or Stockholder Associated Person receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class or series;

(iv) as to the stockholder giving the notice, any Stockholder Associated Person with an interest or ownership referred to in clauses (ii) or (iii) of this paragraph (3) of this Section 11(a) and any Proposed Nominee,

(A) the name and address of such stockholder, as they appear on the Corporation's stock ledger, and the current name and business address, if different, of each such Stockholder Associated Person and any Proposed Nominee and

(B) the investment strategy or objective, if any, of such stockholder and each such Stockholder Associated Person who is not an individual and a copy of the prospectus, offering memorandum or similar document, if any, provided to investors or potential investors in such stockholder and each such Stockholder Associated Person;

(v) the name and address of any person who contacted or was contacted by the stockholder giving the notice or any Stockholder Associated Person about the Proposed Nominee or other business proposal;

(vi) to the extent known by the stockholder giving the notice, the name and address of any other person supporting the nominee for election or reelection as a director or the proposal of other business;

(vii) if the stockholder is proposing one or more Proposed Nominees, a representation that such stockholder, Proposed Nominee or Stockholder Associated Person intends or is part of a group which intends to solicit the holders of shares representing at least 67%

of the voting power of shares entitled to vote on the election of directors in support of Proposed Nominees in accordance with Rule 14a-19 of the Exchange Act; and

(viii) all other information regarding the stockholder giving the notice and each Stockholder Associated Person that would be required to be disclosed by the stockholder in connection with the solicitation of proxies for the election of directors in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such a solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act.

(4) Such stockholder's notice shall, with respect to any Proposed Nominee, be accompanied by a:

(i) written undertaking executed by the Proposed Nominee:

(A) that such Proposed Nominee (I) is not, and will not become, a party to any agreement, arrangement or understanding with any person or entity other than the Corporation in connection with service or action as a director that has not been disclosed to the Corporation, (II) consents to be named as a nominee in a proxy statement relating to the annual meeting or special meeting of stockholders, as applicable, (III) consents to serve as a director of the Corporation if elected, (IV) will notify the Corporation simultaneously with the notification to the stockholder of the Proposed Nominee's actual or potential unwillingness or inability to serve as a director and (V) does not need any permission or consent from any third party to serve as a director of the Corporation, if elected, that has not been obtained, including from any employer or any other board or governing body on which such Proposed Nominee serves;

(B) attaching copies of any and all requisite permissions or consents; and

(C) attaching a completed Proposed Nominee questionnaire (which questionnaire shall be provided by the Corporation, upon request, to the stockholder providing the notice and shall include all information relating to the Proposed Nominee that would be required to be disclosed in connection with the solicitation of proxies for the election of the Proposed Nominee as a director in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act, or would be required pursuant to the rules of any national securities exchange on which any securities of the Corporation are listed or over-the-counter market on which any securities of the Corporation are traded); and

(ii) certificate executed by the stockholder certifying that such stockholder will:

(A) comply with Rule 14a-19 promulgated under the Exchange Act in connection with such stockholder's solicitation of proxies in support of any Proposed Nominee;

(B) notify the Corporation as promptly as practicable of any determination by the stockholder to no longer solicit proxies for the election of any Proposed Nominee as a director at the annual meeting;

(C) furnish such other or additional information as the Corporation may request for the purpose of determining whether the requirements of this Section 11 have been complied with and of evaluating any nomination or other business described in the stockholder's notice; and

(D) appear in person or by proxy at the meeting to nominate any Proposed Nominees or to bring such business before the meeting, as applicable, and acknowledges that if the stockholder does not so appear in person or by proxy at the meeting to nominate such Proposed Nominees or bring such business before the meeting, as applicable, the Corporation need not bring such Proposed Nominee or such business for a vote at such meeting and any proxies or votes cast in favor of the election of any such Proposed Nominee or of any proposal related to such other business need not be counted or considered.

(5) Notwithstanding anything in this subsection (a) of this Section 11 to the contrary, in the event that the number of directors to be elected to the Board of Directors is increased, and there is no public announcement of such action at least 130 days prior to the first anniversary of the date of the proxy statement (as defined in Section 11(c)(4) of this Article II) for the preceding year's annual meeting, a stockholder's notice required by this Section 11(a) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive office of the Corporation not later than 5:00 p.m., Eastern Time, on the tenth day following the day on which such public announcement is first made by the Corporation.

(6) For purposes of this Section 11, "Stockholder Associated Person" of any stockholder shall mean (i) any person acting in concert with such stockholder or another Stockholder Associated Person or who is otherwise a participant (as defined in Instruction 3 to Item 4 of Schedule 14A under the Exchange Act) in the solicitation, (ii) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder (other than a stockholder that is a depositary) and (iii) any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by or under common control with, such stockholder or such stockholder's Stockholder Associated Person.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. No stockholder may make a proposal of other business to be considered at a special meeting or, except as contemplated by and in accordance with the next two sentences of this Section 11(b), nominate an individual for election to the Board of Directors at a special meeting. Nominations of individuals for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected only (1) by or at the direction of the Board of Directors or (2) provided that the special meeting has been called in accordance with Section 3(a) of this Article II for the purpose of electing directors, by any stockholder of the Corporation who is a stockholder of record at the record date set by the Board of Directors for the purpose of determining stockholders entitled to vote at the special meeting, at

the time of giving of notice provided for in this Section 11 and at the time of the special meeting (and any postponement or adjournment thereof), who is entitled to vote at the meeting in the election of each individual so nominated and who has complied with the notice procedures set forth in this Section 11. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more individuals to the Board of Directors, any stockholder may nominate an individual or individuals (as the case may be) for election as a director as specified in the Corporation's notice of meeting, if the stockholder's notice, containing the information and certifications required by paragraphs (a)(3) and (4) of this Section 11, is delivered to the Secretary at the principal executive office of the Corporation not earlier than the 120th day prior to such special meeting and not later than 5:00 p.m., Eastern Time, on the later of the 90th day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting. The postponement or adjournment of a special meeting (or public announcement thereof) shall not commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) General. (1) If any information or certification submitted pursuant to this Section 11 by any stockholder proposing a nominee for election as a director or any proposal for other business at a meeting of stockholders, including any information or certification from a Proposed Nominee, shall be inaccurate in any material respect, such information or certification may be deemed not to have been provided in accordance with this Section 11. Any such stockholder shall notify the Corporation of any inaccuracy or change (within two Business Days of becoming aware of such inaccuracy or change) in any such information or certification. Upon written request by the Secretary or the Board of Directors, any such stockholder or Proposed Nominee shall provide, within five Business Days of delivery of such request (or such other period as may be specified in such request), (i) written verification, satisfactory, in the discretion of the Board of Directors or any authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by the stockholder pursuant to this Section 11, (ii) a written update of any information (including, if requested by the Corporation, written confirmation by such stockholder that it continues to intend to bring such nomination or other business proposal before the meeting and, if applicable, satisfy the requirements of Rule 14a-19(a)(3)) submitted by the stockholder pursuant to this Section 11 as of an earlier date and (iii) an updated certification by each Proposed Nominee that such individual will serve as a director of the Corporation if elected. If a stockholder fails to provide such written verification, update or certification within such period, the information as to which written verification, update or certification was requested may be deemed not to have been provided in accordance with this Section 11.

(2) Only such individuals who are nominated in accordance with this Section 11 shall be eligible for election by stockholders as directors, and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with this Section 11. A stockholder proposing a Proposed Nominee shall have no right to (i) nominate a number of Proposed Nominees that exceed the number of directors to be elected at the meeting or (ii) substitute or replace any Proposed Nominee unless such substitute or replacement is nominated in accordance with this Section 11 (including the timely provision of all information and certifications with respect to such substitute or replacement Proposed Nominee in accordance with the deadlines set forth in this Section 11). If the Corporation provides notice to a stockholder that the number of Proposed Nominees proposed by such stockholder exceeds the number of directors to be elected at a meeting, the stockholder must provide written notice to the

Corporation within five Business Days stating the names of the Proposed Nominees that have been withdrawn so that the number of Proposed Nominees proposed by such stockholder no longer exceeds the number of directors to be elected at a meeting. If any individual who is nominated in accordance with this Section 11 becomes unwilling or unable to serve on the Board of Directors, then the nomination with respect to such individual shall no longer be valid and no votes may validly be cast for such individual. The chairman of the meeting shall have the power to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with this Section 11.

(3) Notwithstanding the foregoing provisions of this Section 11, the Corporation shall disregard any proxy authority granted in favor of, or votes for, director nominees other than the Corporation's nominees if the stockholder or Stockholder Associated Person (each, a "Soliciting Stockholder") soliciting proxies in support of such director nominees abandons the solicitation or does not (i) comply with Rule 14a-19 promulgated under the Exchange Act, including any failure by the Soliciting Stockholder to (A) provide the Corporation with any notices required thereunder in a timely manner or (B) comply with the requirements of Rule 14a-19(a)(2) and Rule 14a-19(a)(3) promulgated under the Exchange Act or (ii) timely provide sufficient evidence in the determination of the Board of Directors sufficient to satisfy the Corporation that such Soliciting Stockholder has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act in accordance with the following sentence. Upon request by the Corporation, if any Soliciting Stockholder provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act (or is not required to provide notice because the information required by Rule 14a-19(b) has been provided in a preliminary or definitive proxy statement previously filed by such Soliciting Stockholder), such Soliciting Stockholder shall deliver to the Corporation, no later than five Business Days prior to the applicable meeting, sufficient evidence in the judgment of the Board of Directors that it has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act.

(4) For purposes of this Section 11, "the date of the proxy statement" shall have the same meaning as "the date of the company's proxy statement released to shareholders" as used in Rule 14a-8(e) promulgated under the Exchange Act, as interpreted by the Securities and Exchange Commission from time to time. "Public announcement" shall mean disclosure (A) in a press release reported by the Dow Jones News Service, Associated Press, Business Wire, PR Newswire or other widely circulated news or wire service or (B) in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to the Exchange Act.

(5) Notwithstanding the foregoing provisions of this Section 11, a stockholder shall also comply with all applicable requirements of state law and of the Exchange Act with respect to the matters set forth in this Section 11. Nothing in this Section 11 shall be deemed to affect any right of a stockholder to request inclusion of a proposal in, or the right of the Corporation to omit a proposal from, any proxy statement filed by the Corporation with the Securities and Exchange Commission pursuant to Rule 14a-8 (or any successor provision) under the Exchange Act. Nothing in this Section 11 shall require disclosure of revocable proxies received by the stockholder or Stockholder Associated Person pursuant to a solicitation of proxies after the filing of an effective Schedule 14A by such stockholder or Stockholder Associated Person under Section 14(a) of the Exchange Act.

(6) Notwithstanding anything in these Bylaws to the contrary, except as otherwise determined by the chairman of the meeting, if the stockholder giving notice as provided for in this Section 11 does not appear in person or by proxy at such annual or special meeting to present each nominee for election as a director or the proposed business, as applicable, such matter shall not be considered at the meeting.

Section 12. VOTING BY BALLOT. Voting on any question or in any election may be *viva voce* unless the presiding officer shall order or any stockholder shall demand that voting be by ballot.

Section 13. CONTROL SHARE ACQUISITION ACT. Notwithstanding any other provision of the Charter or these Bylaws, Title 3, Subtitle 7 of the Maryland General Corporation Law (or any successor statute) (the "MGCL") shall not apply to any acquisition by any person of shares of stock of the Corporation. This section may be repealed, in whole or in part, at any time, whether before or after an acquisition of control shares and, upon such repeal, may, to the extent provided by any successor bylaw, apply to any prior or subsequent control share acquisition.

ARTICLE III.

DIRECTORS

Section 1. GENERAL POWERS. The business and affairs of the Corporation shall be managed under the direction of the Board of Directors.

Section 2. NUMBER, TENURE, QUALIFICATIONS AND RESIGNATION. A majority of the entire Board of Directors may establish, increase or decrease the number of directors, provided that the number thereof shall never be less than the minimum number required by the Maryland General Corporation Law, nor more than 12, and further provided that the tenure of office of a director shall not be affected by any decrease in the number of directors. Any director of the Corporation may resign at any time by delivering his or her resignation to the Board of Directors, the Chairman of the Board or the Secretary. Any resignation shall take effect immediately upon its receipt or at such later time specified in the resignation. The acceptance of a resignation shall not be necessary to make it effective unless otherwise stated in the resignation.

Section 3. LEAD DIRECTOR. At any time during which the Chairman of the Board is not an independent director, the Board of Directors, by the affirmative vote of a majority of the independent directors, shall designate one of the independent directors as the Lead Director. The Lead Director is responsible for (i) serving as a liaison between the Chairman of the Board of Directors and other members of the Board of Directors, (ii) presiding at, and preparing the agenda for, all executive sessions of the non-management directors and the independent directors, (iii) working with the Chairman of the Board of Directors and members of management to schedule Board meetings and prepare agendas, (iv) working with the Chairman of the Board of Directors and members of management to assure the adequacy and timing of information provided to the Board of Directors, (v) retaining outside advisors to the Board of Directors, if necessary or desirable and (vi) performing such other duties as may be requested by the Chairman of the Board or the Board of Directors.

Section 4. ANNUAL AND REGULAR MEETINGS. An annual meeting of the Board of Directors shall be held after the annual meeting of stockholders, as soon as is practicable. In the event such meeting is not so held, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the Board of Directors. The Board of Directors may provide, by resolution, the time and place of regular meetings of the Board of Directors without other notice than such resolution.

Section 5. SPECIAL MEETINGS. Special meetings of the Board of Directors may be called by or at the request of the Chairman of the Board, the Lead Director, the Chief Executive Officer, the President or by a majority of the directors then in office. The person or persons authorized to call special meetings of the Board of Directors may fix the time and place of any special meeting of the Board of Directors called by them. The Board of Directors may provide, by resolution, the time and place of special meetings of the Board of Directors without other notice than such resolution.

Section 6. NOTICE. Notice of any special meeting of the Board of Directors shall be delivered personally or by telephone, electronic mail, facsimile transmission, United States mail or courier to each director at his or her business or residence address. Notice by personal delivery, telephone, electronic mail or facsimile transmission shall be given at least 24 hours prior to the meeting. Notice by United States mail shall be given at least three days prior to the meeting. Notice by courier shall be given at least two days prior to the meeting. Telephone notice shall be deemed to be given when the director or his or her agent is personally given such notice in a telephone call to which the director or his or her agent is a party. Electronic mail notice shall be deemed to be given upon transmission of the message to the electronic mail address given to the Corporation by the director. Facsimile transmission notice shall be deemed to be given upon completion of the transmission of the message to the number given to the Corporation by the director and receipt of a completed answer-back indicating receipt. Notice by United States mail shall be deemed to be given when deposited in the United States mail properly addressed, with postage thereon prepaid. Notice by courier shall be deemed to be given when deposited with or delivered to a courier properly addressed. Neither the business to be transacted at, nor the purpose of, any annual, regular or special meeting of the Board of Directors need be stated in the notice, unless specifically required by statute or these Bylaws.

Section 7. QUORUM. A majority of the directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, provided that, if less than a majority of such directors is present at such meeting, a majority of the directors present may adjourn the meeting from time to time without further notice, and provided further that if, pursuant to applicable law, the Charter or these Bylaws, the vote of a majority or other percentage of a specified group of directors is required for action, a quorum must also include a majority or such other percentage of such group. The directors present at a meeting which has been duly called and at which a quorum has been established may continue to transact business until adjournment, notwithstanding the withdrawal from the meeting of enough directors to leave fewer than required to establish a quorum.

Section 8. VOTING. The action of the majority of the directors present at a meeting at which a quorum is present shall be the action of the Board of Directors, unless the concurrence of a greater proportion is required for such action by applicable law, the Charter or

these Bylaws. If enough directors have withdrawn from a meeting to leave fewer than required to establish a quorum, but the meeting is not adjourned, the action of the majority of that number of directors necessary to constitute a quorum at such meeting shall be the action of the Board of Directors, unless the concurrence of a greater proportion is required for such action by applicable law, the Charter or these Bylaws.

Section 9. ORGANIZATION. At each meeting of the Board of Directors, the chairman of the board or, in the absence of the Chairman, the Lead Director, if any, shall act as Chairman. In the absence of both the Chairman and the Lead Director, the Chief Executive Officer or in the absence of the Chief Executive Officer, the President or in the absence of the President, a director chosen by a majority of the directors present, shall act as Chairman. The Secretary or, in his or her absence, an assistant Secretary of the Corporation, or in the absence of the Secretary and all Assistant Secretaries, a person appointed by the Chairman, shall act as secretary of the meeting.

Section 10. MEETINGS BY REMOTE COMMUNICATION. Directors may participate in a meeting by means of a conference telephone or other communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting.

Section 11. CONSENT BY DIRECTORS WITHOUT A MEETING. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting, if a consent in writing or by electronic transmission to such action is given by each director and is filed with the minutes of proceedings of the Board of Directors.

Section 12. VACANCIES. If for any reason any or all the directors cease to be directors, such event shall not terminate the Corporation or affect these Bylaws or the powers of the remaining directors hereunder (even if fewer than three directors remain). Any vacancy on the Board of Directors for any cause other than an increase in the number of directors may be filled by a majority of the remaining directors, even if such majority is less than a quorum. Any vacancy in the number of directors created by an increase in the number of directors may be filled by a majority vote of the entire Board of Directors. Any individual so elected as director shall serve until the next annual meeting of stockholders and until his or her successor is elected and qualifies.

Section 13. COMPENSATION. Directors shall not receive any stated salary for their services as directors but, by resolution of the Board of Directors, may receive compensation per year and/or per meeting and/or per visit to real property or other facilities owned or leased by the Corporation and for any service or activity they performed or engaged in as directors. Directors may be reimbursed for expenses of attendance, if any, at each annual, regular or special meeting of the Board of Directors or of any committee thereof and for their expenses, if any, in connection with each property visit and any other service or activity they perform or engage in as directors; but nothing herein contained shall be construed to preclude any directors from serving the Corporation in any other capacity and receiving compensation therefor.

Section 14. RELIANCE. Each director and officer of the Corporation shall, in the performance of his or her duties with respect to the Corporation, be entitled to rely on any information, opinion, report or statement, including any financial statement or other financial data,

prepared or presented by an officer or employee of the Corporation whom the director or officer reasonably believes to be reliable and competent in the matters presented, by a lawyer, certified public accountant or other person, as to a matter which the director or officer reasonably believes to be within the person's professional or expert competence, or, with respect to a director, by a committee of the Board of Directors on which the director does not serve, as to a matter within its designated authority, if the director reasonably believes the committee to merit confidence.

Section 15. RATIFICATION. The Board of Directors or the stockholders may ratify any action or inaction by the Corporation or its officers to the extent that the Board of Directors or the stockholders could have originally authorized the matter, and if so ratified, shall have the same force and effect as if originally duly authorized, and such ratification shall be binding upon the Corporation and its stockholders. Any action or inaction questioned in any proceeding on the ground of lack of authority, defective or irregular execution, adverse interest of a director, officer or stockholder, non-disclosure, miscomputation, the application of improper principles or practices of accounting or otherwise, may be ratified, before or after judgment, by the Board of Directors or by the stockholders, and such ratification shall constitute a bar to any claim or execution of any judgment in respect of such questioned action or inaction.

Section 16. CERTAIN RIGHTS OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS. The directors shall have no responsibility to devote their full time to the affairs of the Corporation. Except as set forth in any of the written policies of the Corporation, or except as may have been agreed to in writing, any director or officer, employee or agent of the Corporation, in his or her personal capacity or in a capacity as an affiliate, employee, or agent of any other person, or otherwise, may have business interests and engage in business activities similar to or in addition to or in competition with those of or relating to the Corporation.

ARTICLE IV.

COMMITTEES

Section 1. NUMBER, TENURE AND QUALIFICATIONS. The Board of Directors may appoint from among its members an Executive Committee, an Audit Committee, a Compensation Committee, a Governance Committee, and other committees, composed of one or more directors, to serve at the pleasure of the Board of Directors.

Section 2. POWERS. The Board of Directors may delegate to any committee appointed under Section 1 of this Article any of the powers of the Board of Directors, except as prohibited by law. Except as may be otherwise provided by the Board of Directors, any committee may delegate some or all of its power and authority to one or more subcommittees, composed of one or more directors, as the committee deems appropriate in its sole discretion.

Section 3. MEETINGS. Notice of committee meetings shall be given in the same manner as notice for special meetings of the Board of Directors. A majority of the members of the committee shall constitute a quorum for the transaction of business at any meeting of the committee. The act of a majority of the committee members present at a meeting shall be the act of such committee. The Board of Directors may designate a chairman of any committee, and such chairman or, in the absence of a chairman, any two members of any committee (if there are at least

two members of the committee) may fix the time and place of its meeting unless the Board shall otherwise provide. In the absence of any member of any such committee, the members thereof present at any meeting, whether or not they constitute a quorum, may appoint another director to act in the place of such absent member. Each committee shall keep minutes of its proceedings.

Section 4. MEETINGS BY REMOTE COMMUNICATION. Members of a committee of the Board of Directors may participate in a meeting by means of a conference telephone or similar communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting.

Section 5. CONSENT BY COMMITTEES WITHOUT A MEETING. Any action required or permitted to be taken at any meeting of a committee of the Board of Directors may be taken without a meeting, if a consent in writing or by electronic transmission to such action is given by each member of the committee and is filed with the minutes of proceedings of such committee.

Section 6. VACANCIES. Subject to the provisions hereof, the Board of Directors shall have the power at any time to change the membership of any committee, to appoint the chair of any committee, to fill any vacancy, to designate alternate members to replace any absent or disqualified member or to dissolve any such committee.

ARTICLE V.

OFFICERS

Section 1. GENERAL PROVISIONS. The officers of the Corporation shall include a President, a Secretary and a Treasurer and may include a Chairman of the Board, a Chief Executive Officer, one or more Vice Presidents, a Chief Operating Officer, a Chief Financial Officer, a Chief Credit Officer, one or more Assistant Secretaries and one or more Assistant Treasurers. In addition, the Board of Directors may from time to time elect such other officers with such powers and duties as it shall deem necessary or appropriate, and the Chief Executive Officer or President may from time to time appoint one or more vice presidents, assistant secretaries and assistant treasurers or other officers. Each officer shall serve for the term determined by the Board of Directors or the Chief Executive Officer or President electing or appointing such officer or, if no such term is established, until his or her successor is elected and qualifies or until his or her death, or his or her resignation or removal in the manner hereinafter provided. Any two or more offices except President and Vice President may be held by the same person. Election of an officer or agent shall not of itself create contract rights between the Corporation and such officer or agent.

Section 2. REMOVAL AND RESIGNATION. Any officer or agent of the Corporation may be removed, with or without cause, by the Board of Directors, the Chief Executive Officer, or the President, if in their judgment the best interests of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any officer of the Corporation may resign at any time by delivering his or her resignation to the Board of Directors, the Chairman of the Board of Directors, the President or the Secretary. Unless the Corporation agrees otherwise, any resignation shall take effect immediately

upon its receipt or at such later time specified in the notice of resignation. The acceptance of a resignation shall not be necessary to make it effective unless otherwise stated in the resignation. Such resignation shall be without prejudice to the contract rights, if any, of the Corporation.

Section 3. VACANCIES. A vacancy in any office may be filled by the Board of Directors, the Chief Executive Officer, or the President, for the balance of the term.

Section 4. CHIEF EXECUTIVE OFFICER. The Board of Directors may designate a Chief Executive Officer. In the absence of such designation, the Chairman of the Board of Directors shall be the Chief Executive Officer of the Corporation. The Chief Executive Officer shall have general responsibility for implementation of the policies of the Corporation, as determined by the Board of Directors, and for the management of the business and affairs of the Corporation.

Section 5. CHIEF OPERATING OFFICER. The Board of Directors may designate a Chief Operating Officer. The Chief Operating Officer shall have the responsibilities and duties as set forth by the Board of Directors or the Chief Executive Officer.

Section 6. CHIEF FINANCIAL OFFICER. The Board of Directors may designate a Chief Financial Officer. The Chief Financial Officer shall have the responsibilities and duties as set forth by the Board of Directors or the Chief Executive Officer.

Section 7. CHIEF CREDIT OFFICER. The Board of Directors may designate a Chief Credit Officer. The Chief Credit Officer shall have the responsibilities and duties as set forth by the Board of Directors or the Chief Executive Officer.

Section 8. CHAIRMAN OF THE BOARD. The Board of Directors shall designate a Chairman of the Board of Directors. The Chairman of the Board of Directors shall preside over the meetings of the Board of Directors and of the stockholders at which he shall be present. The Chairman of the Board shall perform such other duties as may be assigned to him or her by the Board of Directors.

Section 9. PRESIDENT. In the absence of a Chief Executive Officer, the President shall in general supervise and control all of the business and affairs of the Corporation. In the absence of a designation of a Chief Operating Officer by the Board of Directors, the President shall be the Chief Operating Officer. He may execute any deed, mortgage, bond, contract or other instrument, except in cases where the execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Corporation or shall be required by law to be otherwise executed; and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 10. VICE PRESIDENTS. In the absence of the President or in the event of a vacancy in such office, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated at the time of their election or, in the absence of any designation, then in the order of their election) shall perform the duties of the President and when so acting shall have all the powers of and be subject to all the restrictions upon the President; and shall perform such other duties as from time to time may be assigned to such Vice President

by the President or by the Board of Directors. The Board of Directors may designate one or more vice Presidents as executive Vice President or Vice President for particular areas of responsibility.

Section 11. SECRETARY. The Secretary shall (a) keep the minutes of the proceedings of the stockholders, the Board of Directors and committees of the Board of Directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the corporate records and of the seal of the Corporation; (d) keep a register of the post office address of each stockholder which shall be furnished to the Secretary by such stockholder; (e) have general charge of the stock transfer books of the Corporation; and (f) in general perform such other duties as from time to time may be assigned to him by the Chief Executive Officer, the President or by the Board of Directors.

Section 12. TREASURER. The Treasurer shall have the custody of the funds and securities of the Corporation, shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation, shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors and in general perform such other duties as from time to time may be assigned to him or her by the Chief Executive Officer, the President or the Board of Directors. In the absence of a designation of a Chief Financial Officer by the Board of Directors, the Treasurer shall be the Chief Financial Officer of the Corporation.

The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and Board of Directors, at the regular meetings of the Board of Directors or whenever it may so require, an account of all his or her transactions as Treasurer and of the financial condition of the Corporation.

Section 13. ASSISTANT SECRETARIES AND ASSISTANT TREASURERS. The Assistant Secretaries and Assistant Treasurers, in general, shall perform such duties as shall be assigned to them by the Secretary or Treasurer, respectively, or by the Chief Executive Officer, the President or the Board of Directors.

Section 14. SALARIES. The salaries and other compensation of the officers shall be fixed from time to time by or under the authority of the Board of Directors and no officer shall be prevented from receiving such salary or other compensation by reason of the fact that he or she is also a director.

ARTICLE VI.

CONTRACTS, CHECKS AND DEPOSITS

Section 1. CONTRACTS. The Board of Directors may authorize any officer or agent to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation and such authority may be general or confined to specific instances. Any agreement, deed, mortgage, lease or other document shall be valid and binding upon the Corporation when authorized or ratified by action of the Board of Directors and executed by an authorized person.

Section 2. CHECKS AND DRAFTS. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or agent of the Corporation in such manner as shall from time to time be determined by the Board of Directors.

Section 3. DEPOSITS. All funds of the Corporation not otherwise employed shall be deposited or invested from time to time to the credit of the Corporation as the Board of Directors, the Chief Executive Officer, the President, the Chief Financial Officer, or any other officer designated by the Board of Directors may determine.

ARTICLE VII.

STOCK

Section 1. CERTIFICATES. Except as may be otherwise provided by the Board of Directors or any officer of the Corporation, stockholders of the Corporation are not entitled to certificates representing the shares of stock held by them. In the event that the Corporation issues shares of stock represented by certificates, such certificates shall be in such form as prescribed by the Board of Directors or a duly authorized officer, shall contain the statements and information required by the MGCL and shall be signed by the officers of the Corporation in any manner permitted by the MGCL. In the event that the Corporation issues shares of stock without certificates, to the extent then required by the MGCL the Corporation shall provide to the record holders of such shares a written statement of the information required by the MGCL to be included on stock certificates. There shall be no difference in the rights and obligations of stockholders based on whether or not their shares are represented by certificates.

Section 2. TRANSFERS. All transfers of shares of stock shall be made on the books of the Corporation in such manner as the Board of Directors or any officer of the Corporation may prescribe and, if such shares are certificated, upon surrender of certificates duly endorsed. The issuance of a new certificate upon the transfer of certificated shares is subject to the determination of the Board of Directors or an officer of the Corporation that such shares shall no longer be represented by certificates. Upon the transfer of any uncertificated shares, the Corporation shall provide to the record holders of such shares, to the extent then required by the MGCL, a written statement of the information required by the MGCL to be included on stock certificates.

The Corporation shall be entitled to treat the holder of record of any share of stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise expressly provided by the laws of the State of Maryland.

Notwithstanding the foregoing, transfers of shares of any class or series of stock will be subject in all respects to the Charter and all of the terms and conditions contained therein.

Section 3. REPLACEMENT CERTIFICATE. Any officer of the Corporation may direct a new certificate or certificates to be issued in place of any certificate or certificates

theretofore issued by the Corporation alleged to have been lost, destroyed, stolen or mutilated, upon the making of an affidavit of that fact by the person claiming the certificate to be lost, destroyed, stolen or mutilated; provided, however, if such shares have ceased to be certificated, no new certificate shall be issued unless requested in writing by such stockholder and the Board of Directors or an officer of the Corporation has determined that such certificates may be issued. Unless otherwise determined by an officer of the Corporation, the owner of such lost, destroyed, stolen or mutilated certificate or certificates, or his or her legal representative, shall be required, as a condition precedent to the issuance of a new certificate or certificates, to give the Corporation a bond in such sums as it may direct as indemnity against any claim that may be made against the Corporation.

Section 4. FIXING OF RECORD DATE. The Board of Directors may set, in advance, a record date for the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders or determining stockholders entitled to receive payment of any dividend or the allotment of any other rights, or in order to make a determination of stockholders for any other proper purpose. Such record date, in any case, shall not be prior to the close of business on the day the record date is fixed and shall be not more than 90 days and, in the case of a meeting of stockholders, not less than ten days, before the date on which the meeting or particular action requiring such determination of stockholders of record is to be held or taken.

When a record date for the determination of stockholders entitled to notice of or to vote at any meeting of stockholders has been set as provided in this section, such record date shall continue to apply to the meeting if postponed or adjourned, except if the meeting is postponed or adjourned to a date more than 120 days after the record date originally fixed for the meeting, in which case a new record date for such meeting shall be determined as set forth herein.

Section 5. STOCK LEDGER. The Corporation shall maintain at its principal office or at the office of its counsel, accountants or transfer agent, an original or duplicate stock ledger containing the name and address of each stockholder and the number of shares of each class held by such stockholder.

Section 6. FRACTIONAL STOCK; ISSUANCE OF UNITS. The Board of Directors may authorize the Corporation to issue fractional shares of stock or authorize the issuance of scrip, all on such terms and under such conditions as it may determine. Notwithstanding any other provision of the Charter or these Bylaws, the Board of Directors may authorize the issuance of units consisting of different securities of the Corporation.

ARTICLE VIII.

ACCOUNTING YEAR

The Board of Directors shall have the power, from time to time, to fix the fiscal year of the Corporation by a duly adopted resolution.

ARTICLE IX.

DISTRIBUTIONS

Section 1. AUTHORIZATION. Dividends and other distributions upon the stock of the Corporation may be authorized by the Board of Directors, subject to the provisions of law and the Charter. Dividends and other distributions may be paid in cash, property or stock of the Corporation, subject to the provisions of law and the Charter.

Section 2. CONTINGENCIES. Before payment of any dividends or other distributions, there may be set aside out of any assets of the Corporation available for dividends or other distributions such sum or sums as the Board of Directors may from time to time, in its sole discretion, think proper as a reserve fund for contingencies, for equalizing dividends or other distributions, for repairing or maintaining any property of the Corporation or for such other purpose as the Board of Directors shall determine, and the Board of Directors may modify or abolish any such reserve.

ARTICLE X.

INVESTMENT POLICY

Subject to the provisions of the Charter, the Board of Directors may from time to time adopt, amend, revise or terminate any policy or policies with respect to investments by the Corporation as it shall deem appropriate in its sole discretion.

ARTICLE XI.

SEAL

Section 1. SEAL. The Board of Directors may authorize the adoption of a seal by the Corporation. The seal shall contain the name of the Corporation and the year of its incorporation and the words "Incorporated Maryland." The Board of Directors may authorize one or more duplicate seals and provide for the custody thereof.

Section 2. AFFIXING SEAL. Whenever the Corporation is permitted or required to affix its seal to a document, it shall be sufficient to meet the requirements of any law, rule or regulation relating to a seal to place the word "(SEAL)" adjacent to the signature of the person authorized to execute the document on behalf of the Corporation.

ARTICLE XII.

INDEMNIFICATION AND ADVANCE OF EXPENSES

To the maximum extent permitted by Maryland law in effect from time to time, the Corporation shall indemnify and, without requiring a preliminary determination of the ultimate entitlement to indemnification, shall pay or reimburse reasonable expenses in advance of final disposition of a proceeding to (a) any individual who is a present or former director or officer of

the Corporation and who is made or threatened to be made a party to, or witness in, the proceeding by reason of his or her service in that capacity or (b) any individual who, while a director or officer of the Corporation and at the request of the Corporation, serves or has served as a director, officer, trustee, member, manager or partner of another corporation, real estate investment trust, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise and who is made or threatened to be made a party to, or witness in, the proceeding by reason of his or her service in that capacity. The rights to indemnification and advance of expenses provided by the Charter and these Bylaws shall vest immediately upon election of a director or officer. The Corporation may, with the approval of its Board of Directors, provide such indemnification and advance of expenses to an individual who served a predecessor of the Corporation in any of the capacities described in (a) or (b) above and to any employee or agent of the Corporation or a predecessor of the Corporation. The indemnification and payment or reimbursement of expenses provided in these Bylaws shall not be deemed exclusive of or limit in any way other rights to which any person seeking indemnification or payment or reimbursement of expenses may be or may become entitled under any bylaw, resolution, insurance, agreement or otherwise.

Neither the amendment nor repeal of this Article, nor the adoption or amendment of any other provision of the Charter or these Bylaws inconsistent with this Article, shall apply to or affect in any respect the applicability of the preceding paragraph with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption.

ARTICLE XIII.

WAIVER OF NOTICE

Whenever any notice of a meeting is required to be given pursuant to the Charter or these Bylaws or pursuant to applicable law, a waiver thereof in writing or by electronic transmission, given by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at nor the purpose of any meeting need be set forth in the waiver of notice of such meeting, unless specifically required by statute. The attendance of any person at any meeting shall constitute a waiver of notice of such meeting, except where such person attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

ARTICLE XIV.

EXCLUSIVE FORUM FOR CERTAIN LITIGATION

Unless the Corporation consents in writing to the selection of an alternative forum, the Circuit Court for Baltimore City, Maryland, or, if that court does not have jurisdiction, the United States District Court for the District of Maryland, Northern Division, shall be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim of breach of any duty owed by any director or officer or other employee of the Corporation to the Corporation or to the stockholders of the Corporation, (c) any action asserting a claim against the Corporation or any director or officer or other employee of the Corporation arising pursuant to any provision of the MGCL, the Charter or these Bylaws, or (d)

any action asserting a claim against the Corporation or any director or officer or other employee of the Corporation that is governed by the internal affairs doctrine. None of the foregoing actions, claims or proceedings may be brought in any court sitting outside the State of Maryland unless the Corporation consents in writing to such court.

ARTICLE XV.

AMENDMENT OF BYLAWS

The Board of Directors shall have the exclusive power to adopt, alter or repeal any provision of these Bylaws and to make new Bylaws.

Arbor Realty Trust, Inc.
List of Significant Subsidiaries

Name	Jurisdiction of Organization
Arbor Realty GPOP, Inc.	Delaware
Arbor Realty Limited Partnership	Delaware
ARSR Holdings, LLC	Delaware
Arbor Realty SR, Inc.	Maryland
Arbor Realty Commercial Real Estate Notes 2019-FL2 Ltd.	Cayman Islands
Arbor Realty Commercial Real Estate Notes 2020-FL1 Ltd.	Cayman Islands
Arbor Realty Commercial Real Estate Notes 2021-FL1 Ltd.	Cayman Islands
Arbor Realty Commercial Real Estate Notes 2021-FL2 Ltd.	Cayman Islands
Arbor Realty Commercial Real Estate Notes 2021-FL3 Ltd.	Cayman Islands
Arbor Realty Commercial Real Estate Notes 2021-FL4 Ltd.	Cayman Islands
Arbor Realty Commercial Real Estate Notes 2022-FL1 Ltd.	Cayman Islands
Arbor Realty Commercial Real Estate Notes 2022-FL2 LLC	Cayman Islands
ARSR Alpine LLC	Delaware
Arbor Q021 Investor LLC	Delaware
Arbor Private Label LLC	Delaware
ART Cardinal, LLC	Delaware
Arbor Private Investment LLC	Delaware

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-3 No. 333-242377) of Arbor Realty Trust, Inc. and Subsidiaries and in the related Prospectus of our reports dated February 17, 2023, with respect to the consolidated financial statements and schedule of Arbor Realty Trust, Inc. and Subsidiaries, and the effectiveness of internal control over financial reporting of Arbor Realty Trust, Inc. and Subsidiaries, included in this Annual Report (Form 10-K) for the year ended December 31, 2022.

/s/ Ernst & Young LLP

New York, New York
February 17, 2023

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the following Registration Statement:

Registration Statement (Form S-3 No. 333-242377) of Arbor Realty Trust, Inc. and Subsidiaries and in the related Prospectuses, of our report dated February 14, 2022, with respect to the consolidated financial statements of Wakefield Investment Holdings LLC, for the year ended December 31, 2021, which is included in the Annual Report (Form 10-K) of Arbor Realty Trust, Inc. and Subsidiaries for the year ended December 31, 2022.

/s/ Richey, May & Co., LLP

Englewood, Colorado
February 14, 2023

Certification of Chief Executive Officer

I, Ivan Kaufman, certify that:

1. I have reviewed this annual report on Form 10-K of Arbor Realty Trust, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 17, 2023

By: /s/ Ivan Kaufman

Name: Ivan Kaufman

Title: Chief Executive Officer

Certification of Chief Financial Officer

I, Paul Elenio, certify that:

1. I have reviewed this annual report on Form 10-K of Arbor Realty Trust, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 17, 2023

By: /s/ Paul Elenio
Name: Paul Elenio
Title: Chief Financial Officer

**Certifications of Chief Executive Officer and Chief Financial Officer Pursuant to
18 U.S.C. Section 1350,
as Adopted Pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Annual Report on Form 10-K of Arbor Realty Trust, Inc. (the "Company") for the annual period ended December 31, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned officers of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of our knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 17, 2023

By: /s/ Ivan Kaufman
Name: Ivan Kaufman
Title: Chief Executive Officer

Date: February 17, 2023

By: /s/ Paul Elenio
Name: Paul Elenio
Title: Chief Financial Officer

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

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

**CONSOLIDATED FINANCIAL STATEMENTS FOR
WAKEFIELD INVESTMENT HOLDINGS LLC
FOR THE YEAR ENDED DECEMBER 31, 2022**



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9780 S. Meridian Blvd. Suite 500
Englewood, CO 80112
303-721-6131
www.richeymay.com
Assurance | Tax | Advisory

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Members
Wakefield Investment Holdings LLC
New York, New York

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Wakefield Investment Holdings LLC (the “Company”) as of December 31, 2021, and the related consolidated statements of operations, changes in partners’ equity and cash flows for the years ended December 31, 2021 and 2020, and the related 2021 notes (collectively, referred to as the “consolidated financial statements”). In our opinion, the 2021 and 2020 consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2021, and the results of their operations and their cash flows for each of the years ended December 31, 2021 and 2020, in conformity with accounting principles generally accepted in the United States of America.

The accompanying consolidated balance sheet as of December 31, 2022 and the related consolidated statements of operations, changes in partners’ equity, cash flows and related notes, for the year ended December 31, 2022, were not audited by us and accordingly, we do not express an opinion on them.

Basis for Opinion

These 2021 and 2020 consolidated financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s 2021 and 2020 consolidated financial statements based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

Except as explained above, we conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatements, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion.

Our audit included performing procedures to assess the risks of material misstatement of the 2021 and 2020 consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the 2021 and 2020 consolidated financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the 2021 and 2020 consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Critical Audit Matters

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

Valuation of Mortgage Servicing Rights

Description of the Matter

The Company's capitalized mortgage servicing rights (MSRs) totaled \$379 million as of December 31, 2021. As explained in Note A to the consolidated financial statements, the Company recognized MSRs at estimated fair value upon the sale of an originated loan when the Company retained the right to service the loan. Subsequently, the MSRs are amortized over the period of net servicing income or loss and are evaluated for impairment based on the fair value at each reporting date. The Company engaged an independent third-party valuation expert to assist in determining the fair value of the MSRs. The fair value estimates for the MSRs primarily utilize discounted cash flow models that incorporate significant assumptions including discount rate, prepayment rate, servicing cost and estimated life.

Auditing the valuation of MSRs was complex and involved a high degree of subjectivity due to the nature of the assumptions. In particular, the valuation of MSRs was sensitive to assumptions such as discount rate, prepayment rate, servicing cost and estimated life, which were based on current market data and had a significant effect on the valuation of the MSRs.

How We Addressed the Matter in our audit

We obtained an understanding and evaluated the design of internal controls over the MSR valuation process. This included evaluating the design of controls over management's evaluation of the MSR valuations prepared by the third-party expert and controls over the data inputs and the significant assumptions used in the discounted cash flow models.

Our audit procedures included, among others, testing the completeness and accuracy of the data provided to management's third-party expert, evaluating the appropriateness of the methodology used to determine the fair value of the MSRs and testing the significant assumptions used in the discounted cash flow models. We utilized information obtained from market participants and recent market activity on other MSR transactions to test management's assumptions and identify potential sources of contrary information.

/s/ Richey, May & Co., LLP.

We have served as Wakefield Investment Holdings LLC's auditor since 2020.

Englewood, Colorado
February 14, 2022

WAKEFIELD INVESTMENT HOLDINGS LLC
CONSOLIDATED BALANCE SHEETS
(\$ in thousands)

	December 31,	
	2022	2021
	(unaudited)	
ASSETS		
CURRENT ASSETS		
Cash and cash equivalents	\$ 38,553	\$ 38,515
Restricted cash	10,304	8,271
Mortgage loans held for sale, at fair value	742,242	2,176,037
Accounts receivable and advances, net	77,898	44,530
Derivative assets	10,804	31,158
Prepaid expenses	11,234	14,570
Loans eligible for repurchase from GNMA	380,898	391,177
Notes receivable, construction loans	35,170	3,978
Total current assets	<u>1,307,103</u>	<u>2,708,236</u>
OTHER ASSETS		
Property and equipment, net	7,884	9,376
Mortgage servicing rights, net	353,674	379,088
Deposits	1,294	1,184
Goodwill	5,000	5,000
Right-of-use asset	23,140	28,179
Other assets	6,001	6,003
Total other assets	<u>396,993</u>	<u>428,830</u>
TOTAL ASSETS	<u>\$ 1,704,096</u>	<u>\$ 3,137,066</u>
LIABILITIES AND PARTNERS' EQUITY		
LIABILITIES		
Accounts payable and accrued expenses	\$ 26,090	\$ 52,264
Customer deposits and loan escrows	7,860	6,744
Due to related party	3,049	8,939
Warehouse lines of credit	679,738	2,022,542
MSR lines of credit	140,000	119,000
Construction lines of credit	35,155	—
Derivative liabilities	—	1,040
Loan loss reserve	5,093	12,525
Lease liability, current portion	8,601	9,632
Liability for loans eligible for repurchase from GNMA	380,898	391,177
Total current liabilities	<u>1,286,484</u>	<u>2,623,863</u>
Lease liability, net of current portion	15,282	19,582
Total liabilities	<u>1,301,766</u>	<u>2,643,445</u>
COMMITMENTS AND CONTINGENCIES (Note L)		
PARTNERS' EQUITY	<u>402,330</u>	<u>493,621</u>
TOTAL LIABILITIES AND PARTNERS' EQUITY	<u>\$ 1,704,096</u>	<u>\$ 3,137,066</u>

The accompanying notes are an integral part of these consolidated financial statements.

WAKEFIELD INVESTMENT HOLDINGS LLC
CONSOLIDATED STATEMENTS OF OPERATIONS
(\$ in thousands)

	Year Ended December 31,		
	2022 (unaudited)	2021	2020
REVENUE			
Gain on sale of mortgage loans held for sale, net of direct costs of \$36,112, \$96,455 and \$147,923, respectively	\$ 267,976	\$ 784,021	\$ 1,070,140
Interest income	47,168	57,530	47,069
Interest expense	(37,341)	(51,775)	(39,234)
Loan servicing fees, net of direct costs of \$24,428, \$27,850 and \$14,388, respectively	88,859	73,828	31,403
Recovery of impairment of mortgage servicing rights	20,864	12,169	—
Gain on addition of mortgage servicing rights	160,786	245,216	165,758
Gain on sale of mortgage servicing rights	43,245	—	—
Other income	5,000	—	—
Total revenue	<u>596,557</u>	<u>1,120,989</u>	<u>1,275,136</u>
EXPENSES			
Salaries, commissions and benefits	388,247	658,245	531,338
Occupancy, equipment and communication	19,510	28,903	29,072
General and administrative	39,409	42,983	60,835
Advertising and marketing	31,252	84,543	53,818
Provision for loan losses	5,448	7,203	13,365
Depreciation and amortization	3,998	2,321	2,146
Amortization of mortgage servicing rights	53,550	61,117	32,351
Loss on disposal of property and equipment	200	—	—
Impairment of mortgage servicing rights	—	—	27,578
Total expenses	<u>541,614</u>	<u>885,315</u>	<u>750,503</u>
NET INCOME	54,943	235,674	524,633
LESS: NET INCOME ATTRIBUTABLE TO NONCONTROLLING INTEREST	<u>28,522</u>	<u>51,178</u>	<u>152,037</u>
NET INCOME ATTRIBUTABLE TO THE PARENT	<u>\$ 26,421</u>	<u>\$ 184,496</u>	<u>\$ 372,596</u>

The accompanying notes are an integral part of these consolidated financial statements.

WAKEFIELD INVESTMENT HOLDINGS LLC
CONSOLIDATED STATEMENTS OF CHANGES IN PARTNERS' EQUITY
(\$ in thousands)

	<u>Total</u> <u>Partners' Equity</u>	<u>Noncontrolling</u> <u>Interest</u>	<u>Totals</u>
Balance, December 31, 2019 (unaudited)	\$ 160,722	\$ 430	\$ 161,152
Partners' contributions	11,840	—	11,840
Partners' distributions	(229,671)	—	(229,671)
Net Income	372,596	152,037	524,633
Balance, December 31, 2020	<u>315,487</u>	<u>152,467</u>	<u>467,954</u>
Partners' contributions	127	—	127
Partners' distributions	(149,254)	(60,880)	(210,134)
Net Income	184,496	51,178	235,674
Balance, December 31, 2021	<u>350,856</u>	<u>142,765</u>	<u>493,621</u>
Partners' contributions	—	—	—
Partners' distributions	(126,914)	(19,320)	(146,234)
Net Income	26,421	28,522	54,943
Balance, December 31, 2022 (unaudited)	<u>\$ 250,363</u>	<u>\$ 151,967</u>	<u>\$ 402,330</u>

The accompanying notes are an integral part of these consolidated financial statements.

WAKEFIELD INVESTMENT HOLDINGS LLC
CONSOLIDATED STATEMENTS OF CASH FLOWS
(\$ in thousands)

	Year Ended December 31,		
	2022 (unaudited)	2021	2020
CASH FLOWS FROM OPERATING ACTIVITIES			
Net income	\$ 54,943	\$ 235,674	\$ 524,633
Non-cash items-			
Provision for loan losses	5,448	7,203	13,365
Depreciation and amortization	3,998	2,321	2,146
Amortization of mortgage servicing rights	53,550	61,117	32,351
Impairment (recovery of impairment) of mortgage servicing rights	(20,864)	(12,169)	27,578
Amortization of right-of-use assets	9,324	7,074	—
Net unrealized gain on investments	—	—	(2,873)
Gain on sale of mortgage loans held for sale, net of direct costs	(267,976)	(784,021)	(1,070,140)
Indemnification payment to related party	—	—	26,667
Gain on sale of mortgage servicing rights	(43,245)	—	—
Gain on addition of mortgage servicing rights	(160,786)	(245,216)	(165,758)
Loss on disposal of property and equipment	200	196	56
(Increase) decrease in-			
Proceeds from sale and principal payments on mortgage loans held for sale	13,774,409	31,272,468	26,698,778
Originations and purchases of mortgage loans held for sale	(12,072,639)	(30,622,346)	(26,934,021)
Accounts receivable and advances, net	(22,773)	13,754	(43,088)
Notes receivable, construction loans	(31,192)	(3,978)	—
Derivative assets	20,355	92,196	(102,404)
Change in other assets and liabilities, net	3,814	(4,726)	(6,801)
Increase (decrease) in-			
Accounts payable and accrued expenses	(26,676)	(10,532)	40,530
Customer deposits and loan escrows	1,118	1,297	3,067
Due to related party	(5,890)	(2,051)	8,092
Loan loss reserve	(12,880)	(6,975)	(4,029)
Derivative liabilities	(1,040)	(34,825)	34,825
Net cash provided by (used in) operating activities	<u>1,261,198</u>	<u>(33,539)</u>	<u>(917,026)</u>
CASH FLOWS FROM INVESTING ACTIVITIES			
Purchases of property and equipment	(2,708)	(8,123)	(2,020)
Proceeds from sale of mortgage servicing rights	186,165	—	—
Related party loan, net	—	—	(1,750)
Purchase of equity investment	—	—	(6,000)
Net proceeds from real estate owned	—	200	(200)
Net cash provided by (used in) investing activities	<u>183,457</u>	<u>(7,923)</u>	<u>(9,970)</u>
CASH FLOWS FROM FINANCING ACTIVITIES			
Net borrowings under warehouse lines of credit	(1,338,467)	107,613	1,210,714
Net borrowings under construction lines	30,818	—	—
Net borrowings under MSR lines of credit	21,000	119,000	(10,203)
Net repayments under lease liability	(9,615)	(7,099)	—
Partners' distributions, net	(146,320)	(210,007)	(217,830)
Net cash (used in) provided by financing activities	<u>(1,442,584)</u>	<u>9,507</u>	<u>982,681</u>
Increase (decrease) in cash and cash equivalents and restricted cash	2,071	(31,955)	55,685
Cash and cash equivalents and restricted cash, beginning of year	46,786	78,741	23,056
Cash and cash equivalents and restricted cash, end of year	<u>\$ 48,857</u>	<u>\$ 46,786</u>	<u>\$ 78,741</u>

The accompanying notes are an integral part of these consolidated financial statements.

WAKEFIELD INVESTMENT HOLDINGS LLC
CONSOLIDATED STATEMENTS OF CASH FLOWS
(\$ in thousands)

	Year Ended December 31,		
	2022 (unaudited)	2021	2020
SUPPLEMENTAL INFORMATION			
Cash paid for interest and warehouse fees	\$ 37,697	\$ 51,379	\$ 39,510
NON-CASH INVESTING AND FINANCING ACTIVITIES			
The Company increased retained mortgage servicing rights in connection with loan sales.	\$ 160,786	\$ 245,216	\$ 165,758
The Company recognized loans eligible for repurchase from GNMA and the related liability.	\$ 380,898	\$ 391,177	\$ 592,380
The Company increased accounts receivable for holdback revenue on the sale of mortgage servicing rights.	\$ 10,594	\$ —	\$ —
The Company obtained operating right-of-use assets in exchange for operating lease obligations.	\$ 4,285	\$ —	\$ —
Effective January 1, 2020, the Company adopted ASC 842 (see note N), resulting in the initial recognition of an operating lease liability and an operating right-of-use asset, net of the deferred rent liability at December 31, 2020. During the year ended December 31, 2020, the Company exchanged the net operating right-of-use assets for operating lease obligations.	\$ —	\$ —	\$ 1,059

The accompanying notes are an integral part of these consolidated financial statements.

WAKEFIELD INVESTMENT HOLDINGS LLC
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (\$ in thousands)

A. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Organization

Wakefield Investment Holdings LLC (Wakefield Holdings) is a holding company owning subsidiaries that engage in real estate investment activities. Wakefield was incorporated in Delaware and maintains its corporate office in New York.

Principles of Consolidation

The consolidated financial statements include the accounts of Wakefield Holdings and Wakefield Investors LLC (Wakefield Investors), which Wakefield Holdings owns an 83% interest in (collectively referred to as “the Company”). Wakefield Investors includes the accounts of its wholly-owned subsidiary Wakefield Partners GP LLC (Wakefield Partners) and a 98% ownership interest in Cardinal Financial Company, Limited Partnership (Cardinal). Cardinal includes the accounts of Lifestyle Home Lending LLC (Lifestyle). Cardinal is primarily engaged in the business of originating, selling and servicing residential mortgage loans through their correspondent, broker, wholesale, retail, and direct-to-consumer origination channels.

All material intercompany transactions have been eliminated in consolidation.

Basis of Accounting

The consolidated financial statements of the Company are prepared on the accrual basis of accounting.

Basis of Presentation

The accompanying consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America (GAAP) as codified in the Financial Accounting Standards Board’s (FASB) *Accounting Standards Codification* (ASC).

Use of Estimates

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Material estimates that are particularly significant relate to the Company’s fair value measurements of mortgage loans held for sale, mortgage servicing rights (MSRs), derivative assets and liabilities, goodwill, as well as the estimate for the loan loss reserve.

Consolidation, Variable Interest Entities

The Company sells mortgage loans to the Federal National Mortgage Association (FNMA) and Federal Home Loan Mortgage Corporation (FHLMC), which are government-sponsored enterprises. The Company also issues Government National Mortgage Association (GNMA) securities by pooling eligible loans through a custodian and assigning rights to the loans to GNMA. FNMA, FHLMC and GNMA (the Agencies) provide credit enhancements for mortgage loans through certain guarantee provisions. These securitizations involve variable interest entities (VIEs) as the trusts or similar vehicles, by design, that either (1) lack sufficient equity to permit the entity to finance its activities without additional subordinated financial support from other parties, or (2) have equity investors that do not have the ability to make significant decisions relating to the entity’s operations through voting rights, or do not have the obligation to absorb the expected losses, or do not have the right to receive the residual returns of the entities.

WAKEFIELD INVESTMENT HOLDINGS LLC
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (\$ in thousands)

A. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Consolidation, Variable Interest Entities (Continued)

The primary beneficiary of a VIE (i.e., the party that has a controlling financial interest) is required to consolidate the assets and liabilities of the VIE. The primary beneficiary is the party that has both (1) the power to direct the activities of an entity that most significantly impact the VIE's economic performance; and (2) through its interests in the VIE, the obligation to absorb losses or the right to receive benefits from the VIE that could potentially be significant to the VIE. The Company typically retains the right to service loans sold or securitized by the Agencies. Due to the significant influence of the Agencies over the VIEs that hold the assets from loan securitizations, principally through their rights and responsibilities as master servicer, the Company is not the primary beneficiary of the VIEs and therefore the VIEs are not consolidated.

The Company performs on-going reassessments of (1) whether entities previously evaluated under the majority voting-interest framework have become VIEs, based on certain events, and therefore become subject to the VIE consolidation framework; and (2) whether changes in the facts and circumstances regarding the Company's involvement with a VIE cause the Company's consolidation determination to change.

The Company consolidates the financial statements of Lifestyle. Although Cardinal does not have the majority interest in Lifestyle, as the managing member, Cardinal is deemed to have control and therefore Lifestyle is consolidated by Cardinal.

Cash and Cash Equivalents

For cash flow purposes, the Company considers cash and temporary investments with original maturities of three months or less, to be cash and cash equivalents. The Company has diversified its credit risk for cash by maintaining deposits in several financial institutions, which may at times exceed amounts covered by insurance from the Federal Deposit Insurance Corporation. The Company evaluates the creditworthiness of these financial institutions in determining the risk associated with these balances. The Company has not experienced any losses in such accounts and believes it is not exposed to any significant credit risk related to cash and cash equivalents.

Restricted Cash

Restricted cash includes certain cash balances that are restricted under warehouse agreements, escrow cash, and appraisal fees collected from borrowers.

Mortgage Loans Held for Sale and Revenue Recognition

Mortgage loans held for sale are carried at fair value under the fair value option with changes in fair value recorded in gain on sale of mortgage loans held for sale on the consolidated statements of operations. The fair value of mortgage loans held for sale committed to investors is calculated using observable market information such as the investor commitment, assignment of trade or other mandatory delivery commitment prices. The Company values loans committed to Agency investors based on the quoted Agency mortgage backed security (MBS) prices. The fair value of mortgage loans held for sale not committed to investors is based on quoted best execution secondary market prices. If no such quoted price exists, the fair value is determined using quoted prices for a similar asset or assets, such as MBS prices, adjusted for the specific attributes of that loan, which would be used by other market participants. Mortgage loans held for sale not calculated using observable market information is based on third party broker quotations (scratch and dent), the underlying collateral adjusted for a valuation allowance, or market bid pricing.

WAKEFIELD INVESTMENT HOLDINGS LLC
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (\$ in thousands)

A. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Mortgage Loans Held for Sale and Revenue Recognition (Continued)

Gains and losses from the sale of mortgage loans held for sale are recognized based upon the difference between the sales proceeds and carrying value of the related loans upon sale and are recorded in gain on sale of mortgage loans held for sale on the consolidated statements of operations. Sales proceeds reflect the cash received from investors through the sale of the loan and servicing release premium. If the related MSR is sold servicing retained, the MSR addition is recorded in gain on sale of mortgage loans held for sale on the consolidated statements of operations. Gain on sale of mortgage loans held for sale also includes the unrealized gains and losses associated with the changes in the fair value of mortgage loans held for sale, and the realized and unrealized gains and losses from derivative instruments.

Mortgage loans held for sale are considered sold when the Company surrenders control over the financial assets. Control is considered to have been surrendered when the transferred assets have been isolated from the Company, beyond the reach of the Company and its creditors; the purchaser obtains the right (free of conditions that constrain it from taking advantage of that right) to pledge or exchange the transferred assets; and the Company does not maintain effective control over the transferred assets through either an agreement that both entitles and obligates the Company to repurchase or redeem the transferred assets before their maturity or the ability to unilaterally cause the holder to return specific financial assets. The Company typically considers the above criteria to have been met upon acceptance and receipt of sales proceeds from the purchaser.

Loan Origination Fees

Loan origination fees represent revenue earned from originating mortgage loans. Loan origination fees generally represent flat per-loan fee amounts or are based on a percentage of the original principal loan balance and are recognized as revenue at the time the mortgage loans are funded. Loan origination expenses are charged to operations as incurred.

Interest Income

Interest income on mortgage loans held for sale is recognized for the period from loan funding to sale based upon the principal balance outstanding and contractual interest rates. Revenue recognition is discontinued when loans become 90 days delinquent, or when, in management's opinion, the recovery of principal and interest becomes doubtful and the mortgage loans held for sale are put on nonaccrual status.

Revenue Recognition

ASC 606, *Revenue from Contracts with Customers* (ASC 606), establishes principles for reporting information about the nature, amount, timing and uncertainty of revenue and cash flows arising from the entity's contracts to provide goods or services to customers. The core principle requires an entity to recognize revenue, to depict the transfer of goods or services to customers in an amount that reflects the consideration that it expects to be entitled to receive in exchange for those goods or services, as performance obligations are satisfied. The majority of the Company's revenue generating transactions are not subject to ASC 606, including revenue generated from financial instruments such as the Company's mortgage loans and derivatives as well as revenue related to the Company's mortgage servicing activities.

WAKEFIELD INVESTMENT HOLDINGS LLC
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (\$ in thousands)

A. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Loan Servicing Fees and Expenses

Loan servicing fees represent revenue earned for servicing loans for various investors. Loan servicing fees are based on a contractual percentage of the outstanding unpaid principal balance and are recognized into revenue as the related mortgage payments are received. Loan servicing expenses are charged to operations as incurred.

Servicing Advances

Servicing advances represent escrows advanced by the Company on behalf of borrowers and investors to cover delinquent balances for property taxes, insurance premiums and other out-of-pocket costs. Servicing advances are made in accordance with the Company's servicing agreements and are recoverable upon collection of future borrower payments, sale of loan collateral, reimbursement by investor, or mortgage insurance claims. Non-recoverable servicing advances are expensed as incurred. The Company periodically reviews outstanding servicing advances for collectability and establishes a valuation allowance for amounts estimated to be uncollectible amounts.

Property and Equipment, Net

Property and equipment is recorded at cost and depreciated or amortized using the straight line method over the estimated useful lives of the assets.

The following is a summary of property and equipment:

	Useful lives (years)	December 31,	
		2022	2021
Property and equipment, at cost			
Furniture and equipment	3-7	\$ 19,966	\$ 17,727
Leasehold improvements	(a)	1,443	1,352
Total property and equipment, at cost		21,409	19,079
Accumulated depreciation and amortization			
Furniture and equipment		(12,244)	(8,458)
Leasehold improvements		(1,281)	(1,245)
Total accumulated depreciation and amortization		(13,525)	(9,703)
Total property and equipment, net		\$ 7,884	\$ 9,376

(a) Amortized over the shorter of the related lease term or the estimated useful life of the assets.

The Company periodically assesses property and equipment for impairment whenever events or circumstances indicate the carrying amount of an asset may exceed its fair value. If property and equipment is considered impaired, the impairment losses will be recorded on the consolidated statements of operations. The Company did not recognize any impairment losses during the years ended December 31, 2022 and 2021.

WAKEFIELD INVESTMENT HOLDINGS LLC
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (\$ in thousands)

A. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Derivative Instruments

The Company holds and issues derivative financial instruments such as interest rate lock commitments (IRLCs) and forward sale commitments. IRLCs are subject to price risk primarily related to fluctuations in market interest rates. To hedge the interest rate risk on certain IRLCs, the Company uses forward sale commitments, such as to-be-announced securities or mandatory delivery commitments with investors. Management expects these forward sale commitments to experience changes in fair value opposite to the changes in fair value of the IRLCs thereby reducing earnings volatility. Forward sale commitments are also used to hedge the interest rate risk on mortgage loans held for sale that are not committed to investors and still subject to price risk. If the mandatory delivery commitments are not fulfilled, the Company pays a pair-off fee. Best effort forward sale commitments are also executed with investors, whereby certain loans are locked with a borrower and simultaneously committed to an investor at a fixed price. If the best effort IRLC does not fund, there is no obligation to fulfill the investor commitment.

The Company considers various factors and strategies in determining what portion of the IRLCs and uncommitted mortgage loans held for sale to economically hedge. FASB ASC 815-25, *Derivatives and Hedging*, requires that all derivative instruments be recognized as assets or liabilities on the consolidated balance sheet at their fair value. Changes in the fair value of the derivative instruments are recognized in gain on sale of mortgage loans held for sale on the consolidated statements of operations in the period in which they occur. Gains and losses resulting from the pairing-out of forward sale commitments are recognized in gain on sale of mortgage loans held for sale on the consolidated statements of operations. The Company accounts for all derivative instruments as free-standing derivative instruments and does not designate any for hedge accounting.

Mortgage Servicing Rights and Revenue Recognition

FASB ASC 860-50, *Transfers and Servicing*, requires that MSRs be initially recorded at fair value at the time the underlying loans are sold. To determine the fair value of the MSR created, the Company applies a valuation multiple to the servicing fee for each loan which is based on the underlying characteristics of the loan. The valuation multiple is derived from a third party valuation model that calculates the net present value of future cash flows. The valuation model incorporates assumptions that market participants would use in estimating future net servicing revenue, including the estimated discount rate, estimated prepayment speeds, the cost of servicing, estimated delinquencies and associated servicing advances, contractual service fees, ancillary income and late fees, float value, the inflation rate, and default rates. The credit quality and stated interest rates of the loans underlying the MSRs affect the assumptions used in the cash flow models. MSRs are not actively traded in open markets; accordingly, considerable judgment is required to estimate their fair value, and changes in these estimates could materially change the estimated fair value. The Company receives a fixed servicing fee monthly based on the outstanding principal balances of the mortgage loans it services for others.

WAKEFIELD INVESTMENT HOLDINGS LLC
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (\$ in thousands)

A. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Mortgage Servicing Rights and Revenue Recognition (Continued)

After initially recording the MSR at fair value, the Company subsequently amortizes the MSR over the estimated economic life of the related mortgage loans in proportion to the estimated future net servicing revenue. MSRs are periodically evaluated to determine if the amortized cost of MSRs is in excess of the estimated fair value. For this purpose, the Company stratifies its MSRs based on loan term, interest rate, and product type. Estimates of remaining loan lives and prepayment rates are derived from the output of the MSR valuation model. When impairment is identified in any individual stratification, due to the MSRs amortized cost exceeding its estimated fair value, management records a valuation allowance. Valuation allowances are recorded as a reduction to the MSRs on the consolidated balance sheets.

Impairment of the amortized cost of MSRs is assessed based on the fair value at each reporting date using estimated prepayment speeds of the underlying mortgage loans serviced and stratification based on risk characteristics of the underlying loans (predominantly interest rates). As interest rates decrease, mortgage refinancing activity may increase, resulting in shortened prepayment speeds of the loans underlying MSRs, which may result in a reduction of the MSR's fair value. Such fair value adjustment may require an additional valuation allowance being charged to earnings, to the extent that the amortized cost of the MSR exceeds the estimated fair value from stratification. Conversely, as mortgage interest rates rise, prepayment speeds are usually slower and the value of the MSR asset generally increases, requiring a lower valuation allowance. If it is later determined that all or a portion of the temporary impairment no longer exists for a stratification, the valuation allowance is reduced through a recovery to earnings. If there is another-than-temporary impairment (i.e. recoverability is considered remote when considering interest rates and loan pay-off activity), it is recognized as a write-down of the MSR asset and the related valuation allowance. A direct write-down permanently reduces the carrying value of the MSR asset and valuation allowance, precluding subsequent recoveries.

The key assumptions used in determining the fair value of MSRs when they are initially recorded are as follows for the years ended December 31:

	2022	2021
Discount rates	8.51% - 10.72%	9.00% - 12.50%
Annual prepayment speeds	7.09% - 29.53%	9.45% - 35.12%
Cost of servicing	\$65 - \$90	\$65 - \$90

Sale of Mortgage Servicing Rights

A transfer of servicing rights related to loans previously sold qualifies as a sale at the date on which title passes, if substantially all risks and rewards of ownership have irrevocably passed to the transferee and any protection provisions retained by the transferor are minor and can be reasonably estimated. In addition, if a sale is recognized and only minor protection provisions exist, a liability is accrued for the estimated obligation associated with those provisions.

WAKEFIELD INVESTMENT HOLDINGS LLC
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (\$ in thousands)

A. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Loans in Forbearance and Loans Eligible for Repurchase from GNMA

When the Company has the unilateral right to repurchase GNMA pool loans it has previously sold (generally loans that are more than 90 days past due) and the Company has determined there is more than a trivial benefit to repurchase the loans, the Company records its right to repurchase the loan on its consolidated balance sheet as an asset and corresponding liability. The recognition of previously sold mortgage loans does not impact the accounting for the previously recognized MSR. At December 31, 2022 and 2021, delinquent or defaulted mortgage loans currently in GNMA pools that the Company has recognized on its consolidated balance sheets totaled \$380,898 and \$391,177, respectively. During the year ended December 31, 2021, the Company elected to effect an early buyout by purchasing \$250,000 of delinquent loans in GNMA mortgage-backed securities all of which were subsequently sold under Mortgage Loan Purchase Agreements that had been negotiated with third parties prior to the applicable early buyout. During the years ended December 31, 2022, 2021 and 2020, the Company repurchased \$71,551; \$65,905 and \$18,505, respectively, of GNMA delinquent or defaulted mortgage loans, of which \$66,732; \$47,800 and \$9,007, respectively, of the repurchased loans were eligible to re-pool.

Borrowers that entered into a forbearance plan under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) had an unpaid principal balance of approximately \$87,976 or 0.28% of the MSR portfolio as of December 31, 2022, of which \$69,653 or 79% was greater than 90 days delinquent.

Goodwill

The Company has goodwill totaling \$5,000 in connection with a change in control of ownership. The Company evaluates goodwill annually for impairment or more frequently if impairment indicators arise. The Company did not record any impairment losses during the years ended December 31, 2022 and 2021.

Loan Loss Reserve

Loans sold to investors by the Company and which met investor and Agency underwriting guidelines at the time of sale may be subject to repurchase in the event of specific default by the borrower or subsequent discovery that underwriting standards were not met. The Company may, upon mutual agreement, indemnify the investor against future losses on such loans. The Company has established a reserve for potential losses related to these representations and warranties. Additionally, reserves are established for estimated liabilities from the need to repay, where applicable, a portion of the premium received from investors on the sale of certain mortgage loans if such loans are repaid in their entirety within a specified period after the sale of the loans. In assessing the adequacy of the reserve, management evaluates various factors including actual write-offs during the period, historical loss experience, known delinquent and other problem loans, and economic trends and conditions in the industry. Actual losses incurred are reflected as write-offs against the loan loss reserve.

The activity in the loan loss reserve for mortgage loans held for sale is as follows:

	December 31,	
	2022	2021
Balance, beginning of year	\$ 12,525	\$ 12,297
Provision for loan losses	5,448	7,203
Loans written-off	(12,880)	(6,975)
Balance, end of year	<u>\$ 5,093</u>	<u>\$ 12,525</u>

WAKEFIELD INVESTMENT HOLDINGS LLC
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (\$ in thousands)

A. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Loan Loss Reserve (Continued)

Because of the uncertainty in the various estimates underlying the loan loss reserve, there is a range of losses in excess of the recorded loan loss reserve that is reasonably possible. The estimate of the range of possible loss for representations and warranties, in excess of the recorded loan loss reserve, does not represent a probable loss. The estimated loan loss is based on current available information, significant judgment, and a number of assumptions that are subject to change.

Escrow and Fiduciary Funds

The Company maintains segregated bank accounts for escrow balances in trust for investors for mortgagors. The balances of these accounts amounted to \$229,068 and \$440,419 at December 31, 2022 and 2021, respectively, and are excluded from the consolidated balance sheets.

Advertising and Marketing

Advertising and marketing are expensed as incurred and amounted to \$31,252; \$84,543 and \$53,818 for the years ended December 31, 2022, 2021 and 2020, respectively.

Income Taxes

The Company has elected to be taxed as a partnership under the Internal Revenue Code. Accordingly, no federal income tax provision and state income taxes, to the extent possible, have been recorded in the consolidated financial statements, as all items of income and expense generated by the Company are reported on the partners' income tax returns. The Company has no federal or state tax examinations in process as of December 31, 2022.

Risks and Uncertainties

In the normal course of business, companies in the mortgage banking industry encounter certain economic and regulatory risks. Economic risks include interest rate risk and credit risk. The Company is subject to interest rate risk to the extent that in a rising interest rate environment, the Company may experience a decrease in loan production, as well as decreases in the value of mortgage loans held for sale not committed to investors and commitments to originate loans, which may negatively impact the Company's operations. Credit risk is the risk of default that may result from the borrowers' inability or unwillingness to make contractually required payments during the period in which loans are being held for sale or serviced by the Company.

The Company sells loans to investors without recourse. As such, the investors have assumed the credit risk of loss or default by the borrower. However, the Company is usually required by these investors to make certain standard representations and warranties relating to credit information, loan documentation and collateral. To the extent that the Company does not comply with such representations, or there are early payment defaults, the Company may be required to repurchase the loans or indemnify these investors for any losses from borrower defaults. In addition, if loans pay-off within a specified time frame, the Company may be required to refund a portion of the sales proceeds to the investors.

WAKEFIELD INVESTMENT HOLDINGS LLC
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (\$ in thousands)

A. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Risks and Uncertainties (Continued)

The Company's business requires substantial cash to support its operating activities. As a result, the Company is dependent on its warehouse lines of credit, and other financing facilities in order to finance its continued operations. If the Company's principal lenders decided to terminate or not to renew any of these financing facilities with the Company, the loss of borrowing capacity could have a material adverse impact on the Company's consolidated financial statements unless the Company found a suitable alternative source.

With the rapid rise in mortgage interest rates compounding with housing affordability and inventory issues, the mortgage banking industry has been significantly disrupted. The operational and financial performance of the Company depends on future economic developments, and such uncertainty may have an adverse impact on the Company's financial performance.

Reclassifications

Certain prior year amounts have been reclassified on the consolidated statements of operations and cash flows to conform to the current period presentation, which primarily included separately stating amounts related to the gain on sale of mortgage servicing rights.

B. MORTGAGE LOANS HELD FOR SALE

Mortgage loans held for sale are as follows:

	December 31,	
	2022	2021
Mortgage loans held for sale	\$ 699,720	\$ 2,054,579
Mortgage loans held for sale (greater than 90 days outstanding)	31,426	62,332
Fair value adjustment	12,838	58,173
Fair value adjustment (greater than 90 days outstanding)	(1,742)	953
	<u>\$ 742,242</u>	<u>\$ 2,176,037</u>

C. NOTE RECEIVABLE, CONSTRUCTION LOANS

The Company provides construction financing to individuals who are building new single family residential homes. The individual loans generally do not exceed the lesser of the total acquisition costs or the maximum allowable loan to value, applicable to the loan, multiplied by the appraised value of the completed property. The initial construction period terms are typically nine to twelve months from the inception of the loan, with extension periods available for a maximum term of up to eighteen months. At the completion of the home, the Company will provide permanent mortgage financing for the home of up to 30 years. The construction loans in process are pledged against warehouse lines of credit with financial institutions (Note F). Construction loans are carried on the statement of assets and liabilities at the amount drawn on the loan. As costs are incurred the loan provides for subsequent draws which increase the carrying value of the construction loan. The drawn balance of the construction notes totaled \$35,170 against undrawn commitments of \$43,303 as of December 31, 2022. Interest rates on outstanding construction notes, as of December 31, 2022, ranged between 3.625% and 7.625%.

WAKEFIELD INVESTMENT HOLDINGS LLC
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (\$ in thousands)

D. DERIVATIVE INSTRUMENTS

The Company enters into IRLCs to originate residential mortgage loans held for sale, at specified interest rates and within a specified period of time (generally between 30 and 90 days), with borrowers who have applied for a loan and have met certain credit and underwriting criteria. In valuing the IRLCs, the Company uses the estimated revenue on each underlying loan, inclusive of any estimated investor pay-ups and paydowns, less any broker commissions to be paid on wholesale loans and any other estimated remaining costs to originate the loan. The estimated revenue, net of all such expenses is then adjusted for the probability that the mortgage loan will fund within the terms of the IRLC (the pullthrough rate). The pullthrough rate is based on estimated changes in market conditions, loan stage, and actual borrower behavior using a historical analysis.

The key unobservable inputs used in determining the fair value of IRLCs are as follows for the year ended December 31, 2022:

	<u>Amounts</u>	
Pullthrough rates	78.27% - 78.87%	
	<u>Notional (a)</u>	<u>Remaining cost to originate</u>
Consumer direct	\$ 48,548	0.74 %
Retail lending	313,855	1.51 %
Third party originated	112,203	0.33 %
	<u>\$ 474,606</u>	

(a) pullthrough rate adjusted

The key unobservable inputs used in determining the fair value of IRLCs are as follows for the year ended December 31, 2021:

	<u>Amounts</u>	
Pullthrough rates	82.98% - 86.71%	
	<u>Notional (a)</u>	<u>Remaining cost to originate</u>
Consumer direct	\$ 522,369	1.10 %
Retail lending	799,515	2.06 %
Third party originated	252,862	0.48 %
	<u>\$ 1,574,746</u>	

(a) pullthrough rate adjusted

WAKEFIELD INVESTMENT HOLDINGS LLC
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (\$ in thousands)

D. DERIVATIVE INSTRUMENTS (Continued)

The fair value of the TBA, AOT or other forward mandatory delivery commitment being used to hedge the mandatory IRLCs and uncommitted mortgage loans held for sale are based on quoted secondary market prices, such as quoted MBS prices, or investor commitment prices. The notional amounts of mortgage loans held for sale not committed to investors amounted to approximately \$414,225 and \$1,743,827 at December 31, 2022 and 2021, respectively.

The following summarizes derivative instruments:

	December 31, 2022		December 31, 2021	
	Fair Value	Notional Amount	Fair Value	Notional Amount
IRLCs:				
Mandatory	\$ 8,516	\$ 428,638 (a)	\$ 30,247	\$ 1,445,154 (a)
Best efforts	779	\$ 45,968 (a)	911	\$ 129,592 (a)
TBAs	1,509	\$ 1,004,500	(1,040)	\$ 2,931,625
Total	<u>\$ 10,804</u>		<u>\$ 30,118</u>	

(a) pullthrough rate adjusted

The Company has exposure to credit loss in the event of contractual non-performance by its trading counterparties in derivative instruments that the Company uses in its rate risk management activities. The Company manages this credit risk by selecting only counterparties that the Company believes to be financially strong, spreading the risk among multiple counterparties, by placing contractual limits on the amount of unsecured credit extended to any single counterparty and by entering into netting agreements with counterparties, as appropriate.

E. ACCOUNTS RECEIVABLE AND ADVANCES, NET

The following summarizes accounts receivable and advances, net:

	December 31,	
	2022	2021
Accounts receivable, trade	\$ 1,926	\$ 1,494
Accounts receivable, servicing	13,699	7,894
Accounts receivable, MSR sales	10,594	167
Accounts receivable, first payments	407	1,363
Accounts receivable, employees (a)	335	299
Employee loans (b)	6,148	306
Interest receivable, net	2,295	3,035
Servicing advances (c)	36,617	29,217
Margin call receivable	5,877	600
MSR flow sale proceeds holdback	—	155
	<u>\$ 77,898</u>	<u>\$ 44,530</u>

(a) The accounts receivable, employees primarily represents employee advances where the Company has a contractual right to recover the advances if the employee were to terminate their employment with the Company. The Company periodically assesses the collectability of this receivable whenever events or circumstances indicate that the carrying amounts may not be recoverable.

WAKEFIELD INVESTMENT HOLDINGS LLC
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (\$ in thousands)

E. ACCOUNTS RECEIVABLE AND ADVANCES, NET (Continued)

- (b) Employee loans represent recoverable advance draws and loans made to Company employees that bear a market rate of interest. The loans are fully callable if the employee's employment with the Company is terminated for any reason. The Company will forgive the principal and interest on the loans, on a monthly basis, so long as the employees remain employed with the Company. All forgiveness of principal and interest is reported as taxable income on wages to the employee and included in salaries, commissions and benefits on the consolidated statement of operations in the period it is forgiven. Recoverable advance draws do not constitute as wages earned, but an advance against future earned wages by the Company after the forgivable date, as defined in the employment agreement. The Company will forgive the advance draws so long as the employees remain employed with the Company after the forgivable date. The advance draws are included in salaries, commissions and benefits on the consolidated statement of operations.
- (c) The Company periodically reviews outstanding servicing advances for collectability and establishes a valuation allowance for amounts estimated to be uncollectible amounts. No allowance has been recorded as of December 31, 2022, as management has determined that all amounts are fully collectible.

Cardinal had related party receivables at December 31, 2022 and 2021 of \$6,544 and \$615, respectively, which included \$61 and \$10, respectively, due from Lifestyle. The Company's total related party receivables at December 31, 2022 and 2021 of \$6,483 and \$605, respectively, as noted in (a) and (b) above, excluded the Lifestyle receivable, which were eliminated in consolidation.

The Company periodically evaluates the carrying value of accounts receivable and advance balances with delinquent balances written-off based on specific credit evaluations and circumstances of the debtor.

F. MORTGAGE SERVICING RIGHTS

The Company's MSR portfolio is summarized as follows (based on the unpaid principal balance (UPB) of the underlying mortgage loans):

	December 31, 2021		December 31, 2021	
	UPB Amounts	MSR balance as a percentage of UPB	UPB Amounts	MSR balance as a percentage of UPB
GNMA	\$ 9,304,412	1.29 %	\$ 9,912,561	0.97 %
FNMA	14,776,001	1.04 %	19,374,710	0.90 %
FHLMC	7,662,146	1.04 %	11,716,835	0.93 %
	<u>\$31,742,559</u>		<u>\$41,004,106</u>	

WAKEFIELD INVESTMENT HOLDINGS LLC
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (\$ in thousands)

F. MORTGAGE SERVICING RIGHTS (Continued)

The following summarizes the activity of MSRs:

	December 31,	
	2022	2021
Balance, beginning of year	\$ 379,088	\$ 182,820
Additions due to loans sold servicing retained	160,786	245,216
Deletions due to sale of MSRs	(153,514)	—
Amortization expense	(53,550)	(61,117)
Recovery of impairment	20,864	12,169
Balance, end of year	<u>\$ 353,674</u>	<u>\$ 379,088</u>

At December 31, 2022 and 2021, the UPB of mortgage loans serviced approximated \$31,742,559 and \$41,004,106, respectively. Conforming conventional loans serviced by the Company are sold to FNMA and FHLMC on a non-recourse basis, whereby foreclosure losses are generally the responsibility of FNMA and FHLMC, and not the Company. The government loans serviced by the Company are secured through GNMA, whereby the Company is insured against loss by the Federal Housing Administration or partially guaranteed against loss by the Veterans Administration.

The fair value of capitalized MSRs at December 31, 2022 and 2021 was \$479,544 and \$456,730, respectively. The Company did not record any permanent impairment losses for the years ended December 31, 2022 and 2021.

The key unobservable inputs used in determining the fair value of the Company's MSRs are as follows:

	December 31,	
	2022	2021
Discount rates	9.01% - 10.72%	9.00% - 12.00%
Annual prepayment speeds	7.09% - 15.49%	9.45% - 32.79%
Cost of servicing	\$65 - \$90	\$65 - \$90

WAKEFIELD INVESTMENT HOLDINGS LLC
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (\$ in thousands)

F. MORTGAGE SERVICING RIGHTS (Continued)

The hypothetical effect of an adverse change in these key assumptions would result in a decrease in fair value as follows:

	December 31,	
	2022	2021
Discount rate:		
Effect on value - 1% adverse change	\$ (19,807)	\$ (16,848)
Effect on value - 2% adverse change	\$ (38,100)	\$ (32,528)
Prepayment speeds:		
Effect on value - 5% adverse change	\$ (7,983)	\$ (10,181)
Effect on value - 10% adverse change	\$ (15,708)	\$ (19,977)
Cost of servicing:		
Effect on value - 5% adverse change	\$ (2,456)	\$ (2,570)
Effect on value - 10% adverse change	\$ (4,912)	\$ (5,140)

These sensitivities are hypothetical and should be used with caution. As the table demonstrates, the Company’s methodology for estimating the fair value of MSR is highly sensitive to changes in key unobservable inputs. For example, actual prepayment experience may differ and any such difference may have a material effect on MSR fair value. Changes in fair value resulting from changes in inputs generally cannot be extrapolated because the relationship of the change in input to the change in fair value may not be linear. Also, in this table, the effect of a variation in a particular input on the fair value of the MSRs is calculated without changing any other input; in reality, changes in one factor may be associated with changes in another (for example, decreases in market interest rates may indicate higher prepayments; however, this may be partially offset by lower prepayments due to other factors such as a borrower’s diminished opportunity to refinance), which may magnify or counteract the sensitivities. Thus, any measurement of MSR fair value is limited by the conditions existing and inputs made as of a particular point in time. Those inputs may not be appropriate if they are applied to a different point in time.

The following table summarizes the Company’s estimated future MSR amortization expense. These estimates are based on existing asset balances, the current interest rate environment, and prepayment speeds as of December 31, 2022. The actual amortization expense the Company recognizes in any given period may be significantly different depending upon acquisition or sale activities, changes in interest rates, prepayment speeds, market conditions, or circumstances that indicate the carrying amount of an asset may not be recoverable.

Year Ending December 31,	Amounts
2023	\$ 44,963
2024	40,303
2025	35,788
2026	31,624
2027	27,873
Thereafter	173,123
	<u>\$ 353,674</u>

WAKEFIELD INVESTMENT HOLDINGS LLC
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (\$ in thousands)

F. MORTGAGE SERVICING RIGHTS (Continued)

Sale of Mortgage Servicing Rights

During 2022, the Company sold MSR portfolios with a UPB of approximately \$16,200,000 for \$212,000. The Company recognized a gain on sale of \$43,245 which is recorded in gain on sale of MSRs on the consolidated statement of operations. In addition, the Company recorded a receivable totaling \$10,594 related to the sales, which is due at various times after the transfer date. There were transfer costs, hedges, and various protection provisions for which an estimated \$15,367 was paid. The Company performed temporary sub-servicing activities with respect to the underlying loans through the established transfer date, for which the Company earned a fee and is also entitled to certain other ancillary income amounts.

G. WAREHOUSE LINES OF CREDIT AND MASTER REPURCHASE AGREEMENTS

At December 31, 2022, the Company has twelve warehouse and master repurchase line of credit agreements, including sublines of credit, with various financial institutions with a total written capacity of \$3,370,000 and outstanding credit balances of \$679,738, excluding construction sublimit outstanding balances (Note H), at December 31, 2022. The warehouse and master repurchase line of credit agreements have maximum line capacities ranging from \$20,000 to \$500,000 expiring April 8, 2023 through December 12, 2023. Interest is at variable rates, based on the underlying collateral, ranging from 30-day SOFR +1.40% to one-month LIBOR + 2.25% with certain lines subject to minimum SOFR interest rate floors ranging from 1.80% to 2.75%, as defined in the Cardinal and Lifestyle agreements. Under the warehouse and master repurchase line of credit agreements, the financial institutions will advance amounts ranging from 98% to 100% of the committed price of the mortgage loan. To the extent the advance amount on the committed price of the mortgage loan exceeds the UPB of the loan, certain agreements cap the advance rate at 100% of the UPB of the loan. Certain warehouse and master repurchase line of credit agreements require the Company hold restricted and pledged cash which totaled \$6,363 at December 31, 2022.

As of December 31, 2022, the Company had mortgage loans held for sale pledged as collateral under the above warehouse and master repurchase lines of credit agreements. The above agreements also contain covenants which include certain financial requirements, including maintenance of minimum tangible net worth, minimum liquid assets, maximum debt to net worth ratio, servicing delinquency rate, and positive net income, as defined in the agreements. The Company was in compliance with all covenants at December 31, 2022. The Company intends to renew the warehouse lines of credit and master repurchase agreements when they mature.

H. CONSTRUCTION LINES OF CREDIT

The Company has three construction line of credit sublimits totaling \$80,000 with outstanding credit balances of \$35,155 at December 31, 2022, included in its corresponding warehouse line of credit agreement, as described in Note G. Interest is at variable rates, based on the underlying collateral, ranging from 30-day SOFR plus a margin, as disclosed in Note G, expiring August 31, 2023 through September 11, 2023.

WAKEFIELD INVESTMENT HOLDINGS LLC
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (\$ in thousands)

I. MORTGAGE SERVICING RIGHTS LINES OF CREDIT

The Company has two mortgage servicing rights line of credit agreements, which provide financing for the Company's MSRs and associated servicing advances, with a total written capacity of \$250,000 and outstanding credit balances of \$140,000. The line of credit agreements have expiration dates in April 2023. Interest is at variable rates ranging from Prime minus 0.50% to 1-month LIBOR plus 3.50% with certain lines subject to minimum interest rate floors ranging from 3.50% to 4.50%.

The agreements also contain covenants which include certain financial requirements, including maintenance of minimum tangible net worth, maximum debt to net worth ratio, minimum current ratio, minimum liquid assets, a minimum servicing portfolio delinquency rate and positive net income, as defined in the agreements. The Company was in compliance with all debt covenants as of December 31, 2022.

J. OPERATING LINES OF CREDIT

Lines of Credit

The Company has an \$8,000 unsecured line of credit agreement with a financial institution, expiring on August 31, 2023, which provides financing for the Company's operations. Interest under the agreement is at 10% per annum. There was no outstanding balance on the line of credit at December 31, 2022. There was no outstanding balance on the line of credit at both December 31, 2022 and 2021.

K. EMPLOYEE BENEFIT PLAN

The Company has a 401(k) profit sharing plan covering substantially all employees. Employees may contribute amounts subject to certain Internal Revenue Service and plan limitations. The Company may make discretionary matching and non-elective contributions. The Company made \$4,031, \$7,110 and \$5,237 in contributions to the plan for the years ended December 31, 2022, 2021 and 2020, respectively.

L. COMMITMENTS AND CONTINGENCIES

Commitments to Extend Credit

The Company enters into IRLCs with borrowers who have applied for residential mortgage loans and enters into commitments to purchase loans with third party originators who have met certain credit and underwriting criteria. These commitments expose the Company to market risk if interest rates change and the underlying loan is not economically hedged or committed to an investor. The Company is also exposed to credit loss if the loan is originated and not sold to an investor and the mortgagor does not perform. The collateral upon extension of credit typically consists of a first deed of trust in the mortgagor's residential property. Commitments to originate loans do not necessarily reflect future cash requirements as some commitments are expected to expire without being drawn upon. Total commitments to originate loans approximated \$604,956 at December 31, 2022.

WAKEFIELD INVESTMENT HOLDINGS LLC
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (\$ in thousands)

L. COMMITMENTS AND CONTINGENCIES (Continued)

Regulatory Contingencies

The Company is subject to periodic audits and examinations, both formal and informal in nature, from various federal and state agencies, including those made as part of regulatory oversight of mortgage origination, servicing and financing activities. Such audits and examinations could result in additional actions, penalties or fines by state or federal governmental bodies, regulators or the courts.

Legal

The Company operates in a highly regulated industry and may be involved in various legal and regulatory proceedings, lawsuits and other claims arising in the ordinary course of its business. The amount, if any, of ultimate liability with respect to such matters cannot be determined, but despite the inherent uncertainties of litigation, management currently believes that the ultimate disposition of any such proceedings and exposure will not have, individually or taken together, a material adverse effect on the financial condition, results of operations, or cash flows of the Company. However, actual outcomes may differ from those expected and could have a material effect on the Company's financial position, results of its operations or cash flows in a future period. The Company accrues for losses when they are probable to occur, and such losses are reasonably estimable. Legal costs are expensed as incurred and are included in general and administrative on the Consolidated Statement of Operations.

As of December 31, 2022, the Company accrued legal expenses related to potential damages in connection with legal proceedings of \$2,250 which are included as accounts payable and accrued expenses on the Consolidated Balance Sheet.

During 2022, the Company received \$5,000 as a result of litigation which is included in other income in the Consolidated Statement of Operations.

Regulatory Net Worth Requirements

In accordance with the regulatory capital requirements administered by HUD, which governs non-supervised, direct endorsement mortgagees, and the Agencies, which governs seller servicers of FNMA, FHLMC and GNMA, the Company is required to maintain a minimum net worth (as defined by the government agencies mentioned above).

The Company met all minimum net worth, capital requirements and the capital ratio of adjusted tangible net worth to total assets greater than 6% to which it was subject as of December 31, 2022.

M. SELF INSURANCE PLAN

The Company has engaged an insurance company to provide administrative services for the Company's self-funded insurance plan. The Company pays the qualifying medical claims expense for all participating individuals up to a stop loss amount of \$200 per individual. Commencing January 1, 2022, the Company discontinued offering the self-funded plan and that plan will be terminated when all claims have been paid. All of the Company's medical plans which it provided to its employees as of January 2, 2022, were fully insured plans. During 2022, the Company released \$3,750, recorded on the consolidated balance sheet in accounts payable and accrued expenses at December 31, 2021 to cover any claims incurred but not paid, in salaries, commissions and benefits on the consolidated statement of operations.

WAKEFIELD INVESTMENT HOLDINGS LLC
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (\$ in thousands)

N. LEASES

The Company leases office space under various operating lease arrangements. Under ASU 2016-02, leases are classified as either finance or operating at the commencement date of the lease, with classification affecting the pattern of expense recognition in the Consolidated Statement of Operations. The Company does not have any finance leases.

The weighted average remaining lease terms and discount rates are as follows for the year ended December 31, 2022:

Weighted-average remaining lease term - operating leases	4.21 years
Weighted-average discount rate - operating leases	1.26%

The Company's lease costs, attributable to entering into short term operating lease arrangements, were \$9,003 and \$9,559 for the years ended December 31, 2022 and 2021, respectively.

The future minimum lease payments required under the Company's leases as of December 31, 2022 are as follows:

<u>Year Ending December 31,</u>	<u>Amounts</u>
2023	\$ 8,840
2024	6,559
2025	4,145
2026	1,487
2027	730
Thereafter	2,707
Total undiscounted lease payments	\$ 24,468
Less: imputed interest	(585)
Net lease liabilities	<u>\$ 23,883</u>

O. RELATED PARTY TRANSACTIONS

Under the Company's agreements with certain of the Company's branch managers, the Company is required to distribute the earnings of the branch, less a fixed spread, fee and/or revenue share earned by the Company, to the branch manager. The Company had \$3,049 and \$8,939 due to branches included on the consolidated balance sheets at December 31, 2022 and 2021, respectively, related to such agreements. If there is a loss in the branch, the Company is required to cover the amount of the earnings shortfall, subject to recapture only through the offset of future earnings payments to the applicable branch manager.

The Company does not recognize a related receivable for such branch earnings shortfalls as there is no contractual obligation to collect the shortfall if the branch manager were to terminate their employment or the branch operations were to be discontinued. When new branches are added they typically generate initial losses related to recognition of all start-up expenses without the benefit of any revenues until the mortgage loan pipeline builds. Any such losses are recognized on the consolidated statements of operations in the period they were incurred.

WAKEFIELD INVESTMENT HOLDINGS LLC
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (\$ in thousands)

O. RELATED PARTY TRANSACTIONS (Continued)

The Company had an MSR line of credit with a related party that was not utilized and expired during 2021. The Company received \$1,119 on interest expense under the MSR line of credit from the related party during 2020. All amounts related to this MSR line of credit have been eliminated in consolidation.

In 2020, in connection with a settlement agreement, a subsidiary of the Company indemnified one of its members in the amount of \$26,667, which was recorded in general and administrative expenses on the consolidated statements of operations. The member used the funds to repay the Company in full for an outstanding note receivable and net accrued interest of \$26,667.

During 2020, one of the Company's subsidiaries purchased a proprietary software from a related party, which was included in other assets on the consolidated balance sheet.

P. FAIR VALUE MEASUREMENTS

FASB ASC 820, *Fair Value Measurements and Disclosures*, (ASC 820) defines fair value as the price that would be received upon sale of an asset or paid upon transfer of a liability in an orderly transaction between market participants at the measurement date and in the principal or most advantageous market for that asset or liability. The fair value should be calculated based on assumptions that market participants would use in pricing the asset or liability, not assumptions specific to the entity.

ASC 820 specifies a hierarchy of valuation techniques based upon whether the inputs to those valuation techniques reflect assumptions other market participants would use based upon the market data obtained from independent sources (observable inputs). The following summarizes the fair value hierarchy under ASC 820:

Level 1 Inputs – Unadjusted quoted market prices for identical assets and liabilities in an active market that the Company has the ability to access.

Level 2 Inputs – Inputs other than the quoted market prices in active markets that are observable either directly or indirectly.

Level 3 Inputs – Inputs based on prices or valuation techniques that are both unobservable and significant to the overall fair value measurements.

ASC 820 requires the use of observable market data, when available, in making fair value measurements. When inputs used to measure fair value fall within different levels of the hierarchy, the level within which the fair value measurement is categorized is based on the lowest level input that is significant to the fair value measurements. Valuation techniques used need to maximize the use of observable inputs and minimize the use of unobservable inputs.

WAKEFIELD INVESTMENT HOLDINGS LLC
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (\$ in thousands)

P. FAIR VALUE MEASUREMENTS (Continued)

While the Company believes its valuation methods are appropriate and consistent with those used by other market participants, the use of different methods or assumptions to estimate the fair value of certain financial statement items could result in a different estimate of fair value at the reporting date. The significant unobservable inputs used in the fair value measurement may result in significantly different fair value measurements if any of those inputs were to change in isolation. Generally, a change in the assumptions used in the fair value measurement would be accompanied by a directionally opposite change in other assumptions. Those estimated values may differ significantly from the values that would have been used had a readily available market for such items existed, or had such items been liquidated, and those differences could be material to the consolidated financial statements.

The following is a description of the valuation methodologies used for assets and liabilities measured at fair value. There have been no changes in the methodologies used at December 31, 2022.

Mortgage loans held for sale (MLHFS) – The fair value of MLHFS based on Level 2 inputs is determined, when possible, using either quoted secondary-market prices or investor commitments. If no such quoted price exists, the fair value of a loan is determined using quoted prices for a similar asset or assets, adjusted for the specific attributes of that loan, which would be used by other market participants. Mortgage loans held for sale based on Level 3 inputs is determined by market bid pricing (e.g. for scratch and dent loans) or based on the value of the underlying collateral, as adjusted by a valuation allowance.

Derivative instruments – The fair value of IRLCs is based on valuation models incorporating the best available market pricing for instruments with similar characteristics, commonly referred to as best execution pricing, or investor commitment prices for best effort IRLCs. The valuation models used to value the IRLCs have unobservable inputs, such as an estimate of the fair value of the servicing rights expected to be recorded upon sale of the loans, estimated remaining costs to originate the loans, and the expected pullthrough rate, and are therefore classified as Level 3 within the fair value hierarchy.

The fair value of forward sale commitments is based on observable market pricing for similar instruments and are therefore classified as Level 2 within the fair value hierarchy.

Mortgage servicing rights – The fair value of MSR is difficult to determine because MSR are not actively traded in observable stand-alone markets. The Company uses a discounted cash flow approach to estimate the fair value of MSR. This approach consists of projecting net servicing cash flows discounted at a rate that management believes market participants would use in their determinations of fair value. The key unobservable inputs used in the estimation of the fair value of MSR include prepayment speeds, discount rates, default rates, cost to service, contractual servicing fees, escrow earnings and ancillary income.

WAKEFIELD INVESTMENT HOLDINGS LLC
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (\$ in thousands)

P. FAIR VALUE MEASUREMENTS (Continued)

Assets and Liabilities Measured at Fair Value

The following are the major categories of assets and liabilities measured at fair value on a recurring basis:

Description	December 31, 2022			Totals
	Level 1	Level 2	Level 3	
MLHFS	\$ —	\$ 712,558	\$ 29,684	\$ 742,242
IRLCs	—	—	9,295	9,295
TBAs	—	1,509	—	1,509
Total	\$ —	\$ 714,067	\$ 38,979	\$ 753,046

Description	December 31, 2021			Totals
	Level 1	Level 2	Level 3	
MLHFS	\$ —	\$ 2,112,752	\$ 63,285	\$ 2,176,037
IRLCs	—	—	31,158	31,158
TBAs	—	(1,040)	—	(1,040)
Total	\$ —	\$ 2,111,712	\$ 94,443	\$ 2,206,155

The following are the changes in fair value of assets and liabilities measured at fair value on a recurring basis:

Description	Year Ended December 31,		
	2022	2021	2020
MLHFS	\$ (45,335)	\$ (33,676)	\$ 68,862
Derivative liabilities	37,373	34,824	(34,824)
Total	\$ (7,962)	\$ 1,148	\$ 34,038

The Company's MSR's are measured at fair value on a periodic basis. The residential mortgage market has been experiencing periods of increasing interest rates, resulting in a decrease in borrower refinancing activity. The Company's MSR portfolio had impairment reversals during 2022 and 2021, as a result of slower prepayment speeds of the mortgage loans underlying the MSR's for some of the higher interest rate stratifications, and was impaired during 2020, as a result of faster prepayment speeds of the loans underlying the MSR's. The change in prepayment rates resulted in an impairment reversals of \$20,864 and \$12,169 in the higher interest rate stratifications in 2022 and 2021, respectively, and losses of \$27,578 during 2020, which is recorded in impairment of mortgage servicing rights on the consolidated statements of operations. The fair value of the lower interest rate stratifications were in excess of their amortized cost basis at December 31, 2022.

WAKEFIELD INVESTMENT HOLDINGS LLC
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (\$ in thousands)

P. FAIR VALUE MEASUREMENTS (Continued)

Level 3 Purchases, Issuances and Transfers

The following is a summary of the Company's purchases, issuances, and transfers of assets which are measured at fair value on a recurring and non-recurring basis using Level 3 inputs:

	Year Ended December 31,					
	2022		2021		2020	
	LHFS	IRLCs	LHFS	IRLCs	LHFS	IRLCs
Issuances (a)	\$ —	\$ 299,308	\$ —	\$ 727,545	\$ —	\$ 879,539
Transfers into Level 3 (b)	\$ 30,400	\$ —	\$ 36,145	\$ —	\$ 11,151	\$ —
Transfers out of Level 3 (c)	\$ 32,774	\$ 450,168	\$ 11,151	\$ 1,171,689	\$ 7,731	\$ 1,101,456

(a) Issuances of Level 3 IRLCs represent the lock-date market value of IRLCs issued to borrowers during the year, net of estimated pullthrough and costs to originate.

(b) MLHFS transferred into Level 3 represent mortgage loans held for sale not calculated using observable market information, such as third-party broker quotations, underlying collateral adjusted for a valuation allowance, or market bid pricing.

(c) MLHFS transferred out of Level 3 represent mortgage loans held for sale not calculated using observable market information, that were either sold, repaid or foreclosed upon and loans that have been cured. IRLCs transferred out of Level 3 represent IRLCs that were funded and moved to mortgage loans held for sale, at fair value.

Fair Value of Other Financial Instruments

Due to their short-term nature, the carrying value of cash and cash equivalents, restricted cash, notes receivable, construction loans, short-term receivables, short-term payables, master repurchase agreement, and warehouse and operating lines of credit approximate their fair value at December 31, 2022.

Q. SUBSEQUENT EVENTS

Management has evaluated subsequent events through February 14, 2023, the date on which the consolidated financial statements were available to be issued.

The Company signed a letter of intent in January 2023, with a third-party investor, to sell FNMA and FHLMC MSRs with a total unpaid principal balance of \$9,400,000. The transaction is expected to close in April 2023.