Impac Mortgage Holdings, Inc.

Consolidated Financial Statements

For the Years Ended December 31, 2023 and 2022

CONSOLIDATED FINANCIAL STATEMENTS
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Independent Auditors' Report

To the Board of Directors of
Impac Mortgage Holdings, Inc.

Opinion

We have audited the consolidated financial statements of Impac Mortgage Holdings, Inc. (the Company), which comprise the consolidated balance sheets as of December 31, 2023 and 2022, and the related consolidated statements of operations and comprehensive earnings (loss), changes in stockholders' deficit and cash flows for the years then ended, and the related notes to the consolidated financial statements.

In our opinion, the accompanying consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2023 and 2022, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditors' Responsibilities for the Audit of the Consolidated Financial Statements section of our report. We are required to be independent of the Company and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Going Concern

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company has incurred recurring net losses and is in default of its debt obligations and an alternate financing arrangement has yet to be executed. These conditions raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty. Our opinion is not modified with respect to this matter.

Responsibilities of Management for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern within one year after the date that the consolidated financial statements are available to be issued.

Auditors' Responsibilities for the Audit of the Consolidated Financial Statements

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the consolidated financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.

- Identify and assess the risks of material misstatement of the consolidated financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements.

- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, no such opinion is expressed.

- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the consolidated financial statements.

- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings and certain internal control-related matters that we identified during the audit.

Baker Tilly US, LLP

BAKER TILLY US, LLP

Irvine, California
April 19, 2024

IMPAC MORTGAGE HOLDINGS, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS
(in thousands, except share data)

	December 31, 2023	December 31, 2022
ASSETS		
Cash and cash equivalents	$ 4,240	$ 25,864
Restricted cash	4,250	4,140
Mortgage loans held-for-sale	263	13,052
Employee retention credit receivable	6,184	—
Corporate-owned life insurance cash surrender value	11,280	11,619
Other assets	4,768	5,656
Total assets	$ 30,985	$ 60,331
LIABILITIES		
Warehouse borrowings	$ —	$ 3,622
Convertible notes	10,000	15,000
Long-term debt	1,311	27,753
Corporate-owned life insurance liability	14,379	13,601
Other liabilities	8,631	11,958
Total liabilities	34,321	71,934
Commitments and contingencies (See Note 12)		
STOCKHOLDERS' DEFICIT		
Series A-1 junior participating preferred stock, $0.01 par value; 2,500,000 shares authorized; none issued or outstanding	—	—
Series B 9.375% redeemable preferred stock, $0.01 par value; 2,000,000 shares authorized, none issued or outstanding (See Note 9)	—	—
Series C 9.125% redeemable preferred stock, $0.01 par value; 5,500,000 shares authorized; none issued or outstanding (See Note 9)	—	—
Series D 8.250% redeemable preferred stock, $0.01 par value; 35,000,000 shares authorized; 34,684,686 and 34,684,686 noncumulative shares issued and outstanding as of December 31, 2023 and December 31, 2022, respectively (See Note 9)	347	347
Common stock, $0.01 par value; 165,000,000 shares authorized; 36,568,876 and 36,568,876 shares issued and outstanding as of December 31, 2023 and December 31, 2022, respectively	366	366
Additional paid-in capital	1,238,466	1,238,187
Accumulated other comprehensive earnings, net of tax	64,014	39,257
Total accumulated deficit:		
Cumulative dividends declared	(822,520)	(822,520)
Accumulated deficit	(484,009)	(467,240)
Total accumulated deficit	(1,306,529)	(1,289,760)
Total stockholders' deficit	(3,336)	(11,603)
Total liabilities and stockholders' deficit	$ 30,985	$ 60,331

See accompanying notes to consolidated financial statements.

IMPAC MORTGAGE HOLDINGS, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE EARNINGS (LOSS)
(in thousands, except per share data)

	For the Year Ended December 31, 2023	For the Year Ended December 31, 2022
Revenues		
Gain on sale of loans, net	$ 2,046	$ 6,317
Real estate services fees, net	1,110	1,081
Broker fee income	594	50
(Loss) gain on mortgage servicing rights, net	(23)	194
Servicing (expense) fees, net	(33)	63
Other	(176)	890
Total revenues, net	3,518	8,595
Expenses		
Personnel	11,432	30,705
General, administrative and other	9,094	15,698
Occupancy	1,603	5,297
Business promotion	687	4,425
Total expenses	22,816	56,125
Operating loss	(19,298)	(47,530)
Other income		
Interest income	1,041	15,268
Interest expense	(7,274)	(19,137)
Change in fair value of net trust assets, including trust REO gains	—	9,248
Employee retention credit	7,334	—
Change in fair value of market component of long-term debt	1,434	2,757
Total other income, net	2,535	8,136
Loss before income taxes	(16,763)	(39,394)
Income tax expense	6	38
Net loss	$ (16,769)	$ (39,432)
Other comprehensive earnings (loss)		
Change in fair value of instrument specific credit risk of long-term debt	24,757	17,213
Total comprehensive earnings (loss)	$ 7,988	$ (22,219)

See accompanying notes to consolidated financial statements

IMPAC MORTGAGE HOLDINGS, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' DEFICIT
(in thousands, except share data)

	Preferred Shares Outstanding	Preferred Stock	Common Shares Outstanding	Common Stock	Additional Paid-In Capital	Cumulative Dividends Declared	Accumulated Deficit	Accumulated Other Comprehensive Earnings, net of tax	Total Stockholders' (Deficit) Equity
Balance, December 31, 2021	2,070,678	$ 21	21,332,684	$ 213	$ 1,237,986	$ (822,520)	$ (427,808)	$ 22,044	$ 9,936
Issuance of restricted stock units	—	—	155,080	2	—	—	—	—	2
Issuance of deferred stock units	—	—	15,000	—	—	—	—	—	—
Stock based compensation	—	—	—	—	678	—	—	—	678
Retirement of Preferred Series B and C (1)	(2,070,678)	(21)	—	—	—	—	—	—	(21)
Issuance of Preferred Series D (1)	34,684,686	347	—	—	(561)	—	—	—	(214)
Issuance of Common Stock (1)	—	—	15,066,112	151	(140)	—	—	—	11
Issuance of Warrants (1)	—	—	—	—	224	—	—	—	224
Other comprehensive earnings	—	—	—	—	—	—	—	17,213	17,213
Net loss	—	—	—	—	—	—	(39,432)	—	(39,432)
Balance, December 31, 2022	34,684,686	$ 347	36,568,876	$ 366	$ 1,238,187	$ (822,520)	$ (467,240)	$ 39,257	$ (11,603)
Stock based compensation	—	—	—	—	279	—	—	—	279
Other comprehensive earnings	—	—	—	—	—	—	—	24,757	24,757
Net loss	—	—	—	—	—	—	(16,769)	—	(16,769)
Balance, December 31, 2023	34,684,686	$ 347	36,568,876	$ 366	$ 1,238,466	$ (822,520)	$ (484,009)	$ 64,014	$ (3,336)

(1) See Note 9.– Redeemable Preferred Stock for a description of the Series B Preferred and Series C Preferred exchange offers.

See accompanying notes to consolidated financial statements

IMPAC MORTGAGE HOLDINGS, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	For the Year Ended December 31, 2023	For the Year Ended December 31, 2022
CASH FLOWS FROM OPERATING ACTIVITIES		
Net loss	$ (16,769)	$ (39,432)
Gain on sale of mortgage servicing rights	23	(264)
Change in fair value of mortgage servicing rights	—	70
(Loss) gain on sale of mortgage loans	10	(20,539)
Change in fair value of mortgage loans held-for-sale	(1,090)	8,802
Change in fair value of derivatives lending, net	53	3,003
Provision for repurchases	(974)	2,417
Origination of mortgage loans held-for-sale	(835)	(693,702)
Sale and principal reduction on mortgage loans held-for-sale	14,704	1,000,818
Change in fair value of net trust assets, excluding trust REO	—	(9,248)
Change in fair value of long-term debt	(1,434)	(2,757)
Accretion of interest income and expense	(251)	6,732
Stock-based compensation	279	678
Impairment of ROU asset	—	123
Loss on disposal of premises and equipment	18	—
Net change in other assets	(5,349)	7,221
Net change in other liabilities	(2,551)	(14,353)
Net cash (used in) provided by operating activities	(14,166)	249,569
CASH FLOWS FROM INVESTING ACTIVITIES		
Net change in securitized mortgage collateral	—	72,889
Proceeds from transfer of trust assets and liabilities	—	37,500
Proceeds from the sale of mortgage servicing rights	—	725
Investment in corporate-owned life insurance	339	(831)
Proceeds from sale of premises and equipment	7	99
Proceeds from sale of master servicing rights	150	—
Net cash provided by investing activities	496	110,382
CASH FLOWS FROM FINANCING ACTIVITIES		
Repayment of warehouse borrowings	(3,622)	(920,967)
Borrowings under warehouse agreements	—	639,050
Repayment of securitized mortgage borrowings	—	(78,818)
Net change in liabilities related to corporate-owned life insurance	778	574
Repayment of convertible notes	(5,000)	(5,000)
Issuance of restricted stock	—	2
Net cash used in financing activities	(7,844)	(365,159)
Net change in cash, cash equivalents and restricted cash	(21,514)	(5,208)
Cash, cash equivalents and restricted cash at beginning of year	30,004	35,212
Cash, cash equivalents and restricted cash at end of year	$ 8,490	$ 30,004
SUPPLEMENTARY INFORMATION		
Interest paid	$ 6,461	$ 11,917
Taxes paid, net	(16)	(7)
NON-CASH TRANSACTIONS		
ROU assets obtained in exchange for new operating lease liabilities	$ 704	$ —
Transfer and deconsolidation of trust assets	—	1,543,608
Transfer and deconsolidation of trust liabilities	—	(1,543,608)
Mortgage servicing rights retained from issuance of mortgage-backed securities and loan sales	—	46

See accompanying notes to consolidated financial statements

Note 1.—Summary of Business and Financial Statement Presentation including Significant Accounting Policies

Business Summary

Impac Mortgage Holdings, Inc. (the Company or IMH) is a financial services company incorporated in Maryland with the following direct and indirect wholly-owned operating subsidiaries: Integrated Real Estate Service Corporation (IRES), Impac Mortgage Corp. (IMC), IMH Assets Corp. (IMH Assets), Impac Funding Corporation (IFC), Copperfield Financial, LLC (CFL) and Copperfield Capital Corporation (CCC). The Company's operations include the mortgage lending operations conducted by IMC, real estate services conducted by IRES and CCC and the long-term mortgage portfolio (residual interests in securitizations reflected as securitized mortgage trust assets and liabilities on the consolidated balance sheets) conducted by IMH Assets prior to the sale of this portfolio in the first quarter of 2022. The long-term mortgage portfolio was deconsolidated in March 2022 as the Company sold its residual interests in the consolidated securitized mortgage trusts (see Note 7.—Securitized Mortgage Trusts). IMC's mortgage lending operations include the activities of its division, CashCall Mortgage (CCM).

On October 20, 2022, the Company received the requisite stockholder consents on the Series B Preferred stock and Series C Preferred stock exchange offers (Exchange Offers), which provided for the exchange and subsequent redemption of all outstanding Series B Preferred and Series C Preferred stock, liquidation preference and cumulative dividends in arrears for common stock, new Series D Preferred stock and, in the case of Series C Preferred stock, warrants to purchase common stock. For further description of the Exchange Offers, see Note 9.—Redeemable Preferred Stock.

The Company is engaged in the business of originating, purchasing, financing, brokering and selling mortgage loans secured by residential real estate throughout the United States and derives income from fees charged for services related to the brokering/origination/purchase of mortgage loans and the subsequent sale of the loans to investors. The Company is licensed by the Department of Housing and Urban Development (HUD). In 2020, the Company received notification from the Federal Home Loan Mortgage Corporation (Freddie Mac) that the Company's eligibility to sell whole loans to Freddie Mac was suspended, without cause. As noted in Freddie Mac's Seller/Servicer Guide, Freddie Mac may elect, in its sole discretion, to suspend a Seller from eligibility, without cause, thereby restricting the Seller from obtaining new purchase commitments during the suspension period. Given the Company's lack of conventional origination volume to the Federal National Mortgage Association (Fannie Mae) and Freddie Mac (collectively the GSEs) and servicing rights over the past several years, with no direct GSE deliveries to Fannie Mae or Freddie Mac since 2016 and 2020, respectively, in 2023 the Company voluntarily relinquished its GSE Seller/Servicer designation, which had been suspended during these periods of nondelivery, as well as its issuer/servicer designation with Ginne Mae.

Liquidity

The Company's liquidity reflects its ability to meet its current obligations (including its operating expenses and, when applicable, the retirement of debt). The Company has experienced recurring losses from operations dating back to 2017. During the year ended December 31, 2023, the Company incurred a net loss of $16.8 million and has an accumulated deficit of $3.3 million as of December 31, 2023. As of December 31, 2023, the Company has unrestricted cash and cash equivalents of $4.2 million and an employee retention credit receivable of $6.2 million. While the Company was able to execute on its expense management plans throughout 2023 and continues to reduce its expense run rate, there is substantial doubt that the Company's existing cash and cash equivalents as of December 31, 2023 are sufficient to fund the Company's operations over the next year.

In January 2024, the Company did not make the interest payment required under the terms of the First Junior Note and First Indenture and such non-payment resulted in an event of default under the Second Junior Note (the Second Indenture) as well as a cross-default under the terms of the Convertible Notes (See Note 6. – Debt). The default has triggered concerns regarding the company's ability to meet its financial obligations. In February 2024, the Company, the collateral manager for the holders of the First Junior Note and Second Junior Note and Convertible Note Holders entered into forbearance agreements whereby each agreed to forbear from exercising their rights and remedies under their respective agreements through February 29, 2024, which forbearance agreements were subsequently extended to April 30, 2024. At December 31, 2023, the Company was not in compliance with one financial covenant from its lender and is working on obtaining the necessary waiver, but has yet to receive it as of the date of the filing. There are no borrowings outstanding on the line.

The Company may seek to raise secured or unsecured debt, raise equity or working capital, retire or restructure the Convertible Notes (which pay down $5.0 million each May 9th for the next two years) or pursue other actions to reorganize its capital. While the Company intends to raise additional capital within the next year to support its operations, it cannot provide any assurance that its capital raise efforts will be successful. Additionally, reliance on the forbearance agreements raises substantial doubt about the Company's capacity to sustain operations without a permanent resolution to its financial challenges, as there can be no assurance that the forbearance will be extended past April 30, 2024. As a result, there is substantial doubt about the Company's ability to continue as a going concern. The accompanying consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. The consolidated financial statements do not include any adjustments related to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might result from the outcome of this uncertainty.

Financial Statement Presentation and Significant Accounting Policies

Basis of Presentation

The accompanying consolidated financial statements of IMH and its subsidiaries (as defined above) have been prepared in accordance with accounting principles generally accepted in the United States of America (GAAP). All significant inter-company balances and transactions have been eliminated in consolidation. In addition, certain immaterial amounts in the prior periods' consolidated financial statements have been reclassified to conform to the current year presentation.

Management has made a number of material estimates and assumptions relating to the reporting of assets and liabilities, the 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 to prepare these consolidated financial statements in conformity with GAAP. Additionally, other items affected by such estimates and assumptions include contingencies, the estimated obligation of repurchase liabilities related to sold loans, the valuation of long-term debt, mortgage loans held-for-sale (LHFS) and derivative instruments, including interest rate lock commitments (IRLCs). Actual results could differ from those estimates and assumptions.

Principles of Consolidation

The accompanying consolidated financial statements include accounts of IMH and its wholly-owned subsidiaries. The usual condition for a controlling financial interest is ownership of a majority of the voting interests of an entity. However, a controlling financial interest may also exist in entities, such as variable interest entities (VIEs), through arrangements that do not involve voting interests.

The VIE framework requires a variable interest holder (counterparty to a VIE) to consolidate the VIE if that party has the power to direct activities of the VIE that most significantly impact the entity's economic performance, will absorb a majority of the expected losses of the VIE, will receive a majority of the residual returns of the VIE, or both, and directs the significant activities of the entity. This party is considered the primary beneficiary of the entity. The determination of whether the Company meets the criteria to be considered the primary beneficiary of a VIE requires an evaluation of all transactions (such as investments, liquidity commitments, derivatives and fee arrangements) with the entity. The assessment of whether or not the Company is the primary beneficiary of the VIE is performed on an ongoing basis.

Fair Value and the Fair Value Option

Fair value is a market-based measurement, not an entity-specific measurement. For some assets and liabilities, observable market transactions or market information might be available. For other assets and liabilities, observable market transactions and market information might not be available. However, the objective of a fair value measurement in both cases is the same—to estimate the price at which an orderly transaction to sell the asset or to transfer the liability would take place between market participants at the measurement date under current market conditions (that is, an exit price at the measurement date from the perspective of a market participant that holds the asset or owes the liability).

The fair value option permits entities to choose, at specified election dates, to measure eligible financial assets and financial liabilities at fair value. The decision to elect the fair value option is applied on an instrument by instrument basis, is irrevocable unless a new election date occurs, and is applied to an entire instrument. The Company has elected the fair value option for LHFS, long-term debt and its consolidated non-recourse securitizations (securitized mortgage collateral and securitized mortgage borrowings), prior to the sale in the first quarter of 2022. Elections were made to mitigate income statement volatility caused by differences in the measurement basis of elected instruments.

Cash and Cash Equivalents and Restricted Cash

Cash and cash equivalents consist of cash and highly liquid investments with maturities of three months or less at the date of acquisition. The carrying amount of cash and cash equivalents approximates fair value.

Cash balances that have restrictions as to the Company's ability to withdraw funds are considered restricted cash. At December 31, 2023 and 2022, restricted cash totaled $4.3 million and $4.1 million, respectively. The restricted cash is primarily collateral against letter of credit financing associated with corporate-owned life insurance (See Note 12.—Commitments and Contingencies) as well as cash required in conjunction with the terms of the Company's warehouse borrowing agreements. In accordance with the terms of the Master Repurchase Agreements related to the warehouse borrowings, the Company is required to maintain cash balances with the lender as additional collateral for the borrowings (See Note 6.—Debt).

Mortgage Banking

Mortgage loans held-for-sale (LHFS) are measured at fair value. The Company's fair value election for LHFS is intended to better reflect the underlying economics given the requirement to also record IRLCs at fair value. With the election of the fair value option for LHFS, fees and costs associated with the origination of LHFS are earned and expensed as incurred, respectively.

Mortgage LHFS are accounted for using the fair value option, with changes in fair value recorded in gain on sale of loans, net in the accompanying consolidated statements of operations and comprehensive earnings (loss). In accordance with Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 825, *Financial Instruments*, loan origination fees and expenses are recognized in earnings as incurred and not deferred.

Revenue derived from the Company's mortgage lending activities includes loan fees collected at the time of origination and gain or loss from the sale of LHFS. Loan fees consist of fee income earned on all loan originations, including loans closed and held-for-sale. Loan fees are recognized as earned and consist of amounts collected for application and underwriting fees, fees on cancelled loans and discount points. The related direct loan origination costs are recognized when incurred and consists of broker fees and commissions. Gain or loss from the sale and mark-to-market adjustments of LHFS includes both realized and unrealized gains and losses and are included in gain on sale of loans, net in the accompanying consolidated statements of operations and comprehensive earnings (loss). The valuation of LHFS approximates a whole-loan price, which includes the value of the related mortgage servicing rights (MSRs).

The Company primarily sells its LHFS to investors. The Company evaluates its loan sales for sales treatment. To the extent the transfer of loans qualifies as a sale, the Company derecognizes the loans and records a realized gain or loss on the sale date. In the event the Company determines that the transfer of loans does not qualify as a sale, the transfer would be treated as a secured borrowing. Interest on loans is recorded as income when earned and deemed collectible. LHFS are placed on nonaccrual status when any portion of the principal or interest is 90 days past due or earlier if factors indicate that the ultimate collectability of the principal or interest is not probable. Interest received from loans on nonaccrual status is recorded as income when collected. Loans return to accrual status when the principal and interest become current and it is probable that the amounts are fully collectible.

Mortgage Servicing Rights

The Company sells residential mortgage loans in the secondary market and may retain the right to service the loans sold. Upon sale, a mortgage servicing right (MSR) asset is capitalized, which represents the then current fair value of future net cash flows expected to be realized for performing servicing activities. Mortgage servicing rights are recorded at fair value as prescribed by FASB ASC 860-50-35, Transfers and Servicing, and the changes in fair value are recorded in the statement of operations within loss on mortgage servicing rights, net.

Consolidated Non-recourse Securitizations

In March 2022, the Company and its subsidiaries (the Sellers), entered into a Purchase, Sale and Assignment Agreement (Sale Agreement) with an unrelated third party pursuant to which the Sellers sold certain residual interest certificates, and assigned certain optional termination and loan purchase rights, owned by the Sellers relating to 37 securitizations that closed between 2000 and 2007 (the Securitizations). As a result of the sale, in accordance with FASB ASC 810-10-25, the Company deconsolidated the securitized mortgage trust assets and liabilities as of the sale date as it was no longer the primary beneficiary of the consolidated securitization trusts. The Company remained the master servicer with respect to all of the securitizations until such time that the deals are collapsed or payoff. During the year ended December 31, 2023, the Company sold the master servicing rights to an unrelated third party for $150 thousand and incurred a net loss of $33 thousand. For a description of the sale, see Note 7.– Securitized Mortgage Trusts.

Securitized Mortgage Collateral

The Company's long-term mortgage portfolio primarily included adjustable rate and, to a lesser extent, fixed rate non-conforming mortgages and commercial mortgages that were acquired and originated by the Company's mortgage and commercial operations prior to 2008.

Historically, the Company securitized mortgages in the form of collateralized mortgage obligations (CMO) or real estate mortgage investment conduits (REMICs). These securitizations were evaluated for consolidation based on the provisions of FASB ASC 810-10-25. Amounts consolidated were included in trust assets and liabilities as securitized mortgage collateral, real estate owned (REO) and securitized mortgage borrowings in the accompanying consolidated balance sheets. The Company also retained the master servicing rights associated with these securitizations which pays the Company approximately 3 basis points on the outstanding unpaid principal balance (UPB) of each securitization trust. Prior to the sale, the retention of the master servicing rights or the retained economic subordinated residual interests provided the Company with clean up call rights on these securitizations.

The Company accounted for securitized mortgage collateral at fair value, with changes in fair value during the period reflected in earnings. Fair value measurements were based on the Company's estimated cash flow models, which incorporated assumptions, inputs of other market participants and quoted prices for the underlying bonds. The Company's assumptions included its expectations of inputs that other market participants would use. These assumptions included judgments about the underlying collateral, prepayment speeds, credit losses, investor yield requirements, forward interest rates and certain other factors.

Interest income on securitized mortgage collateral was recorded using the effective yield for the period based on the previous quarter-end's estimated fair value. Securitized mortgage collateral is generally not placed on nonaccrual status as the servicer advances the interest payments to the trust regardless of the delinquency status of the underlying mortgage loan, until it becomes apparent to the servicer that the advance is not collectible.

Real Estate Owned

Real estate owned within the securitized trusts consisted of residential real estate acquired in satisfaction of loans, was carried at net realizable value, which included the estimated fair value of the residential real estate less estimated selling and holding costs. Adjustments to the loan carrying value required at the time of foreclosure affect the carrying amount of REO. Subsequent write-downs in the net realizable value of REO were included in change in fair value of net trust assets, including trust REO gains in the consolidated statements of operations and comprehensive earnings (loss).

Securitized Mortgage Borrowings

Prior to the sale of its residual interest certificates, the Company recorded securitized mortgage borrowings in the accompanying consolidated balance sheets. The debt from each issuance of a securitized mortgage borrowing was payable from the principal and interest payments on the underlying mortgages collateralizing such debt, as well as the proceeds from liquidations of REO. If the principal and interest payments were insufficient to repay the debt, the shortfall was allocated first to the residual interest holders (generally owned by the Company) then, if necessary, to the certificate holders (e.g. third party investors in the securitized mortgage borrowings) in accordance with the specific terms of the various respective indentures. Securitized mortgage borrowings typically were structured as one-month London Interbank Offered Rate (LIBOR) "floaters" and fixed rate securities with interest payable to certificate holders monthly. The maturity of each class of securitized mortgage borrowing was directly affected by the amount of net interest spread, overcollateralization and the rate of principal prepayments and defaults on the related securitized mortgage collateral. The actual maturity of any class of a securitized mortgage borrowing could occur later than the stated maturities of the underlying mortgages.

When the Company issued securitized mortgage borrowings, the Company generally sought an investment grade rating for the Company's securitized mortgages by nationally recognized rating agencies. To secure such ratings, it was often necessary to incorporate certain structural features that provided for credit enhancement. This generally included the pledge of collateral in excess of the principal amount of the securities to be issued, a bond guaranty insurance policy for some or all of the issued securities, or additional forms of mortgage insurance. These securitization transactions were non-recourse to the Company and the total loss exposure was limited to the Company's initial net economic investment in each trust, which was referred to as a residual interest.

The Company accounted for securitized mortgage borrowings at fair value, with changes in fair value during the period reflected in earnings. Fair value measurements were based on the Company's estimated cash flow models, which incorporated assumptions, inputs of other market participants and quoted prices for the underlying bonds. The Company's assumptions included its expectations of inputs that other market participants would use. These assumptions included judgments about the underlying collateral, prepayment speeds, credit losses, investor yield requirements, forward interest rates and certain other factors. Interest expense on securitized mortgage borrowings was recorded quarterly using the effective yield for the period based on the previous quarter-end's estimated fair value.

Leases

Operating lease right-of-use (ROU) assets represent the right to use an underlying asset for the lease term and lease liabilities represent obligations to make lease payments arising from the lease. The Company determines if a contract is a lease at the inception of the arrangement and reviews all options to extend, terminate, or purchase its ROU assets at the inception of the lease and accounts for these options when they are reasonably certain of being exercised. The Company's lease agreements do not provide an implicit rate. As a result, the Company used an incremental borrowing rate based on the information available as of the lease commencement dates, or as of the acquisition date, if applicable, in determining the present value of lease payments. As a practical expedient permitted under ASC 842, *Leases*, the Company elected to account for the lease and non-lease components as a single lease component for all leases of which it is the lessee. Leases with an initial term of 12 months or less are not recorded in the consolidated balance sheets and lease expense for these leases is recognized on a straight-line basis over the lease term.

ROU assets are tested for impairment whenever changes in facts or circumstances indicate that the carrying amount of an asset may not be recoverable. Modification of a lease term would result in remeasurement of the lease liability and a corresponding adjustment to the ROU asset. For additional information regarding the Company's leases see Note 12.— Commitments and Contingencies.

Derivative Instruments

In accordance with FASB ASC 815-10 *Derivatives and Hedging—Overview*, the Company records all derivative instruments at fair value. The Company has accounted for all its derivatives as non-designated hedge instruments or free-standing derivatives.

The mortgage lending operation enters into IRLCs with consumers to originate mortgage loans at a specified interest rate. These IRLCs are accounted for as derivative instruments and reported at fair value. The concept of fair value relating to IRLCs is no different than fair value for any other financial asset or liability: fair value is the price at which an orderly transaction to sell the asset or to transfer the liability would take place between market participants at the measurement date under current market conditions. Because IRLCs do not trade in the market, the Company determines the estimated fair value based on expectations of what an investor would pay to acquire the Company's IRLCs, which utilizes current market information for secondary market prices for underlying loans and estimated servicing value with similar coupons, maturities and credit quality, subject to the anticipated loan funding probability (pull-through rate). This value is adjusted for other costs that would be required by a market participant acquiring the IRLCs. The fair value of IRLCs is subject to change primarily due to changes in interest rates and the estimated pull-through rate. The Company reports IRLCs within other assets and other liabilities at fair value in the accompanying consolidated balance sheets with changes in fair value being recorded in the accompanying consolidated statements of operations and comprehensive earnings (loss) within gain on sale of loans, net.

The Company hedges the changes in fair value associated with changes in interest rates related to IRLCs and uncommitted LHFS by using forward delivery commitments on mortgage-backed securities (MBS), including Federal National Mortgage Association (Fannie Mae or FNMA), Government National Mortgage Association (Ginnie Mae or GNMA) MBS known as to-be-announced mortgage-backed securities (TBA MBS), interest rate swap futures (swap futures) and forward delivery commitments on whole loans. The TBA MBS, forward loan commitments and swap futures (collectively the Hedging Instruments) are used to fix the forward sales price that will be realized upon the sale of mortgage loans into the secondary market and are accounted for as derivative instruments. The fair value of these Hedging Instruments are subject to change primarily due to changes in interest rates. The Company reports Hedging Instruments within other assets and other liabilities in the accompanying consolidated balance sheets at fair value with changes in fair value being recorded in the accompanying consolidated statements of operations and comprehensive earnings (loss) within gain on sale of loans, net.

The fair value of IRLCs and Hedging Instruments are represented as derivative assets, net and derivative liabilities, net in Note 10.—Fair Value of Financial Instruments.

Long-term Debt

Long-term debt (Junior Subordinated Notes) is reported at fair value. These securities are measured based upon an analysis prepared by management, which considers the Company's own credit risk. With the adoption of FASB ASU 2016-01 in 2018, which applies when the Company elects the fair value election on its own debt, the Company bifurcates the market and instrument specific credit risk components of changes in long-term debt. The market portion continues to be a component of net loss as the change in fair value of long-term debt, but the instrument specific credit risk portion is a component of accumulated other comprehensive earnings (loss) in the accompanying consolidated statements of operations and comprehensive earnings (loss).

Repurchase Reserve

The Company brokers and sells mortgage loans in the secondary market. When the Company brokers or sells mortgage loans it makes customary representations and warranties to the purchasers about various characteristics of each loan such as the origination and underwriting guidelines, including but not limited to the validity of the lien securing the loan, property eligibility, borrower credit, income and asset requirements, and compliance with applicable federal, state and local laws. In the event of a breach of its representations and warranties, the Company may be required to either repurchase the mortgage loans with the identified defects or indemnify the investor or insurer for any loss. In addition, the Company may be required to repurchase loans as a result of borrower fraud or if a payment default occurs on a mortgage loan shortly after its sale. The Company's loss may be reduced by proceeds from the sale or liquidation of the repurchased loan. Also, the Company's loss may be reduced by any recourse it has to correspondent lenders that, in turn, had sold such mortgage loans to the Company and breached similar or other representations and warranties. In such event, the Company has the right to seek a recovery of related repurchase losses from that correspondent lender.

In the case of early loan payoffs and early defaults on certain loans, the Company may be required to repay all or a portion of the premium initially paid by the investor. The estimated obligation associated with early loan payoffs and early defaults is calculated based on historical loss experience by type of loan.

The Company records a warranty provision on brokered loans and a provision for losses on sold loans relating to such representations and warranties as part of its loan sale transactions. The method used to estimate the liability for representations and warranties is a function of the representations and warranties given and considers a combination of factors, including, but not limited to, estimated future defaults and loan repurchase rates and the potential severity of loss in the event of defaults including any loss on sale or liquidation of the repurchased loan and the probability of reimbursement by the correspondent loan seller. The Company establishes a liability at the time loans are brokered or sold and continually updates its estimated repurchase liability. The level of the repurchase liability for representations and warranties is difficult to estimate and requires considerable management judgment. The level of mortgage loan repurchase losses is dependent on economic factors, investor demands for loan repurchases and other external conditions that may change over the lives of the underlying loans.

Revenue Recognition for Fees from Services

The Company follows FASB ASC 606, *Revenue Recognition*, which provides guidance on the application of GAAP to selected revenue recognition issues related to the Company's real estate services fees. Under FASB ASC 606, the Company must identify the contract with a customer, identify the performance obligations in the contract, determine the transaction price, allocate the transaction price to the performance obligations in the contract, and recognize revenue when (or as) the Company satisfies a performance obligation.

The Company's sources of revenue derived from financial instruments are not within the scope of FASB ASC 606. The Company has evaluated the nature of its contracts with customers and determined that further disaggregation of revenue from contracts with customers into more granular categories beyond what is presented in the consolidated statements of operations and comprehensive earnings (loss), was not necessary. The Company generally fully satisfies its performance obligations on its contracts with customers as services are rendered and the transaction prices are typically fixed; charged either on a periodic basis or based on activity. Because performance obligations are satisfied as services are rendered and the transaction prices are fixed, the Company has made no significant judgments in applying the revenue guidance prescribed in ASC 606 that affect the determination of the amount and timing of revenue from contracts with customers. The revenues from these services are recognized in income in the period when services are rendered and collectability is reasonably certain.

Broker Fee Income

The Company provides a variety of mortgage lending products to consumers through its broker fulfillment model. In the broker fulfillment model, the Company sources leads and delivers loan packages to wholesale originators where the originators underwrite and fund the loans. The broker fulfillment model generates broker fee income, comprised of origination fees and broker fees, net of origination costs. As the Company's performance obligations for these services are satisfied once the mortgage loan has been originated by the lender and there is no ongoing obligation, revenue is recognized when services are rendered.

Real Estate Service Fees

The Company provides certain real estate services to servicers, portfolio managers and investors to assist them in maximizing loss mitigation performance in managing distressed mortgage portfolios and foreclosed real estate assets, and the disposition of such assets. In addition, the Company performs default surveillance services for residential and multifamily mortgage portfolios for servicers and investors to assist them with overall portfolio performance. As the Company's performance obligations for these services is satisfied at a point in time and there is no ongoing obligation, revenue is recognized when services are rendered.

Servicing Fees, net

The Company selectively retains MSRs from its sales of certain mortgage loans. The Company receives servicing fees, less subservicing costs, on the UPB of the loans. The servicing fees are collected from the interest portion of the monthly payments made by the mortgagors or when the underlying real estate is foreclosed upon and liquidated. The Company may receive other remuneration from rights to various mortgagor-contracted fees such as late charges, collateral reconveyance charges, nonsufficient fund fees and the Company is generally entitled to retain the interest earned on funds held pending remittance (or float) related to its collection of mortgagor principal, interest, tax and insurance payments. Pursuant to FASB ASC 860, all servicing fees are recognized as income when earned, which typically occurs when cash is collected.

Additionally, to a lesser extent, the Company acts as master servicer on various mortgage and multi-family loan pools. The Company earns portfolio service fees by performing various services such as collection of interest and principal payments from servicers, remittance of those payments to investors, reconciling payment discrepancies, and handling credit issues such as borrower defaults.

Marketing and Advertising Costs

The Company advertises primarily through direct advertising channels such as radio, television, internet and direct mail. The Company expenses advertising costs as incurred. For direct advertising, these costs include radio and television ads as well as design, printing and mailing costs associated with direct mail campaigns. Advertising costs are expensed as incurred and are included in business promotion expense in the accompanying consolidated statements of operations and comprehensive earnings (loss). For the years ended December 31, 2023 and 2022, business promotion expense was $687 thousand and $4.4 million, respectively.

Equity-Based Compensation

The Company accounts for stock-based compensation in accordance with FASB ASC 718 *Compensation—Stock Compensation*. The Company uses the grant-date fair value of equity awards to determine the compensation cost associated with each award. Grant-date fair value is determined using the Black-Scholes pricing model and assumptions noted in Note 13.—Share Based Payments and Employee Benefit Plans, adjusted for unique characteristics of the specific awards. Compensation cost for service-based equity awards is recognized on a straight-line basis over the requisite service period, which is generally the vesting period.

FASB ASC 718 requires forfeitures to be estimated at the time of grant and prospectively revised, if necessary, in subsequent periods if actual forfeitures differ from initial estimates. Stock-based compensation expense is recorded net of estimated forfeitures for the years ended December 31, 2023 and 2022, such that the expense was recorded only for those stock-based awards that were expected to vest during such periods. The cost of equity-based compensation is recorded to personnel expense in the consolidated statements of operations and comprehensive earnings (loss).

Income Taxes

In accordance with FASB ASC 740, *Income Taxes*, the Company records income tax expense as well as deferred tax assets and liabilities. Current income tax expense or benefit approximates taxes to be paid or refunded for the current period, respectively, and includes income tax expense related to uncertain tax positions. The Company determines deferred income taxes using the balance sheet method. Under this method, the net deferred tax asset or liability is based on the tax effects of the differences between the book and tax bases of assets and liabilities, and recognizes enacted changes in tax rates and laws in the period in which they occur. Deferred income tax expense results from changes in deferred tax assets and liabilities between periods. Deferred tax assets are recognized subject to management's judgment that realization is "more likely than not." Uncertain tax positions that meet the more likely than not recognition threshold are measured to determine the amount of benefit to recognize. An uncertain tax position is measured at the largest amount of benefit that management believes has a greater than 50% likelihood of realization upon settlement.

The Company is subject to federal income taxes as a regular (Subchapter C) corporation and files a consolidated U.S. federal income tax return on qualifying subsidiaries. The Company files federal and various states income tax returns in the U.S.

Recent Accounting Pronouncements

In June 2016, the FASB issued ASU 2016-13, *"Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments,"* (ASU 2016-13)*,* which changes the impairment model for most financial assets and certain other instruments. For trade and other receivables, held-to-maturity debt securities, loans and other instruments, entities will be required to use a new forward-looking "expected loss" model that will replace today's "incurred loss" model and generally will result in the earlier recognition of allowances for losses. For available-for-sale debt securities with unrealized losses, entities will measure credit losses in a manner similar to current practice, except that the losses will be recognized as an allowance. Subsequent to issuing ASU 2016-13, the FASB issued ASU 2018-19, "*Codification Improvements to Topic 326, Financial Instruments—Credit Losses"*, for the purpose of clarifying certain aspects of ASU 2016-13. ASU 2018-19 has the same effective date and transition requirements as ASU 2016-13. In April

2019, the FASB issued ASU 2019-04, "*Codification Improvements to Topic 326, Financial Instruments-Credit Losses, Topic 815, Derivatives and Hedging*," and "*Topic 825, Financial Instruments (ASU 2019-04)*," which is effective with the adoption of ASU 2016-13. In May 2019, the FASB issued ASU 2019-05, "*Financial Instruments – Credit Losses (Topic 326)"*, which is also effective with the adoption of ASU 2016-13. In October 2019, the FASB voted to delay the implementation date for smaller reporting companies until January 1, 2023. The Company adopted this ASU on January 1, 2023 and the adoption of this ASU did not have a material impact on the Company's consolidated financial statements.

In March 2020 and January 2021, the FASB issued ASU 2020-04 and ASU 2021-01, "*Reference Rate Reform (Topic 848)"*. Together, the ASUs provide temporary optional expedients and exceptions to the U.S. GAAP guidance on contract modifications and hedge accounting to ease the financial reporting burdens related to the expected market transition from the LIBOR and other interbank offered rates to alternative reference rates. This guidance is effective beginning on March 12, 2020, and the Company may elect to apply the amendments prospectively through December 31, 2022. In December 2022, the FASB issued ASU 2022-06, "*Reference Rate Reform (Topic 848): Deferral of the Sunset Date of Topic 848*", which extends the period of time entities can utilize the reference rate reform relief guidance under ASU 2020-04 from December 31, 2022 to December 31, 2024. The Company adopted this this ASU on January 1, 2023 and the adoption of this ASU did not have a material impact on the Company's consolidated financial statements.

In August 2020, the FASB issued 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*. FASB ASU 2020-06 will simplify the accounting for convertible instruments by reducing the number of accounting models for convertible debt instruments and convertible preferred stock. Limiting the accounting models will result in fewer embedded conversion features being separately recognized from the host contract as compared with current GAAP. Convertible instruments that continue to be subject to separation models are (1) those with embedded conversion features that are not clearly and closely related to the host contract, that meet the definition of a derivative, and that do not qualify for a scope exception from derivative accounting and (2) convertible debt instruments issued with substantial premiums for which the premiums are recorded as paid-in capital. ASU 2020-06 also amends the guidance for the derivatives scope exception for contracts in an entity's own equity to reduce form-over-substance-based accounting conclusions. ASU 2020-06 will be effective January 1, 2024, for the Company. Early adoption is permitted, but no earlier than January 1, 2021, including interim periods within that year. The Company adopted this ASU on January 1, 2024 and the adoption of this ASU did not have a material impact on the Company's consolidated financial statements.

In December 2023, the FASB issued ASU 2023-09, Income Taxes (Topic 740): *Improvements to Income Tax Disclosures*. The amendments further enhance income tax disclosures, primarily through standardization and disaggregation of rate reconciliation categories and income taxes paid by jurisdiction. The amendments are effective for fiscal years beginning after December 15, 2024, and interim periods within fiscal years beginning after December 15, 2025. Early adoption is permitted and should be applied either prospectively or retrospectively. The Company does not expect the adoption of this ASU to have a material impact on the Company's financial statements.

Note 2.—Mortgage Loans Held-for-Sale

A summary of the UPB of mortgage LHFS by type is presented below:

	December 31, 2023	December 31, 2022
Jumbo & Non-qualified mortgages (NonQM)	$ 326	$ 11,658
Government (1)	—	—
Conventional (2)	—	2,506
Fair value adjustment (3)	(63)	(1,112)
Total mortgage loans held-for-sale	$ 263	$ 13,052

(1) Includes all government-insured loans including Federal Housing Administration (FHA), Veterans Affairs (VA) and United States Department of Agriculture (USDA).
(2) Includes loans eligible for sale to Fannie Mae and Federal Home Loan Mortgage Corporation (Freddie Mac or FHLMC).
(3) Changes in fair value are included in gain on sale of loans, net on the accompanying consolidated statements of operations and comprehensive earnings (loss).

As of December 31, 2023 and 2022, there was one mortgage LHFS with a UPB of $326 thousand that was in nonaccrual status as the loan was in foreclosure. The carrying value of this nonaccrual loan as of December 31, 2023 was $263 thousand.

Gain on sale of loans, net in the consolidated statements of operations and comprehensive earnings (loss) is comprised of the following for the years ended December 31, 2023 and 2022:

	For the Year Ended December 31, 2023	For the Year Ended December 31, 2022
(Loss) gain on sale of mortgage loans	$ (26)	$ 18,825
Premium from servicing retained loan sales	—	46
Unrealized loss from derivative financial instruments	(53)	(3,003)
Realized gain from derivative financial instruments	55	6,221
Change in mark to market on LHFS	1,090	(8,802)
Direct origination expenses, net	(39)	(4,553)
Change in provision for repurchases	1,019	(2,417)
Gain on sale of loans, net	$ 2,046	$ 6,317

Note 3.—Mortgage Servicing Rights

The Company selectively retains MSRs from its sales and securitization of certain mortgage loans or as a result of purchase transactions. MSRs are reported at fair value based on the expected income derived from the net projected cash flows associated with the servicing contracts. The Company receives servicing fees, less subservicing costs, on the UPB of the underlying mortgage loans. The servicing fees are collected from the monthly payments made by the mortgagors, or if delinquent, when the underlying real estate is foreclosed upon and liquidated. The Company may receive other remuneration from rights to various mortgagor-contracted fees, such as late charges, collateral reconveyance charges and nonsufficient fund fees, and the Company is generally entitled to retain the interest earned on funds held pending remittance (or float) related to its collection of mortgagor principal, interest, tax and insurance payments.

In December 2022, the Company sold $68.1 million in UPB of its government insured MSRs for approximately $725 thousand, receiving $508 thousand in proceeds upon sale, with the remaining proceeds received in 2023 upon transfer of the servicing and all trailing documents.

The following table summarizes the activity of MSRs for the years ended December 31, 2023 and 2022:

	December 31, 2023	December 31, 2022
Balance at beginning of year	$ —	$ 749
Additions from servicing retained loan sales	—	46
Reductions from bulk sales	—	(725)
Changes in fair value (1)	—	(70)
Fair value of MSRs at end of period	$ —	$ —

(1) Changes in fair value are included within gain on mortgage servicing rights, net in the accompanying consolidated statements of operations and comprehensive earnings (loss).

Gain on mortgage servicing rights, net is comprised of the following for the years ended December 31, 2023 and 2022:

	For the Year Ended December 31,	
	2023	2022
Change in fair value of mortgage servicing rights	$ —	$ (70)
(Loss) gain on sale of mortgage servicing rights	(23)	264
(Loss) gain on mortgage servicing rights, net	$ (23)	$ 194

Servicing (expense) fees, net is comprised of the following for the years ended December 31, 2023 and 2022:

	For the Year Ended December 31,	
	2023	2022
Contractual servicing fees	$ 15	$ 251
Subservicing and other costs	(48)	(188)
Servicing fees (expense), net	$ (33)	$ 63

Note 4.—Employee Retention Credit

The Employee Retention Credit (ERC), which was included as part of the Coronavirus Aid, Relief and Economic Security (CARES) Act and amended by the Consolidated Appropriations Act (CAA), the American Rescue Plan Act (ARPA), and the Infrastructure Investment and Jobs Act (IIJA), incentivizes employers severely impacted by the COVID-19 pandemic to retain their employees when they might otherwise find it difficult to do so. The fully refundable tax credit is allowed against the employer's share of employment taxes for qualified wages paid after March 12, 2020 and before October 1, 2021. Credits in excess of the tax amounts paid by an employer are treated as overpayments and are also refunded to the employer. The ERC is calculated as a percentage of qualified wages (as defined in the CARES Act, as amended) paid by an eligible employer. The Company applied for the ERC as it experienced a significant decline in gross receipts (for 2020, defined as a 50% decline in gross receipts when compared to the same calendar quarter in 2019, and for 2021, defined as a 20% decline in gross receipts when compared to the same quarter in 2019). The Company averaged more than 100 full-time employees (FTEs), but less than 500 FTEs during 2019, therefore, it was considered a large employer during 2020 and a small employer during 2021. As a large employer in 2020, only wages paid to employees not providing services were eligible for the ERC while as a small employer in 2021 all of the Company's otherwise qualified wages were eligible. For 2020, the ERC equaled 50 percent of an employee's qualified wages up to $10,000 per employee per calendar quarter with a maximum annual credit for each employee of $5,000. For 2021, the ERC equaled 70 percent of an employee's qualified wages up to $10,000 per employee per calendar quarter with a maximum annual credit of $21,000 for each employee.

The Company applied for the ERC by amending its previously filed Internal Revenue Service (IRS) forms 941, and as a result, the Company has accounted for this government grant by way of analogy to FASB ASC 410, *Asset Retirement and Environmental Obligations*. FASB ASC 410-30-35-8 indicates that a claim for recovery should be recognized only when the claim is probable of recovery as defined in FASB ASC 450-20-25-1 (i.e. Contingencies). During the year ended December 31, 2023, the Company applied for $7.3 million of ERC and received $1.1 million including accrued interest. Accordingly, the Company believes that the recovery of the remaining employment tax amounts previously paid is probable, and therefore, recorded $6.2 million as an ERC receivable as of December 31, 2023, and grant income in the other income section of its statements of operations for the year ended December 31, 2023.

Note 5.—Other Assets

Other assets consisted of the following:

	December 31, 2023	December 31, 2022
Prepaid expenses	$ 3,325	$ 2,410
Servicing advances	703	735
ROU asset (See Note 12)	474	1,248
Accounts receivable, net	129	916
Premises and equipment, net	89	220
Accrued interest receivable	—	75
Derivative assets (See Note 8)	—	52
Other	48	—
Total other assets	$ 4,768	$ 5,656

Accounts Receivable, net

Accounts receivable are primarily loan sales that have not settled, and fees earned for real estate services rendered, generally collected one month in arrears. Accounts receivable are stated at their carrying value as of December 31, 2023, and net of zero reserve for doubtful accounts as of December 31, 2023.

Servicing Advances

The Company is required to advance certain amounts to meet its contractual loan servicing requirements. The Company advances principal, interest, property taxes and insurance for borrowers that have insufficient escrow accounts, plus any other costs to preserve the properties. Also, the Company will advance funds to maintain, repair and market foreclosed real estate properties. The Company is entitled to recover advances from the borrowers for reinstated and performing loans or from proceeds of liquidated properties.

	December 31,	
	2023	2022
Investor P&I advances	$ 491	$ 451
Corporate advances	153	182
Escrow advances	59	102
Total servicing advances	$ 703	$ 735

Additionally, the Company may advance funds on defaulted mortgage loans. The advances represent the outstanding principal balance plus related foreclosure costs of loans in liquidation. At December 31, 2023, the Company had no default advances outstanding.

Premises and Equipment, net

Premises and equipment are stated at cost, less accumulated depreciation or amortization. Depreciation on premises and equipment is recorded using the straight-line method over the estimated useful lives of individual assets, typically three to twenty years. Premises and equipment, net consisted of the following at December 31, 2023:

	December 31,	
	2023	2022
Premises and equipment	$ 2,989	$ 6,209
Less: Accumulated depreciation	(2,900)	(5,989)
Total premises and equipment, net	$ 89	$ 220

The Company recognized $106 thousand and $317 thousand of depreciation expense within general, administrative and other expense in the accompanying consolidated statements of operations and comprehensive earnings (loss), for the years ended December 31, 2023 and 2022, respectively.

Note 6.—Debt

The following table shows contractual future debt maturities as of December 31, 2023:

	Payments Due by Period				
	Total	Less Than One Year	One to Three Years	Three to Five Years	More Than Five Years
Warehouse borrowings	$ —	$ —	$ —	$ —	$ —
Convertible notes	10,000	5,000	5,000	—	—
Long-term debt	62,000	—	—	—	62,000
Total debt obligations	$ 72,000	$ 5,000	$ 5,000	$ —	$ 62,000

Warehouse Borrowings

The Company, through its subsidiaries, enters into Master Repurchase Agreements with lenders providing warehouse facilities. The warehouse facilities are used to fund, and are secured by, residential mortgage loans that are held for sale. The warehouse and revolving lines of credit are repaid using proceeds from the sale of loans. The base interest rates on the Company's warehouse lines bear interest at 1-month Term Secured Overnight Financing Rate (SOFR) plus a margin or note rate minus a margin. Some of the lines carry additional fees in the form of annual facility fees charged on the total line amount, commitment fees charged on the committed portion of the line and non-usage fees charged when monthly usage falls below a certain utilization percentage. The Company's warehouse line is scheduled to expire on December 20, 2024 under a one year term and the line is subject to renewal based on an annual credit review conducted by the lender.

The base interest rates for all warehouse lines of credit are subject to increase based upon the characteristics of the underlying loans collateralizing the lines of credit, including, but not limited to product type and number of days held for sale. Certain warehouse line lenders require the Company, at all times, to maintain cash accounts with minimum required balances. As of December 31, 2023 and 2022, there was no restricted cash on the consolidated balance sheets attributable to these accounts.

Under the terms of these warehouse lines, the Company is required to maintain various financial and other covenants. At December 31, 2023, the Company was not in compliance with one financial covenant from its lender and is obtaining the necessary waiver, but has yet to receive it as of the date of the filing. There are no borrowings outstanding on the line.

The following table presents certain information on warehouse borrowings for the periods indicated:

	Maximum Borrowing Capacity	Balance Outstanding at December 31, 2023	Balance Outstanding at December 31, 2022	Allowable Advance Rates (%)	Rate Range	Maturity Date
Short-term borrowings:						
Repurchase agreement 1 (1)	$ 1,000	—	98	100	1-month Term SOFR + 2.50%	December 20, 2024
Repurchase agreement 2 (2)	—	—	3,524	99	Note Rate - 0.50 - 0.75%	December 31, 2022
Total warehouse borrowings	$ 1,000	$ —	$ 3,622			

(1) In December 2023, the Company entered into an agreement for a $1.0 million committed line.

(2) At December 31, 2022, the line expired, was not renewed and paid off with the loan sales in January 2023.

The following table presents certain information on warehouse borrowings for the periods indicated:

	For the Year Ended December 31,	
	2023	2022
Maximum outstanding balance during the year	$ —	$ 269,950
Average balance outstanding for the year	58	74,435
UPB of underlying collateral (mortgage loans)	—	4,577
Weighted average interest rate for period	7.56 %	4.19 %

Convertible Notes

In May 2015, the Company issued $25.0 million Convertible Notes (Notes) to purchasers (Convertible Note Holders), some of which are related parties. The Notes were originally due to mature on or before May 9, 2020 and accrued interest at a rate of 7.5% per annum, to be paid quarterly.

The Convertible Note Holders may convert all or a portion of the outstanding principal amount of the Notes into shares of the Company's common stock (Conversion Shares) at a rate of $21.50 per share, subject to adjustment for stock splits and dividends (Conversion Price). The Company has the right to convert the entire outstanding principal of the Notes into Conversion Shares at the Conversion Price if the market price per share of the common stock, as measured by the average volume-weighted closing stock price per share of the common stock on the NYSE AMERICAN (or any other U.S. national securities exchange then serving as the principal such exchange on which the shares of common stock are listed), reaches the level of $30.10 for any twenty (20) trading days in any period of thirty (30) consecutive trading days after the Closing Date (as defined in the Notes). Upon conversion of the Notes by the Company, the entire amount of accrued and unpaid interest (and all other amounts owing) under the Notes are immediately due and payable. To the extent the Company pays any cash dividends on its shares of common stock prior to conversion of the Notes, upon conversion of the Notes, the Convertible Note Holders will also receive such dividends on an as-converted basis of the Notes less the amount of interest paid by the Company prior to such dividend.

On April 15, 2020, the Company and the Convertible Note Holders agreed to extend the outstanding Notes in the principal amount of $25.0 million originally issued in May 2015, at the conclusion of the original note term (First Amendment). The new Notes were issued with a six month term (November 9, 2020) and reduced the interest rate on such Notes to 7.0% per annum. In connection with the issuance of the First Amendment, the Company issued to the Convertible Note Holders, warrants to purchase up to an aggregate of 212,649 shares of the Company's common stock at a cash exercise price of $2.97 per share. The relative fair value of the warrants were $242 thousand and recorded as debt discounts, which are accreted over the term of the warrants (October 2020), using an effective interest rate of 8.9%. The warrants are exercisable commencing on October 16, 2020 and expire on April 15, 2025. The First Amendment was accounted for as an extinguishment.

On October 28, 2020, the Company and the Convertible Note Holders agreed to extend the maturity date of the Notes upon conclusion of the term on November 9, 2020. The new Notes had an 18-month term due May 9, 2022 and the Company decreased the aggregate principal amount of the Notes to $20.0 million, following the pay-down of $5.0 million in principal of the Notes on November 9, 2020 (Second Amendment). The interest rate on the Notes remained at 7.0% per annum. The Second Amendment was accounted for as an extinguishment.

On April 29, 2022, the Company and the Convertible Note Holders agreed to extend the maturity date of the Notes to May 9, 2025, upon conclusion of the term on May 9, 2022. The Company decreased the aggregate principal amount of the new Notes to $15.0 million, following the pay-down of $5.0 million in principal of the Notes on May 9, 2022 (Third Amendment). The Notes are due and payable in three equal installments of $5.0 million on each of May 9, 2023, May 9, 2024 and the stated maturity date of May 9, 2025. Following the pay-down of $5.0 million in principal of the Notes on May 9, 2023, the amount outstanding at December 31, 2023, was $10.0 million. The interest rate on the Notes remains at 7.0% per annum.

In January 2024, an event of default was triggered associated with the long-term debt which caused a corresponding cross-default under the terms of the Notes. The Convertible Note Holders and the Company entered into a forbearance agreement through April 30, 2024. For further detail on the default and forbearance, see long-term debt below.

Long-term Debt

The Company carries its Junior Subordinated Notes at estimated fair value as more fully described in Note 10.—Fair Value of Financial Instruments. The following table shows the remaining principal balance and fair value of Junior Subordinated Notes issued as of December 31, 2023 and 2022:

	December 31, 2023	December 31, 2022
Junior Subordinated Notes (1)	$ 62,000	$ 62,000
Fair value adjustment (2)	(60,689)	(34,247)
Total Junior Subordinated Notes	$ 1,311	$ 27,753

(1) Stated maturity of March 2034; requires quarterly interest payments at a variable rate of 3-month LIBOR plus 3.75% per annum. In June 2023, with the cessation of LIBOR, the calculation agent will use the "Board-selected benchmark replacement" as the benchmark replacement for LIBOR, which, per the Federal LIBOR Act, will be a rate identified by the Federal Reserve Board that is (a) based on SOFR and (b) adjusted based on tenor spread adjustments. At December 31, 2023, the interest rate was 9.45%.
(2) For further detail on the determination of estimated fair value see Note 10.—Fair Value of Financial Instruments.

The Company is a party to Junior Subordinated Indenture, dated as of May 8, 2009 (the First Indenture), between the Company and The Bank of New York Mellon Trust Company, National Association, as trustee, pursuant to which the Company issued a Junior Subordinated Note due 2034 in the original principal amount of $31.8 million (the First Junior Note). Pursuant to the terms of the First Junior Note and First Indenture, an interest payment was due on December 29, 2023, which had a thirty (30) day grace period for payment which ended on January 29, 2024. The Company did not make the required interest payment and such non-payment resulted in an Event of Default (as defined in the First Indenture).

The First Indenture Event of Default caused a corresponding Event of Default under that certain Junior Subordinated Indenture, dated as of May 8, 2009 (the Second Indenture), between the Company and The Bank of New York Mellon Trust Company, National Association, as trustee, pursuant to which the Company issued a Junior Subordinated Note due 2034 in the original principal amount of $30.2 million (the Second Junior Note).

Similarly, the Event of Default under the First Indenture and corresponding Event of Default under the Second Indenture resulted in a cross-default under the terms of the previously discussed Notes, issued by the Company pursuant to that certain Note Purchase Agreement among the Company and the purchasers thereto Convertible Note Holders, dated as of May 8, 2015 (the Note Purchase Agreement), for which the total outstanding principal balance as of December 31, 2023 was $10.0 million.

The Company notified the Convertible Note Holders on January 30, 2024 of the Event of Default under the Note Purchase Agreement. On January 31, 2024, the Convertible Note Holders notified the Company that they were exercising all of their remedies under the Note Purchase Agreement and Convertible Notes, including acceleration of the indebtedness evidenced thereunder.

On February 6, 2024, the Company and the collateral manager for the holders of the First Junior Note and Second Junior Note entered into a forbearance agreement whereby the collateral manager agreed to forbear from exercising its right and remedies under the First Indenture and Second Indenture through February 29, 2024.

On February 7, 2024, the Company and the Convertible Note Holders entered into a forbearance agreement whereby the Convertible Note Holders agreed to forbear from exercising their rights and remedies under the Convertible Notes and Note Purchase Agreement through February 29, 2024.

On February 21, 2024, the Company entered into first amendments to each of the forbearance agreements whereby the expiration date of such forbearance agreements (initially February 29, 2024) was extended to March 31, 2024.

On April 1, 2024, the Company entered into second amendments to each of the forbearance agreements whereby the expiration date of such forbearance agreements was extended to April 30, 2024.

Under the terms of the First and Second Indentures, the Company would need to be current on all interest payments, default interest and fees owed to cure the event of default, which would then also cure the cross-default with the Notes.

Note 7.—Securitized Mortgage Trusts

In March 2022, the Company and its subsidiaries (the Sellers), entered into a Purchase, Sale and Assignment Agreement (Sale Agreement) pursuant to which the Sellers sold certain residual interest certificates, and assigned certain optional termination and loan purchase rights, owned by the Sellers relating to 37 securitizations that closed between 2000 and 2007 (the Securitizations). Pursuant to the terms of the Sale Agreement, the purchaser paid the Company an aggregate cash purchase price of $37.5 million, $20.0 million of which was paid on March 16, 2022, and the remaining balance of the purchase price was paid on March 25, 2022, upon the Company's satisfaction of certain closing and payment release provisions, including delivery of certain residual interest certificates, set forth in the Sale Agreement. For the three months ended March 31, 2022, the Company recorded a $9.2 million increase in fair value, net of $277 thousand in transaction costs related to the transfer.

At December 31, 2022, the Company was also a master servicer of mortgages for others of approximately $138.3 million in UPB that were primarily collateralizing REMIC securitizations. In March 2023, the Company sold the master servicing rights relating to 54 securitizations that closed between 1998 and 2007 for $150 thousand and incurred a net loss of $33 thousand, which is included in servicing (expense) fees, net on the accompanying consolidated statements of operations.

Change in Fair Value of Net Trust Assets, including Trust REO Gains

Changes in fair value of net trust assets, including trust REO gains are comprised of the following for the years ended December 31, 2023 and 2022:

	For the Year Ended December 31,	
	2023	2022
Change in fair value of net trust assets, excluding REO	$ —	$ 9,248
Gains from trust REO	—	—
Change in fair value of net trust assets, including trust REO gains	$ —	$ 9,248

Note 8.—Derivative Instruments

The Company enters into IRLCs with prospective borrowers to originate mortgage loans at a specified interest rate and Hedging Instruments to hedge the fair value changes associated with changes in interest rates relating to its mortgage loan origination operations. The fair value of IRLCs and Hedging Instruments related to mortgage loan origination are included in other assets or other liabilities in the accompanying consolidated balance sheets. As of December 31, 2023, there were no IRLCs and Hedging Instruments. As of December 31, 2022, the estimated fair value of IRLCs was $5 thousand while Hedging Instruments was $47 thousand.

The following table includes information for the derivative assets and liabilities for the periods presented:

	Notional Amount		Total Gains (Losses) For the Year Ended December 31,	
	December 31, 2023	December 31, 2022	2023	2022
Derivative – IRLCs (1)	$ —	$ 493	$ (5)	$ (3,106)
Derivative – TBA MBS (1)	—	7,000	(141)	5,020
Derivative – Swap Futures (1)	—	8,800	148	1,304

(1) Amounts included in gain on sale of loans, net within the accompanying consolidated statements of operations and comprehensive earnings (loss).

Note 9.—Redeemable Preferred Stock

As disclosed within Note 12.—Commitments and Contingencies, on July 15, 2021, the Maryland Court of Appeals issued its decision affirming the decisions of the Maryland Circuit Court (the Circuit Court) and the Court of Special Appeals granting summary judgment in favor of the plaintiffs on the Series B Preferred voting rights language interpretation. Accordingly, the 2009 Article Amendments to the 2004 Series B Articles Supplementary were not validly adopted and the 2004 Series B Articles Supplementary remained in effect.

As a result, as of September 30, 2022, the Company had cumulative undeclared dividends in arrears of approximately $20.3 million, or approximately $30.47 per outstanding share of Series B Preferred stock, thereby increasing the liquidation value to approximately $55.47 per share. Every quarter the cumulative undeclared dividends in arrears increased by $0.5859 per Series B Preferred share, or approximately $390 thousand. The accrued and unpaid dividends on the Series B Preferred stock were payable only upon declaration by the Board of Directors, and the liquidation preference, inclusive of Series B Preferred cumulative undeclared dividends in arrears, was only payable upon voluntary or involuntary liquidation, dissolution or winding up of the Company's affairs. In addition, the Company was required to pay an amount equal to three quarters of dividends on the Series B Preferred stock under the 2004 Series B Preferred Articles Supplementary (approximately $1.2 million, which had been previously accrued for [such amount, the 2009 Dividend Amount]) to Series B Preferred shareholders as of August 15, 2022, into the registry of the Circuit Court no later than August 19, 2022, to be held pending final resolution of all issues and final determination by the Circuit Court of the appropriate distribution of those funds. The Company deposited the 2009 Dividend Amount on August 18, 2022.

At September 30, 2022, the Company had $72.0 million in outstanding liquidation preference of Series B Preferred and Series C Preferred stock (including cumulative unpaid dividends in the case of the Series B Preferred stock). The holders of each series of Preferred Stock, which carried limited voting rights and were redeemable at the option of the Company, retained the right to a $25.00 per share liquidation preference (plus cumulative unpaid dividends in the case of the Series B Preferred stock) in the event of a liquidation of the Company and the right to receive dividends on the Preferred Stock if any such dividends were declared (and, in the case of the Series B Preferred stock, before any dividends or other distributions are made to holders of junior stock, including the Company's common stock). However as further discussed below, holders of Series B Preferred stock and Series C Preferred stock in connection with the Exchange Offers and the Redemption received the applicable consideration payable therein and were not entitled to any other payment with respect to the liquidation preference of, or any accrued and unpaid dividends on, any shares of Preferred Stock, other than the rights of holders of Series B Preferred stock to receive the 2009 Dividend Amount, based upon final determinations as to entitlement to such amounts by the Circuit Court.

Common and preferred dividends were included in the reconciliation of earnings per share beginning July 15, 2021, which was the date the Maryland Court of Appeals affirmed the decision in granting summary judgment in favor of the plaintiffs on the Series B Preferred voting rights. Cumulative preferred dividends, whether or not declared, were reflected in basic and diluted earnings per share in accordance with FASB ASC 260-10-45-11, despite not being accrued for on the consolidated balance sheets.

On September 14, 2022, the Company commenced exchange offers (the Exchange Offers) and a consent solicitation for its outstanding shares of Series B Preferred stock and Series C Preferred stock. On October 20, 2022 (the Expiration Date), the Exchange Offers and consent solicitation expired with approximately 69% of the Series B Preferred stock and approximately 67% of the Series C Preferred stock tendering their shares and voting in favor of certain amendments to the Company's charter as discussed in further detail below. Holders of Series B Preferred stock were entitled to receive (the Series B Consideration), for each share of Series B Preferred stock tendered, (i) 13.33 shares of newly issued common stock and (ii) thirty (30) shares of newly issued 8.25% Series D Cumulative Redeemable Preferred Stock (Series D Preferred stock). Holders of Series C Preferred stock were entitled to receive (the Series C Consideration), for each share of Series C Preferred stock tendered, (i) 1.25 shares of newly issued common stock, (ii) 1.5 warrants to purchase an equal number of shares of common stock at an exercise price of $5.00 per share and (iii) one (1) share of Series D Preferred stock. In connection with the closing of the Exchange Offers, the Company issued on October 26, 2022, a total of 7,330,319 shares of newly issued common stock, 14,773,811 shares of Series D Preferred stock and 1,425,695 warrants to purchase an equal number of shares of common stock.

Concurrently with the Exchange Offers, the Company received consent from the requisite holders of each of its outstanding Series B Preferred stock and its outstanding Series C Preferred stock to amend its charter to (i) make all shares of Series B Preferred stock that remain outstanding after the closing of the Exchange Offers redeemable for the same consideration as the Series B Consideration and (ii) make all shares of Series C Preferred stock that remain outstanding after the closing of the Exchange Offers redeemable for the same consideration as the Series C Consideration. On October 27, 2022, the Company provided notice to holders of Series B Preferred stock and Series C Preferred stock that such shares would be redeemed (the Redemption) on November 15, 2022 upon which holders of Series B Preferred stock and Series C Preferred stock will only be entitled to receive the Series B Consideration and the Series C Consideration, as the case may be. In connection with the Redemption, the Company issued approximately 3,298,439 shares of newly issued common stock, 6,599,035 shares of Series D Preferred stock and 681,923 warrants to purchase an equal number of shares of common stock.

All holders of Series B Preferred stock and Series C Preferred stock in connection with the Exchange Offers and the Redemption only received the applicable consideration payable therein and were not entitled to any other payment with respect to the liquidation preference of, or any accrued and unpaid dividends on, any shares of Series B Preferred stock or Series C Preferred stock (whether or not such dividends have accumulated and whether or not such dividends accrued before or after completion of the Exchange Offers), other than the rights of holders of Series B Preferred stock to receive the 2009 Dividend Amount, based upon final determinations as to entitlement to such amounts by the Circuit Court.

In addition, on August 25, 2022, the Circuit Court issued an Order to Segregate Funds and/or Stock (Segregation Order), directing the Company, if the Exchange Offer for the Series B Preferred stock is completed prior to December 5, 2022, to deposit 13,311,840 shares of Series D Preferred stock, plus, in either event, 4,437,280 shares of newly issued common stock (collectively, the Series B Common Fund) in the custody of a third party custodian or escrow agent approved by class counsel. The Exchange Offer was approved and closed with respect to tendered shares on October 26, 2022, and the Company deposited the required stock with a third party pursuant to the Segregation Order. On August 29, 2022, the Circuit Court issued an order approving the form and substance of the notice by which the Company and the class notice administrator are required to give notice to the Series B Preferred stock class of the final hearing date of December 5, 2022, and the opportunity to file objections to the proposed final injunctive relief and to the applications for awards of attorney's fees, expenses and incentives. Between September 7 through September 19, the Company and the notice administrator provided the notice required by the August 29, 2022 order.

On December 5, 2022, the Circuit Court held a final hearing on all outstanding matters identified in the notice. On December 16, 2022, the Circuit Court issued its Final Judgment Order which was entered on December 19, 2022. The Final Judgment Order granted Plaintiff Camac's Motion for Attorney's Fees, Litigation Costs, and Incentive Payment, granted in part and denied in part Plaintiff Timm's Petition for Incentive Award and Payment of Costs and Expenses. In February 2023, pursuant to the Final Judgement Order, (i) the 2009 Dividend Amount was distributed to certain former Series B Preferred stockholders, with a portion going to pay attorney's fees, litigation costs and incentive payments and (ii) the Common Stock and Series D Preferred Stock that was held in escrow was distributed to certain former Series B Preferred stockholders, with a portion of the Series D Preferred Stock going to pay attorney's fees to Class Counsel.

The Series D Preferred stock (w) ranks senior to the common stock as to dividends and upon liquidation; (x) is non-participating, and bears a cumulative cash dividend from and including the original issue date at a fixed rate equal to 8.25% per annum (equivalent to a fixed annual amount of $.00825 per share of the Series D Preferred stock); (y) bears an initial liquidation preference of $0.10 per share and (z) is mandatorily redeemable by the Company for cash at a redemption price of $0.10 per share, plus any accrued and unpaid dividends (whether or not declared) on (A) the 60th day, or such earlier date as the Company may fix, after the date of any public announcement by the Company of annual or quarterly financial statements that indicate that payment of the redemption price would not cause the Company to violate the restrictions on payment of distributions to stockholders under section 2-311 of the MGCL unless, before such redemption date, the Company's Board of Directors determines in good faith that the payment by the Company of the redemption price for the Series D Preferred stock and for any stock ranking on parity with the Series D Preferred stock with respect to redemption and which have become redeemable as of the applicable redemption date would cause the Company to violate the Cash Consideration Restrictions, as defined below, or (B) any date the Company fixes not more than sixty (60) days after any determination by the Board of Directors (which the Board of Directors, or a committee thereof, is obligated to undertake after the release of annual and quarterly financial statements and upon any capital raise) in good faith that the payment by the Company of the redemption price for the Series D Preferred stock and any stock ranking on parity with the Series D Preferred stock with respect to redemption rights that have become redeemable as of such redemption date would not cause the Company to violate the Cash Consideration Restrictions. A violation of the "Cash Consideration Restrictions" will occur if the occurrence of an action would cause (i) the Company to violate the restrictions on payment of distributions to stockholders under section 2-311 of the MGCL, (ii) any material breach of or default under the terms and conditions of any obligation of the Company, including any agreement relating to its indebtedness, or (iii) the Company to violate any restriction or prohibition of any law rule or regulation applicable to the Company or of any order, judgment or decree of any court or administrative agency.

As a result of receiving the requisite stockholder consents on the Exchange Offers on October 20, 2022 and completion of the Redemption, the aggregate cumulative undeclared dividends in arrears of approximately $20.3 million, or approximately $30.47 per outstanding share of Series B Preferred stock, were exchanged and are no longer considered in the earnings per share calculation. However, as a result of the Company not being able to satisfy the new dividend payment on the 8.25% dividend on the Series D Preferred stock due to the aforementioned Cash Consideration Restrictions, the Company has approximately $338 thousand in cumulative dividends in arrears on the new Series D Preferred stock from the date of issuance through December 31, 2023. Every quarter the cumulative undeclared dividends in arrears will accumulate by approximately $0.0021 per share of Series D Preferred stock, or approximately $72 thousand, increasing the new Series D Preferred stock liquidation preference. Cumulative preferred dividends, whether or not declared, are reflected in basic and diluted loss per share in accordance with FASB ASC 260-10-45-11, despite not being accrued for on the consolidated balance sheets.

Note 10.—Fair Value of Financial Instruments

The use of fair value to measure the Company's financial instruments is fundamental to its consolidated financial statements and is a critical accounting estimate because a substantial portion of its assets and liabilities are recorded at estimated fair value.

FASB ASC 825 requires disclosure of the estimated fair value of certain financial instruments and the methods and significant assumptions used to estimate such fair values. The Company uses exit price notion when measuring the fair values of financial instruments for disclosure purposes. The following table presents the estimated fair value of financial instruments included in the consolidated financial statements as of the dates indicated:

	December 31, 2023				December 31, 2022			
	Carrying	Estimated Fair Value			Carrying	Estimated Fair Value		
	Amount	Level 1	Level 2	Level 3	Amount	Level 1	Level 2	Level 3
Assets								
Cash and cash equivalents	$ 4,240	$ 4,240	$ —	$ —	$ 25,864	$ 25,864	$ —	$ —
Restricted cash	4,250	4,250	—	—	4,140	4,140	—	—
Mortgage loans held-for-sale	263	—	263	—	13,052	—	13,052	—
Derivative assets, net (1)	—	—	—	—	52	—	47	5
Liabilities								
Warehouse borrowings	$ —	$ —	$ —	$ —	$ 3,622	$ —	$ 3,622	$ —
Convertible notes	10,000	—	—	10,000	15,000	—	—	15,000
Long-term debt	1,311	—	—	1,311	27,753	—	—	27,753

(1) Represents IRLCs and Hedging Instruments and are included in other assets in the accompanying consolidated balance sheets.

The fair value amounts above have been estimated by management using available market information and appropriate valuation methodologies. Considerable judgment is required to interpret market data to develop the estimates of fair value in both inactive and orderly markets. Accordingly, the estimates presented are not necessarily indicative of the amounts that could be realized in a current market exchange. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated fair value amounts. Refer to Recurring Fair Value Measurements below for a description of the valuation methods used to determine the fair value of long-term debt, derivative assets and liabilities and mortgage LHFS.

Fair Value Hierarchy

The application of fair value measurements may be on a recurring or nonrecurring basis depending on the accounting principles applicable to the specific asset or liability or whether management has elected to carry the item at its estimated fair value.

FASB ASC 820-10-35 specifies a hierarchy of valuation techniques based on whether the inputs to those techniques are observable or unobservable. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect the Company's market assumptions. These two types of inputs create the following fair value hierarchy:

- Level 1—Quoted prices (unadjusted) in active markets for identical instruments or liabilities that an entity has the ability to assess at measurement date.

- Level 2—Quoted prices for similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; inputs other than quoted prices that are observable for an asset or liability, including interest rates and yield curves observable at commonly quoted intervals, prepayment speeds, loss severities, credit risks and default rates; and market-corroborated inputs.

- Level 3—Valuations derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable.

This hierarchy requires the Company to use observable market data, when available, and to minimize the use of unobservable inputs when estimating fair value.

As a result of the lack of observable market data resulting from inactive markets, the Company classified its derivative assets (IRLCs) and long-term debt as Level 3 fair value measurements. Level 3 assets and liabilities measured at fair value on a recurring basis were approximately 0% and 12% and 0% and 60%, respectively, of total assets and total liabilities measured at estimated fair value at December 31, 2023 and 2022.

Recurring Fair Value Measurements

The Company assesses its financial instruments to determine the appropriate classification within the fair value hierarchy, as defined by FASB ASC Topic 810. Transfers between fair value classifications occur when there are changes in pricing observability levels. Transfers of financial instruments among the levels occur at the beginning of the reporting period. There were no material transfers into Level 3 classified instruments during the year ended December 31, 2023.

The following tables present the Company's assets and liabilities that are measured at estimated fair value on a recurring basis, including financial instruments for which the Company has elected the fair value option at December 31, 2023 and 2022, based on the fair value hierarchy:

	Recurring Fair Value Measurements					
	December 31, 2023			December 31, 2022		
	Level 1	Level 2	Level 3	Level 1	Level 2	Level 3
Assets						
Mortgage loans held-for-sale	$ —	$ 263	$ —	$ —	$ 13,052	$ —
Derivative assets, net (1)	—	—	—	—	47	5
Total assets at fair value	$ —	$ 263	$ —	$ —	$ 13,099	$ 5
Liabilities						
Long-term debt	$ —	$ —	$ 1,311	$ —	$ —	$ 27,753
Total liabilities at fair value	$ —	$ —	$ 1,311	$ —	$ —	$ 27,753

(1) At December 31, 2023, there were no derivative assets, net and Hedging Instruments. At December 31, 2022, derivative assets, net included $5 thousand in IRLCs and $47 thousand in Hedging Instruments included in other assets in the accompanying consolidated balance sheets.

The following tables present a reconciliation for all assets and liabilities measured at fair value on a recurring basis using significant unobservable inputs (Level 3) for the years ended December 31, 2023 and 2022:

	Level 3 Recurring Fair Value Measurements For the Year Ended December 31, 2023	
	Interest rate lock commitments, net	**Long-term debt**
Fair value, December 31, 2022	$ 5	$ (27,753)
Total (losses) gains included in earnings:		
Interest income	—	—
Interest expense (1)	—	251
Change in fair value	(5)	1,434
Change in instrument specific credit risk (2)	—	24,757
Total (losses) gains included in earnings	(5)	26,442
Transfers in and/or out of Level 3	—	—
Purchases, issuances and settlements:		
Purchases	—	—
Issuances	—	—
Settlements	—	—
Fair value, December 31, 2023	$ —	$ (1,311)

(1) Amounts primarily represent accretion to recognize interest income and interest expense using effective yields based on estimated fair values for trust assets and liabilities. Net interest income, including cash received and paid, was zero for the year ended December 31, 2023. The difference between accretion of interest income and expense and the amounts of interest income and expense recognized in the consolidated statements of operations and comprehensive earnings (loss) is primarily from contractual interest on the securitized mortgage collateral and borrowings.

(2) Amount represents the change in instrument specific credit risk in other comprehensive earnings (loss) in the consolidated statements of operations and comprehensive earnings (loss).

	Level 3 Recurring Fair Value Measurements For the Year Ended December 31, 2022				
	Securitized mortgage collateral	**Securitized mortgage borrowings**	**Mortgage servicing rights**	**Interest rate lock commitments, net**	**Long-term debt**
Fair value, December 31, 2021	$ 1,639,251	$ (1,614,862)	$ 749	$ 3,111	$ (46,536)
Total gains (losses) included in earnings:					
Interest income (1)	2,019	—	—	—	—
Interest expense (1)	—	(7,564)	—	—	(1,187)
Change in fair value	9,248	—	(70)	(3,106)	2,757
Change in instrument specific credit risk (2)	—	—	—	—	17,213
Total gains (losses) included in earnings	11,267	(7,564)	(70)	(3,106)	18,783
Transfers in and/or out of Level 3	—	—	—	—	—
Purchases, issuances and settlements:					
Purchases	—	—	—	—	—
Issuances	—	—	46	—	—
Settlements	(1,650,518)	1,622,426	(725)	—	—
Fair value, December 31, 2022	$ —	$ —	$ —	$ 5	$ (27,753)

(1) Amounts primarily represent accretion to recognize interest income and interest expense using effective yields based on estimated fair values for trust assets and liabilities. Net interest income, including cash received and paid, was $1.2 million for the year ended December 31, 2022. The difference between accretion of interest income and expense and the amounts of interest income and expense recognized in the consolidated statements of operations and comprehensive earnings (loss) is primarily from contractual interest on the securitized mortgage collateral and borrowings.

(2) Amount represents the change in instrument specific credit risk in other comprehensive earnings (loss) in the consolidated statements of operations and comprehensive earnings (loss).

The following table presents quantitative information about the valuation techniques and unobservable inputs applied to Level 3 fair value measurements for financial instruments measured at fair value on a recurring and non-recurring basis at December 31, 2023 and 2022.

			December 31, 2023		December 31, 2022	
Financial Instrument	**Valuation Technique**	**Unobservable Input**	**Range of Inputs**	**Weighted Average**	**Range of Inputs**	**Weighted Average**
Other assets and liabilities						
Derivative assets – IRLCs, net	Market pricing	Pull-through rates	- %	- %	70.0 – 78.0 %	72.3 %
	Expected cash flows (weighted 80%)	Expected liquidation proceeds	N/A	N/A	N/A	N/A
Long-term debt (1)	Market pricing (weighted 15%)	Indicative bids	N/A	N/A	N/A	N/A
	Discounted cash flows (weighted 5%)	Discount rate	100% %	100% %	N/A %	N/A %

(1) For the year ended December 31, 2023, the Company used three different techniques to determine the estimated fair value of the long-term debt. For further detail see measurement techniques used in determining the estimated fair value on a recurring basis. For the year ended December 31, 2022, the Company used the expected cash flow valuation methodology and the unobservable input was the expected proceeds.

A significant increase or decrease in pull-through rate assumptions would result in a significant increase or decrease, respectively, in the fair value of IRLCs. The Company believes that the imprecision of an estimate could be significant.

The following tables present the changes in recurring fair value measurements included in net losses for the years ended December 31, 2023 and 2022:

	Recurring Fair Value Measurements Changes in Fair Value Included in Net Loss For the Year Ended December 31, 2023						
			Change in Fair Value of				
	Interest Income (1)	**Interest Expense (1)**	**Net Trust Assets**	**Long-term Debt**	**Other Income and Expense**	**(Loss) Gain on Sale of Loans, net**	**Total**
Long-term debt	$ —	$ 251	—	$ 1,434	$ —	$ —	$ 1,685
Mortgage loans held-for-sale	—	—	—	—	—	1,090	1,090
Derivative assets — IRLCs	—	—	—	—	—	(5)	(5)
Derivative liabilities — Hedging Instruments	—	—	—	—	—	(48)	(48)
Total	**$ —**	**$ 251**	**$ —**	**$ 1,434**	**$ —**	**$ 1,037**	**$ 2,722**

	Recurring Fair Value Measurements Changes in Fair Value Included in Net Loss For the Year Ended December 31, 2022						
			Change in Fair Value of				
	Interest Income (1)	**Interest Expense (1)**	**Net Trust Assets**	**Long-term Debt**	**Other Income and Expense**	**(Loss) Gain on Sale of Loans, net**	**Total**
Securitized mortgage collateral	$ 2,019	$ —	9,248	$ —	$ —	$ —	$ 11,267
Securitized mortgage borrowings	—	(7,564)	—	—	—	—	(7,564)
Long-term debt	—	(1,187)	—	2,757	—	—	1,570
Mortgage servicing rights (2)	—	—	—	—	(70)	—	(70)
Mortgage loans held-for-sale	—	—	—	—	—	(8,802)	(8,802)
Derivative assets — IRLCs	—	—	—	—	—	(3,106)	(3,106)
Derivative liabilities — Hedging Instruments	—	—	—	—	—	103	103
Total	**$ 2,019**	**$ (8,751)**	**$ 9,248** (3)	**$ 2,757**	**$ (70)**	**$ (11,805)**	**$ (6,602)**

(1) Amounts primarily represent accretion to recognize interest income and interest expense using effective yields based on estimated fair values for trust assets and trust liabilities.
(2) Included in gain on mortgage servicing rights, net in the consolidated statements of operations and comprehensive earnings (loss).
(3) For the year ended December 31, 2022, the change in the fair value of trust assets, excluding REO was $9.2 million.

The following is a description of the measurement techniques for items recorded at estimated fair value on a recurring basis.

Mortgage servicing rights—The Company elected to carry its mortgage servicing rights arising from its mortgage loan origination operation at fair value. The fair value of mortgage servicing rights is based upon a discounted cash flow model. The valuation model incorporates assumptions that market participants would use in estimating the fair value of servicing. These assumptions include estimates of prepayment speeds, discount rate, cost to service, escrow account earnings, contractual servicing fee income, prepayment and late fees, among other considerations. As discussed in Note 3.— Mortgage Servicing Rights, the Company sold its government insured MSRs for approximately $725 thousand in December 31, 2022. Mortgage servicing rights were considered a Level 3 measurement at December 31, 2022.

Mortgage loans held-for-sale—The Company elected to carry its mortgage LHFS originated or acquired from its mortgage lending operation at fair value. Fair value is based on quoted market prices, where available, prices for other traded mortgage loans with similar characteristics, and purchase commitments and bid information received from market participants. Given the meaningful level of secondary market activity for mortgage loans, active pricing is available for similar assets and accordingly, the Company classified its mortgage LHFS as a Level 2 measurement at December 31, 2023 and 2022.

Securitized mortgage collateral—The Company carried its securitized mortgage collateral at fair value. These assets consist primarily of non-conforming mortgage loans securitized between 2002 and 2007. Fair value measurements were based on the Company's internal models used to compute the net present value of future expected cash flows, with observable market participant assumptions, where available. The Company's assumptions included its expectations of inputs that other market participants would use in pricing these assets. These assumptions included judgments about the underlying collateral, prepayment speeds, estimated future credit losses, forward interest rates, investor yield requirements and certain other factors. As discussed in Note 7.— Securitized Mortgage Trusts, in March 2022, the Company sold certain certificates, and assigned certain optional termination and loan purchase rights associated with the consolidated securitization trusts for $37.5 million and deconsolidated the securitized mortgage trust assets and liabilities, recording a $9.2 million fair value increase, net of $277 thousand in transaction costs related to the transfer.

Securitized mortgage borrowings—The Company carried its securitized mortgage borrowings at fair value. These borrowings consisted of individual tranches of bonds issued by securitization trusts and are primarily backed by non-conforming mortgage loans. Fair value measurements included the Company's judgments about the underlying collateral and assumptions such as prepayment speeds, estimated future credit losses, forward interest rates, investor yield requirements and certain other factors. As discussed in Note 7.— Securitized Mortgage Trusts, in March 2022, the Company sold certain certificates, and assigned certain optional termination and loan purchase rights associated with the consolidated securitization trusts for $37.5 million and deconsolidated the securitized mortgage trust assets and liabilities, recording a $9.2 million fair value increase, net of $277 thousand in transaction costs related to the transfer.

Long-term debt—The Company elected to carry its remaining long-term debt (consisting of junior subordinated notes) at fair value. These securities are measured based upon an analysis prepared by management, which considers the Company's own credit risk, including settlements with trust preferred debt holders, if any, and a cash flow analysis. At December 31, 2022, the Company used an expected cash flow valuation methodology to estimate the cash flows based on the expected proceeds that the asset would receive. At December 31, 2023, the Company used three different methodologies [estimated cash flows (expected cash liquidation proceeds (weighted at 80%), market pricing (indicative bids (weighted at 15%)) and discounted cash flows (with a 100% discount rate (weighted at 5%))]. Based on the qualitative and quantitative valuation processes applied, the Company believes that the best estimate of fair value is a blended confidence weighted approach which required considerable amount of judgement to determine the probability of each outcome presented, and included qualitative factors including default, cash burn, seniority, passage of time in its assessment and assignment of performance confidence levels to each outcome. As of December 31, 2023, long-term debt had an unpaid principal balance of $62.0 million compared to an estimated fair value of $1.3 million. The aggregate unpaid principal balance exceeds the fair value by $60.7 million at December 31, 2023. The long-term debt is considered a Level 3 measurement at December 31, 2023 and 2022.

Derivative assets and liabilities— Derivative assets and liabilities are carried at fair value and are accounted for as free standing derivatives. All derivative financial instruments are recognized on the consolidated balance sheets at fair value with changes in the fair values being reported in current period earnings. The derivatives include IRLCs with prospective residential mortgage borrowers whereby the interest rate on the loan is determined prior to funding and the borrowers have locked in that interest rate. These commitments are determined to be derivative instruments in accordance with GAAP. The derivatives also include Hedging Instruments used to hedge the fair value changes associated with changes in interest rates relating to its mortgage lending originations. The Company hedges the period from the interest rate lock (assuming a fall-out factor) to the date of the loan sale. The estimated fair value of IRLCs are based on underlying loan types with similar characteristics using the TBA MBS market, which is actively quoted and validated through external sources. The data inputs used in this valuation include, but are not limited to, loan type, underlying loan amount, note rate, loan program and expected sale date of the loan, adjusted for current market conditions. These valuations are adjusted at the loan level to consider the servicing release premium and loan pricing adjustments specific to each loan. For all IRLCs, the base value is then adjusted for the anticipated Pull-through Rate. The anticipated Pull-through Rate is an unobservable input based on historical experience, which results in classification of IRLCs as a Level 3 measurement at December 31, 2022. The fair value of the TBA MBS and forward delivery commitments is based on the actively quoted TBA MBS market using observable inputs related to characteristics of the underlying MBS stratified by product, coupon and settlement date. Therefore, the TBA MBS and forward delivery commitment, if any, are classified as a Level 2 measurement at December 31, 2022. The Company also utilizes interest rate swap futures to hedge interest rate risk. These instruments are actively traded in a liquid market and classified as Level 2 measurement at December 31, 2022.

Nonrecurring Fair Value Measurements

The Company is required to measure certain assets and liabilities at estimated fair value from time to time. These fair value measurements typically result from the application of specific accounting pronouncements under GAAP. The fair value measurements are considered nonrecurring fair value measurements under FASB ASC 820-10.

The following table presents financial and non-financial assets and liabilities measured using nonrecurring fair value measurements at December 31, 2023 and 2022, respectively:

	Nonrecurring Fair Value Measurements					
	December 31, 2023			December 31, 2022		
	Level 1	Level 2	Level 3	Level 1	Level 2	Level 3
ROU asset	$ —	$ —	$ 474	$ —	$ —	$ 1,248

The following table presents total (losses) on financial and non-financial assets and liabilities measured using nonrecurring fair value measurements for the years ended December 31, 2023 and 2022, respectively:

	Total (Losses) (1)	
	For the Year Ended December 31,	
	2023	2022
ROU asset impairment	$ —	$ (123)

(1) Total (losses) reflect (losses) from all nonrecurring measurements during the year.

ROU asset impairment—The Company performs reviews of its ROU assets for impairment when evidence exists that the carrying value of an asset may not be recoverable. During the first quarter of 2022, the Company recorded a $123 thousand ROU asset impairment charge related to the sublease of approximately 1,900 square feet of a floor within the Company's corporate office, reducing the carrying value of the lease asset to its estimated fair value. The impairment charge is included in general, administrative and other expense in the consolidated statements of operations and comprehensive earnings (loss). ROU asset was considered a Level 3 fair value measurement at December 31, 2023 and December 31, 2022.

Note 11.—Income Taxes

The Company is subject to federal income taxes as a regular (Subchapter C) corporation and files a consolidated U.S. federal income tax return.

Income taxes for the years ended December 31, 2023 and 2022 were as follows:

	For the Year Ended December 31, 2023	2022
Current income taxes:		
Federal	$ —	$ —
State	6	38
Total current income tax expense	6	38
Deferred income taxes:		
Federal	—	—
State	—	—
Total deferred income tax expense	—	—
Total income tax expense	$ 6	$ 38

The Company recorded income tax expense of $6 thousand and $38 thousand for the years ended December 31, 2023 and 2022, respectively. The income tax expense for the year ended December 31, 2023 and 2022, was primarily the result of state minimum taxes and franchise taxes.

Deferred tax assets are recognized subject to management's judgment that realization is "more likely than not". A valuation allowance is recognized for a deferred tax asset if, based on the weight of the available evidence, it is more likely than not that some portion of the deferred tax asset will not be realized. In making such judgments, significant weight is given to evidence that can be objectively verified. As of each reporting date, the Company considers new evidence, both positive and negative, that could impact management's view with regard to future realization of deferred tax assets. Significant judgment is required in assessing future earnings trends, the availability of tax planning strategies, recent pretax losses and the timing of reversals of temporary differences. The Company's evaluation is based on current tax laws as well as management's expectation of future performance.

The Company's deferred tax assets are primarily the result of net operating losses and basis differences on mortgage securities and goodwill. The Company has recorded a full valuation allowance against its deferred tax assets at December 31, 2023 as it is more likely than not that the deferred tax assets will not be realized. The valuation allowance is based on management's assessment that it is more likely than not that certain deferred tax assets, primarily net operating loss carryforwards, may not be realized in the foreseeable future due to objective negative evidence.

Deferred tax assets are comprised of the following temporary differences between the financial statement carrying value and the tax basis of assets:

	For the Year Ended December 31, 2023	2022
Deferred tax assets:		
Federal and state net operating losses	$ 254,118	$ 248,559
Mortgage securities	—	—
Depreciation and amortization	19,085	21,655
Capital loss carryover	—	172
Interest carryforward	2,121	—
Compensation and other accruals	1,363	1,563
Repurchase reserve	1,305	1,839
Total gross deferred tax assets	277,992	273,788
Deferred tax liabilities:		
Fair value adjustments on long-term debt	(17,260)	(9,516)
Mortgage servicing rights	—	—
Corporate-owned life insurance	(1,168)	(1,272)
Total gross deferred tax liabilities	(18,428)	(10,788)
Valuation allowance	(259,564)	(263,000)
Total net deferred tax assets	$ —	$ —

The following is a reconciliation of income taxes to the expected statutory federal corporate income tax rates for the years ended December 31, 2023 and 2022:

	For the Year Ended December 31,	
	2023	2022
Expected income tax expense	$ (3,520)	$ (8,273)
State tax expense, net of federal benefit	5	30
State rate change	(38)	345
Change in valuation allowance	4,760	7,532
Employee Retention Tax Credit	(1,540)	—
Corporate-owned life insurance interest and premiums	—	121
Other	339	283
Total income tax expense	$ 6	$ 38

At December 31, 2023, the Company had accumulated other comprehensive earnings of $64.0 million, which was net of tax of $11.3 million.

As of December 31, 2023, the Company had estimated NOL carryforwards of approximately $867.0 million. Federal NOL carryforwards begin to expire in 2027. Included in the estimated NOL carryforward is $309.4 million of NOLs with an indefinite carryover period. As of December 31, 2023, the Company had estimated California NOL carryforwards of approximately $633.8 million, which begin to expire in 2028. The Company may not be able to realize the maximum benefit due to the nature and tax entities that hold the NOL.

On October 23, 2019, the Company adopted a Tax Benefits Preservation Rights Agreement (Rights Plan) to help preserve the value of certain deferred tax benefits, including those generated by net operating losses (collectively, Tax Benefits). In general, the Company may “carry forward” net operating losses in certain circumstances to offset current and future taxable income, which will reduce federal and state income tax liability, subject to certain requirements and restrictions. The Company’s ability to use these Tax Benefits would be substantially limited and impaired if it were to experience an “ownership change” for purposes of Section 382 of the Internal Revenue Code of 1986, as amended (the Code) and the Treasury Regulations promulgated thereunder. Generally, the Company will experience an “ownership change” if the percentage of the shares of Common Stock owned by one or more “five-percent shareholders” increases by more than 50 percentage points over the lowest percentage of shares of Common Stock owned by such stockholder at any time during the prior three year on a rolling basis. As such, the Rights Plan has a 4.99% “trigger” threshold that is intended to act as a deterrent to any person or entity seeking to acquire 4.99% or more of the outstanding Common Stock without the prior approval of the board of directors. The Rights Plan also has certain ancillary anti-takeover effects. The rights accompany each share of common stock of the Company and are evidenced by ownership of common stock. The rights are not exercisable except upon the occurrence of certain change of control events. Once triggered, the rights would entitle the stockholders, other than a person qualifying as an “Acquiring Person” pursuant to the rights plan, to certain “flip in”, “flip over” and exchange rights. The rights issued under the Rights Plan may be redeemed by the board of directors at a nominal redemption price of $0.001 per right, and the board of directors may amend the rights in any respect until the rights are triggered. The Rights Plan was approved at the Company’s 2020 annual meeting of stockholders and will expire on the three-year anniversary of its adoption. On August 26, 2022, the Company entered into a First Amendment (the Amendment) to the Rights Plan, which provides for (i) a three-year extension of the Initial Rights Agreement upon expiration of the initial three-year term and (ii) a reduction to the Purchase Price. On June 15, 2023, the Amendment was approved at the Company’s 2023 annual meeting of stockholders extending the expiration to October 22, 2025.

The Company adopted ASU 2019-12 on a prospective basis on January 1, 2020. The most significant impact to the Company included the removal of the exception to the incremental approach for intraperiod tax allocation when there is a loss from continuing operations and income or a gain from other items (for example, discontinued operations or other comprehensive earnings). The changes also add a requirement for an entity to reflect the effect of an enacted change in tax laws or rates in the annual effective tax rate computation in the interim period that includes the enactment date. The adoption of this standard did not have a material impact on the Company's consolidated financial statements.

The Company files numerous tax returns in various jurisdictions. While the Company is subject to examination by various taxing authorities, the Company believes there are no unresolved issues or claims likely to be material to its financial position. The Company classifies interest and penalties on taxes as provision for income taxes. As of December 31, 2023 and 2022, the Company has no material uncertain tax positions. The Company has state alternative minimum tax (AMT) credits in the amount of $404 thousand as of December 31, 2023.

Note 12.—Commitments and Contingencies

Legal Proceedings

The Company is a defendant in or a party to a number of legal actions or proceedings that arise in the ordinary course of business. In some of these actions and proceedings, claims for monetary damages are asserted against the Company. In view of the inherent difficulty of predicting the outcome of such legal actions and proceedings, the Company generally cannot predict what the eventual outcome of the pending matters will be, what the timing of the ultimate resolution of these matters will be, or what the eventual loss related to each pending matter may be, if any.

In accordance with applicable accounting guidance, the Company establishes an accrued liability for litigation when those matters present loss contingencies that are both probable and estimable. In any case, there may be an exposure to losses in excess of any such amounts whether accrued or not. Any estimated loss is subject to significant judgment and is based upon currently available information, a variety of assumptions, and known and unknown uncertainties. The matters underlying the estimated loss will change from time to time, and actual results may vary significantly from the current estimate. Therefore, an estimate of possible loss represents what the Company believes to be an estimate of possible loss only for certain matters meeting these criteria. It does not represent the Company's maximum loss exposure.

Based on the Company's current understanding of these pending legal actions and proceedings, management does not believe that judgments or settlements arising from pending or threatened legal matters, individually or in the aggregate, will have a material adverse effect on the consolidated financial position, operating results or cash flows of the Company. However, in light of the inherent uncertainties involved in these matters, some of which are beyond the Company's control, and the very large or indeterminate damages sought in some of these matters, an adverse outcome in one or more of these matters could be material to the Company's results of operations or cash flows for any particular reporting period.

The legal matter updates summarized below are ongoing and may have an effect on the Company's business and future financial condition and results of operations:

Timm, et al v. Impac Mortgage Holdings, Inc., et al.

On December 7, 2011, a purported class action was filed in the Circuit Court of Baltimore City (Circuit Court) entitled Timm, et al v. Impac Mortgage Holdings, Inc., et al. (Maryland Action) on behalf of holders of the Company's 9.375% Series B Cumulative Redeemable Preferred Stock (Series B Preferred) and 9.125% Series C Cumulative Redeemable Preferred Stock (Series C Preferred) who did not tender their stock in connection with the Company's 2009 Offer to Purchase and Consent Solicitation (2009 Offer), including that the Company failed to achieve the requisite number of votes to amend the 2004 Series B Articles Supplementary, that the consents of the holders of Series B Preferred stock and Series C Preferred stock to amend the 2004 Series B Articles Supplementary and 2004 Series C Articles Supplementary (together, the 2004 Articles Supplementary) were not effective, and that the Company's Board of Directors breached their fiduciary duties by recommending and approving the 2009 Offer.

The Maryland Action sought a judicial declaration that the Article Amendments related to the 2009 Offer (the 2009 Article Amendments) were ineffective, reinstatement of cumulative dividends on the Series B Preferred stock and Series C Preferred stock, payment of additional dividends that would have been required if the 2004 Articles Supplementary had remained in effect after June 29, 2009 (due to the Company's purchase of certain Preferred Stock before year end 2009), the election of two directors by the holders of Series B Preferred stock and Series C Preferred stock, punitive damages and legal expenses.

In 2013, the Company and the individual defendants in the Maryland Action prevailed on a motion to dismiss all claims, except the claim that the Company had failed to receive the requisite number of votes to amend the 2004 Series B Articles Supplementary and related remedies. All claims made on behalf of the holders of Series C Preferred stock and all claims against individual defendants were dismissed. The case proceeded to discovery and cross-motions for summary judgment on the remaining primary dispute as to whether the 2004 Series B Articles Supplementary required the approval of the holders of two-thirds (2/3rds) of the Series B Preferred, voting as a separate class, in order to make the 2009 Article Amendments to the 2004 Series B Articles Supplementary, which was the plaintiff's position, or required the approval of the holders of two-thirds (2/3rds) of the Series C Preferred and Series C Preferred, voting together as a single class, which was the Company’s position.

The Circuit Court entered a Judgment Order (Judgment Order) on July 16, 2018 (amended on July 24, 2018), whereby it entered a partial final judgment: (1) in favor of the Company and all other defendants on all claims on behalf of the holders of Series C Preferred and all claims against all individual defendants, thereby affirming the validity of the 2009 Article Amendments to the 2004 Series C Articles Supplementary; (2) declaring its interpretation of the voting provision language in the 2004 Series B Articles Supplementary to mean that consent of the holders of two-thirds (2/3rds) of the Series B Preferred stock, voting as a separate class, was required to approve and amend the 2009 Article Amendments to the 2004 Series B Articles Supplementary, which was not obtained, thus rendering the amendments invalid and leaving the 2004 Series B Articles Supplementary continuously in effect; (3) ordering the Company to hold a special election within sixty (60) days for the holders of Series B Preferred stock to elect two directors to the Board of Directors pursuant to the 2004 Series B Articles Supplementary (who would remain on the Board until all accumulated dividends on the Series B Preferred stock have been paid or set aside for payment); and (4) declaring that the Company is required to pay three quarters of dividends on the Series B Preferred stock under the 2004 Series B Articles Supplementary (approximately $1.2 million), but did not order the Company to make any payment at that time (the 2009 Dividend Amount), however the amount was accrued by the Company. The Circuit Court declined to certify any class pending the outcome of appeals and certified its partial Judgment Order for immediate appeal.

The Company appealed from the Judgment Order and one co-Plaintiff cross-appealed to the Court of Special Appeals (CSA). After briefing and argument, the CSA issued an opinion on April 1, 2020, affirming the Circuit Court’s judgments. Specifically, the CSA affirmed judgment in favor of the Company and other defendants on all claims involving Series C Preferred stock and affirmed judgment in favor of plaintiffs on the Series B Preferred voting rights interpretation, finding that the voting rights language in the 2004 Series B Articles Supplementary required consent of the holders of two-thirds (2/3rds) of the Series B Preferred stock, voting as a separate class, to amend the 2004 Series B Articles Supplementary in 2009.

The Company filed a petition for a writ of certiorari to the Maryland Court of Appeals (Court of Appeals) seeking review of the voting rights decision, which was granted. Neither of the two co-Plaintiffs sought further review. The Court of Appeals issued its decision on July 15, 2021, affirming the decisions of the Circuit Court and the Court of Special Appeals granting summary judgment in favor of the plaintiffs on the Series B Preferred voting rights language interpretation. Accordingly, the 2009 Article Amendments to the 2004 Series B Articles Supplementary were not validly adopted and the 2004 Series B Articles Supplementary remained in effect.

On August 17, 2021, the Court of Appeals issued its mandate returning the case to the Circuit Court for final proceedings on certain open issues, discussed below. On October 25, 2021, the case was assigned to a judge of the Circuit Court to oversee final disposition of outstanding issues.

On remand, the Circuit Court directed the parties to submit briefs on any outstanding issues. The two co-Plaintiffs filed motions taking differing positions regarding certification of a Series B Preferred stock (the Class), appointment of a Class representative and Class counsel, notice to the Class regarding payment of the 2009 Dividend Amount and any award of attorney’s fees to Plaintiffs’ counsel from future dividends. After a hearing on February 18, 2022, the Circuit Court took all such matters under submission.

On July 22, 2022, the Circuit Court issued an Order Certifying Class and Providing for Class Notice and Final Hearing, accompanied by a Memorandum Opinion explaining the Circuit Court’s rulings on the matters under submission. The Circuit Court denied plaintiff Curtis Timm’s Motion for Class Certification and Other Relief and granted plaintiff Camac Fund LP’s Motion to Certify Class, Appoint Class Representative and Lead Counsel, Preliminarily Determine Right to Receive Dividends, and Set Final Judgment Hearing. The Circuit Court certified a non-opt out class of owners of Series B Preferred stock from the close of the tender offer on June 29, 2009 to the date of the class certification order, appointed plaintiff Camac Fund as Lead Class Plaintiff and its counsel, Tydings & Rosenberg LLP, as Lead Class Counsel, ordered the co-plaintiffs to file any petitions for award of attorneys’ fees and expenses or other form of monetary award no later than August 12, 2022, and directed Impac to provide shareholder information to the parties’ class notice administrator by August 12, 2022.

In addition, the Circuit Court made a preliminary determination that the 2009 Dividend Amount should be paid to current Series B Preferred stockholders, as of a record date to be established. The Circuit Court stated that it anticipated entering final injunctive relief, prior to a final class hearing date, directing the Company to declare a record date for payment to then current Series B Preferred stockholders of the dividends previously determined to be due for three quarters in 2009 and to deposit such funds in escrow until after the proper recipients of the funds are determined following the final hearing.

The Circuit Court held a further conference on July 27, 2022, during which the parties discussed proposed revisions to the Class definition to include all Series B Preferred stockholders through the date of finality of final orders to be issued in the case, the method for the establishing a record date for the Company's satisfaction of its obligations to distribute the adjudicated amount of the 2009 Dividend Amount, the final hearing date and other matters. On August 8, 2022, the Circuit Court issued an Amended Class Certification Order, which amends the definition of the class to include all Series B Preferred stockholders through the date of finality of final orders to be issued in the case, directs the Company to establish a record date of August 15, 2022 for distribution of the 2009 Dividend Amount and to pay that amount into the registry of the Circuit Court no later than August 19, 2022, to be held pending final resolution of all issues and final determination by the Court of the appropriate distribution of those funds. The Company deposited the funds on August 18, 2022. The Amended Class Certification Order states that the Company shall have no further right or obligation with respect to the funds deposited in the registry, except as necessary to effectual the final determination of the Court. The Company can take no action with respect to the 2009 Dividend Amount until the Circuit Court makes further orders.

On August 12, 2022, Class Representative Camac and Lead Class Counsel filed an application for an award of attorney's fees, expenses and an incentive award, and plaintiff Timm filed an application for an award of incentive award and expenses, in each case to be paid from benefits that members of the Series B Preferred class receive as a result of the Maryland Action, including but not limited to a portion of the 2009 Dividend Amount on deposit in the registry of the Circuit Court, and future dividends or, if the Exchange Offer (as described elsewhere in this document) closes, cash or stock to be received by Series B Preferred stockholders pursuant to the Exchange Offer and subsequent redemption. On August 25, 2022, the Circuit Court issued a further Order directing Impac to segregate cash funds and/or stock that otherwise would be paid to the Series B Preferred stockholders in the Exchange Offer and subsequent redemption within five (5) business days after closing of the Exchange Offer, either by depositing cash to Court's registry or by transferring stock to the custody of a third party custodian or escrow holder (Stock Escrow), as the case may be. The August 25, 2022 Order provides that upon such deposit or transfer, the Company shall have no further right or obligation with respect to the disposition of such cash or stock, except to pay the costs associated with such deposit or escrow and subsequent distributions as may be ordered by the Court in its final determination following the December 5, 2022 final class hearing in the Maryland Action. The Exchange Offer was approved and closed with respect to tendered shares on October 26, 2022, and the Company deposited the required stock with a third party pursuant to the August 25, 2022 Order.

On August 29, 2022, the Circuit Court issued an order approving the form and substance of the notice by which the Company and the class notice administrator are required to give notice to the Series B class of the final hearing date of December 5, 2022, and the opportunity to file objections to the proposed final injunctive relief and to the applications for awards of attorney's fees, expenses and incentives. On dates between September 7 through September 19, the Company and the notice administrator provided the notice required by the August 29, 2022 order.

No objections were made by any member of the Class to the proposed final injunctive relief. Both plaintiffs filed objections to each other's respective applications for awards of attorney's fees, expenses and incentives. On December 5, 2022, the Circuit Court held a final hearing on all outstanding matters identified in the notice. No Class Member other than named Plaintiffs appeared at the hearing. On December 16, 2022, the Circuit issued its Final Judgment Order directing, among other things, that Impac pay the 2009 Dividend Amount to members of the Plaintiff Class who held Series B Preferred stock as of August 15, 2022 no earlier than the 45th day or later than the 60th after entry of the Final Judgment Order by the Clerk, which was entered on December 19, 2022. The Final Judgment Order also granted Plaintiff Camac's Motion for Attorney's Fees, Litigation Costs, and Incentive Payment, granted in part and denied in part Plaintiff Timm's Petition for Incentive Award and Payment of Costs and Expenses, and included implementing orders. No appeal was filed. In February 2023, pursuant to the Final Judgement Order, (i) the 2009 Dividend Amount was distributed to certain former Series B Preferred stockholders, with a portion going to pay attorney's fees, litigation costs and incentive payments and (ii) the Common Stock and Series D Preferred Stock that was held in escrow was distributed to certain former Series B Preferred stockholders, with a portion of the Series D Preferred Stock going to pay attorney's fees to Class Counsel. It is Company's understanding that Class Counsel will file a request for an Order of Satisfaction in this matter with the Circuit Court, although at this time none has been filed.

McNair v Impac Mortgage Corp.

On September 18, 2018, a purported class action was filed in the Superior Court of California, Orange County, entitled McNair v. Impac Mortgage Corp. dba CashCall Mortgage. The plaintiff contends the defendant did not pay the plaintiff and purported class members overtime compensation, provide required meal and rest breaks, or provide accurate wage statements. The action seeks damages, restitution, penalties, interest, attorney's fees, and all other appropriate injunctive, declaratory, and equitable relief. On March 8, 2019, a First Amended Complaint was filed, which added a claim alleging PAGA violations. On March 12, 2019, the parties filed a stipulation with the court stating (1) the plaintiff's individual claims should be arbitrated pursuant to the parties' arbitration agreement, (2) the class claims should be struck from the First Amended Complaint, and (3) the plaintiff will proceed solely with regard to her PAGA claims. This case was consolidated with the Batres v. Impac Mortgage Corp. dba CashCall Mortgage case discussed below with a rescheduled trial date of January 18, 2022. On October 28, 2021, the Company entered into a settlement agreement, which was amended and restated on February 17, 2022. On March 14, 2022, the court issued an order granting preliminary approval of the settlement. On October 4, 2022, the court issued an order, subsequently revised on October 19, 2022, granting final approval of the class action settlement and entering judgment, which was previously accrued for in the third quarter of 2021. On October 26, 2022, the Company deposited the required settlement amount with the third party administrator pursuant to the October 28, 2021 settlement agreement as amended and restated on February 17, 2022. The third party administrator has until July 1, 2024 to file any supplemental declaration regarding disbursements with the court.

Batres v. Impac Mortgage Corp.

On December 27, 2018, a purported class action was filed in the Superior Court of California, Orange County, entitled Batres v. Impac Mortgage Corp. dba CashCall Mortgage. The plaintiff contends the defendant did not pay the plaintiff and purported class members overtime compensation, provide required meal and rest breaks, or provide accurate wage statements. The action seeks damages, restitution, penalties, interest, attorney's fees, and all other appropriate injunctive, declaratory, and equitable relief. On March 14, 2019, the plaintiff filed an amended complaint alleging only PAGA violations and seeking penalties, attorneys' fees, and such other appropriate relief. This case was consolidated with the McNair v. Impac Mortgage Corp. dba CashCall Mortgage discussed above with a rescheduled trial date of January 18, 2022. On October 28, 2021, the Company entered into a settlement agreement, which was amended and restated on February 17, 2022. On March 14, 2022, the court issued an order granting preliminary approval of the settlement. On October 4, 2022, the court issued an order, subsequently revised on October 19, 2022, granting final approval of the class action settlement and entering judgment, which was previously accrued for in the third quarter of 2021. On October 26, 2022, the Company deposited the required settlement amount with the third party administrator pursuant to the October 28, 2021 settlement agreement as amended and restated on February 17, 2022. The third party administrator has until July 1, 2024 to file any supplemental declaration regarding disbursements with the court.

UBS Americas Inc., et al. v. Impac Funding Corporation et al.

On December 17, 2021, a summons with notice was filed in the Supreme Court of the State of New York, County of New York (NY Court), initiating a lawsuit entitled UBS Americas Inc., et al. v. Impac Funding Corporation et al. The plaintiffs contend that the defendants are required to indemnify payments that plaintiffs made to resolve claims asserted by the Federal Home Loan Bank of San Francisco and HSH Nordbank AG related to certain residential mortgage-backed securities (RMBS). Plaintiffs contend that the RMBS included loans that the defendants allegedly sold to certain UBS entities in breach of contractual representations and warranties. Plaintiffs further contend that they settled the cases for which plaintiffs are demanding indemnification in December 2015 and March 2016. On April 18, 2022, the Company accepted service of the summons with notice on behalf of Impac Funding Corp. and Impac Mortgage Holdings, Inc. On June 2, 2022, a complaint was filed with the NY Court related to the summons with notice, however Impac Mortgage Holdings, Inc. was no longer listed as a defendant in the matter. On July 25, 2022, Impac Funding Corporation filed a motion to dismiss the complaint. All parties submitted their briefs and oral arguments on the motion to dismiss were held on March 6, 2023. There is no set timeframe for the court to issue its ruling. The Company believes the claims are without merit and intends to defend itself vigorously.

CrossCountry Mortgage, LLC v Impac Mortgage Holdings, Inc. and Impac Mortgage Corp.

On August 4, 2022, a complaint was filed in the United States District Court for the Northern District of Ohio – Eastern Division ("Court") by CrossCountry Mortgage, LLC ("Plaintiff") against the Company and IMC. The Plaintiff alleges infringement of Plaintiff's federally-registered trademark, unfair competition and false designation of origin and for substantial and related claims of deceptive trade practice under the statutory and common laws of the State of Ohio. Plaintiff is seeking injunctive and monetary relief. The Company and IMC were served with the complaint on August 8, 2022, and filed an answer on September 29, 2022. On December 27, 2023, the parties entered into a confidential settlement agreement resolving all matters in connection with the complaint, and on January 2, 2024, the Court issued a Stipulated Notice of Dismissal with Prejudice of the litigation.

The Company is a party to other litigation and claims which are in the course of the Company's operations. While the results of such other litigation and claims cannot be predicted with certainty, the Company believes the final outcome of such matters will not have a material adverse effect on the Company's financial condition or results of operations. The Company believes that it has meritorious defenses to the claims and intends to defend these claims vigorously and as such the Company believes the final outcome of such matters will not have a material adverse effect on its financial condition or results of operations. Nevertheless, litigation is uncertain and the Company may not prevail in the lawsuits and can express no opinion as to their ultimate resolution. An adverse judgment in any of these matters could have a material adverse effect on the Company's financial position and results of operations.

Lease Commitments

The following table presents the operating and finance lease balances within the consolidated balance sheets, weighted average remaining lease term, and weighted average discount rates related to the Company's leases as of December 31, 2023:

Lease Assets and Liabilities	Classification	December 31, 2023
Assets		
Lease ROU assets	Other assets	$ 474
Liabilities		
Lease liabilities	Other liabilities	$ 517
Weighted average remaining lease term (in years)		1.6
Weighted average discount rate		8.2 %

The following table presents the maturities of the Company's operating and finance lease liabilities as of December 31, 2023:

Year 2024	$	342
Year 2025		211
Total lease commitments	$	553
Less: imputed interest		(36)
Total lease liability	$	517

During the years ended December 31, 2023 and 2022, cash paid for operating leases was $251 thousand and $5.2 million, respectively. Total operating lease expense for the years ended December 31, 2023 and 2022 was $1.5 million and $5.1 million, respectively. Operating lease expense includes short-term leases and sublease income, both of which are immaterial.

In December 2022, the Company recorded an additional $970 thousand in occupancy expense related to the modification and early termination of the Company's corporate office. On December 15, 2022, IFC and Jacaranda Holdings, LLC (the Landlord), entered into a Lease Termination Agreement (the Termination Agreement) relating to the lease (the Lease) for the Company's primary executive, administrative and operations offices located at 19500 Jamboree Road, Irvine, California (the Premises). The Lease, as amended, was originally entered into in March 2005, and the Premises currently consists of approximately 120,000 square feet.

Pursuant to the Termination Agreement, IFC and Landlord agreed to terminate the Lease on January 31, 2023, in lieu of the Lease's original expiration date of September 30, 2024. In accordance with the terms of the Termination Agreement, on December 16, 2022, IFC paid to the Landlord the termination consideration of $3.0 million, among other required action items. As a result of the Termination Agreement, the Company accounted for the termination as a lease modification, recording an additional $970 thousand of occupancy expense in December 2022 related to the modification, with an additional $1.2 million in occupancy expense occurring in January 2023, when the premises were vacated.

During the year ended December 31, 2022, the Company recorded $123 thousand in ROU asset impairment charges related to the sublease of approximately 1,900 square feet of a floor within the Company's previous corporate office, reducing the carrying value of the lease asset to its estimated fair value. The impairment charges recorded in 2022 are included in general, administrative and other expense in the accompanying consolidated statements of operations and comprehensive earnings (loss).

In January 2023, the Company entered into a new sublease agreement for approximately 18,900 per square foot of executive, administrative and operations workspace in Newport Beach, California. The term of the new lease term is through July 31, 2025 with an average rent of $1.35 per square foot over the term of the lease, which including CAM charges will total approximately $800 thousand.

Repurchase Reserve

The provision for repurchases represents an estimate of losses to be incurred on the repurchase of loans or indemnification of purchaser's losses related to brokered loans and loan sales. Certain sale contracts and GSE standards require the Company to repurchase a loan or indemnify the purchaser or insurer for losses if a borrower fails to make initial loan payments or if the accompanying mortgage loan fails to meet certain customary representations and warranties.

In the event of a breach of the representations and warranties, the Company may be required to either repurchase the loan or indemnify the purchaser for losses it sustains on the loan. In addition, an investor may request that the Company refund a portion of the premium paid on the sale of mortgage loans if a loan is prepaid within a certain amount of time from the date of sale. The Company records a reserve for estimated losses associated with loan repurchases, purchaser indemnification and premium refunds. The provision for repurchase losses is charged against gain on sale of loans, net when associated with a sold loan and broker fee income when associated with a brokered loan, in the consolidated statements of operations and comprehensive earnings (loss). A release of repurchase reserves is recorded when the Company's assessment reveals that previously recorded reserves are no longer needed.

Loans sold to Ginnie Mae are insured by the FHA or are guaranteed by the VA. As servicer, the Company may elect to repurchase delinquent loans in accordance with Ginnie Mae guidelines; however, the loans continue to be insured. The Company may also indemnify the FHA and VA for losses related to loans not originated in accordance with their guidelines.

The Company regularly evaluates the adequacy of repurchase reserves based on trends in repurchase and indemnification requests, actual loss experience, settlement negotiation, estimated future loss exposure and other relevant factors including economic conditions. The Company sold $6.3 million and $979 million of loans for the years ended December 31, 2023 and 2022, respectively, which were subject to repurchase representations and warranties. Additionally, the Company brokered $36.4 million of loans for the year ended December 31, 2023, which were subject to repurchase representations and warranties. The Company believes its reserve balances as of December 31, 2023 are sufficient to cover loss exposure associated with repurchase contingencies.

The following table summarizes the repurchase reserve activity (included in other liabilities in the accompanying consolidated balance sheets) related to previously sold loans for the years ended December 31, 2023 and 2022:

	December 31, 2023	December 31, 2022
Beginning balance	$ 5,875	$ 4,744
(Recovery) provision for repurchases (1)	(974)	2,417
Settlements	(741)	(1,286)
Total repurchase reserve	$ 4,160	$ 5,875

(1) (Recovery) provision for repurchases is included in gain on sale of loans, net and broker fee income in the accompanying consolidated statements of operations and comprehensive earnings (loss).

Corporate-owned Life Insurance Trusts

During the first quarter of 2020, there was a triggering event that caused the Company to reevaluate the consolidation of certain corporate-owned life insurance trusts. As a result, the Company has consolidated life insurance trusts for three former executive officers. The corporate-owned life insurance contracts are recorded at cash surrender value, which is provided by a third party and held within trusts. At December 31, 2023 and 2022, the cash surrender value of the policies was $11.3 million and $11.6 million, respectively. At December 31, 2023 and 2022, the liability associated with the corporate-owned life insurance trusts was $14.4 million and $13.6 million, respectively.

	At December 31, 2023			
Corporate-owned life insurance trusts:	**Trust #1**	**Trust #2**	**Trust #3**	**Total**
Corporate-owned life insurance cash surrender value	$ 5,147	$ 4,004	$ 2,129	$ 11,280
Corporate-owned life insurance liability	6,762	5,031	2,586	14,379
Corporate-owned life insurance shortfall (1)	$ (1,615)	$ (1,027)	$ (457)	$ (3,099)

(1) $1.3 million of the total shortfall was recorded as a change in retained deficit at the time of the consolidation of the trusts in 2020. The additional shortfall was recorded in the accompanying consolidated statements of operations and comprehensive earnings (loss).

Risks and Uncertainties

As previously noted, given the Company's lack of conventional GSE origination volume and servicing rights over the past several years, with no direct GSE deliveries to Fannie Mae or Freddie Mac since 2016 and 2020, respectively, in 2023 the Company voluntarily relinquished its GSE Seller/Servicer designation, which had been suspended during these periods of non-delivery, as well as its issuer/servicer designation with Ginne Mae. The Company is a third-party originator with the GSE's to support the broker model as needed. Additionally, in line with the Company's expense management initiatives previously noted, the Company also voluntarily relinquished state lending licenses in certain states and may voluntarily relinquish additional state licenses where the Company has historically originated lower volume.

In the normal course of business, companies in the mortgage banking industry encounter certain economic and regulatory risks. Economic risks include interest rate risk, credit risk, market risk and regulatory risk. The Company is subject to interest rate risk to the extent that in a rising interest rate environment, the Company will generally experience a decrease in origination loan volumes, which will negatively impact the Company's operations. Credit risk is the risk of default, primarily in the Company's loan portfolio, that results from borrowers' inability or unwillingness to make contractually required payments.

Market risk reflects changes in the liquidity of the secondary loan markets which impacts the value of loans held for sale and in commitments to originate loans. Regulatory risks include administrative enforcement actions and/or civil or criminal liability resulting from the Company's failure to comply with the laws and regulations applicable to the Company's business.

Concentration of Risk

The Company maintains all of its cash with major financial institutions. At times, cash balances may be in excess of the amounts insured by the Federal Deposit Insurance Corporation.

Substantially all of the Company's revenue is derived from fees related to residential real estate activity. Real estate activity is cyclical and is affected greatly by the cost and availability of long-term mortgage funds. Real estate activity and the Company's revenue can be adversely affected during periods of high interest rates and/or limited money supply. The reduction of real estate activity and fees generated from such activity could have a material adverse effect on the financial condition and results of operations of the Company.

As of December 31, 2023, the Company had approval to service loans in 38 states, originate loans in 36 states including the District of Columbia and broker loans in 28 states. For the year ended December 31, 2023, the UPB of brokered loan activity by state in excess of 5% of total brokered loans was as follows:

California	$	15,393
Texas		4,972
Florida		2,531
North Carolina		2,134
Pennsylvania		2,031
Georgia		2,014
All other states		7,326
Total brokered loan activity by state	$	36,401

The Company brokers mortgage loans to various third-party originators. The largest four originators accounted for 91% of the Company's brokered loans for the year ended December 31, 2023. No other originators accounted for more than 5% of brokered loans for the year ended December 31, 2023.

Note 13.—Share Based Payments and Employee Benefit Plans

The Company maintains an equity-based incentive compensation plan, the terms of which are governed by the 2020 Equity Incentive Plan (the 2020 Incentive Plan). The 2020 Incentive Plan provides for the grant of stock appreciation rights, RSUs, DSUs, performance shares and other stock and cash-based incentive awards. Employees, directors, consultants or other persons providing services to the Company or its affiliates are eligible to receive awards pursuant to the 2020 Incentive Plan. In connection with the adoption of the 2020 Incentive Plan, the Company's 2010 Omnibus Incentive Plan (2010 Plan), which was scheduled to expire in July 2020, was frozen for new grants. The 2010 Plan will remain in place only for the issuance of shares of common stock pursuant to equity compensation awards outstanding under the 2010 Plan, which awards will continue to be governed by the terms of the 2010 Plan. As of December 31, 2023, the aggregate number of shares reserved under the 2020 Incentive Plan and 2010 Plan, was 2.0 million and 722 thousand shares, respectively, and there were 1.6 million shares available for grants as stock options, RSUs, DSUs or other stock and cash-based incentive awards under the 2020 Incentive Plan. The Company issues new shares of common stock to satisfy stock option exercises, RSU vesting, DSU issuances and other stock-based incentive awards. No options were granted in 2023 and 2022.

The following table summarizes activity, pricing and other information for the Company's stock options for the years presented below:

	For the Year Ended December 31,			
	2023		2022	
	Number of Shares	Weighted-Average Exercise Price	Number of Shares	Weighted-Average Exercise Price
Options outstanding at the beginning of the year	531,478	$ 7.86	570,228	$ 7.89
Options granted	—	—	—	—
Options exercised	—	—	—	—
Options forfeited/cancelled	(71,112)	5.44	(38,750)	8.33
Options outstanding at the end of the period	460,366	8.23	531,478	7.86
Options exercisable at the end of the period	454,225	$ 8.30	496,790	$ 8.18

The aggregate intrinsic value in the following table represents the total pre-tax intrinsic value, based on the Company's closing stock price of $0.03 and $0.17 per common share as of December 31, 2023 and 2022, respectively.

Aggregate intrinsic value represents the amount of proceeds the option holders would have received had all option holders exercised their options and sold the stock as of that date.

	As of December 31,			
	2023		2022	
	Weighted-Average Remaining Life (Years)	Aggregate Intrinsic Value (in thousands)	Weighted-Average Remaining Life (Years)	Aggregate Intrinsic Value (in thousands)
Options outstanding at end of year	3.95	$ -	5.00	$ -
Options exercisable at end of year	3.91	$ -	4.78	$ -

As of December 31, 2023, there was approximately $5 thousand of total unrecognized compensation cost related to stock option compensation arrangements granted, net of estimated forfeitures. That cost is expected to be recognized over the remaining weighted average period of 0.1 year.

The Company did not grant any stock options. The aggregate grant-date fair value of stock options granted was zero for both years ended December 31, 2023 and 2022.

For the years ended December 31, 2023 and 2022, total stock-based compensation expense was $279 thousand and $678 thousand, respectively.

Additional information regarding stock options outstanding as of December 31, 2023 is as follows:

	Stock Options Outstanding			Options Exercisable	
Exercise Price Range	Number Outstanding	Weighted-Average Remaining Contractual Life in Years	Weighted-Average Exercise Price	Number Exercisable	Weighted-Average Exercise Price
$ 3.22 - 3.74	69,925	5.34	$ 3.49	63,784	$ 3.53
3.75 - 5.38	200,000	5.16	3.75	200,000	3.75
5.39 - 9.85	27,416	2.01	7.02	27,416	7.02
9.86 - 17.39	69,275	2.40	11.84	69,275	11.84
17.40 - 20.49	44,750	2.55	17.40	44,750	17.40
20.50 - 20.50	49,000	1.56	20.50	49,000	20.50
$ 3.22 - 20.50	460,366	3.95	$ 8.23	454,225	$ 8.30

In addition to the options granted, the Company has granted DSUs, which vest between one and three year periods. The fair value of each DSU was measured on the date of grant using the grant date price of the Company's stock. In 2023, the Company did not grant any DSUs.

The following table summarizes activity, pricing and other information for the Company's DSUs for the year ended December 31, 2023:

	Number of Shares	Weighted-Average Grant Date Fair Value
DSUs outstanding at the beginning of the year	39,500	$ 7.70
DSUs granted	—	—
DSUs issued (converted)	—	—
DSUs forfeited/cancelled	—	—
DSUs outstanding at the end of the period	39,500	$ 7.70

As of December 31, 2023, there was no total unrecognized compensation cost related to the DSU compensation arrangements granted under the plan.

The following table summarizes activity, pricing and other information for the Company's RSUs for the ended December 31, 2023:

	Number of Shares	Weighted-Average Grant Date Fair Value
RSUs outstanding at beginning of the year	221,384	$ 4.00
RSUs granted	—	—
RSUs issued (converted)	—	—
RSUs forfeited/cancelled	(3,612)	3.29
RSUs outstanding at end of the period	217,772	$ 4.01

As of December 31, 2023, there was approximately $41 thousand of total unrecognized compensation cost related to the RSU compensation arrangements granted under the plan. This cost is expected to be recognized over a weighted average period of 0.1 years.

401(k) Plan

After meeting certain employment requirements, employees can participate in the Company's 401(k) plan. Under the 401(k) plan, employees may contribute up to 25% of their salaries, pursuant to certain restrictions. Effective January 1, 2020, the Company matches 50% of the first 6% of employee contributions. Additional contributions may be made at the discretion of the board of directors. During the years ended December 31, 2023 and 2022, the Company recorded compensation expense of approximately $325 thousand and $402 thousand for basic matching contributions, respectively. There were no discretionary matching contributions recorded during the years ended December 31, 2023 or 2022.

Note 14.—Related Party Transactions

In May 2015, the Company issued the 2015 Convertible Notes to purchasers, some of which are related parties. See Note 6.—Debt—Convertible Notes.

Note 15.—Subsequent Events

Subsequent events are events or transactions that occur after the balance sheet date but before the financial statements are issued. The Company recognizes in the financial statements the effects of all subsequent events that provide additional evidence about conditions that existed at the date as of the balance sheet date, including the estimates inherent in the process of preparing the financial statements.

The Company's financial statements do not recognize subsequent events that provide evidence about conditions that did not exist at the date as of the balance sheet date but arose after the balance sheet date and before the date that the financial statements were available to be issued. The Company has evaluated subsequent events through April 19, 2024, the date that the financial statements were available to be issued.