

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K/A

(Amendment No. 1)

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

For the fiscal year ended December 31, 2023

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

For the transition period from to

Commission File Number: 001-36105

EMPIRE STATE REALTY TRUST, INC.

(Exact name of Registrant as specified in its charter)

Maryland

(State or other jurisdiction of incorporation or organization)

37-1645259

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

111 West 33rd Street, 12th Floor

New York, New York 10120

(Address of principal executive offices) (Zip Code)

(212) 687-8700

(Registrant's telephone number, including area code)

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

<u>Title of Each Class</u>	<u>Trading Symbol</u>	<u>Name of Exchange on Which Registered</u>
Class A Common Stock, par value \$0.01 per share	ESRT	The New York Stock Exchange
Class B Common Stock, par value \$0.01 per share	N/A	N/A

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

None

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

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

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

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

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

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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

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

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant

included in the filing reflect the correction of an error to previously issued financial statements

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

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

The aggregate market value of the voting stock held by non-affiliates of the registrant as of the last business day of the registrant's most recently completed second fiscal quarter was \$1,197,221,000 based on the June 30, 2023 closing price of the registrant's Class A common stock of \$7.49 per share on the New York Stock Exchange.

As of February 22, 2024, there were 163,091,331 shares of the registrants' Class A common stock outstanding and 983,434 shares of the registrants' Class B common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of Empire State Realty Trust, Inc.'s Proxy Statement for its 2024 Annual Stockholders' Meeting (the "2024 Proxy Statement") are incorporated by reference into Part III of this Annual Report on Form 10-K where indicated. The 2024 Proxy Statement was filed with the U.S. Securities and Exchange Commission (the "SEC") on March 28, 2024 (File No. 001-36105).

EXPLANATORY NOTE

This Amendment No. 1 on Form 10-K/A (this "amended Annual Report") amends the Annual Report on Form 10-K for the fiscal year ended December 31, 2023 (the "Original Form 10-K"), filed by Empire State Realty Trust, Inc. ("our Company," "we," "us," "our," and "ESRT") with the SEC on February 28, 2024. Unless otherwise indicated or unless the context requires otherwise, all references herein to this Annual Report on Form 10-K, this Form 10-K, this Annual Report and similar names refer to the Original Form 10-K, as amended by this amended Annual Report.

This amended Annual Report is being filed to amend (i) Part II, Item 9A—Controls and Procedures to address management's re-evaluation of disclosure controls and procedures and reflect the identification of a material weaknesses in internal control over financial reporting, (ii) Ernst & Young LLP's ("EY") opinion on our internal control over financial reporting and (iii) to include EY's opinion on the consolidated financial statements included in Part II, Item 8—Financial Statements and Supplementary Data of the Original Form 10-K updated to include a reference to EY's updated report on internal control over financial reporting and for the Critical Audit Matter.

Part IV, Item 15—Exhibits, Financial Statement and Schedules also has been amended to include currently dated certifications from our Chief Executive Officer and Principal Financial Officer as required by Sections 302 and 906 of the Sarbanes-Oxley Act of 2002. The certifications are attached to amended Annual Report as Exhibits 31.1, 31.2, 32.1 and 32.2. We are also filing an updated Consent of Independent Registered Public Accounting Firm, attached as Exhibit 23.1.

This amended Annual Report is limited in scope to the portions of this amended Annual Report set forth above. This amended Annual Report does not modify, amend, or update in any way any other items or disclosures contained in the Original Form 10-K, including the consolidated financial statements set forth in the Original Form 10-K or XBRL data filed in Exhibit 101.

Except as noted herein, this amended Annual Report has not been updated for other events or information subsequent to the date of the filing of the Original Form 10-K, and should be read in conjunction with the Original Form 10-K and our other filings with the SEC.

Material Weakness

In August 2024, EY, our independent registered public accounting firm, informed us that following EY's internal post audit quality review of its audit of our consolidated financial statements for the fiscal year ended December 31, 2023, EY had identified control deficiencies in the design of certain information technology ("IT") general controls ("ITGCs") for our information systems and applications which were relevant to the preparation of the consolidated financial statements as of December 31, 2023. In particular, the Company's ITGCs included: (i) controls to approve and monitor changes within information systems and related applications, but the monitoring controls were not designed to ensure a complete population of changes were subject to the control procedures across all relevant IT components, and (ii) controls to approve and monitor user access to information systems and related applications, but the monitoring controls were not designed to review the appropriateness of permissions granted to approved users. As a result, business process controls (automated and manual) that are dependent on the ineffective ITGCs, or that rely on data produced from systems impacted by the ineffective ITGCs, were

also deemed ineffective. In consideration of this, management, after discussion with EY, concluded there was a material weakness resulting from those ITGCs as the compensating business process controls in place to mitigate this control deficiency were impacted by the ineffective ITGCs. As a result, we reevaluated the effectiveness of our disclosure controls and our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls were not effective at a reasonable level of assurance for the periods presented in the Original Form 10-K because of the material weakness.

Despite the finding of the material weakness, we have concluded that our consolidated financial statements and related notes thereto included in our Original Form 10-K fairly present in all material respects the financial condition, results of operations and cash flows of the Company as of, and for, the periods presented in the Original Form 10-K. Such financial statements are reincluded in this amended Annual Report for purposes of EY's opinions, but have not been amended or restated in any way since the Original Form 10-K.

Management's Remediation Efforts

We are in the process of implementing changes associated with the design, implementation and monitoring of ITGCs in the areas of logical access and change management for IT applications that support our financial statement preparation and reporting processes to ensure that internal controls are designed and operating effectively. Our remediation plans will include:

- Enhancing the current change monitoring control to use an appropriate system source to help ensure a complete population of changes are reviewed to detect if any changes were made outside the Company's established change control process across all relevant IT components.
- Adding controls to manage the appropriate assignment and maintenance of permission configurations within access groups and the users they are assigned to.
- Increasing the frequency of periodic re-evaluation of user access privileges.
- Training of relevant personnel on the design and operation of our ITGCs over financial reporting.

We believe that these actions, collectively, will remediate the material weakness identified. However, we will not be able to conclude that we have completely remediated the material weakness until the applicable controls are fully implemented and operated for a sufficient period of time and management has concluded, through formal testing, that the remediated controls are operating effectively. We will continue to monitor the design and effectiveness of these and other processes, procedures, and controls and will make any further changes management deems appropriate.

EMPIRE STATE REALTY TRUST, INC.
FORM 10-K/A
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PART II

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The financial statements beginning on Page F-1 of this Annual Report on Form 10-K/A are incorporated herein by reference.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Prior to the filing of the Original Form 10-K, under the supervision and with the participation of the Company's management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, the Company carried out an evaluation of the effectiveness of the design and operation of the Company's disclosure controls and procedures (as such term is defined in Rule 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act")). Disclosure controls and procedures are designed to ensure that information required to be disclosed in our reports under the Exchange Act is processed, recorded, summarized and reported within the time periods specified in the SEC's rules and regulations and that such information is accumulated and communicated to management, to allow for timely decisions regarding required disclosure. At the time that the Company filed the Original Form 10-K, our management concluded that, as of December 31, 2023, our disclosure controls and procedures were effective at the reasonable assurance level.

As discussed in the Explanatory Note to this amended Annual Report, subsequent to the filing of the Original Form 10-K, we reevaluated the effectiveness of our disclosure controls and our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls were not effective at a reasonable level of assurance for the periods presented in the Original Form 10-K because of the material weakness described in "Management's report on Internal Control over Financial Reporting" below.

Despite the finding of the material weakness, we have concluded that our consolidated financial statements and related notes thereto included in our Original Form 10-K fairly present in all material respects the financial condition, results of operations and cash flows of the Company as of, and for, the periods presented in the Original Form 10-K. Such financial statements are reincluded in this amended Annual Report for purposes of Ernst and Young LLP's ("EY") opinions, but have not been amended or restated in any way since the Original Form 10-K.

Inherent Limitations of Internal Controls over Financial Reporting

The Company's internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. The Company's internal control over financial reporting includes those policies and procedures that: (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the Company's assets; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that the Company's receipts and expenditures are being made only in accordance with authorizations of the Company's management and directors; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the Company's assets that could have a material effect on the Company's financial statements.

Management, including our Chief Executive Officer and Chief Financial Officer, does not expect that the Company's internal controls will prevent or detect all errors and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of internal controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. Also, any evaluation of the effectiveness of controls in future periods are subject to the risk that those internal controls may become inadequate because of changes in business conditions.

(a) Management's Report on Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rule 13(a)-15(f) under the Exchange Act. Prior to the filing of the Original Form 10-K, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted

an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2023 as required by Rule 13(a)-15(f) under the Exchange Act. In making this assessment, we used the criteria set forth in the framework in Internal Control–Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (the “COSO criteria”). A material weakness (as defined in Rule 12b-2 under the Exchange Act) is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

In Management’s Annual Report on Internal Control Over Financial Reporting included in the Original Form 10-K, management, including our Chief Executive Officer and Chief Financial Officer, concluded our internal control over financial reporting was effective as of December 31, 2023. As discussed in the Explanatory Note to this amended Annual Report, subsequent to the filing of the Original Form 10-K, we reevaluated the effectiveness of our internal control over financial reporting as of December 31, 2023, and management has now concluded that a material weakness in the design of ITGCs related to IT systems and applications relevant to preparation of our financial statements existed as of December 31, 2023 for the periods presented in the Original Form 10-K, and thus our disclosure controls were not effective at a reasonable level of assurance for the periods presented in the Original Form 10-K. Accordingly, management has restated its report on internal control over financial reporting.

Despite the finding of the material weakness, management has concluded that our consolidated financial statements and related notes thereto included in the Original Form 10-K fairly present in all material respects the financial condition, results of operations and cash flows of the Company as of, and for, the periods presented in this report. Additional detail on the nature of the material weakness, and management’s conclusions can be found below.

Design of Information Technology General Controls

We identified a material weakness in the design of ITGCs related to IT systems and applications relevant to preparation of our financial statements. In particular, the Company's ITGCs included: (i) controls to approve and monitor changes within information systems and related applications, but the monitoring controls were not designed to ensure a complete population of changes were subject to the control procedures across all relevant IT components and (ii) the controls to approve and monitor user access to information systems and related applications, but the monitoring controls were not designed to review the appropriateness of permissions granted to approved users. As a result, business process controls (automated and manual) that are dependent on the ineffective ITGCs, or that rely on data produced from systems impacted by the ineffective ITGCs, were also deemed ineffective.

In light of these findings, EY has issued an adverse report on the effectiveness of our internal control over financial reporting for the period ended December 31, 2023, as stated in its report, which is included herein.

As a result of the identification of the material weakness, and prior to filing this amended Annual Report, we performed further analysis and completed additional procedures intended to ensure our consolidated financial statements as of December 31, 2023 and 2022 and for the three years ended December 31, 2023 and financial statement schedule listed in the Index at Item 15(a) fairly present in all material respects the financial condition, results of operations and cash flows of the Company in accordance with generally accepted accounting principles. Based on these procedures and analysis, and notwithstanding the material weakness in our internal control over financial reporting, our management has concluded that our consolidated financial statements and related notes thereto and financial statement schedule listed in the Index at Item 15(a) included in this amended Annual Report fairly present in all material respects the financial condition, results of operations and cash flows of the Company and have been prepared in accordance with generally accepted accounting principles.

Our Chief Executive Officer and Chief Financial Officer have certified that, based on each such officer’s knowledge, the financial statements, as well as the other financial information included in this amended Annual Report, fairly present in all material respects the financial condition, results of operations and cash flows of the Company as of, and for, the periods presented in this amended Annual Report. In addition, EY has issued an unqualified opinion on our financial statements, which is included in Part IV of this amended Annual Report, and we have developed a remediation plan for the material weakness, which is described below.

Remediation of the Material Weakness in Internal Control Over Financial Reporting

We are in the process of implementing changes associated with the design, implementation and monitoring of ITGCs in the areas of logical access and change management for IT applications that support our financial statement preparation and reporting processes to ensure that internal controls are designed and operating effectively. Our remediation plans will include:

- Enhancing the current change monitoring control to use an appropriate system source to help ensure a complete population of changes are reviewed to detect if any changes were made outside the Company's established change control process across all relevant IT components.
- Adding controls to manage the appropriate assignment and maintenance of permission configurations within access groups and the users they are assigned to.
- Increasing the frequency of periodic re-evaluation of user access privileges.
- Training of relevant personnel on the design and operation of our ITGCs over financial reporting.

We believe that these actions, collectively, will remediate the material weakness identified. However, we will not be able to conclude that we have completely remediated the material weakness until the applicable controls are fully implemented and operated for a sufficient period of time and management has concluded, through formal testing, that the remediated controls are operating effectively. We will continue to monitor the design and effectiveness of these and other processes, procedures, and controls and will make any further changes management deems appropriate.

Changes in Internal Control Over Financial Reporting

Except for the unremediated material weaknesses noted above, there were no changes in the Company's internal control over financial reporting that occurred that have materially affected, or are reasonably likely to materially affect, its internal control over financial reporting.

(b) Attestation report of the independent registered public accounting firm

Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Empire State Realty Trust, Inc.

Opinion on Internal Control Over Financial Reporting

We have audited Empire State Realty Trust, Inc.'s internal control over financial reporting as of December 31, 2023, based on criteria established in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). In our opinion, because of the effect of the material weakness described below on the achievement of the objectives of the control criteria, Empire State Realty Trust, Inc. (the Company) has not maintained effective internal control over financial reporting as of December 31, 2023, based on the COSO criteria.

In our report dated February 28, 2024, we expressed an unqualified opinion that the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2023, based on the COSO criteria. Management has subsequently identified deficiencies in controls related to the design of information technology ("IT") general controls ("ITGCs") for IT systems and applications supporting the Company's internal control over financial reporting processes and has further concluded that such deficiencies represented a material weakness as of December 31, 2023. Consequently, automated and IT dependent manual business process controls that rely upon information from the IT systems were also deemed ineffective. As a result, management has revised its assessment, as presented in the accompanying Management's Report on Internal Control over Financial Reporting, to conclude that the Company's internal control over financial reporting was not effective as of December 31, 2023. Accordingly, our present opinion on the effectiveness of internal control over financial reporting as of December 31, 2023, as expressed herein, is different from that expressed in our previous report.

A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis. The following material weakness has been identified and included in management's assessment. Management has identified a material weakness related to the design of ITGCs for IT systems and applications supporting the Company's internal control over financial reporting processes. Consequently, automated and IT dependent manual business process controls that rely upon information from the IT systems were also deemed ineffective.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of December 31, 2023 and 2022, the related consolidated statement of operations, comprehensive income (loss), stockholders' equity and cash flows for each of the three years ended December 31, 2023, and the related notes and the financial statement schedule listed in the Index at Item 15(a) (collectively

referred to as the "consolidated financial statements"). The material weakness was considered in determining the nature, timing and extent of audit tests applied in our audit of the consolidated financial statements, and this report does not affect our report dated February 28, 2024, except for the effect of the material weakness described above and the Critical Audit Matter described in our Opinion on the Consolidated Financial Statements, as to which the date is October 8, 2024, which expressed an unqualified opinion thereon.

Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects.

Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ Ernst & Young LLP

New York, New York

February 28, 2024, except for the effects of the material weakness described in the third paragraph above, as to which the date is October 8, 2024.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENTS AND SCHEDULES

(a) The following documents are filed as part of this report:

1. The consolidated financial statements are set forth in ITEM 8 of this Annual Report.
2. The following financial statement schedules should be read in conjunction with the financial statements included in ITEM 8 of this Annual Report.

Schedule III-Real Estate and Accumulated Depreciation as of December 31, 2023 on page F-42.

Schedules other than those listed are omitted as they are not applicable or the required or equivalent information has been included in the financial statements or notes thereto.

(b) The exhibits required by Item 601 of Regulation S-K (§229.601 of this chapter) are listed below:

Exhibit Index

Exhibit No.	Description
<u>3.1</u>	<u>Articles of Amendment and Restatement of Empire State Realty Trust, Inc., incorporated by reference to Exhibit 3.1 to Amendment No. 8 to the Registrant's Form S-11 (Registration No. 333-179485), filed with the SEC on September 27, 2013.</u>
<u>3.2</u>	<u>Fourth Amended and Restated Bylaws of Empire State Realty Trust, Inc., incorporated by reference to Exhibit 3.1 to the Registrant's Form 8-K filed with the SEC on August 11, 2023.</u>
<u>4.1</u>	<u>Specimen Class A Common Stock Certificate of Empire State Realty Trust, Inc., incorporated by reference to Exhibit 4.1 to Amendment No. 3 to the Registrant's Form S-11 (Registration No. 333-179485), filed with the SEC on November 2, 2012.</u>
<u>4.2</u>	<u>Specimen Class B Common Stock Certificate of Empire State Realty Trust, Inc., incorporated by reference to Exhibit 4.2 to Amendment No. 3 to the Registrant's Form S-11 (Registration No. 333-179485), filed with the SEC on November 2, 2012.</u>
<u>4.3</u>	<u>Description of Empire State Realty Trust, Inc. Securities Registered Under Section 12 of the Securities Exchange Act of 1934.</u>
<u>10.1</u>	<u>Contribution Agreement among Empire Realty Trust, Inc., Empire Realty Trust, L.P. and certain members of the Malkin Group listed on the signature pages thereto, dated November 28, 2011, incorporated by reference to Exhibit 10.8 to the Registrant's Form S-11 (Registration No. 333-179485), filed with the SEC on February 13, 2012.</u>
<u>10.2</u>	<u>Amended and Restated Contribution Agreement among Empire Realty Trust, Inc., Empire Realty Trust, L.P. and certain entities affiliated with the Helmsley estate listed on the signature pages thereto, dated July 2, 2012, incorporated by reference to Exhibit 10.11 to Amendment No. 7 to the Registrant's Form S-11 (Registration No. 333-179485), filed with the SEC on September 19, 2013.</u>
<u>10.3</u>	<u>Form of Contribution Agreement among Empire Realty Trust, Inc., Empire Realty Trust, L.P. and each of the private existing entities that contributed properties in the consolidation, incorporated by reference to Exhibit 10.10 to the Registrant's Form S-11 (Registration No. 333-179485), filed with the SEC on February 13, 2012.</u>
<u>10.4</u>	<u>Form of Contribution Agreement among Empire State Realty Trust, Inc., Empire Realty OP, L.P. and each of the public existing entities that contributed properties in the consolidation, incorporated by reference to Exhibit 10.11 to the Registrant's Form S-11 (Registration No. 333-179485), filed with the SEC on February 13, 2012.</u>
<u>10.5</u>	<u>Representation, Warranty and Indemnity Agreement among Empire Realty Trust, Inc., Empire Realty Trust, L.P., Anthony E. Malkin, Cynthia M. Blumenthal and Scott D. Malkin, dated November 28, 2011, incorporated by reference to Exhibit 10.13 to the Registrant's Form S-11 (Registration No. 333-179485), filed with the SEC on February 13, 2012.</u>
<u>10.6</u>	<u>Form of Merger Agreement among Empire Realty Trust, Inc., Empire Realty Trust, L.P. and each of the predecessor management companies, incorporated by reference to Exhibit 10.12 to the Registrant's Form S-11 (Registration No. 333-179485), filed with the SEC on February 13, 2012.</u>
<u>10.7+</u>	<u>First Amended and Restated Empire State Realty Trust, Inc. Empire State Realty OP, L.P. 2013 Equity Incentive Plan (as amended and restated as of April 4, 2016), incorporated by reference to Exhibit 10.10 to the Registrant's Form 10-Q filed with the SEC on May 5, 2016.</u>
<u>10.8</u>	<u>Amended and Restated Agreement of Limited Partnership of Empire State Realty OP, L.P., dated October 1, 2013, incorporated by reference to Exhibit 10.1 to the Registrant's Form 10-Q filed with the SEC on November 12, 2013.</u>
<u>10.9</u>	<u>Amendment No. 1 to the First Amended and Restated Agreement of Limited Partnership of Empire State Realty OP, L.P., dated August 26, 2014, incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on August 26, 2014.</u>
<u>10.10</u>	<u>Amendment No. 2 to the First Amended and Restated Agreement of Limited Partnership of Empire State Realty OP, L.P., dated December 6, 2019, incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on December 12, 2019.</u>
<u>10.11</u>	<u>Registration Rights Agreement among Empire State Realty Trust, Inc. and the persons named therein, dated October 7, 2013, incorporated by reference to Exhibit 10.2 to the Registrant's Form 10-Q filed with the SEC on November 12, 2013.</u>
<u>10.12</u>	<u>Tax Protection Agreement among Empire State Realty Trust, Inc., Empire State Realty OP, L.P., and the parties named therein, dated October 7, 2013, incorporated by reference to Exhibit 10.3 to the Registrant's Form 10-Q filed with the SEC on November 12, 2013.</u>

<u>10.13</u>	<u>Indemnification Agreement among Empire State Realty Trust, Inc. and Peter L. Malkin, dated October 7, 2013, incorporated by reference to Exhibit 10.4 to the Registrant's Form 10-Q filed with the SEC on November 12, 2013.</u>
<u>10.14</u>	<u>Indemnification Agreement among Empire State Realty Trust, Inc. and Anthony E. Malkin, dated October 7, 2013, incorporated by reference to Exhibit 10.5 to the Registrant's Form 10-Q filed with the SEC on November 12, 2013.</u>
<u>10.15</u>	<u>Indemnification Agreement among Empire State Realty Trust, Inc. and Thomas P. Durels, dated October 7, 2013, incorporated by reference to Exhibit 10.7 to the Registrant's Form 10-Q filed with the SEC on November 12, 2013.</u>
<u>10.16</u>	<u>Indemnification Agreement among Empire State Realty Trust, Inc. and Thomas N. Keltner, Jr., dated October 7, 2013, incorporated by reference to Exhibit 10.8 to the Registrant's Form 10-Q filed with the SEC on November 12, 2013.</u>
<u>10.17</u>	<u>Form of Empire State Realty Trust, Inc. Independent Director Indemnification Agreement, incorporated by reference to Exhibit 10.22 to the Registrant's Form 10-K filed with the SEC on February 28, 2018.</u>
<u>10.18</u>	<u>Indemnification Agreement among Empire State Realty Trust, Inc. and Christina Chiu, dated April 20, 2020 incorporated by reference to Exhibit 10.4 to the Registrant's Form 10-Q filed with the SEC on May 6, 2020.</u>
<u>10.19</u>	<u>Change in Control Severance Agreement between Empire State Realty Trust, Inc. and Christina Chiu, dated April 13, 2020 incorporated by reference to Exhibit 10.5 to the Registrant's Form 10-Q filed with the SEC on May 6, 2020.</u>
<u>10.20^</u>	<u>Indemnification Agreement among Empire State Realty Trust, Inc. and Stephen V. Horn, dated February 20, 2024.</u>
<u>10.21^</u>	<u>Change in Control Severance Agreement between Empire State Realty Trust, Inc. and Stephen V. Horn, dated February 20, 2024.</u>
<u>10.22+</u>	<u>Amended and Restated Employment Agreement between Empire State Realty Trust, Inc. and Anthony E. Malkin, dated October 6 2021, incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on October 6, 2021.</u>
<u>10.23+</u>	<u>Amended and Restated Change in Control Severance Agreement between Empire State Realty Trust, Inc. and Thomas P. Durels, dated April 5, 2016, incorporated by reference to Exhibit 10.35 to the Registrant's Form 10-Q filed with the SEC on May 5, 2016.</u>
<u>10.24</u>	<u>Note Purchase Agreement, dated March 27, 2015, among Empire State Realty OP, L.P., Empire State Realty Trust, Inc. and the purchasers named therein, incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on March 30, 2015.</u>
<u>10.25</u>	<u>Registration Rights Agreement among Empire State Realty Trust, Inc. and the persons named therein, dated July 15, 2014, incorporated by reference to Exhibit 10.4 to the Registrant's Form 8-K filed with the SEC on July 21, 2014.</u>
<u>10.26</u>	<u>Form of Asset and Property Management Agreement, incorporated by reference to Exhibit 10.18 to Amendment No. 6 to the Registrant's Form S-11 (Registration No. 333-179485), filed with the SEC on September 6, 2013.</u>
<u>10.27</u>	<u>Form of Services Agreement, incorporated by reference to Exhibit 10.19 to Amendment No. 6 to the Registrant's Form S-11 (Registration No. 333-179485), filed with the SEC on September 6, 2013.</u>
<u>10.28</u>	<u>Stockholders Agreement dated as of August 23, 2016, by and between Empire State Realty Trust, Inc. and Q REIT Holding LLC, incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on August 23, 2016.</u>
<u>10.29</u>	<u>Registration Rights Agreement dated as of August 23, 2016, by and between Empire State Realty Trust, Inc. and Q REIT Holding LLC, incorporated by reference to Exhibit 10.2 to the Registrant's Form 8-K filed with the SEC on August 23, 2016.</u>
<u>10.30</u>	<u>Note Purchase Agreement, dated December 13, 2017, among Empire State Realty OP, L.P., Empire State Realty Trust, Inc. and the purchasers named therein, incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on December 14, 2017.</u>
<u>10.31+</u>	<u>Empire State Realty Trust, Inc. Empire State Realty OP, L.P. 2019 Equity Incentive Plan, incorporated by reference to Exhibit A to the Company's Definitive Proxy Statement filed with the SEC on April 4, 2019.</u>
<u>10.32+</u>	<u>Form of Restricted Stock Agreement (Time Based), incorporated by reference to Exhibit 99.1 to the Registration Statement on Form S-8 (Registration No. 333-231544), filed with the SEC on May 16, 2019.</u>
<u>10.33+</u>	<u>Form of LTIP Agreement (Performance- Based), incorporated by reference to Exhibit 99.2 to the Registration Statement on Form S-8 (Registration No. 333-231544), filed with the SEC on May 16, 2019.</u>
<u>10.34+</u>	<u>Form of LTIP Agreement (Time-Based), incorporated by reference to Exhibit 99.3 to the Registration Statement on Form S-8 (Registration No. 333-231544), filed with the SEC on May 16, 2019.</u>
<u>10.35</u>	<u>Empire State Realty OP, L.P., Empire State Realty Trust, Inc. \$100,000,000 3.61% Series G Senior Notes due March 17, 2032, \$75,000,000 3.73% Series H Senior Notes due March 17, 2035 Note Purchase Agreement dated March 17, 2020 incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on March 23, 2020.</u>

10.36+	First Amended and Restated Empire State Realty Trust, Inc. Empire State Realty OP, L.P. 2019 Equity Incentive Plan As Amended and Restated as of July 13, 2020 incorporated by reference to Exhibit 10.6 to Empire State Realty Trust, Inc. Form 10-Q filed with the SEC on August 10, 2020.
10.37+	Form of LTIP Agreement (Executive Officer, Time Based) incorporated by reference to Exhibit 10.1 to the Empire State Realty Trust, Inc. Form 10-Q filed with the SEC on August 5, 2021.
10.38+	Form of LTIP Agreement (Executive Officer, Performance Based) incorporated by reference to Exhibit 10.1 to the Empire State Realty Trust, Inc. Form 10-Q filed with the SEC on August 5, 2021.
10.39+	Form of LTIP Agreement (Executive Officer or Director, Immediate Vest) incorporated by reference to Exhibit 10.1 to the Empire State Realty Trust, Inc. Form 10-Q filed with the SEC on August 5, 2021.
10.40+	Form of LTIP Agreement (Director, Time-Based) incorporated by reference to Exhibit 10.1 to the Empire State Realty Trust, Inc. Form 10-Q filed with the SEC on August 5, 2021.
10.41	Second Amendment, dated as of August 29, 2022, to that certain Credit Agreement, dated as of March 19, 2020, among Empire State Realty Trust, Inc., Empire State Realty OP, L.P., the subsidiary guarantors party thereto, the lenders party thereto, and Wells Fargo Bank, National Association, as administrative agent incorporated by reference to Exhibit 10.62 to the Empire State Realty Trust Form 10-Q filed with the SEC on November 3, 2022.
10.42	Third Amendment, dated as of August 29, 2022, to that certain Amended and Restated Credit Agreement, dated August 29, 2017, among Empire State Realty Trust, Inc., Empire State Realty OP, L.P., the subsidiary guarantors party thereto, the lenders party thereto, and Bank of America, N.A., as administrative agent incorporated by reference to Exhibit 10.62 to the Empire State Realty Trust Form 10-Q filed with the SEC on November 3, 2022.
21.1^	Subsidiaries of Registrant
23.1*	Consent of Ernst & Young LLP
31.1*	Certification of Chief Executive Officer pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of Principal Financial Officer pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Certification of Chief Executive Officer pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Certification of Principal Financial Officer pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
97.1^	Compensation Clawback Policy of Empire State Realty Trust, Inc.
101.INS^	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH^	XBRL Taxonomy Extension Schema Document
101.CAL^	XBRL Taxonomy Extension Calculation Document
101.DEF^	XBRL Taxonomy Extension Definitions Document
101.LAB^	XBRL Taxonomy Extension Labels Document
101.PRE^	XBRL Taxonomy Extension Presentation Document
104	Cover Page Interactive Data File (formatted as inline XBRL with applicable taxonomy extension information contained in Exhibits 101.)

Notes:

* Filed herewith.

+ Indicates management contract or compensatory plan or arrangement required to be filed or incorporated by reference as an exhibit to this Form 10-K pursuant to Item 15(b) of Form 10-K.

^ Previously filed with our Original Form 10-K, originally filed with the SEC on February 28, 2024, which is being amended hereby.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Exchange Act, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

EMPIRE STATE REALTY TRUST, INC.

By: /s/ Stephen V. Horn

Date: October 8, 2024

Stephen V. Horn
*Executive Vice President, Chief Financial Officer
& Chief Accounting Officer
(Principal Financial and Accounting Officer)*

EMPIRE STATE REALTY TRUST
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Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Empire State Realty Trust, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Empire State Realty Trust, Inc. (the Company) as of December 31, 2023 and 2022, the related consolidated statements of operations, comprehensive income (loss), stockholders' equity and cash flows for each of the three years in the period ended December 31, 2023, and the related notes and the financial statement schedule listed in the Index at Item 15(a) (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2023 and 2022, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2023, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2023, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework), and our report dated February 28, 2024, except for the effects of the material weakness described in the third paragraph of that report as to which the date is October 8, 2024, expressed an adverse opinion thereon.

Basis for Opinion

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

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

Critical Audit Matter

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

Valuation of goodwill – observatory

Description of the Matter

At December 31, 2023, the Company's goodwill related to the observatory reporting unit was \$227.5 million as disclosed in Note 4 to the consolidated financial statements. As discussed in Note 2 to the consolidated financial statements, goodwill is tested for impairment at least annually or more frequently if there are indicators of impairment.

The Company performed its annual impairment testing as of October 1, 2023 and engaged a third-party valuation specialist to perform valuation procedures.

Auditing management's goodwill impairment test was complex due to the highly judgmental nature of the assumptions used. The fair value estimates were sensitive to significant assumptions such as revenue and cost projections and the weighted average cost of capital, which are affected by expectations about future market and economic conditions.

*How We Addressed
the Matter in Our
Audit*

To test the implied fair value of the Company's observatory reporting unit, we performed audit procedures that included, among other procedures, assessing the methodologies and testing the significant assumptions and underlying data used by the Company. We utilized internal valuation specialists in assessing the fair value methodologies applied and evaluating the reasonableness of certain assumptions selected by management. We compared the significant assumptions used by management to current industry and economic trends, recent historical performance, and other relevant factors, and performed sensitivity analyses of significant assumptions to evaluate the changes in the fair value of the observatory reporting unit that would result from changes in the assumptions.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 2010.

New York, New York

February 28, 2024, except for the effects of the material weakness described in the second paragraph above and the Critical Audit Matter described above, as to which the date is October 8, 2024.

Empire State Realty Trust, Inc.
Consolidated Balance Sheets
(amounts in thousands, except share and per share amounts)

ASSETS	December 31, 2023	December 31, 2022
Commercial real estate properties, at cost:		
Land	\$ 366,357	\$ 365,540
Development costs	8,178	8,166
Building and improvements	3,280,657	3,177,743
	<u>3,655,192</u>	<u>3,551,449</u>
Less: accumulated depreciation	(1,250,062)	(1,137,267)
Commercial real estate properties, net	2,405,130	2,414,182
Assets held for sale	—	35,538
Cash and cash equivalents	346,620	264,434
Restricted cash	60,336	50,244
Tenant and other receivables	39,836	24,102
Deferred rent receivables	255,628	240,188
Prepaid expenses and other assets	98,167	98,114
Deferred costs, net	172,457	187,570
Acquired below-market ground leases, net	321,241	329,073
Right of use assets	28,439	28,670
Goodwill	491,479	491,479
	<u>\$ 4,219,333</u>	<u>\$ 4,163,594</u>
LIABILITIES AND EQUITY		
Liabilities:		
Mortgage notes payable, net	\$ 877,388	\$ 883,705
Senior unsecured notes, net	973,872	973,659
Unsecured term loan facilities, net	389,286	388,773
Unsecured revolving credit facility	—	—
Accounts payable and accrued expenses	99,756	80,729
Acquired below-market leases, net	13,750	17,849
Ground lease liabilities	28,439	28,670
Deferred revenue and other liabilities	70,298	76,091
Tenants' security deposits	35,499	25,084
Liabilities related to assets held for sale	—	5,943
Total liabilities	<u>2,488,288</u>	<u>2,480,503</u>
Commitments and contingencies		
Equity:		
Empire State Realty Trust, Inc. stockholders' equity:		
Preferred stock, \$0.01 par value per share, 50,000 shares authorized, none issued or outstanding	—	—
Class A common stock, \$0.01 par value per share, 400,000 shares authorized, 162,062 and 160,139 shares issued and outstanding in 2023 and 2022, respectively	1,621	1,601
Class B common stock, \$0.01 par value per share, 50,000 shares authorized, 984 and 990 shares issued and outstanding in 2023 and 2022, respectively	10	10
Additional paid-in capital	1,060,969	1,055,184
Accumulated other comprehensive loss	6,026	7,048
Retained deficit	(83,108)	(109,468)
Total Empire State Realty Trust, Inc.'s stockholders' equity	<u>985,518</u>	<u>954,375</u>
Non-controlling interests in Operating Partnership	700,180	683,310
Non-controlling interests in other partnerships	15,407	15,466
Private perpetual preferred units:		
Series 2019 preferred units, \$13.52 per unit liquidation preference, 4,664 issued and outstanding in 2023 and 2022	21,936	21,936
Series 2014 preferred units, \$16.62 per unit liquidation preference, 1,560 issued and outstanding in 2023 and 2022	8,004	8,004
Total equity	<u>1,731,045</u>	<u>1,683,091</u>
Total liabilities and equity	<u>\$ 4,219,333</u>	<u>\$ 4,163,594</u>

The accompanying notes are an integral part of these financial statements

Empire State Realty Trust, Inc.
Consolidated Statements of Operations
(amounts in thousands, except per share amounts)

	For the Year Ended December 31,		
	2023	2022	2021
Revenues:			
Rental revenue	\$ 597,319	\$ 591,048	\$ 559,690
Observatory revenue	129,366	105,978	41,474
Lease termination fees	—	20,032	16,230
Third-party management and other fees	1,351	1,361	1,219
Other revenue and fees	11,536	8,622	5,481
Total revenues	<u>739,572</u>	<u>727,041</u>	<u>624,094</u>
Operating expenses:			
Property operating expenses	167,324	157,935	126,986
Ground rent expenses	9,326	9,326	9,326
General and administrative expenses	63,939	61,765	55,947
Observatory expenses	35,265	31,036	23,206
Real estate taxes	127,101	123,057	119,967
Impairment charges	—	—	7,723
Depreciation and amortization	189,911	216,894	201,806
Total operating expenses	<u>592,866</u>	<u>600,013</u>	<u>544,961</u>
Total operating income	146,706	127,028	79,133
Other income (expense):			
Interest income	15,136	4,948	704
Interest expense	(101,484)	(101,206)	(94,394)
Gain on sale/disposition of properties	26,764	33,988	—
Loss on early extinguishment of debt	—	—	(214)
Income (loss) before income taxes	87,122	64,758	(14,771)
Income tax (expense) benefit	(2,715)	(1,546)	1,734
Net income (loss)	84,407	63,212	(13,037)
Private perpetual preferred unit distributions	(4,201)	(4,201)	(4,201)
Net (income) loss attributable to non-controlling interests:			
Non-controlling interests in the Operating Partnership	(31,094)	(22,812)	6,527
Non-controlling interests in other partnerships	(68)	243	—
Net income (loss) attributable to common stockholders	<u>\$ 49,044</u>	<u>\$ 36,442</u>	<u>\$ (10,711)</u>
Total weighted average shares:			
Basic	<u>161,122</u>	<u>165,039</u>	<u>172,445</u>
Diluted	<u>265,633</u>	<u>269,948</u>	<u>277,420</u>
Earnings (loss) per share attributable to common stockholders:			
Basic	<u>\$ 0.30</u>	<u>\$ 0.22</u>	<u>\$ (0.06)</u>
Diluted	<u>\$ 0.30</u>	<u>\$ 0.22</u>	<u>\$ (0.06)</u>

The accompanying notes are an integral part of these financial statements

Empire State Realty Trust, Inc.
Consolidated Statements of Comprehensive Income (Loss)
(amounts in thousands)

	For the Year Ended December 31,		
	2023	2022	2021
Net income (loss)	\$ 84,407	\$ 63,212	\$ (13,037)
Other comprehensive income (loss):			
Unrealized gain on valuation of interest rate swap agreements	5,581	40,044	348
Amount reclassified into interest expense	(7,819)	7,230	11,653
Other comprehensive income (loss)	(2,238)	47,274	12,001
Comprehensive income (loss)	82,169	110,486	(1,036)
Net (income) loss attributable to non-controlling interests and private perpetual preferred unitholders	(35,363)	(26,770)	2,326
Other comprehensive (income) loss attributable to non-controlling interests	1,060	(19,573)	(4,536)
Comprehensive income (loss) attributable to common stockholders	\$ 47,866	\$ 64,143	\$ (3,246)

The accompanying notes are an integral part of these financial statements

Empire State Realty Trust, Inc.
Consolidated Statements of Stockholders' Equity
(amounts in thousands)

	Number of Class A Common Shares	Class A Common Stock	Number of Class B Common Shares	Class B Common Stock	Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Retained Deficit	Total Stockholders' Equity	Non-controlling Interests	Private Perpetual Preferred Units	Total Equity
Balance at December 31, 2020	170,555	\$ 1,705	1,010	\$ 10	\$ 1,147,527	\$ (28,320)	\$ (65,673)	\$ 1,055,249	\$ 646,118	\$ 29,940	\$ 1,731,307
Conversion of operating partnership units and Class B shares to Class A shares	3,512	35	(14)	—	10,384	7	—	10,426	(10,426)	—	—
Repurchases of common shares	(4,887)	(49)	—	—	(7,539)	—	(39,116)	(46,704)	—	—	(46,704)
Contributions to consolidated joint venture interests	—	—	—	—	—	—	—	—	13,269	—	13,269
Equity compensation:											
LTIP Units, net of forfeitures	—	—	—	—	—	—	—	—	19,747	—	19,747
Restricted stock, net of forfeitures	41	1	—	—	512	—	—	513	—	—	513
Dividends and distributions	—	—	—	—	—	—	(18,110)	(18,110)	(10,453)	(4,201)	(32,764)
Net income (loss)	—	—	—	—	—	—	(10,711)	(10,711)	(6,527)	4,201	(13,037)
Other comprehensive income	—	—	—	—	—	7,465	—	7,465	4,536	—	12,001
Balance at December 31, 2021	169,221	\$ 1,692	996	\$ 10	\$ 1,150,884	\$ (20,848)	\$ (133,610)	\$ 998,128	\$ 656,264	\$ 29,940	\$ 1,684,332
Conversion of operating partnership units and Class B shares to Class A shares	2,304	23	(6)	—	4,277	195	—	4,495	(4,495)	—	—
Repurchases of common shares	(11,571)	(116)	—	—	(100,869)	—	10,809	(90,176)	—	—	(90,176)
Contributions to consolidated joint venture interests	—	—	—	—	—	—	—	—	224	—	224
Equity compensation:											
LTIP Units, net of forfeitures	—	—	—	—	—	—	—	—	20,117	—	20,117
Restricted stock, net of forfeitures	185	2	—	—	892	—	—	894	—	—	894
Dividends and distributions	—	—	—	—	—	—	(23,109)	(23,109)	(15,476)	(4,201)	(42,786)
Net income	—	—	—	—	—	—	36,442	36,442	22,569	4,201	63,212
Other comprehensive income	—	—	—	—	—	27,701	—	27,701	19,573	—	47,274
Balance at December 31, 2022	160,139	\$ 1,601	990	\$ 10	\$ 1,055,184	\$ 7,048	\$ (109,468)	\$ 954,375	\$ 698,776	\$ 29,940	\$ 1,683,091
Conversion of operating partnership units and Class B shares to Class A shares	3,762	38	(6)	—	17,477	156	—	17,671	(17,671)	—	—
Repurchases of common shares	(2,151)	(21)	—	—	(13,084)	—	—	(13,105)	—	—	(13,105)
Contributions to consolidated joint venture interests	—	—	—	—	—	—	—	—	187	—	187
Equity compensation:											
LTIP Units, net of forfeitures	—	—	—	—	—	—	—	—	18,631	—	18,631
Restricted stock, net of forfeitures	312	3	—	—	1,392	—	—	1,395	—	—	1,395
Dividends and distributions	—	—	—	—	—	—	(22,684)	(22,684)	(14,438)	(4,201)	(41,323)
Net income	—	—	—	—	—	—	49,044	49,044	31,162	4,201	84,407
Other comprehensive loss	—	—	—	—	—	(1,178)	—	(1,178)	(1,060)	—	(2,238)
Balance at December 31, 2023	162,062	\$ 1,621	984	\$ 10	\$ 1,060,969	\$ 6,026	\$ (83,108)	\$ 985,518	\$ 715,587	\$ 29,940	\$ 1,731,045

The accompanying notes are an integral part of these financial statements

Empire State Realty Trust, Inc.
Consolidated Statements of Cash Flows
(amounts in thousands)

	For the Year Ended December 31,		
	2023	2022	2021
Cash Flows From Operating Activities			
Net income (loss)	\$ 84,407	\$ 63,212	\$ (13,037)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Depreciation and amortization	189,911	216,894	201,806
Gain on sale/disposition of properties	(26,764)	(33,988)	—
Impairment charges	—	—	7,723
Amortization of non-cash items within interest expense	9,089	9,799	10,862
Amortization of acquired above- and below-market leases, net	(2,415)	(4,759)	(5,896)
Amortization of acquired below-market ground leases	7,831	7,831	7,831
Straight-lining of rental revenue	(19,563)	(24,562)	(21,078)
Equity based compensation	20,026	21,011	20,260
Loss on early extinguishment of debt	—	—	214
Increase (decrease) in cash flows due to changes in operating assets and liabilities:			
Security deposits	10,486	(828)	(1,052)
Tenant and other receivables	(15,643)	(5,306)	2,894
Deferred leasing costs	(17,669)	(36,909)	(16,090)
Prepaid expenses and other assets	(5,186)	(2,263)	5,814
Accounts payable and accrued expenses	746	4,705	(99)
Deferred revenue and other liabilities	(2,765)	(3,664)	12,334
Net cash provided by operating activities	<u>232,491</u>	<u>211,173</u>	<u>212,486</u>
Cash Flows From Investing Activities			
Acquisition of real estate property	(26,910)	(115,593)	(117,540)
Net proceeds from disposition of real estate	88,910	11,005	—
Additions to building and improvements	(139,328)	(126,268)	(95,037)
Development costs	(12)	(35)	(165)
Net cash used in investing activities	<u>(77,340)</u>	<u>(230,891)</u>	<u>(212,742)</u>

The accompanying notes are an integral part of these financial statements

Empire State Realty Trust, Inc.
Consolidated Statements of Cash Flows (continued)
(amounts in thousands)

	For the Year Ended December 31,		
	2023	2022	2021
Cash Flows From Financing Activities			
Repayment of mortgage notes payable	(8,632)	(7,504)	(4,091)
Contributions from consolidated joint ventures	187	224	—
Deferred financing costs	—	—	(9,486)
Repurchases of common shares	(13,105)	(90,176)	(46,704)
Private perpetual preferred unit distributions	(4,201)	(4,201)	(4,201)
Dividends paid to common stockholders	(22,684)	(23,109)	(18,110)
Distributions paid to non-controlling interests in the operating partnership	(14,438)	(15,476)	(10,453)
Net cash used in financing activities	<u>(62,873)</u>	<u>(140,242)</u>	<u>(93,045)</u>
Net increase (decrease) in cash and cash equivalents and restricted cash	92,278	(159,960)	(93,301)
Cash and cash equivalents and restricted cash—beginning of period	314,678	474,638	567,939
Cash and cash equivalents and restricted cash—end of period	<u>\$ 406,956</u>	<u>\$ 314,678</u>	<u>\$ 474,638</u>
Reconciliation of Cash and Cash Equivalents and Restricted Cash:			
Cash and cash equivalents at beginning of period	\$ 264,434	\$ 423,695	\$ 526,714
Restricted cash at beginning of period	50,244	50,943	41,225
Cash and cash equivalents and restricted cash at beginning of period	<u>\$ 314,678</u>	<u>\$ 474,638</u>	<u>\$ 567,939</u>
Cash and cash equivalents at end of period	\$ 346,620	\$ 264,434	\$ 423,695
Restricted cash at end of period	60,336	50,244	50,943
Cash and cash equivalents and restricted cash at end of period	<u>\$ 406,956</u>	<u>\$ 314,678</u>	<u>\$ 474,638</u>
Supplemental disclosures of cash flow information:			
Cash paid for interest	<u>\$ 92,000</u>	<u>\$ 91,012</u>	<u>\$ 77,610</u>
Cash paid for income taxes	<u>\$ 1,390</u>	<u>\$ 200</u>	<u>\$ 644</u>
Non-cash investing and financing activities:			
Building and improvements included in accounts payable and accrued expenses	\$ 51,815	\$ 44,293	\$ 49,247
Write-off of fully depreciated assets	33,391	35,124	31,341
Derivative instruments at fair values included in prepaid expenses and other assets	11,800	17,902	—
Derivative instruments at fair values included in accounts payable and accrued expenses	85	—	25,308
Conversion of operating partnership units and Class B shares to Class A shares	17,671	4,495	10,426
Transfer of assets related to assets held for sale	—	35,538	—
Transfer of liabilities related to assets held for sale	—	5,943	—
Mortgage assumed in connection with sale of real estate	—	30,117	—
Debt assumed with the acquisition of real estate properties	—	—	177,453
Contribution from other partnerships	—	—	13,269

The accompanying notes are an integral part of these financial statements

Empire State Realty Trust, Inc.
Notes to Consolidated Financial Statements

1. Description of Business and Organization

As used in these consolidated financial statements, unless the context otherwise requires, "we," "us," "our," the "Company," and "ESRT" mean Empire State Realty Trust, Inc. and its consolidated subsidiaries.

Empire State Realty Trust, Inc. (NYSE: ESRT) is a NYC-focused REIT that owns and operates a portfolio of modernized, amenitized, and well-located office, retail, and multifamily assets. The Company is a recognized leader in energy efficiency and indoor environmental quality. ESRT's flagship Empire State Building – the "World's Most Famous Building" – includes its Observatory, the #1 attraction in the U.S. in Tripadvisor's Travelers' Choice Awards: Best of the Best for two consecutive years.

As of December 31, 2023, our portfolio was comprised of approximately 8.6 million rentable square feet of office space, 0.7 million rentable square feet of retail space and 727 residential units. Our office portfolio included 11 properties (including three long-term ground leasehold interests) encompassing approximately 8.6 million rentable square feet. Nine of these office properties are located in midtown Manhattan and encompass approximately 7.6 million rentable square feet, including the Empire State Building. The remaining two office properties encompass approximately 1.1 million rentable square feet and are located in Stamford, Connecticut, with immediate access to mass transportation. Additionally, we have entitled land adjacent to one of the Stamford office properties that can support the development of either office or residential per local zoning. Our multifamily portfolio included 727 residential units in New York City.

We were organized as a Maryland corporation on July 29, 2011 and commenced operations upon completion of our initial public offering and related formation transactions on October 7, 2013 (the "IPO"). Our operating partnership, Empire State Realty OP, L.P. (the "Operating Partnership"), holds substantially all of our assets and conducts substantially all of our business. As of December 31, 2023, we owned approximately 60.2% of the aggregate operating partnership units in the Operating Partnership. We, as the sole general partner in the Operating Partnership, have responsibility and discretion in the management and control of the Operating Partnership, and the limited partners in the Operating Partnership, in such capacity, have no authority to transact business for, or participate in the management activities of, the Operating Partnership. Accordingly, the Operating Partnership has been consolidated by us. We elected to be subject to tax as a REIT for U.S. federal income tax purposes commencing with our taxable year ended December 31, 2013.

We have two entities that elected to be treated as taxable REIT subsidiaries, or TRSs, and are owned by our Operating Partnership. The TRSs, through several wholly owned limited liability companies, conduct third-party services businesses, which include the Empire State Building Observatory, cleaning services, cafeterias, restaurant and health clubs, and asset and property management services.

2. Summary of Significant Accounting Policies

Basis of Presentation and Principles of Consolidation

The accompanying consolidated financial statements prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP") and with the rules and regulations of the SEC, represent our assets and liabilities and operating results. The consolidated financial statements include our accounts and our partially owned and wholly owned subsidiaries as well as our Operating Partnership and its subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

We consolidate entities in which we have a controlling financial interest. In determining whether we have a controlling financial interest in a partially owned entity and the requirement to consolidate the accounts of that entity, we consider factors such as ownership interest, board representation, management representation, authority to make decisions, and contractual and substantive participating rights of the partners/members. For variable interest entities ("VIE"), we consolidate the entity if we are deemed to have a variable interest in the entity and through that interest we are deemed the primary beneficiary. The primary beneficiary of a VIE is the entity that has (i) the power to direct the activities that most significantly impact the entity's economic performance and (ii) the obligation to absorb losses of the VIE or the right to receive benefits from the VIE that could be significant to the VIE. The primary beneficiary is required to consolidate the VIE. The Operating Partnership is a VIE of ESRT. As the Operating Partnership is already consolidated in the financial statements of ESRT, the identification of this entity

as a VIE has no impact on our consolidated financial statements. At December 31, 2022, the Operating Partnership was the primary beneficiary of a variable interest in the intermediary entity which held title to 298 Mulberry Street, the multifamily asset acquired in December 2022. The intermediary entity was utilized to execute a like-kind exchange and subsequent to March 31, 2023, the like-kind exchange was completed and the Operating Partnership took title to 298 Mulberry Street. Therefore, the Operating Partnership had no VIEs at December 31, 2023.

We will assess the accounting treatment for each investment we may have in the future. This assessment will include a review of each entity's organizational agreement to determine which party has what rights and whether those rights are protective or participating. For all VIEs, we will review such agreements in order to determine which party has the power to direct the activities that most significantly impact the entity's economic performance and benefit. In situations where we or our partner could approve, among other things, the annual budget, or leases that cover more than a nominal amount of space relative to the total rentable space at each property, we would not consolidate the investment as we consider these to be substantive participation rights that result in shared power of the activities that would most significantly impact the performance and benefit of such joint venture investment.

A non-controlling interest in a consolidated subsidiary is defined as the portion of the equity (net assets) in a subsidiary not attributable, directly or indirectly, to a parent. Non-controlling interests are required to be presented as a separate component of equity in the consolidated balance sheets and in the consolidated statements of income by requiring earnings and other comprehensive income to be attributed to controlling and non-controlling interests.

Accounting Estimates

The preparation of the consolidated financial statements in accordance with GAAP requires management to use estimates and assumptions that in certain circumstances affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported revenues and expenses. Significant items subject to such estimates and assumptions include allocation of the purchase price of acquired real estate properties among tangible and intangible assets, determination of the useful life of real estate properties and other long-lived assets, valuation and impairment analysis of commercial real estate properties, goodwill, right-of-use assets and other long-lived and indefinite-lived assets, estimate of tenant expense reimbursements, valuation of the allowance for doubtful accounts, and valuation of derivative instruments, ground lease liabilities, senior unsecured notes, mortgage notes payable, unsecured revolving credit and term loan facilities, and equity based compensation. These estimates are prepared using management's best judgment, after considering past, current, and expected events and economic conditions. Actual results could differ from those estimates.

Revenue Recognition

Rental Revenue

Rental revenue includes base rents that each tenant pays in accordance with the terms of its respective lease and is reported on a straight-line basis over the non-cancellable term of the lease which includes the effects of rent steps and rent abatements under the leases. In general, we commence rental revenue recognition when the tenant takes possession of the leased space or controls the physical use of the leased space and the leased space is substantially ready for its intended use. We account for all of our leases as operating leases. Deferred rent receivables, including free rental periods and leasing arrangements allowing for increased base rent payments, are accounted for in a manner that provides an even amount of fixed lease revenues over the respective non-cancellable lease terms. Differences between rental income recognized and amounts due under the respective lease agreements are recognized as an increase or decrease to deferred rent receivables.

In addition to base rent, our tenants also generally will pay their pro rata share of increases in real estate taxes and operating expenses for the building over a base year. In some leases, in lieu of paying additional rent based upon increases in building operating expenses, the tenant will pay additional rent based upon increases in an index such as the Consumer Price Index over the index value in effect during a base year, or contain fixed percentage increases over the base rent to cover escalations.

We recognize rental revenue of acquired in-place above- and below-market leases at their fair values over the terms of the respective leases, including, for below-market leases, fixed option renewal periods, if any.

Lease termination fees are recognized when the fees are determinable, tenant vacancy has occurred, collectability is reasonably assured, we have no continuing obligation to provide services to such former tenants and the payment is not subject to any conditions that must be met or waived.

Observatory Revenue

Revenues from the sale of Observatory tickets are recognized upon admission or ticket expirations. Deferred revenue related to unused and unexpired tickets as of December 31, 2023 and 2022 was \$1.7 million and \$1.4 million, respectively, and is included in deferred revenue and other liabilities on the consolidated balance sheets.

Gains on Sale/Disposition of Real Estate

We record a gain on sale of real estate pursuant to provisions under Accounting Standards Codification (ASC) 610-20, Gains and Losses from the Derecognition of Nonfinancial Assets. Under ASC 610-20, we must first determine whether the transaction is a sale to a customer or non-customer. We do not sell real estate within the ordinary course of our business and therefore, expect that sale transactions will not be contracts with customers. We will next determine whether we would have a controlling financial interest in the property after the sale. If we determine that we do not have a controlling financial interest in the real estate, we would evaluate whether a contract exists under ASC 606 Revenue from Contracts with Customers and whether the buyer has obtained control of the asset that was sold. We recognize the full gain on sale of real estate when the derecognition criteria under ASC 610-20 have been met.

Third-Party Management and Other Fees

We earn revenue arising from contractual agreements with related party entities for asset and property management services. This revenue is recognized as the related services are performed under the respective agreements in place.

Other Revenues and Fees

Other revenues and fees includes parking income, legal, tax and insurance settlements, demand response energy use earnings and sales from our restaurant at the Empire State Building.

Advertising and Marketing Costs

Advertising and marketing costs are expensed as incurred. The expense for the years ended December 31, 2023, 2022, and 2021 was \$10.9 million, \$10.8 million and \$7.9 million, respectively, and is included within operating expenses in our consolidated statements of operations.

Real Estate Properties and Related Intangible Assets

Land and buildings and improvements are recorded at cost less accumulated depreciation and amortization. The recorded cost includes cost of acquisitions, development and construction and tenant allowances and improvements. Expenditures for ordinary repairs and maintenance are charged to property operating expense as incurred. Significant replacements and betterments which improve or extend the life of the asset are capitalized. Tenant improvements which improve or extend the life of the asset are capitalized. If a tenant vacates its space prior to the contractual termination of its lease, the unamortized balance of any tenant improvements are written off if they are replaced or have no future value. For developed properties, direct and indirect costs that clearly relate to projects under development are capitalized. Costs include construction costs, professional services such as architectural and legal costs, capitalized interest and direct payroll costs. We begin capitalization when the project is probable. The assets relating to the project are stated at cost and are not depreciated. Once construction is completed and the assets are placed in service, the assets are reclassified to the appropriate asset class and depreciated in accordance with the useful lives as indicated below. Capitalization of interest ceases when the asset is ready for its intended use, which is generally near the date that a certificate of occupancy is obtained. There was no capitalized interest for the years ended December 31, 2023 and 2022.

Depreciation and amortization are computed using the straight-line method for financial reporting purposes. Buildings and improvements are depreciated over the shorter of 39 years, the useful life, or the remaining term of any leasehold interest. Tenant improvement costs, which are included in building and improvements in the consolidated balance sheets, are depreciated over the shorter of (i) the related remaining lease term or (ii) the life of the improvement. Corporate and other equipment is depreciated over three to seven years.

Acquisitions of properties are accounted for utilizing the acquisition method and accordingly the purchase cost is allocated to tangible and intangible assets and liabilities based on their fair values. The fair value of tangible assets acquired is determined by valuing the property as if it were vacant, applying methods similar to those used by independent appraisers of income-producing property. The resulting value is then allocated to land, buildings and improvements, and tenant

improvements based on our determination of the fair value of these assets. The assumptions used in the allocation of fair values to assets acquired are based on our best estimates at the time of evaluation.

Fair value is assigned to above-market and below-market leases based on the difference between (a) the contractual amounts to be paid by the tenant based on the existing lease and (b) our estimate of current market lease rates for the corresponding in-place leases, over the remaining terms of the in-place leases. Capitalized above-market lease amounts are amortized as a decrease to rental revenue over the remaining terms of the respective leases. Capitalized below-market lease amounts are amortized as an increase to rental revenue over the remaining terms of the respective leases. If a tenant vacates its space prior to the contractual termination of the lease and no rental payments are being made on the lease, any unamortized balance of the related intangible will be written off.

The aggregate value of other acquired intangible assets consists of acquired ground leases and acquired in-place leases and tenant relationships. The fair value allocated to acquired in-place leases consists of a variety of components including, but not necessarily limited to: (a) the value associated with avoiding the cost of originating the acquired in-place leases (i.e. the market cost to execute a lease, including leasing commissions, if any); (b) the value associated with lost revenue related to tenant reimbursable operating costs estimated to be incurred during the assumed lease-up period (i.e. real estate taxes, insurance and other operating expenses); (c) the value associated with lost rental revenue from existing leases during the assumed lease-up period; and (d) the value associated with any other inducements to secure a tenant lease.

We assess the potential for impairment of our long-lived assets, including real estate properties, annually or whenever events occur or a change in circumstances indicate that the recorded value might not be fully recoverable. We determine whether impairment in value has occurred by comparing the estimated future undiscounted cash flows expected from the use and eventual disposition of the asset to its carrying value. If the undiscounted cash flows do not exceed the carrying value, the real estate is adjusted to fair value and an impairment loss is recognized. Assets held for sale are recorded at the lower of cost or fair value less costs to sell and depreciation expense is no longer recorded.

During the fourth quarter 2021, we concluded that the cost basis of 383 Main Avenue, Norwalk, Connecticut exceeded its fair value when we reduced our hold period given our intent to transfer property ownership to the lender. As such, we incurred a \$7.7 million impairment charge in the year ended December 31, 2021. Our methodology to calculate the fair value of the property involved a combination of the discounted cash flow method, utilizing Level 3 unobservable inputs such as market capitalization rates obtained from external sources, and the market-based approach utilizing recent sales comparables. In April 2022, we transferred this asset back to the lender in a consensual foreclosure. Refer to Note 3 Acquisitions and Dispositions. We do not believe that the value of any of our other properties and intangible assets were impaired during the years ended December 31, 2023, 2022 and 2021.

Cash and Cash Equivalents

Cash and cash equivalents consist of cash on hand, government money markets, demand deposits with financial institutions and short-term liquid investments with original maturities of three months or less when purchased. Cash and cash equivalents held at major commercial banks may at times exceed the Federal Deposit Insurance Corporation limit. To date, we have not experienced any losses on our invested cash.

Restricted Cash

Restricted cash consists of amounts held for tenants in accordance with lease agreements such as security deposits and amounts held by lenders and/or escrow agents to provide for future real estate tax expenditures and insurance expenditures, tenant vacancy related costs and debt service obligations.

Short-term Investments

Short-term investments include time deposits with original maturities of greater than three months and remaining maturities of less than one year.

Tenant and Other Receivables

Tenant and other receivables, other than deferred rent receivable, are generally expected to be collected within one year.

Deferred Leasing Costs

Deferred leasing costs consist of fees incurred to initiate and renew leases, are amortized on a straight-line basis over the related lease term and the expense is included in depreciation and amortization in our consolidated statements of income. Upon the early termination of a lease, unamortized deferred leasing costs are charged to expense.

Deferred Financing Costs

Fees and costs incurred to obtain long-term financing have been deferred and are amortized as a component of interest expense in our consolidated statements of income over the life of the respective long-term financing on the straight-line method which approximates the effective interest method. Unamortized deferred financing costs are expensed when the associated debt is refinanced or repaid before maturity. Costs incurred in seeking debt, which do not close, are expensed in the period in which it is determined that the financing will not close.

Equity Method Investments

We account for investments under the equity method of accounting where we do not have control but have the ability to exercise significant influence. Under this method, investments are recorded at cost, and the investment accounts are adjusted for our share of the entities' income or loss and for distributions and contributions. Equity income (loss) is allocated based on the portion of the ownership interest that is controlled by us. The agreements may designate different percentage allocations among investors for profits and losses; however, our recognition of the entity's income or loss generally follows the entity's distribution priorities, which may change upon the achievement of certain investment return thresholds.

To the extent that we contributed assets to an entity, our investment in the entity is recorded at cost basis in the assets that were contributed to the entity. Upon contributing assets to an entity, we make a judgment as to whether the economic substance of the transaction is a sale. In accordance with the provisions of ASC 610-20, we will recognize a full gain on both the retained and sold portions of real estate contributed or sold to an entity by recognizing our new equity method investment interest at fair value.

To the extent that the carrying amount of these investments on our combined balance sheets is different than the basis reflected at the entity level, the basis difference would be amortized over the life of the related asset and included in our share of equity in net income of the entity.

On a periodic basis, we assess whether there are any indicators that the carrying value of our investments in entities may be impaired on an other than temporary basis. An investment is impaired only if management's estimate of the fair value of the investment is less than the carrying value of the investment on an other than temporary basis. To the extent impairment has occurred, the loss shall be measured as the excess of the carrying value of the investment over the fair value of the investment.

As of December 31, 2023 and 2022, we had no equity method investments.

Goodwill

Goodwill is tested annually for impairment and more frequently if events and circumstances indicate that the asset might be impaired. An impairment loss is recognized to the extent that the carrying amount, including goodwill, exceeds the reporting unit's fair value and the implied fair value of goodwill is less than the carrying amount of that goodwill. Non-amortizing intangible assets, such as trade names and trademarks, are subject to an annual impairment test based on fair value and amortizing intangible assets are tested whenever events or changes in circumstances indicate that the carrying amount may not be recoverable.

Fair Value

Fair value is a market-based measurement, not an entity-specific measurement, and should be determined based on the assumptions that market participants would use in pricing the asset or liability. As a basis for considering market participant assumptions in fair value measurements, the FASB guidance establishes a fair value hierarchy that distinguishes between market participant assumptions based on market data obtained from sources independent of the reporting entity (observable inputs that are classified within levels one and two of the hierarchy) and the reporting entity's own assumptions about market participant assumptions (unobservable inputs classified within Level 3 of the hierarchy).

The methodologies used for valuing financial instruments have been categorized into three broad levels as follows:

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

Level 2 - Valuations based principally on other observable market parameters, including:

- Quoted prices in active markets for similar instruments;
- Quoted prices in less active or inactive markets for identical or similar instruments;
- Other observable inputs (such as risk free interest rates, yield curves, volatilities, prepayment speeds, loss severities, credit risks and default rates); and
- Market corroborated inputs (derived principally from or corroborated by observable market data).

Level 3 - Valuations based significantly on unobservable inputs, including:

- Valuations based on third-party indications (broker quotes or counterparty quotes) which were, in turn, based significantly on unobservable inputs or were otherwise not supportable; and
- Valuations based on internal models with significant unobservable inputs.

These levels form a hierarchy. We follow this hierarchy for our financial instruments measured or disclosed at fair value on a recurring and nonrecurring basis and other required fair value disclosures. The classifications are based on the lowest level of input that is significant to the fair value measurement.

We use the following methods and assumptions in estimating fair value disclosures for financial instruments.

Cash and cash equivalents, restricted cash, short term investments, tenant and other receivables, prepaid expenses and other assets, deferred revenue, tenant security deposits, accounts payable and accrued expenses carrying values approximate their fair values due to the short term maturity of these instruments.

The fair value of derivative instruments is determined using widely accepted valuation techniques, including discounted cash flow analysis on the expected cash flows of each derivative. Although the majority of the inputs used to value our derivatives fall within Level 2 of the fair value hierarchy, the credit valuation adjustments associated with our derivatives utilize Level 3 inputs, such as estimates of current credit spreads to evaluate the likelihood of default by ourselves and our counterparties. The impact of such credit valuation adjustments, determined based on the fair value of each individual contract, was not significant to the overall valuation. As a result, all of our derivatives were classified as Level 2 of the fair value hierarchy.

The fair value of our mortgage notes payable, senior unsecured notes (Series A, B, C, D, E, F, G and H), unsecured term loan facilities and unsecured revolving credit facility which are determined using Level 3 inputs are estimated by discounting the future cash flows using current interest rates at which similar borrowings could be made by us.

Derivative Instruments

We are exposed to the effect of interest rate changes and manage these risks by following policies and procedures including the use of derivatives. To manage exposure to interest rates, derivatives are used primarily to fix the rate on debt based on floating-rate indices. We record all derivatives on the balance sheet at fair value. We incorporate credit valuation adjustments to appropriately reflect both our own nonperformance risk and the respective counterparty's nonperformance risk in the fair value measurements. We measure the credit risk of our derivative instruments that are subject to master netting agreements on a net basis by counterparty portfolio. For derivatives that qualify as cash flow hedges, we report the gain or loss on the derivative designated as a hedge as part of other comprehensive income (loss) and subsequently reclassify the gain or loss into income in the period that the hedged transaction affects income.

Income Taxes

We elected to be subject to tax as a REIT under sections 856 through 860 of the Internal Revenue Code of 1986, as amended, (the "Code"), commencing with the taxable year ended December 31, 2013 and believe that our intended manner of operations will enable us to continue to meet the requirements for qualification and taxation as a REIT. REITs are subject to a number of organizational and operational requirements, including a requirement that 90% of ordinary "REIT taxable income" (as determined without regard to the dividends paid deduction or net capital gains) be distributed. As a REIT, we will generally not be subject to U.S. federal income tax to the extent that we meet the organizational and operational requirements and our distributions equal or exceed REIT taxable income. For all periods subsequent to the effective date of our REIT

election, we have met the organizational and operational requirements and distributions have exceeded net taxable income. Accordingly, no provision has been made for federal income taxes.

We have elected to treat ESRT Observatory TRS, L.L.C., our subsidiary that holds our Observatory operations, and ESRT Holdings TRS, L.L.C., our subsidiary that holds our third-party management, restaurant, cafeterias, health clubs and certain cleaning operations, as taxable REIT subsidiaries. Taxable REIT subsidiaries may participate in non-real estate activities and/or perform non-customary services for tenants and their operations are generally subject to regular corporate income taxes. Our taxable REIT subsidiaries accounts for its income taxes in accordance with GAAP, which includes an estimate of the amount of taxes payable or refundable for the current year and deferred tax liabilities and assets for the future tax consequences of events that have been recognized in our consolidated financial statements or tax returns. The calculation of the taxable REIT subsidiaries' tax provisions may require interpreting tax laws and regulations and could result in the use of judgments or estimates which could cause its recorded tax liability to differ from the actual amount due. Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The taxable REIT subsidiaries periodically assess the realizability of deferred tax assets and the adequacy of deferred tax liabilities, including the results of local, state, or federal statutory tax audits or estimates and judgments used.

We apply provisions for measuring and recognizing tax benefits associated with uncertain income tax positions. Penalties and interest, if incurred, would be recorded as a component of income tax expense. As of December 31, 2023 and 2022, we do not have a liability for uncertain tax positions. As of December 31, 2023, the tax years ended December 31, 2020 through December 31, 2023 remain open for an audit by the Internal Revenue Service, state or local authorities.

Share-Based Compensation

Share-based compensation for time-based equity awards is measured at the fair value of the award on the date of grant and recognized as an expense on a straight-line basis over the shorter of (i) the stated vesting period, which is generally three, four or five years, or (ii) the period from the date of grant to the date the employee becomes retirement eligible, which may occur upon grant. An employee is retirement eligible when the employee attains the (i) age of 65 for awards granted in 2020 and after and age of 60 for awards granted before 2020 and (ii) the date on which the employee has first completed the requisite years of continuous service with us or our affiliates. Share-based compensation for market-based equity awards and performance-based equity awards is measured at the fair value of the award on the date of grant and recognized as an expense on a straight-line basis over three or four years. Additionally, for the performance-based equity awards, we assess, at each reporting period, whether it is probable that the performance conditions will be satisfied. We recognize expense respective to the number of awards we expect to vest at the conclusion of the measurement period. Changes in estimate are accounted for in the period of change through a cumulative catch-up adjustment. Any forfeitures of share-based compensation awards are recognized as they occur.

The determination of fair value of these awards is subjective and involves significant estimates and assumptions including expected volatility of our stock, expected dividend yield, expected term, and assumptions of whether these awards will achieve parity with other Operating Partnership units or achieve performance thresholds. We believe that the assumptions and estimates utilized are appropriate based on the information available to management at the time of grant.

Per Share Data

Basic and diluted earnings per share are computed based upon the weighted average number of shares outstanding during the respective period.

Segment Reporting

We have identified two reportable segments: (1) Real Estate and (2) Observatory. Our real estate segment includes all activities related to the ownership, management, operation, acquisition, repositioning and disposition of our real estate assets. Our Observatory segment operates the 86th and 102nd floor observatories at the Empire State Building. These two lines of businesses are managed separately because each business requires different support infrastructures, provides different services and has dissimilar economic characteristics such as investments needed, stream of revenues and different marketing strategies. We account for intersegment sales and rent as if the sales or rent were to third parties, that is, at current market prices.

Recently Issued or Adopted Accounting Standards

During March 2020, the FASB issued Accounting Standards Update ("ASU") 2020-04, Reference Rate Reform (Topic 848). ASU 2020-04 contains practical expedients for reference rate reform related activities that impact debt, leases, derivatives and other contracts. The guidance in ASU 2020-04 is optional and may be elected over time as reference rate reform activities

occur. During the first quarter 2020, we elected to apply the hedge accounting expedients related to probability and the assessments of effectiveness for future LIBOR-indexed cash flows to assume that the index upon which future hedged transactions will be based matches the index on the corresponding derivatives. Application of these expedients preserves the presentation of derivatives consistent with past presentation. In December 2022, the FASB issued ASU 2022-06, Reference Rate Reform (Topic 848) Deferral of the Sunset Date of Topic 848 which deferred the sunset date of ASU 2022-04, Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform to December 31, 2024. As of December 31, 2023, we have transitioned all of our LIBOR-indexed debt and derivatives to SOFR and applied the practical expedient allowed under the guidance.

During November 2023, the Financial Accounting Standards Board issued Accounting Standards Update ("ASU") No. 2023-07, Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures, to improve the disclosures about reportable segments and add more detailed information about a reportable segment's expenses. The amendments in the ASU require public entities to disclose on an annual and interim basis significant segment expenses that are regularly provided to the chief operating decision maker ("CODM") and included within each reported measure of segment profit or loss, other segment items and a description of its composition by reportable segment, the title and position of the CODM, and an explanation of how the CODM uses the reported measures of segment profit or loss in assessing segment performance and deciding how to allocate resources. The ASU does not change the definition of a segment, the method for determining segments, the criteria for aggregating operating segments into reportable segments, or the current specifically enumerated segment expenses that are required to be disclosed. The amendments in this ASU are effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024. Early adoption is permitted. We are evaluating the impact of adopting this new accounting standard on our consolidated financial statements.

3. Acquisitions and Dispositions

Property Acquisitions

On September 14, 2023, we closed on the acquisition of a retail property in Williamsburg, Brooklyn, located on the corner of North 6th Street and Wythe Avenue for a purchase price of \$26.4 million. The property has three retail tenants and six residential units and was fully leased as of December 31, 2023. The transaction was executed as an exchange under Section 1031 of the Internal Revenue Code of 1986, as amended. The purchase price is the fair value at the date of acquisition.

On December 20, 2022, we closed on the acquisition of a multifamily asset located at 298 Mulberry Street in Manhattan for a purchase price of \$114.9 million. In addition to the 96 residential units, the property also contains retail space leased to CVS and a garage. The purchase price is the fair value at the date of acquisition.

On December 22, 2021, we acquired 90% of two multifamily assets located in Manhattan, the Victory (561 10th Avenue) and 345 East 94th Street. The total transaction value was \$307.0 million, inclusive of \$134.0 million of debt on the Victory, that matures in 2033 and has an effective interest rate of 3.85%, and \$52.0 million of debt on 345 East 94th Street, that matures in 2030 and has an effective interest rate of 3.56%. The previous owner retained a 10% equity stake. We asset manage the properties and have control over all decision making through our voting interests in each entity. We currently use a third-party manager, but we have the right to assume day-to-day property management for no additional consideration. The fair value of the non-controlling interest was equivalent to 10% of the gross purchase price less the pro-rata share of the debt assumed. The purchase price of the non-controlling interest is its fair value at the date of acquisition.

The Victory is a 417 unit, 45-story apartment building with an 11,000 square foot retail space leased to CVS through 2040. It is a participant in an extendable 421a tax abatement program.

345 East 94th Street is a 208 unit, 30-story, apartment building. It is a participant in an extendable 421a tax abatement program.

The following table summarizes properties acquired during the years ended December 31, 2023, 2022 and 2021 (amounts in thousands):

Property	Date Acquired	Land	Building and Improvements	Intangibles		Total*
				Assets	Liabilities	
Williamsburg Retail, Brooklyn	9/14/2023	\$ 4,851	\$ 20,936	\$ 1,573	\$ (300)	\$ 27,060
298 Mulberry Street, Manhattan	12/20/2022	\$ 40,935	\$ 69,508	\$ 5,300	\$ (150)	\$ 115,593
The Victory	12/21/2021	91,437	124,997	13,573	(19,895)	210,112
345 East 94th St.	12/21/2021	44,228	55,766	4,824	(5,491)	99,327

*Includes total capitalized transaction costs of \$3.8 million.

Property Dispositions

The following table summarizes properties disposed of during the years ended December 31, 2023 and 2022 (amounts in thousands):

Property	Date of Disposal	Sales Price	Gain on Disposition
500 Mamaroneck Avenue, Harrison, New York*	4/5/2023	\$ 53,000	\$ 11,075
69-97 and 103-107 Main Street, Westport, Connecticut	2/1/2023	\$ 40,000	\$ 15,689
10 Bank Street, White Plains, New York	12/7/2022	\$ 42,000	\$ 6,818
383 Main Avenue, Norwalk, Connecticut**	4/1/2022	\$ 30,000	\$ 27,170

*The gain is net of approximately \$4.5 million of post-closing costs we accrued related to expected contaminated soil remediation costs and our commitment to reimburse the buyer for a delay in rent commencement from a tenant impacted by the soil remediation efforts. Subsequent to December 31, 2023, we funded the buyer for these costs and we have no further obligations or contingencies that relate to this property.

**We transferred the property, which was encumbered by a \$30.0 million mortgage, back to the lender in a consensual foreclosure and recognized a non-cash gain upon the disposition.

There were no property dispositions for the year ended December 31, 2021.

4. Deferred Costs, Acquired Lease Intangibles and Goodwill

Deferred costs, net, consisted of the following at December 31, 2023 and 2022 (amounts in thousands):

	2023	2022
Leasing costs	\$ 224,295	\$ 218,707
Acquired in-place lease value and deferred leasing costs	158,267	160,683
Acquired above-market leases	23,918	27,833
	406,480	407,223
Less: accumulated amortization	(236,900)	(223,246)
Total deferred costs, net, excluding net deferred financing costs	\$ 169,580	\$ 183,977

At December 31, 2023 and 2022, \$2.9 million and \$5.0 million, respectively, of net deferred financing costs associated with the unsecured revolving credit facility was included in deferred costs, net on the consolidated balance sheets.

Amortization expense related to deferred leasing and acquired deferred leasing costs was \$23.6 million, \$25.4 million, and \$28.6 million, for the years ended December 31, 2023, 2022, and 2021, respectively. Amortization expense related to acquired lease intangibles was \$7.4 million, \$11.8 million and \$10.5 million for the years ended December 31, 2023, 2022 and 2021, respectively.

Amortizing acquired intangible assets and liabilities consisted of the following at December 31, 2023 and 2022 (amounts in thousands):

	2023	2022
Acquired below-market ground leases	\$ 396,916	\$ 396,916
Less: accumulated amortization	(75,675)	(67,843)
Acquired below-market ground leases, net	\$ 321,241	\$ 329,073

	2023	2022
Acquired below-market leases	\$ (55,155)	\$ (64,656)
Less: accumulated amortization	41,405	46,807
Acquired below-market leases, net	<u>\$ (13,750)</u>	<u>\$ (17,849)</u>

Rental revenue related to the amortization of below market leases, net of above market leases was \$2.4 million, \$4.8 million and \$5.9 million for the years ended December 31, 2023, 2022 and 2021, respectively. The remaining weighted-average amortization period as of December 31, 2023 is 22.2 years, 3.4 years, 3.5 years and 2.9 years for below-market ground leases, in-place leases and deferred leasing costs, above-market leases and below-market leases, respectively. We expect to recognize amortization expense and rental revenue from the acquired intangible assets and liabilities as follows (amounts in thousands):

For the year ending:	Future Ground Rent Amortization	Future Amortization Expense	Future Rental Revenue (Expense)
2024	\$ 7,831	\$ 7,430	\$ 1,977
2025	7,831	6,481	1,914
2026	7,831	5,593	1,116
2027	7,831	4,930	882
2028	7,831	4,297	854
Thereafter	282,086	4,110	(124)
	<u>\$ 321,241</u>	<u>\$ 32,841</u>	<u>\$ 6,619</u>

As of December 31, 2023, we had goodwill of \$491.5 million. In 2013, we acquired the interests in Empire State Building Company, L.L.C. and 501 Seventh Avenue Associates, L.L.C. for an amount in excess of their net tangible and identified intangible assets and liabilities and as a result we recorded goodwill related to the transaction. Goodwill was allocated \$227.5 million to the Observatory operations of the Empire State Building, \$250.8 million to Empire State Building, and \$13.2 million to 501 Seventh Avenue.

We performed our annual goodwill testing in October 2023, where we bypassed the optional qualitative goodwill impairment assessment and proceeded directly to a quantitative assessment of the Observatory reportable segment and engaged a third-party valuation consulting firm to perform the valuation process. The quantitative analysis used a combination of the discounted cash flow method (a form of the income approach) utilizing Level 3 unobservable inputs and the guideline company method (a form of the market approach). Significant assumptions under the former included revenue and cost projections, weighted average cost of capital, long-term growth rate and income tax considerations while the latter included guideline company enterprise values, revenue multiples, EBITDA multiples and control premium rates. Our methodology to review goodwill impairment, which included a significant amount of judgment and estimates, provided a reasonable basis to determine whether impairment had occurred. The quantitative analysis performed concluded the fair value of the reporting unit exceeds its carrying value. Many of the factors employed in determining whether or not goodwill is impaired are outside of our control, and it is reasonably likely that assumptions and estimates will change in future periods. We will continue to assess the impairment of the Observatory reporting unit goodwill going forward.

5. Debt

Debt consisted of the following as of December 31, 2023 and 2022 (amounts in thousands):

	Principal Balance as of December 31, 2023	Principal Balance as of December 31, 2022	As of December 31, 2023		
			Stated Rate	Effective Rate ⁽¹⁾	Maturity Date ⁽²⁾
<i>Fixed rate mortgage debt</i>					
Metro Center	\$ 80,070	\$ 82,596	3.59 %	3.67 %	11/5/2024
10 Union Square	50,000	50,000	3.70 %	3.97 %	4/1/2026
1542 Third Avenue	30,000	30,000	4.29 %	4.53 %	5/1/2027
First Stamford Place ⁽³⁾	175,860	178,823	4.28 %	4.73 %	7/1/2027

1010 Third Avenue and 77 West 55th Street	34,958	35,831	4.01 %	4.21 %	1/5/2028
250 West 57th Street	180,000	180,000	2.83 %	3.21 %	12/1/2030
1333 Broadway	160,000	160,000	4.21 %	4.29 %	2/5/2033
345 East 94th Street - Series A	43,600	43,600	70.0% of SOFR plus 0.95%	3.56 %	11/1/2030
345 East 94th Street - Series B	7,209	7,865	SOFR plus 2.24%	3.56 %	11/1/2030
561 10th Avenue - Series A	114,500	114,500	70.0% of SOFR plus 1.07%	3.85 %	11/1/2033
561 10th Avenue - Series B	15,801	17,415	SOFR plus 2.45%	3.85 %	11/1/2033
Total fixed rate mortgage debt	891,998	900,630			
Senior unsecured notes: ⁽⁴⁾					
Series A	100,000	100,000	3.93 %	3.96 %	3/27/2025
Series B	125,000	125,000	4.09 %	4.12 %	3/27/2027
Series C	125,000	125,000	4.18 %	4.21 %	3/27/2030
Series D	115,000	115,000	4.08 %	4.11 %	1/22/2028
Series E	160,000	160,000	4.26 %	4.27 %	3/22/2030
Series F	175,000	175,000	4.44 %	4.45 %	3/22/2033
Series G	100,000	100,000	3.61 %	4.89 %	3/17/2032
Series H	75,000	75,000	3.73 %	5.00 %	3/17/2035
Unsecured revolving credit facility ⁽⁴⁾	—	—	SOFR plus 1.30%	— %	3/31/2025
Unsecured term loan facility ⁽⁴⁾	215,000	215,000	SOFR plus 1.20%	4.22 %	3/19/2025
Unsecured term loan facility ⁽⁴⁾	175,000	175,000	SOFR plus 1.50%	4.51 %	12/31/2026
Total principal	2,256,998	2,265,630			
Deferred financing costs, net	(9,488)	(11,748)			
Unamortized debt discount	(6,964)	(7,745)			
Total	\$ 2,240,546	\$ 2,246,137			

- (1) The effective rate is the yield as of December 31, 2023 and includes the stated interest rate, deferred financing cost amortization and interest associated with variable to fixed interest rate swap agreements.
- (2) Pre-payment is generally allowed for each loan upon payment of a customary pre-payment penalty.
- (3) Represents a \$164.0 million mortgage loan bearing interest of 4.09% and a \$11.9 million loan bearing interest at 6.25%.
- (4) At December 31, 2023, we were in compliance with all debt covenants.

Principal Payments

Aggregate required principal payments at December 31, 2023 are as follows (amounts in thousands):

Year	Amortization	Maturities	Total
2024	\$ 8,861	\$ 77,675	\$ 86,536
2025	6,893	315,000	321,893
2026	7,330	225,000	232,330
2027	6,461	319,000	325,461
2028	3,556	146,092	149,648
Thereafter	18,523	1,122,607	1,141,130
Total principal maturities	\$ 51,624	\$ 2,205,374	\$ 2,256,998

Deferred Financing Costs

Deferred financing costs, net, consisted of the following at December 31, 2023 and 2022 (amounts in thousands):

	2023	2022
Financing costs	\$ 43,473	\$ 43,473
Less: accumulated amortization	(31,108)	(26,753)
Total deferred financing costs, net	\$ 12,365	\$ 16,720

Amortization expense related to deferred financing costs was \$4.4 million, \$4.9 million, and \$4.5 million, for the years ended December 31, 2023, 2022 and 2021, respectively, and was included in interest expense.

Unsecured Revolving Credit and Term Loan Facilities

On August 29, 2022, through our Operating Partnership, we entered into a third amendment to our amended and restated credit agreement dated August 29, 2017 with Bank of America, N.A., as administrative agent and the other lenders party thereto, which governs our senior unsecured revolving credit facility and term loan facility (collectively, the “BofA Credit Facility”). The BofA Credit Facility is in the initial maximum principal amount of up to \$1.065 billion, which consists of a \$850.0 million revolving credit facility that matures on March 31, 2025, and a \$215.0 million term loan facility that matures on March 19, 2025. The third amendment revised the terms of the BofA Credit Facility to (i) replace LIBOR with SOFR given the phase out of LIBOR and (ii) permit the addition of multifamily assets as Unencumbered Eligible Property (as defined therein) and add a capitalization rate for such assets. As of December 31, 2023, we had no borrowings under the revolving credit facility and \$215.0 million under the term loan facility.

On August 29, 2022, through our Operating Partnership, we entered into a second amendment to our credit agreement dated March 19, 2020 with Wells Fargo Bank, National Association, as administrative agent, and the other lenders party thereto, which governs a senior unsecured term loan facility (the “Wells Term Loan Facility”). The Wells Term Loan Facility is in the original principal amount of \$175 million and matures on December 31, 2026. The second amendment revised the terms of the Wells Term Loan Facility to (i) replace LIBOR with SOFR given the phase out of LIBOR and (ii) permit the addition of multifamily assets as Unencumbered Eligible Property (as defined therein) and add a capitalization rate for such assets. We may request the Wells Term Loan Facility be increased through one or more increases or the addition of new pari passu term loan tranches, for a maximum aggregate principal amount not to exceed \$225 million. As of December 31, 2023, our borrowings amounted to \$175.0 million under the Wells Term Loan Facility.

The terms of both the BofA Credit Facility and the Wells Term Loan Facility include customary covenants, including limitations on liens, investment, distributions, debt, fundamental changes, and transactions with affiliates and require certain customary financial reports. Both facilities also require compliance with financial ratios including a maximum leverage ratio, a maximum secured leverage ratio, a minimum fixed charge coverage ratio, a minimum unencumbered interest coverage ratio, and a maximum unsecured leverage ratio. The agreements governing both facilities also contain customary events of default (subject in certain cases to specified cure periods), including but not limited to non-payment, breach of covenants, representations or warranties, cross defaults, bankruptcy or other insolvency events, judgments, ERISA events, invalidity of loan documents, loss of real estate investment trust qualification, and occurrence of a change of control. As of December 31, 2023, we were in compliance with these covenants.

Senior Unsecured Notes

The terms of the senior unsecured notes include customary covenants, including limitations on liens, investment, distributions, debt, fundamental changes, and transactions with affiliates and require certain customary financial reports. It also requires compliance with financial ratios including a maximum leverage ratio, a maximum secured leverage ratio, a minimum fixed charge coverage ratio, a minimum unencumbered interest coverage ratio, and a maximum unsecured leverage ratio. The agreements also contain customary events of default (subject in certain cases to specified cure periods), including but not limited to non-payment, breach of covenants, representations or warranties, cross defaults, bankruptcy or other insolvency events, judgments, ERISA events, the occurrence of certain change of control transactions and loss of real estate investment trust qualification. As of December 31, 2023, we were in compliance with these covenants.

6. Accounts Payable and Accrued Expenses

Accounts payable and accrued expenses consist of the following as of December 31, 2023 and 2022 (amounts in thousands):

	2023	2022
Accrued capital expenditures	\$ 51,815	\$ 44,293
Accounts payable and accrued expenses	44,169	32,927
Interest rate swap agreements liability	85	—
Accrued interest payable	3,687	3,509
Total accounts payable and accrued expenses	<u>\$ 99,756</u>	<u>\$ 80,729</u>

7. Financial Instruments and Fair Values

Derivative Financial Instruments

We use derivative financial instruments primarily to manage interest rate risk and such derivatives are not considered speculative. These derivative instruments are typically in the form of interest rate swap and forward agreements, and the primary objective is to minimize interest rate risks associated with investing and financing activities. The counterparties of these arrangements are major financial institutions with which we may also have other financial relationships. We are exposed to credit risk in the event of non-performance by these counterparties; however, we currently do not anticipate that any of the counterparties will fail to meet their obligations.

We have agreements with our derivative counterparties that contain a provision where if we either default or are capable of being declared in default on any of our indebtedness, then we could also be declared in default on our derivative obligations. As of December 31, 2023, the fair value of derivatives in a net liability position, which includes accrued interest but excludes any adjustment for nonperformance risk, related to these agreements was \$0.1 million. If we had breached any of these provisions at December 31, 2023, we could have been required to settle our obligations under the agreements at their termination value of \$0.1 million.

As of December 31, 2023 and 2022, we had interest rate swaps and caps with an aggregate notional value of \$573.2 million and \$574.8 million, respectively. The notional value does not represent exposure to credit, interest rate or market risks. As of December 31, 2023, the fair values of our derivative instruments amounted to \$11.8 million which is included in prepaid expenses and other assets, and (\$0.1 million) which is included in accounts payable and accrued expenses on the consolidated balance sheet. As of December 31, 2022, the fair value of our derivative instruments amounted to \$17.9 million which is included in prepaid expenses and other assets on the consolidated balance sheet. These interest rate swaps have been designated as cash flow hedges and hedge the variability in future cash flows associated with our existing variable-rate term loan facilities. Interest rate caps not designated as hedges are not speculative and are used to manage our exposure to interest rate movements, but do not meet the strict hedge accounting requirements.

As of December 31, 2023 and 2022, our cash flow hedges are deemed highly effective and for the years ended December 31, 2023 and 2022, net unrealized gains (losses) of \$(2.2) million and \$47.3 million, respectively, are reflected in the consolidated statements of comprehensive income (loss) relating to both active and terminated cash flow hedges of interest rate risk. Amounts reported in accumulated other comprehensive income (loss) related to derivatives will be reclassified to interest expense as interest payments are made on the debt. We estimate that \$5.6 million net gain of the current balance held in accumulated other comprehensive income (loss) will be reclassified into interest expense within the next 12 months.

The table below summarizes the terms of agreement and the fair value of our derivative financial instruments as of December 31, 2023 and 2022 (dollar amounts in thousands):

Derivative	Notional Amount	Receive Rate	Pay Rate	Effective Date	Expiration Date	December 31, 2023		December 31, 2022	
						Asset	Liability	Asset	Liability
Interest rate swap	\$ 36,820	70% of 1 Month SOFR	2.5000 %	December 1, 2021	November 1, 2030	\$ 64	\$ —	\$ 256	\$ —
Interest rate swap	103,790	70% of 1 Month SOFR	2.5000 %	December 1, 2021	November 1, 2033	—	(85)	365	—
Interest rate swap	15,942	1 Month SOFR	2.2540 %	December 1, 2021	November 1, 2030	782	—	1,070	—
Interest rate cap	6,780	70% of 1 Month SOFR	4.5000 %	December 1, 2021	October 1, 2024	—	—	8	—
Interest rate cap	9,188	1 Month SOFR	5.5000 %	December 1, 2021	October 1, 2024	4	—	26	—
Interest rate swap	175,000	SOFR Compound	2.5620 %	August 31, 2022	December 31, 2026	5,637	—	8,040	—
Interest rate swap	107,500	SOFR Compound	2.6260 %	August 19, 2022	March 19, 2025	2,384	—	3,766	—
Interest rate swap	107,500	SOFR OIS Compound	2.6280 %	August 19, 2022	March 19, 2025	2,383	—	3,762	—
						<u>\$ 11,800</u>	<u>\$ (85)</u>	<u>\$ 17,936</u>	<u>\$ —</u>

The table below shows the effect of our derivative financial instruments designated as cash flow hedges on accumulated other comprehensive income (loss) for the years ended December 31, 2023, 2022 and 2021 (amounts in thousands):

Effects of Cash Flow Hedges	December 31, 2023	December 31, 2022	December 31, 2021
Amount of gain recognized in other comprehensive income (loss)	\$ 5,581	\$ 40,044	\$ 348
Amount of loss (gain) reclassified from accumulated other comprehensive income (loss) into interest expense	7,819	(7,230)	(11,653)

The table below shows the effect of our derivative financial instruments designated as cash flow hedges on the consolidated statements of operations for the years ended December 31, 2023, 2022 and 2021 (amounts in thousands):

Effects of Cash Flow Hedges	December 31, 2023	December 31, 2022	December 31, 2021
Total interest expense presented on the consolidated statements of income in which the effects of cash flow hedges are recorded	\$ (101,484)	(101,206)	(94,394)
Amount of loss (gain) reclassified from accumulated other comprehensive income (loss) into interest expense	7,819	(7,230)	(11,653)

Fair Valuation

The estimated fair values at December 31, 2023 and 2022 were determined by management, using available market information and appropriate valuation methodologies. Considerable judgment is necessary to interpret market data and develop estimated fair value. Accordingly, the estimates presented herein are not necessarily indicative of the amounts we could realize on disposition of the financial instruments. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated fair value amounts.

The following tables summarize the carrying and estimated fair values of our financial instruments as of December 31, 2023 and 2022 (amounts in thousands):

	December 31, 2023				
	Carrying Value	Estimated Fair Value			
		Total	Level 1	Level 2	Level 3
Interest rate swaps included in prepaid expenses and other assets	\$ 11,800	\$ 11,800	\$ —	\$ 11,800	\$ —
Interest rate swaps included in accounts payable and accrued expenses	85	85	—	85	—
Mortgage notes payable	877,388	774,280	—	—	774,280
Senior unsecured notes - Series A, B, C, D, E, F, G and H	973,872	882,242	—	—	882,242
Unsecured term loan facilities	389,286	390,000	—	—	390,000

	December 31, 2022				
	Carrying Value	Estimated Fair Value			
		Total	Level 1	Level 2	Level 3
Interest rate swaps included in prepaid expenses and other assets	\$ 17,936	\$ 17,936	\$ —	\$ 17,936	\$ —
Mortgage notes payable	883,705	783,648	—	—	783,648
Senior unsecured notes - Series A, B, C, D, E, F, G and H	973,659	865,292	—	—	865,292
Unsecured term loan facility	388,773	390,000	—	—	390,000

Disclosure about the fair value of financial instruments is based on pertinent information available to us as of December 31, 2023 and 2022. Although we are not aware of any factors that would significantly affect the reasonable fair value amounts, such amounts have not been comprehensively revalued for purposes of these consolidated financial statements since that date and current estimates of fair value may differ significantly from the amounts presented herein.

8. Leases

Lessor

We lease various commercial spaces to tenants over terms ranging from one to 22 years. Certain leases have renewal options for additional terms. The leases provide for base monthly rentals and reimbursements for real estate taxes, escalations linked to the consumer price index or common area maintenance known as operating expense escalation. Operating expense reimbursements are reflected in our December 31, 2023, 2022 and 2021 consolidated statements of operations as rental revenue.

Rental revenue includes fixed and variable payments. Fixed payments primarily relate to base rent and variable payments primarily relate to tenant expense reimbursements for certain property operating costs. The components of rental revenue for the years ended December 31, 2023, 2022 and 2021 are as follows (amounts in thousands):

Rental revenue	Year Ended December 31,		
	2023	2022	2021
Fixed payments	\$ 529,965	\$ 531,740	\$ 500,847
Variable payments	67,354	59,308	58,843
Total rental revenue	<u>\$ 597,319</u>	<u>\$ 591,048</u>	<u>\$ 559,690</u>

As of December 31, 2023, we were entitled to the following future contractual minimum lease payments (excluding operating expense reimbursements) on non-cancellable operating leases to be received which expire on various dates through 2040 (amounts in thousands):

2024	\$ 513,589
2025	499,154
2026	453,645
2027	434,447
2028	395,858
Thereafter	1,646,769
	<u>\$ 3,943,462</u>

The above future minimum lease payments exclude tenant recoveries and the net accretion of above-market leases and below-market lease intangibles. Some leases are subject to termination options generally upon payment of a termination fee. The preceding table is prepared assuming such options are not exercised.

Lessee

We determine if an arrangement is a lease at inception. Our operating lease agreements relate to three ground lease assets and are reflected in right-of-use assets of \$28.4 million and lease liabilities of \$28.4 million in our consolidated balance sheets as of December 31, 2023. Right-of-use assets represent our right to use an underlying asset for the lease term and lease liabilities represent our obligation to make lease payments arising from the lease. Right-of-use assets and liabilities are recognized at the commencement date based on the present value of lease payments over the lease term. Variable lease payments are excluded from the right-of-use assets and lease liabilities and are recognized in the period in which the obligation for those payments is incurred.

The ground leases are due to expire between the years 2050 and 2077, inclusive of extension options, and have no variable payments or residual value guarantees. As our leases do not provide an implicit rate, we determined our incremental borrowing rate based on information available at the date of adoption of ASU No. 2016-02, Leases (Topic 842), in determining the present value of lease payments. The weighted average incremental borrowing rate used to calculate the right-of-use assets and lease liabilities as of December 31, 2023 was 4.5%. Rent expense for lease payments related to our operating leases is recognized on a straight-line basis over the non-cancellable term of the leases. The weighted average remaining lease term as of December 31, 2023 was 46.5 years.

As of December 31, 2023, the following table summarizes our future minimum lease payments discounted by our incremental borrowing rates to calculate the lease liabilities of our leases (amounts in thousands):

2024	\$	1,518
2025		1,518
2026		1,503
2027		1,482
2028		1,482
Thereafter		60,795
Total undiscounted lease payments		68,298
Present value discount		(39,859)
Ground lease liabilities	\$	28,439

9. Commitments and Contingencies

Legal Proceedings

Litigation

Except as described below, as of December 31, 2023, we were not involved in any material litigation, nor, to our knowledge, was any material litigation threatened against us or our properties, other than routine litigation arising in the ordinary course of business such as disputes with tenants. We believe that the costs and related liabilities, if any, which may result from such actions will not materially affect our consolidated financial position, operating results or liquidity.

As previously disclosed, in October 2014, 12 former investors (the "Claimants") in Empire State Building Associates L.L.C. ("ESBA"), which prior to the initial public offering of our Company (the "Offering"), owned the fee title to the Empire State Building, filed an arbitration with the American Arbitration Association against Peter L. Malkin, Anthony E. Malkin, Thomas N. Keltner, Jr., and our subsidiary ESRT MH Holdings LLC, the former supervisor of ESBA, (the "Respondents"). The statement of claim (also filed later in federal court in New York for the expressed purpose of tolling the statute of limitations) alleged breach of fiduciary duty and related claims in connection with the Offering and formation transactions and sought monetary damages and declaratory relief. Claimants had opted out of a prior class action bringing similar claims that was settled with court approval. Respondents filed an answer and counterclaims. In March 2015, the federal court action was stayed on consent of all parties pending the arbitration. Arbitration hearings started in May 2016 and concluded in August 2018. On August 26, 2020, the arbitration panel issued an award that denied all Claimants' claims with one exception, on which it awarded Claimants approximately \$1.2 million, inclusive of seven years of interest through October 2, 2020. This amount was recorded as an IPO litigation expense in the consolidated statement of operations for the year ended December 31, 2020.

Respondents believe that such award in favor of the Claimants is entirely without merit and sought to vacate that portion of the award. On September 27, 2021, a federal district court denied Respondents' petition to vacate and entered judgement in the aforementioned amount, inclusive of accumulated interest. Respondents appealed that ruling. On May 10, 2022, Respondents moved to dismiss the appeal and judgment on the grounds that a recent decision of the United States Supreme Court held that the federal courts have no subject matter jurisdiction over the case. On April 20, 2023, the federal appeals court granted the motion and the federal court action challenging the award was dismissed. On April 21, 2023, the Respondents filed a petition to vacate in part and otherwise confirm in New York State court. On April 28, 2023, the Claimants filed a petition to confirm in that same court. On July 31, 2023, the New York State court denied the Respondents' petition to vacate in part and confirmed the award. On January 22, 2024, that court entered judgment in favor of the Claimants (save for one Claimant, whose petition to confirm is still pending in New York state court) in an amount of approximately \$1.26 million, inclusive of interest. The Respondents believe those rulings are incorrect and have appealed them. In addition, certain of the Claimants in the federal court action brought to toll the statute of limitations sought to pursue claims in that case against Respondents. Respondents believe that any such claims are meritless. The magistrate judge assigned to the action issued a Report and Recommendation rejecting Claimants' claims; the district judge will decide whether to adopt the Report and Recommendation.

Pursuant to indemnification agreements which were made with our directors, executive officers and chairman emeritus as part of our formation transactions, Anthony E. Malkin, Peter L. Malkin and Thomas N. Keltner, Jr. have defense and indemnity rights from us with respect to this arbitration.

Unfunded Capital Expenditures

At December 31, 2023, we estimate that we will incur approximately \$101.2 million of capital expenditures (including tenant improvements and leasing commissions) on our properties pursuant to existing lease agreements. We expect to fund these capital expenditures with operating cash flow, cash on hand and other borrowings. Future property acquisitions may require substantial capital investments for refurbishment and leasing costs. We expect that these financing requirements will be met in a similar fashion.

Concentration of Credit Risk

Financial instruments that subject us to credit risk consist primarily of cash and cash equivalents, restricted cash, short-term investments, tenant and other receivables and deferred rent receivables. At December 31, 2023, we held on deposit at various major financial institutions cash and cash equivalents and restricted cash balances in excess of amounts insured by the Federal Deposit Insurance Corporation.

Real Estate Investments

Our properties are located in Manhattan and Brooklyn, New York; and Stamford, Connecticut. The ability of the tenants to honor the terms of their respective leases is dependent upon the economic, regulatory and social factors affecting the markets in which the tenants operate. We perform ongoing credit evaluations of our tenants for potential credit losses.

Tenant Credit Evaluations

Our investments in real estate properties are subject to risks incidental to the ownership and operation of commercial real estate. These risks include, among others, the risks normally associated with changes in general economic conditions, trends in the real estate industry, creditworthiness of tenants, competition of tenants and customers, changes in tax laws, interest rate levels, the availability and cost of financing, and potential liability under environmental and other laws.

We may require tenants to provide some form of credit support such as corporate guarantees and/or other financial guarantees and we perform ongoing credit evaluations of tenants. Although the tenants operate in a variety of industries, to the extent we have a significant concentration of rental revenue from any single tenant, the inability of that tenant to make its lease payments could have an adverse effect on our Company.

Major Customers and Other Concentrations

For the year ended December 31, 2023, other than four tenants who accounted for 6.8%, 2.5%, 2.1%, and 2.1% of rental revenues, no other tenant in our portfolio accounted for more than 2.0% of rental revenues. For the year ended December 31, 2022, other than two tenants who accounted for 6.4% and 2.0% of rental revenues, no other tenant in our portfolio accounted for more than 2.0% of rental revenues. For the year ended December 31, 2021, other than four tenants who accounted for 4.6%, 3.3%, 2.8% and 2.1% of rental revenues, no other tenant in our commercial portfolio accounted for more than 2.0% of rental revenues.

For the years ended December 31, 2023, 2022 and 2021, the three properties listed below each exceeded 10% of total rental revenues.

	Year Ended December 31,		
	2023	2022	2021
Empire State Building	29.6 %	29.9 %	31.7 %
One Grand Central Place	12.8 %	12.4 %	12.6 %
111 West 33rd Street	10.8 %	11.2 %	11.3 %

Asset Retirement Obligations

We are required to accrue costs that we are legally obligated to incur on retirement of our properties which result from acquisition, construction, development and/or normal operation of such properties. Retirement includes sale, abandonment or disposal of a property. Under that standard, a conditional asset retirement obligation represents a legal obligation to perform an asset retirement activity in which the timing and/or method of settlement is conditional on a future event that may or may not be within a company's control and a liability for a conditional asset retirement obligation must be recorded if the fair value of the obligation can be reasonably estimated. Environmental site assessments and investigations have identified asbestos or asbestos-containing building materials in certain of our properties. As of December 31, 2023, management has no plans to remove or alter these properties in a manner that would trigger federal and other applicable regulations for asbestos removal, and accordingly, the obligations to remove the asbestos or asbestos-containing building materials from these properties have

indeterminable settlement dates. As such, we are unable to reasonably estimate the fair value of the associated conditional asset retirement obligation. However ongoing asbestos abatement, maintenance programs and other required documentation are carried out as required and related costs are expensed as incurred.

Other Environmental Matters

Under various federal, state and/or local laws, ordinances and regulations, as a current or former owner or operator of real property, we may be liable for costs and damages resulting from the presence or release of hazardous substances, waste, or petroleum products at, on, in, under or from such property, including costs for investigation or remediation, natural resource damages, or third-party liability for personal injury or property damage. These laws often impose liability without regard to whether the owner or operator knew of, or was responsible for, the presence or release of such materials, and the liability may be joint and several. Some of our properties have been or may be impacted by contamination arising from current or prior uses of the property or adjacent properties for commercial, industrial or other purposes. Such contamination may arise from spills of petroleum or hazardous substances or releases from tanks used to store such materials. We also may be liable for the costs of remediating contamination at off-site disposal or treatment facilities when we arrange for disposal or treatment of hazardous substances at such facilities, without regard to whether we comply with environmental laws in doing so. The presence of contamination or the failure to remediate contamination on our properties may adversely affect our ability to attract and/or retain tenants, and our ability to develop or sell or borrow against those properties. In addition to potential liability for cleanup costs, private plaintiffs may bring claims for personal injury, property damage or for similar reasons. Environmental laws also may create liens on contaminated sites in favor of the government for damages and costs it incurs to address such contamination. Moreover, if contamination is discovered on our properties, environmental laws may impose restrictions on the manner in which that property may be used or how businesses may be operated on that property.

Some of our properties are adjacent to or near other properties which are used for industrial or commercial purposes or have contained or currently contain underground storage tanks used to store petroleum products or other hazardous or toxic substances. Releases from these properties could impact our properties. In addition, some of our properties have previously been used by former owners or tenants for commercial or industrial activities, e.g., gas stations and dry cleaners, and a portion of the Metro Tower site is currently used for automobile parking and was formerly leased to a fueling facility that may release petroleum products or other hazardous or toxic substances at such properties or to surrounding properties. While certain properties contain or contained uses that could have or have impacted our properties, we are not aware of any liabilities related to environmental contamination that we believe will have a material adverse effect on our operations.

We have post-closing obligations related to the 69-97 and 103-107 Main Street, Westport, Connecticut properties that we sold in February 2023 to (i) close out a voluntary remediation program at 69-97 Main Street to address residual impacts of prior presence of underground storage tanks and (ii) comply with a consent order issued by the Connecticut Department of Environmental Protection to investigate soil conditions at 103-107 Main Street. We believe any expenses incurred to close out and comply with the remediation program and consent order, respectively, will be immaterial to the results of our operations.

Our property situated at 500 Mamaroneck Avenue in Harrison, New York was the subject of a voluntary remedial action work cleanup plan under an agreement with the New York State Department of Environmental Conservation, but we sold this property in April 2023 and the obligations have been transferred to the buyer. Refer to Note 3 Acquisitions and Dispositions.

In addition, our properties are subject to various federal, state and local environmental and health and safety laws and regulations. Noncompliance with these laws and regulations could subject us or our tenants to liability. These liabilities could affect a tenant's ability to make rental payments to us. Moreover, changes in laws could increase the potential costs of compliance with such laws and regulations or increase liability for noncompliance. This may result in significant unanticipated expenditures. We sometimes require our tenants to comply with environmental and health and safety laws and regulations and to indemnify us for any related liabilities in our leases with them. But in the event of the bankruptcy or inability of any of our tenants to satisfy such obligations, we may be required to satisfy such obligations. We are not presently aware of any instances of material non-compliance with environmental or health and safety laws or regulations at our properties, and we believe that we and/or our tenants have all material permits and approvals necessary under current laws and regulations to operate our properties.

In addition, we may become subject to new compliance requirements and/or new costs or taxes associated with natural resource or energy usage and related emissions (such as a carbon tax), which could increase our operating costs. In particular, as the owner of large commercial buildings in New York City, we are subject to Local Law 97 passed by the New York City Council in April 2019, which for each such building establishes annual limits for greenhouse gas emissions, requires yearly emissions reports beginning in May 2025, and imposes penalties for emissions above such limits. Based upon our present

understanding of the law and calculations related thereto, we expect to pay no fine on any building in our commercial portfolio in the 2024-2029 first period of enforcement.

As the owner or operator of real property, we may also incur liability based on various building conditions. For example, environmental site assessments and investigations have identified asbestos or asbestos-containing material ("ACM") in certain of our properties, and it is possible that other properties that we currently own or operate or those we acquire or operate in the future contain, may contain, or may have contained ACM. Environmental and health and safety laws require that ACM be properly managed and maintained and may impose fines or penalties on owners, operators or employers for non-compliance with those requirements. These requirements include special precautions, such as removal, abatement or air monitoring, if ACM would be disturbed during maintenance, redevelopment or demolition of a building, potentially resulting in substantial costs. In addition, we may be subject to liability for personal injury or property damage sustained as a result of releases of ACM into the environment. We are not presently aware of any material liabilities related to building conditions, including any instances of material non-compliance with asbestos requirements or any material liabilities related to asbestos.

Our properties may contain or develop harmful mold or suffer from other indoor air quality issues, which could lead to liability for adverse health effects or property damage or costs for remediation. When excessive moisture accumulates in buildings or on building materials, mold growth may occur, particularly if the moisture problem remains undiscovered or is not addressed over a period of time. Some molds may produce airborne toxins or irritants. Indoor air quality issues can also stem from inadequate ventilation, chemical contamination from indoor or outdoor sources, and other biological contaminants such as pollen, viruses and bacteria. Indoor exposure to airborne toxins or irritants above certain levels can be alleged to cause a variety of adverse health effects and symptoms, including allergic or other reactions. As a result, the presence of significant mold or other airborne contaminants at any of our properties could require us to undertake a costly remediation program to contain or remove the mold or other airborne contaminants from the affected property or increase indoor ventilation. In addition, the presence of significant mold or other airborne contaminants could expose us to liability from our tenants, employees of our tenants or others if property damage or personal injury occurs. We are not presently aware of any material adverse indoor air quality issues at our properties.

As of December 31, 2023, with the exception of the Westport assets, management believes that there are no obligations related to environmental remediation other than maintaining the affected sites in conformity with the relevant authority's mandates and filing the required documents. All such maintenance costs are expensed as incurred. However, we cannot be certain that we have identified all environmental liabilities at our properties, that all necessary remediation actions have been or will be undertaken at our properties or that we will be indemnified, in full or at all, in the event that such environmental liabilities arise.

Insurance Coverage

We carry insurance coverage on our properties of types and in amounts with deductibles that we believe are in line with coverage customarily obtained by owners of similar properties.

Multiemployer Pension and Defined Contribution Plans

We contribute to a number of multiemployer defined benefit pension plans under the terms of collective bargaining agreements that cover our union-represented employees. The risks of participating in these multiemployer plans are different from single-employer plans in the following respects:

- Assets contributed to the multiemployer plan by one employer may be used to provide benefits to employees of other participating employers.
- If a participating employer stops contributing to the plan, the unfunded obligations of the plan may be borne by the remaining participating employers.
- If we no longer employ union members, we may be required to pay those plans an amount based on the underfunded status of the plan, referred to as a withdrawal liability.

We participate in various unions. The union in which we have significant employees and costs is 32BJ.

32BJ

We participate in the Building Service 32BJ ("Union") Pension Plan and Health Plan. The Pension Plan is a multi-employer, non-contributory defined benefit pension plan that was established under the terms of collective bargaining

agreements between the Service Employees International Union, Local 32BJ, the Realty Advisory Board on Labor Relations, Inc. and certain other employers. This Pension Plan is administered by a joint board of trustees consisting of union trustees and employer trustees and operates under employer identification number 13-1879376. The Pension Plan year runs from July 1 to June 30. Employers contribute to the Pension Plan at a fixed rate on behalf of each covered employee. Separate actuarial information regarding such pension plans is not made available to the contributing employers by the union administrators or trustees, since the plans do not maintain separate records for each reporting unit. On September 28, 2021, the actuary certified that for the plan year beginning July 1, 2021, the Pension Plan was in critical status under the Pension Protection Act of 2006. The Pension Plan trustees adopted a rehabilitation plan consistent with this requirement. However, on September 28, 2022 and September 28, 2023, the actuary certified that for the plan year beginning July 1, 2022 and July 1, 2023, respectively, the Pension Plan was in endangered status under the Pension Protection Act of 2006. The Pension Plan trustees adopted a funding improvement plan consistent with this requirement. For the plan years ended June 30, 2021, 2022 and 2023, the Pension Plan received contributions from employers totaling \$290.1 million, \$305.7 million and \$317.9 million, respectively.

The Health Plan was established under the terms of collective bargaining agreements between the Union, the Realty Advisory Board on Labor Relations, Inc. and certain other employers. The Health Plan provides health and other benefits to eligible participants employed in the building service industry who are covered under collective bargaining agreements, or other written agreements, with the Union. The Health Plan is administered by a Board of Trustees with equal representation by the employers and the Union and operates under employer identification number 13-2928869. The Health Plan receives contributions in accordance with collective bargaining agreements or participation agreements. Generally, these agreements provide that the employers contribute to the Health Plan at a fixed rate on behalf of each covered employee. For the plan years ended June 30, 2021, 2022 and 2023, the Health Plan received contributions from employers totaling \$1.5 billion, \$1.6 billion and \$1.9 billion, respectively.

Term of Collective Bargaining Agreements

Our collective bargaining agreement for Service Employees International Union Local 32BJ relating to commercial properties in New York City was renewed and commenced effective January 1, 2024 through December 31, 2027. We are in the process of negotiating a successor agreement to the collective bargaining agreement for Service Employees International Union Local 32BJ relating to our operations in the greater New York metropolitan area. We are also a signatory to another collective bargaining agreement for Service Employees International Union Local 32BJ with a term from April 21, 2022 through April 20, 2026 for our residential properties.

Contributions

Contributions we made to the multi-employer plans for the years ended December 31, 2023, 2022 and 2021 are included in the table below (amounts in thousands):

Benefit Plan	For the Year Ended December 31,		
	2023	2022	2021
Pension Plans (pension and annuity)*	\$ 3,671	\$ 2,958	\$ 2,165
Health Plans**	8,812	8,618	6,214
Other***	434	460	305
Total plan contributions	\$ 12,917	\$ 12,036	\$ 8,684

* Pension plans include \$0.8 million, \$0.8 million and \$0.7 million for the years ended 2023, 2022 and 2021, respectively, to multiemployer plans not discussed above.

** Health plans include \$1.6 million, \$1.5 million and \$1.4 million for the years ended 2023, 2022 and 2021, respectively, to multiemployer plans not discussed above.

*** Other consists of union costs which were not itemized between pension and health plans. Other includes \$0.3 million, \$0.2 million and \$0.2 million for the years ended 2023, 2022 and 2021, respectively, in connection with other multiemployer plans not discussed above.

The increase in plan contributions in 2023 is mainly due to higher payroll levels with the increased building utilization at our various properties. Benefit plan contributions are included in operating expenses in our consolidated statements of operations.

10. Equity

Shares and Units

An operating partnership unit ("OP Unit") and a share of our common stock have essentially the same economic characteristics as they receive the same per unit profit distributions of the Operating Partnership. On the one-year anniversary of issuance, an OP Unit may be tendered for redemption for cash; however, we have sole and absolute discretion, and sufficient authorized common stock, to exchange OP Units for shares of common stock on a one-for-one basis instead of cash.

As of December 31, 2023, there were 162,061,947 shares of Class A common stock, 984,317 shares of Class B common stock and 107,900,200 OP Units outstanding. The REIT holds a 60.2% controlling interest in the OP. The other 39.8% noncontrolling interest in the OP is diversified among various limited partners, some of whom include Company directors, senior management and employees. We have two classes of common stock as a means to give our OP Unit holders voting rights in the public company that correspond to their economic interest in the combined entity. A one-time option was created at our formation transactions for any pre-IPO OP Unit holder to exchange one OP Unit out of every 50 OP Units they owned for one Class B share, and such Class B share carries 50 votes per share.

Stock and Publicly Traded Operating Partnership Unit Repurchase Program

Our Board of Directors authorized the repurchase of up to \$500 million of our Class A common stock and the Operating Partnership's Series ES, Series 250 and Series 60 operating partnership units from January 1, 2022 through December 31, 2023. Upon expiration of this program, the Board of Directors authorized the repurchase of up to \$500 million of our Class A common stock and the Operating Partnership's Series ES, Series 250 and Series 60 operating partnership units during the period from January 1, 2024 through December 31, 2025. Under the program, we may purchase our Class A common stock and the Operating Partnership's Series ES, Series 250 and Series 60 operating partnership units in accordance with applicable securities laws from time to time in the open market or in privately negotiated transactions. The timing, manner, price and amount of any repurchases will be determined by us at our discretion and will be subject to stock price, availability, trading volume, general market conditions, and applicable securities laws. The authorization does not obligate us to acquire any particular amount of securities, and the program may be suspended or discontinued at our discretion without prior notice. At December 31, 2023, we had used approximately \$103.3 million of the authorized repurchase amount for the 2022-2023 period.

The following table summarizes our purchases of equity securities for the year ended December 31, 2023 under the previous repurchase program.

Period	Total Number of Shares Purchased	Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Plan	Maximum Approximate Dollar Value Available for Future Purchase
Year ended December 31, 2023	2,150,857	\$ 6.09	2,150,857	\$500,000,000 ^(a)

^(a) Represents the new board authorization for the January 1, 2024 - December 31, 2025 period. As of the date of this filing, we have used \$0 of such \$500 million authorization.

Private Perpetual Preferred Units

As of December 31, 2023, there were 4,664,038 Series 2019 Preferred Units ("Series 2019 Preferred Units") and 1,560,360 Series 2014 Private Perpetual Preferred Units ("Series 2014 Preferred Units"). The Series 2019 Preferred Units have a liquidation preference of \$13.52 per unit and are entitled to receive cumulative preferential annual cash distributions of \$0.70 per unit payable in arrears on a quarterly basis. The Series 2014 Preferred Units which have a liquidation preference of \$16.62 per unit and are entitled to receive cumulative preferential annual cash distributions of \$0.60 per unit payable in arrears on a quarterly basis. Both series are not redeemable at the option of the holders and are redeemable at our option only in the case of specific defined events.

Dividends and Distributions

The following table summarizes the dividends paid on our Class A common stock and Class B common stock for the years ended December 31, 2023, 2022 and 2021:

Record Date	Payment Date	Amount per Share
December 18, 2023	December 29, 2023	\$0.035
September 15, 2023	September 29, 2023	\$0.035
June 15, 2023	June 30, 2023	\$0.035
March 15, 2023	March 31, 2023	\$0.035
December 19, 2022	December 31, 2022	\$0.035
September 15, 2022	September 30, 2022	\$0.035
June 15, 2022	June 30, 2022	\$0.035
March 15, 2022	March 31, 2022	\$0.035
December 20, 2021	December 31, 2021	\$0.035
September 15, 2021	September 30, 2021	\$0.035
June 15, 2021	June 30, 2021	\$0.035

Total dividends paid to common securityholders during 2023, 2022 and 2021 were \$22.7 million, \$23.1 million and \$18.1 million, respectively. Total distributions paid to OP unitholders, excluding inter-company distributions, during 2023, 2022 and 2021 totaled \$14.4 million, \$15.5 million and \$10.5 million, respectively. Total distributions paid to Preferred unitholders during 2023, 2022 and 2021 were \$4.2 million, \$4.2 million, and \$4.2 million, respectively.

Earnings and profits, which determine the tax treatment of distributions to securityholders, will differ from income reported for financial reporting purposes due to the differences for federal income tax purposes, including, but not limited to, treatment of revenue recognition, compensation expense, and basis of depreciable assets and estimated useful lives used to compute depreciation. The 2023 dividends of \$0.14 per share are classified for income tax purposes 89.2% as taxable ordinary dividends eligible for the Section 199A deduction and 10.8% as a return of capital. The 2022 dividends of \$0.14 per share are classified for income tax purposes 100% as taxable ordinary dividends eligible for the Section 199A deduction and 0% as a return of capital. The 2021 dividends of \$0.105 per share are classified for income tax purposes 16.2% as taxable ordinary dividends eligible for the Section 199A deduction and 83.8% as a return of capital.

Incentive and Share-Based Compensation

On May 16, 2019, the Empire State Realty Trust, Inc. Empire State Realty OP, L.P. 2019 Equity Incentive Plan ("2019 Plan") was approved by our shareholders. The 2019 Plan provides for grants to directors, employees and consultants of our Company and Operating Partnership, including options, restricted stock, restricted stock units, stock appreciation rights, performance awards, dividend equivalents and other equity-based awards, and replaced the First Amended and Restated Empire State Realty Trust, Inc. and Empire State Realty OP, L.P. 2013 Equity Incentive Plan ("2013 Plan", and collectively with the 2019 Plan, "the Plans"). The shares of Class A common stock underlying any awards under the 2019 Plan and the 2013 Plan that are forfeited, canceled or otherwise terminated, other than by exercise, will be added back to the shares of Class A common stock available for issuance under the 2019 Plan. Shares tendered or held back upon exercise of a stock option or settlement of an award under the 2019 Plan or the 2013 Plan to cover the exercise price or tax withholding and shares subject to a stock appreciation right that are not issued in connection with the stock settlement of the stock appreciation right upon exercise thereof, will not be added back to the shares of Class A common stock available for issuance under the 2019 Plan. In addition, shares of Class A common stock repurchased on the open market will not be added back to the shares of Class A common stock available for issuance under the 2019 Plan.

An aggregate of approximately 11.0 million shares of our common stock was authorized for issuance under awards granted pursuant to the 2019 Plan, and as of December 31, 2023, approximately 4.2 million shares of common stock remain available for future issuance under the Plans.

Long-term incentive plan ("LTIP") units are a special class of partnership interests in the Operating Partnership. Each LTIP unit awarded will be deemed equivalent to an award of one share of stock under the Plans, reducing the availability for other equity awards on a one-for-one basis. The vesting period for LTIP units, if any, will be determined at the time of issuance. Under the terms of the LTIP units, the Operating Partnership will revalue for tax purposes its assets upon the occurrence of certain specified events, and any increase in valuation from the time of one such event to the next such event will be allocated first to the holders of LTIP units to equalize the capital accounts of such holders with the capital accounts of OP unitholders.

Subject to any agreed upon exceptions, once vested and having achieved parity with OP unitholders, LTIP units are convertible into OP Units in the Operating Partnership on a one-for-one basis.

LTIP units subject to time-based vesting, whether vested or not, receive the same per unit distributions as OP Units, which equal per share dividends (both regular and special) on our common stock. Market and performance-based LTIPs receive 10% of such distributions currently, unless and until such LTIP units are earned based on performance, at which time they will receive the accrued and unpaid 90% and will commence receiving 100% of such distributions thereafter.

In March 2023, we made grants of LTIP units to executive officers under the 2019 Plan, including a total of 552,412 LTIP units that are subject to time-based vesting, 834,456 LTIP units that are subject to market-based vesting and 679,969 units that are subject to performance-based vesting with fair market values of \$3.2 million, \$3.9 million and \$3.9 million, respectively. In March 2023, we made grants of LTIP units and restricted stock to certain other employees under the 2019 Plan, including a total of 229,308 LTIP units and 370,465 shares of restricted stock that are subject to time-based vesting, 111,942 LTIP units that are subject to market-based vesting and 91,211 LTIP units that are subject to performance-based vesting, with fair market values of \$1.5 million and \$2.6 million, respectively, for the time-based vesting awards, \$0.6 million for the market-based vesting awards and \$0.6 million for the performance-based vesting awards. The awards subject to time-based vesting vest ratably over four years, subject generally to the grantee's continued employment, with the first installment vesting on January 1, 2024. The vesting of the LTIP units subject to market-based vesting is based on the achievement of relative total stockholder return hurdles over a three-year performance period, commencing on January 1, 2023. The vesting of the LTIP units subject to performance-based vesting is based on the achievement of (i) operational metrics over a one-year performance period, subject to a three-year absolute TSR modifier, and (ii) environmental, social and governance metrics over a three-year performance period, in each case, commencing on January 1, 2023. Following the completion of the respective performance periods, our Compensation and Human Capital Committee will determine the number of LTIP units to which the grantee is entitled based on our performance relative to the performance hurdles set forth in the LTIP unit award agreements the grantee entered in connection with the award grant. These LTIP units then vest in two equal installments, on January 1, 2025 and December 31, 2026, subject generally to the grantee's continued employment on those dates.

In March 2023, we also made one-time additional grants of LTIP units to certain non-executive employees under the 2019 Plan. At such time, we granted to certain other employees a total of 152,542 LTIP units that are subject to time-based vesting, with a fair market value of \$1.0 million that vest over four and five year periods.

In 2023, our named executive officers could elect to receive their annual incentive bonus in any combination of (i) cash or vested LTIPs at the face amount of such bonus or (ii) time-vesting LTIPs which would vest over three years, subject to continued employment, at a premium over such face amount (120% for awards granted in 2021, 2022, and 2023; 125% for years prior to 2021). In March 2023, we made grants of LTIP units to executive officers under the 2019 Plan in connection with the 2022 bonus election program. We granted to executive officers a total of 521,571 LTIP units that are subject to time-based vesting with a fair market value of \$3.0 million. Of these LTIP units, 446,376 LTIP units vest ratably over three years from January 1, 2023, subject generally to the grantee's continued employment. The first installment vests on January 1, 2024, and the remainder will vest thereafter in two equal annual installments on January 1, 2025 and January 1, 2026. We also granted to our retired general counsel 75,195 LTIP units that vested immediately on the grant date.

Annually, we make grants of LTIP units to our non-employee directors under the 2019 Plan. In May 2023, each of our directors received 60% of their \$200,000 annual base retainer in the form of equity vesting ratably over four years, and could elect to receive the remaining 40% of such base retainer in (i) cash at the face value of the award, (ii) immediately vesting equity at the face value of the award, or (iii) equity vesting ratably over three years at 120% of the face amount. Each director could elect to receive any equity portion of the base retainer in either (i) LTIP units or (ii) restricted shares of our Class A common stock. In accordance with each director's election, in May 2023, we granted a total of 237,856 LTIP units that are subject to time-based vesting with fair market values of \$1.2 million. The LTIP units vest ratably over three or four years from the date of the grant, based on grantee election, subject generally to the director's continued service on our Board of Directors.

During July 2023, we granted our two new directors, Christina Van Tassell and Hannah Yang, a total of 27,000 LTIP units which are subject to time-based vesting with a combined fair market value of \$0.2 million. One-fourth of the units will vest on May 12, 2024, and the remainder shall vest in substantially equal installments on each subsequent anniversary for a period of three years thereafter.

Share-based compensation for time-based equity awards is measured at the fair value of the award on the date of grant and recognized as an expense on a straight-line basis over the shorter of (i) the stated vesting period, which is generally three, four or five years, or (ii) the period from the date of grant to the date the employee becomes retirement eligible, which may occur upon grant. An employee is retirement eligible when the employee attains the (i) age of 65 for awards granted in 2020 and after, and age of 60 for awards granted before 2020 and (ii) the date on which the employee has first completed the

requisite years of continuous service with us or our affiliates. Share-based compensation for market-based equity awards and performance-based equity awards is measured at the fair value of the award on the date of grant and recognized as an expense on a straight-line basis over three or four years. Additionally, for the performance-based equity awards, we assess, at each reporting period, whether it is probable that the performance conditions will be satisfied. We recognize expense respective to the number of awards we expect to vest at the conclusion of the measurement period. Changes in estimate are accounted for in the period of change through a cumulative catch-up adjustment. Any forfeitures of share-based compensation awards are recognized as they occur.

For the market-based LTIP units, the fair value of the awards was estimated using a Monte Carlo Simulation model and discounted for the restriction period during which the LTIP units cannot be redeemed or transferred and the uncertainty regarding if, and when, the book capital account of the LTIP units will equal that of the common units. Our stock price, along with the prices of the comparative indexes, is assumed to follow the Geometric Brownian Motion Process. Geometric Brownian Motion is a common assumption when modeling in financial markets, as it allows the modeled quantity (in this case the stock price) to vary randomly from its current value and take any value greater than zero. The volatilities of the returns on our stock price and the comparative indexes were estimated based on implied volatilities and historical volatilities using an appropriate look-back period. The expected growth rate of the stock prices over the performance period is determined with consideration of the risk-free rate as of the grant date. For LTIP unit awards that are time or performance based, the fair value of the awards was estimated based on the fair value of our stock at the grant date discounted for the restriction period during which the LTIP units cannot be redeemed or transferred and the uncertainty regarding if, and when, the book capital account of the LTIP units will equal that of the common units. For restricted stock awards, the fair value of the awards are based on the market price of our stock at the grant date.

LTIP units and restricted stock issued during the year ended December 31, 2023, 2022 and 2021 were valued at \$21.7 million, \$22.4 million and \$20.0 million, respectively. The weighted-average per unit or share fair value was \$5.67, \$7.21 and \$8.52 for grants issued in 2023, 2022 and 2021, respectively. The fair value per unit or share granted in 2023 was estimated on the respective dates of grant using the following assumptions: an expected life from 2.0 to 5.3 years, a dividend rate of 1.7%, a risk-free interest rate from 4.4% to 5.0%, and an expected price volatility from 35.0% to 46.0%. The fair value per unit or share granted in 2022 was estimated on the respective dates of grant using the following assumptions: an expected life from 2.0 to 5.3 years, a dividend rate of 2.0%, a risk-free interest rate from 1.4% to 2.0%, and an expected price volatility from 37.0% to 53.0%. The fair value per unit or share granted in 2021 was estimated on the respective dates of grant using the following assumptions: an expected life from 2.0 to 5.3 years, a dividend rate of 2.60%, a risk-free interest rate from 0.12% to 0.32%, and an expected price volatility from 36.0% to 53.0%. No other stock options, dividend equivalents, or stock appreciation rights were issued or outstanding in 2023, 2022 and 2021.

The following is a summary of restricted stock and LTIP unit activity for the year ended December 31, 2023:

	Restricted Stock	Time-based LTIPs	Market-based LTIPs	Performance-based LTIPs	Weighted Average Grant Fair Value
Unvested balance at December 31, 2022	359,293	2,713,522	4,070,537	510,989	\$ 6.69
Vested	(121,128)	(1,148,987)	(582,800)	(2,011)	7.17
Granted	370,465	1,733,015	946,398	771,180	5.67
Forfeited or unearned	(10,341)	—	(1,695,323)	(3,795)	4.30
Unvested balance at December 31, 2023	598,289	3,297,550	2,738,812	1,276,363	\$ 6.60

The total fair value of LTIP units and restricted stock that vested during 2023, 2022 and 2021 was \$13.3 million, \$14.1 million and \$12.3 million, respectively.

The time-based LTIPs and restricted stock awards are treated for accounting purposes as immediately vested upon the later of (i) the date the grantee attains the age of 60 or 65, as applicable, and (ii) the date on which grantee has first completed the requisite years of continuous service with our Company or its affiliates. For award agreements that qualify, we recognize noncash compensation expense on the grant date for the time-based awards and ratably over the vesting period for the market-based and performance-based awards, and accordingly, we recognized \$2.8 million, \$2.3 million and \$1.3 million for the years ended December 31, 2023, 2022 and 2021, respectively. Unrecognized compensation expense was \$3.2 million at December 31, 2023, which will be recognized over a weighted average period of 2.4 years.

For the remainder of the LTIP unit awards, we recognized noncash compensation expense ratably over the vesting period, and accordingly, we recognized \$17.2 million, \$18.7 million and \$19.0 million in noncash compensation expense for

the years ended December 31, 2023, 2022 and 2021, respectively. Unrecognized compensation expense was \$24.1 million at December 31, 2023, which will be recognized over a weighted average period of 2.4 years.

Earnings Per Share

Earnings per share is calculated by dividing the net income attributable to common shareholders by the weighted average number of shares outstanding during the respective period. Unvested share-based payment awards that contain non-forfeitable rights to dividends, whether paid or unpaid, are accounted for as participating securities. Share-based payment awards are included in the calculation of diluted income using the treasury stock method if dilutive.

Earnings per share for the years ended December 31, 2023, 2022 and 2021 is computed as follows (amounts in thousands, except per share amounts):

	For the Year Ended December 31,		
	2023	2022	2021
Numerator - Basic:			
Net income (loss)	\$ 84,407	\$ 63,212	\$ (13,037)
Private perpetual preferred unit distributions	(4,201)	(4,201)	(4,201)
Net (income) loss attributable to non-controlling interest in operating partnership	(31,094)	(22,812)	6,527
Net (income) loss attributable to non-controlling interests in other partnerships	(68)	243	—
Earnings allocated to unvested shares	—	—	(26)
Net income (loss) attributable to common stockholders - basic	<u>\$ 49,044</u>	<u>\$ 36,442</u>	<u>\$ (10,737)</u>
Numerator - Diluted:			
Net income (loss)	\$ 84,407	\$ 63,212	\$ (13,037)
Private perpetual preferred unit distributions	(4,201)	(4,201)	(4,201)
Net (income) loss attributable to non-controlling interests in other partnerships	(68)	243	—
Earnings allocated to unvested shares	—	—	(26)
Net income (loss) attributable to common stockholders - diluted	<u>\$ 80,138</u>	<u>\$ 59,254</u>	<u>\$ (17,264)</u>
Denominator:			
Weighted average shares outstanding - basic	161,122	165,039	172,445
Operating partnership units	102,104	103,298	104,975
Effect of dilutive securities:			
Stock-based compensation plans	2,407	1,611	—
Weighted average shares outstanding - diluted	<u>265,633</u>	<u>269,948</u>	<u>277,420</u>
Earnings per share - basic	<u>\$ 0.30</u>	<u>\$ 0.22</u>	<u>\$ (0.06)</u>
Earnings per share - diluted	<u>\$ 0.30</u>	<u>\$ 0.22</u>	<u>\$ (0.06)</u>

There were zero antidilutive shares for the years ended December 31, 2023 and 2022, respectively. There were 1,052,390 antidilutive shares for the year ended December 31, 2021.

11. Related Party Transactions

Sale of Westport Retail Properties

On February 1, 2023, we closed on the disposition of our retail assets located at 69-97 and 103-107 Main Street in Westport, Connecticut, for total consideration of \$40.0 million, to an entity affiliated with our Chairman and Chief Executive Officer, Anthony E. Malkin (the "Westport Transaction"). The Company determined to make the sale to the related party entity

after a marketed sale process conducted from February 2022 through August 2022 through a broker in which it received several third-party bids. Deals with third-party purchasers failed to materialize due to adverse changes in capital market conditions during that time. The Westport Transaction materialized due to timing because the related party entity had recently completed a sale of property and was in the market for exchange property to defer tax in a 1031 exchange, and the Company recently executed on the acquisition of 298 Mulberry Street. The \$40.0 million valuation for the Westport Transaction is in the range of the bids the Company received during the marketed sale process.

In connection with the Westport Transaction, we advanced a loan to the buyer to facilitate closing with a maximum principal amount of up to \$1.0 million, which bore interest at SOFR plus 3.5% and required repayment of principal to the extent of available cash flow of the property. As of December 31, 2023, the loan has been fully paid.

The Company has a written Related Party Transactions Policy (the “Policy”) which requires the Nominating and Corporate Governance Committee to review the material facts of all related party transactions and consider all relevant factors in approving any related party transaction. Further, the Policy provides that a director or executive officer shall not participate in any consideration, discussion or approval of such related party transaction in which he or she is a related party. The Westport Transaction process was completed in compliance with the Policy.

The independent members of the Nominating and Corporate Governance Committee conducted an independent review under the guidance of outside counsel and then approved the transaction. The Company reviewed with outside counsel best practices for the specific Westport Transaction and took additional precautions to ensure an arms-length process. There were separate counsels and appraisals for both buyer and seller.

Tax Protection Agreements

In 2013, we entered into a tax protection agreement with Anthony E. Malkin and Peter L. Malkin that is intended to protect to a limited extent the Malkin Group and an additional third-party investor in Metro Center (who was one of the original landowners and was involved in the development of the property) against certain tax consequences arising from a transaction involving one of four properties, which we refer to in this section as the protected assets.

First, this agreement provides that our operating partnership will not sell, exchange, transfer or otherwise dispose of such protected assets, or any interest in a protected asset, until (i) October 7, 2025, with respect to one protected asset, First Stamford Place, and (ii) the later of (x) October 7, 2021 and (y) the death of both Peter L. Malkin and Isabel W. Malkin, who are 90 and 87 years old, respectively, for the three other protected assets, Metro Center, 298 Mulberry Street (“substituted basis property” as contemplated by the tax protection agreement for 10 Bank Street, which was sold on December 7, 2022) and 1542 Third Avenue, unless:

- (1) Anthony E. Malkin consents to the sale, exchange, transfer or other disposition; or
- (2) our operating partnership delivers to each protected party thereunder a cash payment intended to approximate the tax liability arising from the recognition of the pre-contribution built-in gain resulting from the sale, exchange, transfer or other disposition of such protected asset (with the pre-contribution “built-in gain” being not more than the taxable gain that would have been recognized by such protected party if the protected asset been sold for fair market value in a taxable transaction at the time of the consolidation) plus an additional amount so that, after the payment of all taxes on amounts received pursuant to the agreement (including any tax liability incurred as a result of receiving such payment), the protected party retains an amount equal to such protected party’s total tax liability incurred as a result of the recognition of the pre-contribution built-in gain pursuant to such sale, exchange, transfer or other disposition; or
- (3) the disposition does not result in a recognition of any built-in gain by the protected party.

Second, with respect to the Malkin Group, including Anthony E. Malkin and Peter L. Malkin, and one additional third-party investor in Metro Center (who was one of the original landowners and was involved in the development of the property), to protect against gain recognition resulting from a reduction in such continuing investor’s share of the operating partnership liabilities, the agreement provides that during the period from October 7, 2013 until such continuing investor owns less than the aggregate number of operating partnership units and shares of common stock equal to 50% of the aggregate number of such units and shares such investor received in the formation transactions, which we refer to in this section as the tax protection period, our operating partnership will (i) refrain from prepaying any amounts outstanding under any indebtedness secured by the protected assets and (ii) use its commercially reasonable efforts to refinance such indebtedness at or prior to maturity at its

current principal amount, or, if our operating partnership is unable to refinance such indebtedness at its current principal amount, at the highest principal amount possible. The agreement also provides that, during the tax protection period, our operating partnership will make available to such continuing investors the opportunity (i) to enter into a “bottom dollar” guarantee of their allocable share of \$160.0 million of aggregate indebtedness of our operating partnership meeting certain requirements or (ii) in the event our operating partnership has recourse debt outstanding and such a continuing investor agrees, in lieu of guaranteeing debt pursuant to clause (i) above, to enter into a deficit restoration obligation, in each case, in a manner intended to provide an allocation of operating partnership liabilities to the continuing investor. In the event that a continuing investor guarantees debt of our operating partnership, such continuing investor will be responsible, under certain circumstances, for the repayment of the guaranteed amount to the lender in the event that the lender would otherwise recognize a loss on the loan, such as, for example, if property securing the loan was foreclosed and the value was not sufficient to repay a certain amount of the debt. A deficit restoration obligation is a continuing investor’s obligation, under certain circumstances, to contribute a designated amount of capital to our operating partnership upon our operating partnership’s liquidation in the event that the assets of our operating partnership are insufficient to repay our operating partnership liabilities.

Because we expect that our operating partnership will at all times have sufficient liabilities to allow it to meet its obligations to allocate liabilities to its partners that are protected parties under the tax protection agreement, our operating partnership’s indemnification obligation with respect to “certain tax liabilities” would generally arise only in the event that the operating partnership disposes in a taxable transaction of a protected asset within the period specified above in a taxable transaction. In the event of such a disposition, the amount of our operating partnership’s indemnification obligation would depend on several factors, including the amount of “built-in gain,” if any, recognized and allocated to the indemnified partners with respect to such disposition and the effective tax rate to be applied to such gain at the time of such disposition. Our disposition of the 10 Bank Street asset on December 7, 2022 did not trigger any obligation of payment pursuant to the tax protection agreement.

The operating partnership agreement requires that allocations with respect to such acquired property be made in a manner consistent with Section 704(c) of the Code. Treasury Regulations issued under Section 704(c) of the Code provide partnerships with a choice of several methods of allocating book-tax differences. Under the tax protection agreement, our operating partnership has agreed to use the “traditional method” for accounting for book-tax differences for the properties acquired by our operating partnership in the consolidation. Under the traditional method, which is the least favorable method from our perspective, the carryover basis of the acquired properties in the hands of our operating partnership (i) may cause us to be allocated lower amounts of depreciation and other deductions for tax purposes than would be allocated to us if all of the acquired properties were to have a tax basis equal to their fair market value at the time of acquisition and (ii) in the event of a sale of such properties, could cause us to be allocated gain in excess of its corresponding economic or book gain (or taxable loss that is less than its economic or book loss), with a corresponding benefit to the partners transferring such properties to our operating partnership for interests in our operating partnership.

In 2016, we entered into a tax protection agreement with Q REIT Holding LLC, a Qatar Financial Centre limited liability company and a wholly owned subsidiary of the Qatar Investment Authority, a governmental authority of the State of Qatar (“QREIT”, and together with any eligible transferee, “QIA”). Subject to certain minimum thresholds and conditions, we will indemnify QIA for certain applicable U.S. federal and state taxes payable by QIA in connection with dividends paid by us on the QIA shares that are attributable to capital gains from the sale or exchange of any U.S. real property interests. Our obligation to indemnify QIA will terminate one year following the date on which the sum of the QIA shares then owned by QIA falls below 10% of our outstanding common shares.

Registration Rights

We entered into a registration rights agreement with certain persons receiving shares of our common stock or operating partnership units in the formation transactions, including certain members of our senior management team and our other continuing investors. In connection therewith, we have filed, and are obligated to maintain the effectiveness of, an automatically effective shelf registration statement, along with a prospectus supplement, with respect to, among other things, shares of our Class A common stock that may be issued upon redemption of operating partnership units or issued upon conversion of shares of Class B common stock to continuing investors in the public existing entities. Pursuant to the registration rights agreement, under certain circumstances, we will also be required to undertake an underwritten offering upon the written request of the Malkin Group, which we refer to as the holder, provided (i) the registrable shares to be registered in such offering will have a market value of at least \$150.0 million, (ii) we will not be obligated to effect more than two underwritten offerings during any 12-month period; and (iii) the holder will not have the ability to effect more than four underwritten offerings. In addition, if we file a registration statement with respect to an underwritten offering for our own account or on behalf of the holder, the holder will have the right, subject to certain limitations, to register such number of registrable shares held by him, her or it as each such

holder requests. With respect to underwritten offerings on behalf of the holder, we will have the right to register such number of primary shares as we request; provided, however, that if cut backs are required by the managing underwriters of such an offering, our primary shares shall be cutback first (but in no event will our shares be cut back to less than \$25.0 million).

We have also agreed to indemnify the persons receiving rights against specified liabilities, including certain potential liabilities arising under the Securities Act, or to contribute to the payments such persons may be required to make in respect thereof. We have agreed to pay all of the expenses relating to the registration and any underwritten offerings of such securities, including, without limitation, all registration, listing, filing and stock exchange or FINRA fees, all fees and expenses of complying with securities or “blue sky” laws, all printing expenses and all fees and disbursements of counsel and independent public accountants retained by us, but excluding underwriting discounts and commissions, any out-of-pocket expenses (except we will pay any holder’s out-of-pocket fees (including disbursements of such holder’s counsel, accountants and other advisors) up to \$25,000 in the aggregate for each underwritten offering and each filing of a resale shelf registration statement or demand registration statement), and any transfer taxes.

Employment Agreement and Change in Control Severance Agreements

We entered into an employment agreement with Anthony E. Malkin, which provides for salary, bonuses and other benefits, including among other things, severance benefits upon a termination of employment under certain circumstances and the issuance of equity awards. In addition, we entered into change in control severance agreements with Thomas P. Durels and Christina Chiu.

Indemnification of Our Directors and Officers

We entered into indemnification agreements with each of our directors, executive officers, chairman emeritus and certain other parties, providing for the indemnification by us for certain liabilities and expenses incurred as a result of actions brought, or threatened to be brought, against (i) our directors, executive officers and chairman emeritus and (ii) our executive officers, chairman emeritus and certain other parties who are former members, managers, securityholders, directors, limited partners, general partners, officers or controlling persons of our predecessor in such capacities.

Excluded Properties and Businesses

The Malkin Group, including Anthony E. Malkin, our Chairman and Chief Executive Officer, owns non-controlling interests in, and Anthony E. Malkin and Peter L. Malkin control the general partners or managers of, the entities that own interests in seven multi-family properties and five net leased retail properties, (including one single tenant retail property in Greenwich, Connecticut). The Malkin Group also owns non-controlling interests in one Manhattan office property, two Manhattan retail properties and several retail properties outside of Manhattan, none of which were contributed to us in the formation transactions, and two retail properties in Westport, Connecticut acquired from ESRT in February 2023 (see Sale of Westport Retail Properties above). We refer to the non-controlling interests described above collectively as the excluded properties. In addition, the Malkin Group owns interests in one senior equity fund and three property managers, which we refer to collectively as the excluded businesses. We do not believe that the excluded properties or the excluded businesses are consistent with our current commercial portfolio or strategic direction.

Pursuant to management and/or service agreements with the owners of interests in those excluded properties and businesses, we are designated as the asset manager (supervisor) and/or property manager of the excluded properties, provide services to certain of the excluded properties and the other excluded businesses. As the manager or service provider, we are paid a management or other fee with respect to those excluded properties and businesses where our predecessor had previously received a management fee, and reimbursed for our costs in providing the management and other services to those excluded properties and businesses where our predecessor had not previously received a management fee. Our management of the excluded properties and provision of services to the three residential property managers and the existing managers of the other excluded businesses represent a minimal portion of our overall business. There is no established time period in which we will continue to provide such services; and Peter L. Malkin and Anthony E. Malkin expect to sell certain properties or unwind these businesses over time. We are not precluded from acquiring all or certain interests in the excluded properties or businesses. If we were to attempt any such acquisition, we anticipate that Anthony E. Malkin, our Chairman and Chief Executive Officer, will not participate in the negotiation process on our behalf with respect to our potential acquisition of any of these excluded properties or businesses, and the approval of a majority of our independent directors will be required to approve any such acquisition.

Services are and were provided by us to excluded properties and businesses. These transactions are reflected in our consolidated statements of operations as third-party management and other fees.

We earned asset management (supervisory) and service fees from excluded properties and businesses of \$0.9 million, \$1.0 million and \$1.0 million during the years ended December 31, 2023, 2022 and 2021, respectively.

We earned property management fees from excluded properties of \$0.3 million, \$0.3 million and \$0.2 million during the years ended December 31, 2023, 2022 and 2021, respectively.

Other

We receive rent generally at market rental rate for 5,447 square feet of leased space from entities affiliated with Anthony E. Malkin at one of our properties. Under the lease, the tenant has the right to cancel such lease without special payment on 90 days' notice. We also have a shared use agreement with such tenant to occupy a portion of the leased premises as the office location for Peter L. Malkin, our chairman emeritus and employee, utilizing approximately 15% of the space, for which we pay to such tenant an allocable pro rata share of the cost. We also have agreements with these entities and excluded properties and businesses to provide them with general computer-related support services. Total aggregate revenue was \$0.2 million, \$0.3 million and \$0.3 million for the years ended December 31, 2023, 2022 and 2021, respectively.

12. Income Taxes

Holdings TRS and Observatory TRS are taxable entities and their consolidated provision for income taxes consisted of the following for the years ended December 31, 2023, 2022 and 2021 (amounts in thousands):

	For the Year Ended December 31,		
	2023	2022	2021
Current:			
Federal	\$ (783)	\$ (319)	\$ (266)
State and local	(695)	(227)	(347)
Total current	(1,478)	(546)	(613)
Deferred:			
Federal	(710)	(264)	1,206
State and local	(527)	(736)	1,141
Total deferred	(1,237)	(1,000)	2,347
Income tax (expense) benefit	\$ (2,715)	\$ (1,546)	\$ 1,734

As of December 31, 2023, Empire State Realty Trust, Inc. had \$103.0 million of NOL carryforwards that may be used in the future to reduce the amount otherwise required to be distributed by ESRT to meet REIT requirements. However, for federal income tax purposes, the NOL will not be able to offset more than 80% of ESRT's REIT taxable income and may not be able to reduce the amount required to be distributed by ESRT to meet REIT requirements to zero. The federal NOL may be carried forward indefinitely. Other limitations may apply to ESRT's ability to use its NOL to offset taxable income.

As of December 31, 2023, the Observatory TRS had a federal income tax receivable of \$2.5 million. This receivable reflects an anticipated refund resulting from the carryback of 2020 NOL to previous tax years. The Observatory TRS has \$1.5 million of federal NOL carryforward that may be used to offset future taxable income, if any. The federal NOL may be carried forward indefinitely.

We measure deferred tax assets using enacted tax rates that will apply in the years in which the temporary differences are expected to be recovered or paid.

The effective income tax rate is 44.5%, 33.6% and 26.0% for the years ended December 31, 2023, 2022 and 2021, respectively. The actual tax provision differed from that computed at the federal statutory corporate rate as follows (amounts in thousands):

	For the Year Ended December 31,		
	2023	2022	2021
Federal tax benefit (expense) at statutory rate	\$ (1,494)	\$ (583)	\$ 940
State income tax benefit (expense), net of federal benefit	(1,221)	(963)	794
Income tax (expense) benefit	<u>\$ (2,715)</u>	<u>\$ (1,546)</u>	<u>\$ 1,734</u>

The income tax effects of temporary differences that give rise to deferred tax assets are presented below as of December 31, 2023, 2022 and 2021 (amounts in thousands):

	2023	2022	2021
Deferred tax assets:			
Deferred revenue on unredeemed Observatory admission ticket sales	\$ 616	\$ 535	\$ 383
Federal net operating loss carryforward credit	328	969	1,393
New York State net operating loss carryforward credit	—	250	612
New York City net operating loss carryforward credit	—	233	704
Other deferred tax assets	161	261	—
Deferred tax assets	<u>\$ 1,105</u>	<u>\$ 2,248</u>	<u>\$ 3,092</u>

Deferred tax assets at December 31, 2023, 2022 and 2021 are included in prepaid expenses and other assets on the consolidated balance sheets. The deferred tax assets at December 31, 2023 are mainly attributable to a timing difference in recognizing income on unredeemed Observatory admission tickets and the inclusion of the Federal net operating loss to be carried forward and utilized during income years indefinitely. No valuation allowance has been recorded against the deferred tax asset because the Company believes it is more likely than not that the deferred tax asset will be realized. This determination is based on the Observatory TRS's anticipated future taxable income and the reversal of the deferred tax asset.

As of December 31, 2023, 2022 and 2021, the TRS entities have no amount of unrecognized tax benefits. As of December 31, 2023, the tax years ended December 31, 2020 through December 31, 2023 remain open for an audit by the Internal Revenue Service, state or local authorities.

13. Segment Reporting

We have identified two reportable segments: (1) real estate and (2) Observatory. Our real estate segment includes all activities related to the ownership, management, operation, acquisition, redevelopment, repositioning and disposition of our traditional real estate assets. Our Observatory segment operates the 86th and 102nd floor observatories at the Empire State Building. These two lines of businesses are managed separately because each business requires different support infrastructures, provides different services and has dissimilar economic characteristics such as investments needed, stream of revenues and marketing strategies. We account for intersegment sales and rents as if the sales or rents were to third parties, that is, at current market prices.

The following tables provide components of segment profit for each segment for the years ended December 31, 2023, 2022 and 2021 (amounts in thousands):

2023

	Real Estate	Observatory	Intersegment Elimination	Total
Revenues:				
Rental revenue	\$ 597,319	\$ —	\$ —	\$ 597,319
Intercompany rental revenue	80,514	—	(80,514)	—
Observatory revenue	—	129,366	—	129,366
Lease termination fees	—	—	—	—
Third-party management and other fees	1,351	—	—	1,351
Other revenue and fees	11,536	—	—	11,536
Total revenues	690,720	129,366	(80,514)	739,572
Operating expenses:				
Property operating expenses	167,324	—	—	167,324
Intercompany rent expense	—	80,514	(80,514)	—
Ground rent expenses	9,326	—	—	9,326
General and administrative expenses	63,939	—	—	63,939
Observatory expenses	—	35,265	—	35,265
Real estate taxes	127,101	—	—	127,101
Depreciation and amortization	189,762	149	—	189,911
Total operating expenses	557,452	115,928	(80,514)	592,866
Total operating income	133,268	13,438	—	146,706
Other income (expense):				
Interest income	14,936	200	—	15,136
Interest expense	(101,484)	—	—	(101,484)
Gain on sale/disposition of properties	26,764	—	—	26,764
Income before income taxes	73,484	13,638	—	87,122
Income tax expense	(552)	(2,163)	—	(2,715)
Net income	\$ 72,932	\$ 11,475	\$ —	\$ 84,407
Segment assets	\$ 3,957,659	\$ 261,674	\$ —	\$ 4,219,333
Expenditures for segment assets	\$ 169,044	\$ 111	\$ —	\$ 169,155

2022

	Real Estate	Observatory	Intersegment Elimination	Total
Revenues:				
Rental revenue	\$ 591,048	\$ —	\$ —	\$ 591,048
Intercompany rental revenue	65,005	—	(65,005)	—
Observatory revenue	—	105,978	—	105,978
Lease termination fees	20,032	—	—	20,032
Third-party management and other fees	1,361	—	—	1,361
Other revenue and fees	8,622	—	—	8,622
Total revenues	686,068	105,978	(65,005)	727,041
Operating expenses:				
Property operating expenses	157,935	—	—	157,935
Intercompany rent expense	—	65,005	(65,005)	—
Ground rent expenses	9,326	—	—	9,326
General and administrative expenses	61,765	—	—	61,765
Observatory expenses	—	31,036	—	31,036
Real estate taxes	123,057	—	—	123,057
Impairment charge	—	—	—	—
Depreciation and amortization	216,707	187	—	216,894
Total operating expenses	568,790	96,228	(65,005)	600,013
Total operating income (loss)	117,278	9,750	—	127,028
Other income (expense):				
Interest income	4,901	47	—	4,948
Interest expense	(101,206)	—	—	(101,206)
Gain on sale/disposition of properties	33,988	—	—	33,988
Income before income taxes	54,961	9,797	—	64,758
Income tax (expense) benefit	(584)	(962)	—	(1,546)
Net income	\$ 54,377	\$ 8,835	\$ —	\$ 63,212
Segment assets	\$ 3,909,299	\$ 254,295	\$ —	\$ 4,163,594
Expenditures for segment assets	\$ 85,646	\$ 315	\$ —	\$ 85,961

	2021			
	Real Estate	Observatory	Intersegment Elimination	Total
Revenues:				
Rental revenue	\$ 559,690	\$ —	\$ —	\$ 559,690
Intercompany rental revenue	23,413	—	(23,413)	—
Observatory revenue	—	41,474	—	41,474
Lease termination fees	16,230	—	—	16,230
Third-party management and other fees	1,219	—	—	1,219
Other revenue and fees	5,343	138	—	5,481
Total revenues	<u>605,895</u>	<u>41,612</u>	<u>(23,413)</u>	<u>624,094</u>
Operating expenses:				
Property operating expenses	126,986	—	—	126,986
Intercompany rent expense	—	23,413	(23,413)	—
Ground rent expenses	9,326	—	—	9,326
General and administrative expenses	55,947	—	—	55,947
Observatory expenses	—	23,206	—	23,206
Real estate taxes	119,967	—	—	119,967
Impairment charges	7,723	—	—	7,723
Depreciation and amortization	201,676	130	—	201,806
Total operating expenses	<u>521,625</u>	<u>46,749</u>	<u>(23,413)</u>	<u>544,961</u>
Total operating income (loss)	84,270	(5,137)	—	79,133
Other income (expense):				
Interest income	701	3	—	704
Interest expense	(94,292)	(102)	—	(94,394)
Loss on early extinguishment of debt	(214)	—	—	(214)
Loss before income taxes	(9,535)	(5,236)	—	(14,771)
Income tax (expense) benefit	(613)	2,347	—	1,734
Net loss	<u>\$ (10,148)</u>	<u>\$ (2,889)</u>	<u>\$ —</u>	<u>\$ (13,037)</u>
Segment assets	<u>\$ 4,037,122</u>	<u>\$ 245,325</u>	<u>\$ —</u>	<u>\$ 4,282,447</u>
Expenditures for segment assets	<u>\$ 398,368</u>	<u>\$ 4</u>	<u>\$ —</u>	<u>\$ 398,372</u>

During the fourth quarter 2021, we incurred a \$7.7 million impairment charge relating to our property in Norwalk, Connecticut. Refer to Note 2 Summary of Significant Accounting Policies. Our methodology to calculate the fair value of the property involved a combination of the discounted cash flow method, utilizing Level 3 unobservable inputs such as market capitalization rates obtained from external sources, and the market based approach utilizing recent sales comparables.

14. Subsequent Events

None.

Empire State Realty Trust, Inc.
Schedule III—Real Estate and Accumulated Depreciation
(amounts in thousands)

Development	Type	Initial Cost to the Company		Cost Capitalized Subsequent to Acquisition			Gross Amount at which Carried at 12/31/23					Date of Construction	Date Acquired	Life on which depreciation in latest income statement is computed
		Encumbrances	Land and Development Costs	Building & Improvements	Improvements	Carrying Costs	Land and Development Costs	Buildings & Improvements	Total	Accumulated Depreciation				
111 West 33rd Street, New York, NY	office/retail	\$ —	\$ 13,630	\$ 244,461	\$ 129,859	n/a	\$ 13,630	\$ 374,320	\$ 387,950	\$ (118,371)	1954	2014	various	
1400 Broadway, New York, NY	office/retail	—	—	96,338	102,241	n/a	—	198,579	198,579	(72,907)	1930	2014	various	
1333 Broadway, New York, NY	office/retail	159,039	91,434	120,190	17,239	n/a	91,435	137,429	228,864	(43,811)	1915	2013	various	
1350 Broadway, New York, NY	office/retail	—	—	102,518	48,815	n/a	—	151,333	151,333	(55,169)	1929	2013	various	
250 West 57th Street, New York, NY	office/retail	175,755	2,117	5,041	179,876	n/a	2,117	184,917	187,034	(74,936)	1921	1953	various	
501 Seventh Avenue, New York, NY	office/retail	—	1,100	2,600	107,812	n/a	1,100	110,412	111,512	(58,775)	1923	1950	various	
1359 Broadway, New York, NY	office/retail	—	1,233	1,809	83,221	n/a	1,233	85,029	86,262	(33,438)	1924	1953	various	
350 Fifth Avenue (Empire State Building), New York, NY	office/retail	—	21,551	38,934	1,060,121	n/a	21,551	1,099,055	1,120,606	(428,926)	1930	2013	various	
One Grand Central Place, New York, NY	office/retail	—	7,240	17,490	310,522	n/a	7,222	328,030	335,252	(164,248)	1930	1954	various	
First Stamford Place, Stamford, CT	office	177,181	22,952	122,738	86,494	n/a	24,860	207,324	232,184	(113,916)	1986	2001	various	
One Station Place, Stamford, CT (Metro Center)	office	80,117	5,313	28,602	40,955	n/a	5,313	69,557	74,870	(41,494)	1987	1984	various	
10 Union Square, New York, NY	retail	49,762	5,003	12,866	5,742	n/a	5,003	18,608	23,611	(10,102)	1987	1996	various	
1542 Third Avenue, New York, NY	retail	29,804	2,239	15,266	485	n/a	2,239	15,751	17,990	(9,937)	1991	1999	various	
1010 Third Avenue, New York, NY and 77 West 55th Street, New York, NY	retail	34,697	4,462	15,819	4,211	n/a	4,462	20,030	24,492	(10,937)	1962	1998	various	
345 E 94th Street, New York, NY	multi-family	48,646	44,228	55,766	4,237	n/a	44,228	60,003	104,231	(3,485)	2000	2021	various	
Victory 561 10th Ave, New York, NY	multi-family	124,194	91,437	124,997	3,461	n/a	91,437	128,458	219,895	(7,491)	2004	2021	various	
298 Mulberry, New York, NY	multi-family	—	40,935	69,509	1,475	n/a	41,125	70,794	111,919	(1,923)	1986	2022	various	
Williamsburg Retail, Brooklyn, NY	retail	—	4,851	20,936	101	n/a	4,860	21,028	25,888	(196)	1910, 1945	2023	various	
Property for development at the Transportation Hub in Stamford, CT	land	—	4,541	—	8,179	n/a	12,720	—	12,720	—	n/a	n/a	n/a	
Totals		<u>\$ 879,195</u>	<u>\$ 364,266</u>	<u>\$ 1,095,880</u>	<u>\$ 2,195,046</u>	<u>\$ —</u>	<u>\$ 374,535</u>	<u>\$ 3,280,657</u>	<u>\$ 3,655,192</u>	<u>\$ (1,250,062)</u>				

Empire State Realty Trust, Inc.
Notes to Schedule III—Real Estate and Accumulated Depreciation
(amounts in thousands)

1. Reconciliation of Investment Properties

The changes in our investment properties for the years ended December 31, 2023, 2022 and 2021 are as follows:

	2023	2022	2021
Balance, beginning of year	\$ 3,551,449	\$ 3,500,917	\$ 3,133,966
Acquisition of new properties	25,787	110,444	316,428
Improvements	106,792	79,070	89,426
Property classified as held for sale	—	(61,965)	—
Disposals	(28,836)	(77,017)	(38,903)
Balance, end of year	\$ 3,655,192	\$ 3,551,449	\$ 3,500,917

The unaudited aggregate cost of investment properties for federal income tax purposes as of December 31, 2023 was \$3.8 billion.

2. Reconciliation of Accumulated Depreciation

The changes in our accumulated depreciation for the years ended December 31, 2023, 2022 and 2021 are as follows:

	2023	2022	2021
Balance, beginning of year	\$ 1,137,267	\$ 1,072,938	\$ 941,612
Depreciation expense	158,879	179,872	162,667
Property classified as held for sale	—	(30,315)	—
Disposals	(46,084)	(85,228)	(31,341)
Balance, end of year	\$ 1,250,062	\$ 1,137,267	\$ 1,072,938

Depreciation of investment properties reflected in the combined statements of income is calculated over the estimated original lives of the assets as follows:

Buildings	39 years or useful life
Building improvements	39 years or useful life
Tenant improvements	Term of related lease

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the following Registration Statements:

- (1) Registration Statement (Form S-8 No. 333-231544) pertaining to the Empire State Realty Trust, Inc. Empire State Realty OP, L.P. 2019 Equity Incentive Plan,
- (2) Registration Statement (Form S-3 No. 333-273535) of Empire State Realty Trust, Inc. and Empire State Realty OP, L.P.;

of our reports dated February 28, 2024, except for the effects of the material weakness described in our reports and as related to the Critical Audit Matter described in our opinion on the consolidated financial statements and schedule, as to which the date is October 8, 2024, with respect to the consolidated financial statements and schedule of Empire State Realty Trust, Inc. and the effectiveness of internal control over financial reporting of Empire State Realty Trust, Inc. included in this Amendment No. 1 to the Annual Report (Form 10-K/A) of Empire State Realty Trust, Inc. for the year ended December 31, 2023.

/s/ Ernst & Young LLP

New York, New York

October 8, 2024

EXHIBIT 31.1

Certification of Chief Executive Officer pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Anthony E. Malkin, certify that:

1. I have reviewed this Amendment No.1 to the Annual Report on Form 10-K/A of Empire State Realty Trust, Inc.;
 2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
 3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
 4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
 5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
-

- b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By: /s/ Anthony E. Malkin

Date: October 8, 2024

Anthony E. Malkin
Chairman and Chief Executive Officer

EXHIBIT 31.2

Certification of Chief Financial Officer pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Stephen V. Horn, certify that:

1. I have reviewed this Amendment No.1 to the Annual Report on Form 10-K/A of Empire State Realty Trust, Inc.;
 2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
 3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
 4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
 5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.
-

Date: October 8, 2024

By:

/s/ Stephen V. Horn

Stephen V. Horn

Executive Vice President, Chief Financial Officer
& Chief Accounting Officer

EXHIBIT 32.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

PURSUANT TO

18 U.S.C. SECTION 1350

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Pursuant to 18 U.S.C. Section 1350, adopted pursuant to Section 906 of The Sarbanes-Oxley Act of 2002, the undersigned, Executive Vice President, Chief Financial Officer & Chief Accounting Officer of Empire State Realty Trust, Inc. (the "Company"), hereby certifies, to his knowledge that the Amendment No.1 to the Annual Report on Form 10-K/A for the year ended December 31, 2023 (the "Report"), as filed with the Securities and Exchange Commission on the date hereof, fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended, and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ Stephen V. Horn

Date: October 8, 2024

Stephen V. Horn
Executive Vice President, Chief Financial Officer
& Chief Accounting Officer