

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

**FORM 10-Q**

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

For the quarterly period ended September 30, 2020  
or

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

Commission file number: 001-37980

**COLONY CAPITAL, INC.**

(Exact Name of Registrant as Specified in Its Charter)

**Maryland**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**46-4591526**  
(I.R.S. Employer  
Identification No.)

**515 South Flower Street, 44th Floor**  
**Los Angeles, California 90071**  
(Address of Principal Executive Offices, Including Zip Code)  
**(310) 282-8820**  
(Registrant's Telephone Number, Including Area Code)

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

Title of Class	Trading Symbol(s)	Name of Each Exchange on Which Registered
Class A Common Stock, \$0.01 par value	CLNY	New York Stock Exchange
Preferred Stock, 7.50% Series G Cumulative Redeemable, \$0.01 par value	CLNY.PRG	New York Stock Exchange
Preferred Stock, 7.125% Series H Cumulative Redeemable, \$0.01 par value	CLNY.PRH	New York Stock Exchange
Preferred Stock, 7.15% Series I Cumulative Redeemable, \$0.01 par value	CLNY.PRI	New York Stock Exchange
Preferred Stock, 7.125% Series J Cumulative Redeemable, \$0.01 par value	CLNY.PRJ	New York Stock Exchange

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 an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer	<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 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 pursuant to Section 13(a) of the Exchange Act. Yes  No

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

As of November 2, 2020, 481,627,944 shares of the Registrant's class A common stock and 733,931 shares of class B common stock were outstanding.

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**COLONY CAPITAL, INC.**  
**FORM 10-Q**  
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**PART I—FINANCIAL INFORMATION**

**Item 1. Financial Statements.**

**COLONY CAPITAL, INC.  
CONSOLIDATED BALANCE SHEETS  
(In thousands, except per share data)**

	September 30, 2020 (Unaudited)	December 31, 2019
<b>Assets</b>		
Cash and cash equivalents	\$ 658,446	\$ 1,205,190
Restricted cash	167,109	91,063
Real estate, net	7,860,474	6,218,196
Loans receivable (at fair value at September 30, 2020)	1,325,144	1,566,328
Equity and debt investments (\$377,278 and \$457,693 at fair value, respectively)	1,911,988	2,313,805
Goodwill	851,757	1,452,891
Deferred leasing costs and intangible assets, net	1,275,039	632,157
Assets held for disposition (\$3,592,940 and \$4,679,169 held for sale, respectively)	4,379,558	5,743,085
Other assets (\$6,007 and \$21,382 at fair value, respectively)	534,734	557,989
Due from affiliates	78,801	51,480
<b>Total assets</b>	<b>\$ 19,043,050</b>	<b>\$ 19,832,184</b>
<b>Liabilities</b>		
Debt, net	\$ 7,085,994	\$ 5,517,918
Accrued and other liabilities (\$107,698 and \$127,531 at fair value, respectively)	789,866	887,519
Intangible liabilities, net	109,616	111,484
Liabilities related to assets held for disposition	3,908,474	3,862,521
Due to affiliates	1,279	34,064
Dividends and distributions payable	18,516	83,301
Preferred stock redemptions payable	—	402,855
<b>Total liabilities</b>	<b>11,913,745</b>	<b>10,899,662</b>
Commitments and contingencies (Note 21)		
<b>Redeemable noncontrolling interests</b>	<b>287,231</b>	<b>6,107</b>
<b>Equity</b>		
Stockholders' equity:		
Preferred stock, \$0.01 par value per share; \$1,033,750 liquidation preference; 250,000 shares authorized; 41,350 shares issued and outstanding	999,490	999,490
Common stock, \$0.01 par value per share		
Class A, 949,000 shares authorized; 481,662 and 487,044 shares issued and outstanding, respectively	4,817	4,871
Class B, 1,000 shares authorized; 734 shares issued and outstanding	7	7
Additional paid-in capital	7,559,551	7,553,599
Accumulated deficit	(6,054,881)	(3,389,592)
Accumulated other comprehensive income	76,610	47,668
<b>Total stockholders' equity</b>	<b>2,585,594</b>	<b>5,216,043</b>
Noncontrolling interests in investment entities	4,085,739	3,254,188
Noncontrolling interests in Operating Company	170,741	456,184
Total equity	6,842,074	8,926,415
<b>Total liabilities, redeemable noncontrolling interests and equity</b>	<b>\$ 19,043,050</b>	<b>\$ 19,832,184</b>

The accompanying notes are an integral part of the consolidated financial statements.

**COLONY CAPITAL, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(In thousands, except per share data)  
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
<b>Revenues</b>				
Property operating income	\$ 246,122	\$ 168,858	\$ 666,657	\$ 543,978
Interest income	14,816	40,237	70,060	121,356
Fee income (\$43,527, \$111,359, \$129,765 and \$175,477 from affiliates, respectively)	43,919	111,854	130,964	178,315
Other income (\$5,528, \$34,058, \$16,537 and \$55,242 from affiliates, respectively)	11,820	38,051	30,069	64,061
<b>Total revenues</b>	<b>316,677</b>	<b>359,000</b>	<b>897,750</b>	<b>907,710</b>
<b>Expenses</b>				
Property operating expense	108,393	80,877	309,553	248,714
Interest expense	71,849	74,592	213,947	236,756
Investment and servicing expense	30,532	8,605	47,897	39,215
Transaction costs	3,310	100	3,806	2,922
Depreciation and amortization	125,733	116,932	301,605	242,490
Provision for loan loss	—	17,233	—	35,847
Impairment loss	36,169	533,031	1,444,908	635,869
Compensation expense—cash and equity-based	53,780	85,800	169,192	157,283
Compensation expense—carried interest and incentive fee	912	10,846	(9,431)	13,264
Administrative expenses	23,500	21,968	75,246	63,404
Settlement loss	—	—	5,090	—
<b>Total expenses</b>	<b>454,178</b>	<b>949,984</b>	<b>2,561,813</b>	<b>1,675,764</b>
<b>Other income (loss)</b>				
Gain on sale of real estate	13,258	8,221	24,058	42,841
Other loss, net	(12,979)	(44,940)	(199,320)	(182,560)
Equity method earnings (losses)	(62,998)	46,777	(319,831)	(178,448)
Equity method earnings (losses)—carried interest	6,082	(474)	(14,653)	6,258
<b>Loss from continuing operations before income taxes</b>	<b>(194,138)</b>	<b>(581,400)</b>	<b>(2,173,809)</b>	<b>(1,079,963)</b>
Income tax benefit (expense)	9,922	(10,096)	(3,246)	(11,723)
<b>Loss from continuing operations</b>	<b>(184,216)</b>	<b>(591,496)</b>	<b>(2,177,055)</b>	<b>(1,091,686)</b>
Income (loss) from discontinued operations	(177,014)	25,654	(1,307,225)	11,043
<b>Net loss</b>	<b>(361,230)</b>	<b>(565,842)</b>	<b>(3,484,280)</b>	<b>(1,080,643)</b>
Net income (loss) attributable to noncontrolling interests:				
Redeemable noncontrolling interests	(2,158)	364	(2,316)	2,317
Investment entities	(149,154)	15,170	(640,955)	51,744
Operating Company	(22,651)	(53,560)	(287,309)	(90,160)
<b>Net loss attributable to Colony Capital, Inc.</b>	<b>(187,267)</b>	<b>(527,816)</b>	<b>(2,553,700)</b>	<b>(1,044,544)</b>
Preferred stock dividends	18,517	27,137	56,507	81,412
<b>Net loss attributable to common stockholders</b>	<b>\$ (205,784)</b>	<b>\$ (554,953)</b>	<b>\$ (2,610,207)</b>	<b>\$ (1,125,956)</b>
<b>Basic loss per share</b>				
Loss from continuing operations per basic common share	\$ (0.22)	\$ (1.16)	\$ (3.35)	\$ (2.30)
Net loss per basic common share	\$ (0.44)	\$ (1.16)	\$ (5.51)	\$ (2.35)
<b>Diluted loss per share</b>				
Loss from continuing operations per diluted common share	\$ (0.22)	\$ (1.16)	\$ (3.35)	\$ (2.30)
Net loss per diluted common share	\$ (0.44)	\$ (1.16)	\$ (5.51)	\$ (2.35)
<b>Weighted average number of shares</b>				
Basic	471,739	479,776	474,081	479,412
Diluted	471,739	479,776	474,081	479,412
<b>Dividends declared per common share</b>	<b>\$ —</b>	<b>\$ 0.11</b>	<b>\$ 0.11</b>	<b>\$ 0.33</b>

The accompanying notes are an integral part of the consolidated financial statements.

**COLONY CAPITAL, INC.**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)**  
**(In thousands)**  
**(Unaudited)**

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Net loss	\$ (361,230)	\$ (565,842)	\$ (3,484,280)	\$ (1,080,643)
Changes in accumulated other comprehensive income (loss) related to:				
Investments in unconsolidated ventures, net	4,385	(2,721)	3,397	6,598
Available-for-sale debt securities	(2,446)	5,067	(3,535)	6,365
Cash flow hedges	(14)	(2,302)	(15)	(9,152)
Foreign currency translation	89,030	(78,729)	58,821	(99,401)
Net investment hedges	(414)	27,004	21,001	43,474
Other comprehensive income (loss)	90,541	(51,681)	79,669	(52,116)
Comprehensive loss	(270,689)	(617,523)	(3,404,611)	(1,132,759)
Comprehensive income (loss) attributable to noncontrolling interests:				
Redeemable noncontrolling interests	(2,158)	364	(2,316)	2,317
Investment entities	(94,401)	(30,966)	(593,452)	(8,513)
Operating Company	(19,102)	(54,048)	(284,101)	(89,826)
Comprehensive loss attributable to stockholders	\$ (155,028)	\$ (532,873)	\$ (2,524,742)	\$ (1,036,737)

The accompanying notes are an integral part of the consolidated financial statements.

**COLONY CAPITAL, INC.**  
**CONSOLIDATED STATEMENTS OF EQUITY**  
(In thousands, except per share data)  
(Unaudited)

	Preferred Stock	Common Stock	Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Income	Total Stockholders' Equity	Noncontrolling Interests in Investment Entities	Noncontrolling Interests in Operating Company	Total Equity
<b>Balance at December 31, 2018</b>	\$ 1,407,495	\$ 4,841	\$ 7,598,019	\$ (2,018,302)	\$ 13,999	\$ 7,006,052	\$ 3,779,728	\$ 360,590	\$ 11,146,370
Cumulative effect of adoption of new accounting pronouncement	—	—	—	(2,905)	—	(2,905)	(1,378)	(185)	(4,468)
Net income (loss)	—	—	—	(74,976)	—	(74,976)	49,988	(6,611)	(31,599)
Other comprehensive income (loss)	—	—	—	—	8,045	8,045	(17,629)	513	(9,071)
Common stock repurchases	—	(7)	(3,160)	—	—	(3,167)	—	—	(3,167)
Redemption of OP Units for class A common stock	—	—	33	—	—	33	—	(33)	—
Equity-based compensation	—	27	6,323	—	—	6,350	191	—	6,541
Shares canceled for tax withholdings on vested stock awards	—	(6)	(3,001)	—	—	(3,007)	—	—	(3,007)
Contributions from noncontrolling interests	—	—	—	—	—	—	305,216	—	305,216
Distributions to noncontrolling interests	—	—	—	—	—	—	(107,377)	(3,450)	(110,827)
Preferred stock dividends	—	—	—	(27,137)	—	(27,137)	—	—	(27,137)
Common stock dividends declared (\$0.11 per share)	—	—	—	(53,410)	—	(53,410)	—	—	(53,410)
Reallocation of equity (Notes 2 and 15)	—	—	12,733	—	94	12,827	(12,533)	(294)	—
<b>Balance at March 31, 2019</b>	<u>1,407,495</u>	<u>4,855</u>	<u>7,610,947</u>	<u>(2,176,730)</u>	<u>22,138</u>	<u>6,868,705</u>	<u>3,996,206</u>	<u>350,530</u>	<u>11,215,441</u>
Net loss	—	—	—	(441,752)	—	(441,752)	(13,414)	(29,989)	(485,155)
Other comprehensive income	—	—	—	—	4,819	4,819	3,508	309	8,636
Redemption of OP Units for class A common stock	—	2	2,061	—	—	2,063	—	(2,063)	—
Equity-based compensation	—	20	7,720	—	—	7,740	197	—	7,937
Contributions from noncontrolling interests	—	—	—	—	—	—	87,304	—	87,304
Distributions to noncontrolling interests	—	—	—	—	—	—	(212,842)	(3,429)	(216,271)
Preferred stock dividends	—	—	—	(27,138)	—	(27,138)	—	—	(27,138)
Common stock dividends declared (\$0.11 per share)	—	—	—	(53,656)	—	(53,656)	—	—	(53,656)
Reallocation of equity (Notes 2 and 15)	—	—	927	—	10	937	88	(1,025)	—
<b>Balance at June 30, 2019</b>	<u>1,407,495</u>	<u>4,877</u>	<u>7,621,655</u>	<u>(2,699,276)</u>	<u>26,967</u>	<u>6,361,718</u>	<u>3,861,047</u>	<u>314,333</u>	<u>10,537,098</u>

The accompanying notes are an integral part of the consolidated financial statements.

**COLONY CAPITAL, INC.**  
**CONSOLIDATED STATEMENTS OF EQUITY (Continued)**  
(In thousands, except per share data)  
(Unaudited)

	Preferred Stock	Common Stock	Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity	Noncontrolling Interests in Investment Entities	Noncontrolling Interests in Operating Company	Total Equity
<b>Balance at June 30, 2019</b>	\$1,407,495	\$ 4,877	\$7,621,655	\$ (2,699,276)	\$ 26,967	\$ 6,361,718	\$ 3,861,047	\$ 314,333	\$10,537,098
Net income (loss)	—	—	—	(527,816)	—	(527,816)	15,170	(53,560)	(566,206)
Other comprehensive loss	—	—	—	—	(5,057)	(5,057)	(46,136)	(488)	(51,681)
Redemption of OP Units for class A common stock	—	—	8	—	—	8	—	(8)	—
Equity-based compensation	—	2	9,569	—	—	9,571	191	—	9,762
Shares canceled for tax withholdings on vested stock awards	—	(1)	(393)	—	—	(394)	—	—	(394)
OP Unit issuance	—	—	—	—	—	—	—	111,903	111,903
Contributions from noncontrolling interests	—	—	—	—	—	—	109,604	—	109,604
Distributions to noncontrolling interests	—	—	—	—	—	—	(88,052)	(5,791)	(93,843)
Preferred stock dividends	—	—	—	(27,137)	—	(27,137)	—	—	(27,137)
Common stock dividends declared (\$0.11 per share)	—	—	—	(53,657)	—	(53,657)	—	—	(53,657)
Reallocation of equity (Notes 2 and 15)	—	—	(92,483)	—	(1,022)	(93,505)	3,510	89,995	—
<b>Balance at September 30, 2019</b>	<u>\$1,407,495</u>	<u>\$ 4,878</u>	<u>\$7,538,356</u>	<u>\$ (3,307,886)</u>	<u>\$ 20,888</u>	<u>\$ 5,663,731</u>	<u>\$ 3,855,334</u>	<u>\$ 456,384</u>	<u>\$ 9,975,449</u>

The accompanying notes are an integral part of the consolidated financial statements.

**COLONY CAPITAL, INC.**  
**CONSOLIDATED STATEMENTS OF EQUITY (Continued)**  
(In thousands, except per share data)  
(Unaudited)

	Preferred Stock	Common Stock	Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity	Noncontrolling Interests in Investment Entities	Noncontrolling Interests in Operating Company	Total Equity
<b>Balance at December 31, 2019</b>	\$ 999,490	\$ 4,878	\$ 7,553,599	\$(3,389,592)	\$ 47,668	\$ 5,216,043	\$ 3,254,188	\$ 456,184	\$ 8,926,415
Cumulative effect of adoption of new accounting pronouncement (Note 2)	—	—	—	(3,187)	—	(3,187)	(1,577)	(349)	(5,113)
Net loss	—	—	—	(342,159)	—	(342,159)	(21,749)	(39,601)	(403,509)
Other comprehensive loss	—	—	—	—	(31,414)	(31,414)	(28,859)	(3,440)	(63,713)
Common stock repurchases	—	(127)	(24,622)	—	—	(24,749)	—	—	(24,749)
Equity-based compensation	—	76	12,114	—	—	12,190	—	584	12,774
Shares canceled for tax withholdings on vested stock awards	—	(18)	(5,051)	—	—	(5,069)	—	—	(5,069)
Contributions from noncontrolling interests	—	—	—	—	—	—	87,736	—	87,736
Distributions to noncontrolling interests	—	—	—	—	—	—	(55,829)	(5,857)	(61,686)
Preferred stock dividends	—	—	—	(18,516)	—	(18,516)	—	—	(18,516)
Common stock dividends declared (\$0.11 per share)	—	—	—	(52,854)	—	(52,854)	—	—	(52,854)
Reallocation of equity (Note 2)	—	—	(3,827)	—	(32)	(3,859)	—	3,859	—
<b>Balance at March 31, 2020</b>	999,490	4,809	7,532,213	(3,806,308)	16,222	4,746,426	3,233,910	411,380	8,391,716
Net loss	—	—	—	(2,024,274)	—	(2,024,274)	(470,052)	(225,057)	(2,719,383)
Other comprehensive income	—	—	—	—	28,133	28,133	21,609	3,099	52,841
Redemption of OP Units for class A common stock	—	2	1,421	—	—	1,423	—	(1,423)	—
Equity-based compensation	—	16	8,946	—	—	8,962	296	584	9,842
Shares canceled for tax withholdings on vested stock awards	—	(6)	(1,151)	—	—	(1,157)	—	—	(1,157)
Contributions from noncontrolling interests	—	—	—	—	—	—	112,721	—	112,721
Distributions to noncontrolling interests	—	—	—	—	—	—	(123,495)	—	(123,495)
Preferred stock dividends	—	—	—	(18,516)	—	(18,516)	—	—	(18,516)
Reallocation of equity (Note 2)	—	—	(1,232)	—	12	(1,220)	1,615	(395)	—
<b>Balance at June 30, 2020</b>	999,490	4,821	7,540,197	(5,849,098)	44,367	2,739,777	2,776,604	188,188	5,704,569

The accompanying notes are an integral part of the consolidated financial statements.

**COLONY CAPITAL, INC.**  
**CONSOLIDATED STATEMENTS OF EQUITY (Continued)**  
(In thousands, except per share data)  
(Unaudited)

	Preferred Stock	Common Stock	Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity	Noncontrolling Interests in Investment Entities	Noncontrolling Interests in Operating Company	Total Equity
<b>Balance at June 30, 2020</b>	\$ 999,490	\$ 4,821	\$ 7,540,197	\$(5,849,098)	\$ 44,367	\$ 2,739,777	\$ 2,776,604	\$ 188,188	\$ 5,704,569
Net loss	—	—	—	(187,267)	—	(187,267)	(149,154)	(22,651)	(359,072)
Other comprehensive income	—	—	—	—	32,239	32,239	54,753	3,549	90,541
Fair value of noncontrolling interest assumed in asset acquisition	—	—	—	—	—	—	366,136	—	366,136
Equity-based compensation	—	5	6,566	—	—	6,571	148	668	7,387
Shares canceled for tax withholdings on vested stock awards	—	(2)	(510)	—	—	(512)	—	—	(512)
Warrant issuance (Note 15)	—	—	20,240	—	—	20,240	—	—	20,240
Costs of noncontrolling interests	—	—	(6,287)	—	—	(6,287)	—	—	(6,287)
Contributions from noncontrolling interests	—	—	—	—	—	—	1,101,099	—	1,101,099
Distributions to noncontrolling interests	—	—	—	—	—	—	(63,511)	—	(63,511)
Preferred stock dividends	—	—	—	(18,516)	—	(18,516)	—	—	(18,516)
Reallocation of equity (Note 2)	—	—	(655)	—	4	(651)	(336)	987	—
<b>Balance at September 30, 2020</b>	<u>\$ 999,490</u>	<u>\$ 4,824</u>	<u>\$ 7,559,551</u>	<u>\$(6,054,881)</u>	<u>\$ 76,610</u>	<u>\$ 2,585,594</u>	<u>\$ 4,085,739</u>	<u>\$ 170,741</u>	<u>\$ 6,842,074</u>

The accompanying notes are an integral part of the consolidated financial statements.

**COLONY CAPITAL, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands)  
(Unaudited)

	Nine Months Ended September 30,	
	2020	2019
<b>Cash Flows from Operating Activities</b>		
Net loss	\$ (3,484,280)	\$ (1,080,643)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Amortization of discount and net origination fees on loans receivable and debt securities	(5,090)	(15,215)
Paid-in-kind interest added to loan principal, net of interest received	(36,856)	(42,609)
Straight-line rents	(13,916)	(13,263)
Amortization of above- and below-market lease values, net	(5,503)	(9,982)
Amortization of deferred financing costs and debt discount and premium	31,061	61,779
Equity method losses	334,648	137,069
Distributions of income from equity method investments	92,445	78,219
Provision for loan losses	—	35,847
Allowance for doubtful accounts	8,655	4,221
Impairment of real estate and related intangibles and right-of-use assets	1,946,786	288,216
Goodwill impairment	594,000	387,000
Depreciation and amortization	439,463	476,886
Equity-based compensation	26,415	25,051
Unrealized settlement loss	3,890	—
Gain on sales of real estate, net	(15,261)	(71,824)
Payment of cash collateral on derivative	(771)	(223,886)
Deferred income tax expense	(10,602)	(1,778)
Other loss, net	195,805	181,847
Decrease (increase) in other assets and due from affiliates	10,344	(16,487)
(Increase) decrease in accrued and other liabilities and due to affiliates	(16,764)	39,038
Other adjustments, net	(4,583)	(4,896)
Net cash provided by operating activities	89,886	234,590
<b>Cash Flows from Investing Activities</b>		
Contributions to and acquisition of equity investments	(289,091)	(222,157)
Return of capital from equity method investments	123,952	176,508
Acquisition of loans receivable and debt securities	—	(771)
Net disbursements on originated loans	(180,756)	(94,816)
Repayments of loans receivable	131,368	228,480
Proceeds from sales of loans receivable and debt securities	—	66,249
Cash receipts in excess of accretion on purchased credit-impaired loans	—	18,886
Acquisition of and additions to real estate, related intangibles and leasing commissions	(1,278,957)	(1,798,039)
Proceeds from sales of real estate	258,440	659,245
Proceeds from paydown and maturity of debt securities	4,479	9,180
Proceeds from sale of equity investments	254,921	152,658
Investment deposits	(8,150)	(13,210)
Net receipts on settlement of derivatives	27,097	43,938
Acquisition of DBH, net of cash acquired, and payment of deferred purchase price (Note 3)	(32,500)	(181,167)
Other investing activities, net	7,274	17,349
Net cash used in investing activities	(981,923)	(937,667)

**COLONY CAPITAL, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS (Continued)**  
(In thousands)  
(Unaudited)

	Nine Months Ended September 30,	
	2020	2019
<b>Cash Flows from Financing Activities</b>		
Dividends paid to preferred stockholders	\$ (60,817)	\$ (81,411)
Dividends paid to common stockholders	(106,510)	(160,490)
Repurchase of common stock	(24,749)	(10,734)
Payment of offering costs	(2,962)	—
Proceeds from issuance of exchangeable senior notes	291,000	—
Repurchase of convertible senior notes	(370,998)	—
Borrowings from corporate credit facility	600,000	740,200
Repayment of borrowings from corporate credit facility	(600,000)	(556,000)
Borrowings from secured debt	33,407	3,269,413
Repayments of secured debt	(323,150)	(2,647,109)
Payment of deferred financing costs	(8,530)	(56,542)
Contributions from noncontrolling interests	1,353,866	557,065
Distributions to and redemptions of noncontrolling interests	(261,314)	(443,614)
Contribution from Wafra (Note 15)	253,575	—
Redemption of preferred stock	(402,855)	—
Shares canceled for tax withholdings on vested stock awards	(6,738)	(3,401)
Other financing activities, net	—	(1,504)
Net cash (used in) provided by financing activities	363,225	605,873
Effect of exchange rates on cash, cash equivalents and restricted cash	3,500	(6,449)
Net decrease in cash, cash equivalents and restricted cash	(525,312)	(103,653)
Cash, cash equivalents and restricted cash, beginning of period	1,424,698	832,730
Cash, cash equivalents and restricted cash, end of period	\$ 899,386	\$ 729,077

**Reconciliation of cash, cash equivalents and restricted cash to consolidated balance sheets**

	Nine Months Ended September 30,	
	2020	2019
<b>Beginning of the period</b>		
Cash and cash equivalents	\$ 1,205,190	\$ 461,912
Restricted cash	91,063	135,650
Restricted cash included in assets held for disposition	128,445	235,168
Total cash, cash equivalents and restricted cash, beginning of period	\$ 1,424,698	\$ 832,730
<b>End of the period</b>		
Cash and cash equivalents	\$ 658,446	\$ 455,330
Restricted cash	167,109	113,897
Restricted cash included in assets held for disposition	73,831	159,850
Total cash, cash equivalents and restricted cash, end of period	\$ 899,386	\$ 729,077

The accompanying notes are an integral part of the consolidated financial statements.

**COLONY CAPITAL, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**September 30, 2020**  
**(Unaudited)**

**1. Business**

Colony Capital, Inc. (together with its consolidated subsidiaries, the "Company") is a leading global investment firm with a focus on identifying and capitalizing on key secular trends in digital real estate.

Following the acquisition in July 2019 of Digital Bridge Holdings, LLC ("DBH"), an investment manager dedicated to digital real estate and infrastructure, the Company is currently the only global real estate investment trust ("REIT") that owns, manages, and/or operates across all major infrastructure components of the digital ecosystem including data centers, cell towers, fiber networks and small cells. As previously disclosed, Marc C. Ganzi, who co-founded DBH, became the Chief Executive Officer ("CEO") of the Company effective July 1, 2020. In connection with Mr. Ganzi's appointment as the Company's CEO, on June 30, 2020, the Board of Directors of the Company (the "Board") appointed Mr. Ganzi to the Board and to serve as President of the Company (in addition to his role as CEO), also effective as of July 1, 2020. Thomas J. Barrack, Jr., who, prior to July 1, 2020, served as the Company's CEO and President, continues to serve in his role as Executive Chairman of the Company and the Board. In addition, Jacky Wu was appointed as the Company's Chief Financial Officer and Treasurer, effective July 1, 2020.

At September 30, 2020, the Company has \$46.8 billion of assets under management, of which \$23.3 billion is dedicated to digital real estate and infrastructure, managed on behalf of third party investors, and the Company's own balance sheet on behalf of its stockholders.

**Organization**

The Company was organized in May 2016 as a Maryland corporation and was formed through a tri-party merger (the "Merger") among Colony Capital, Inc. ("Colony"), NorthStar Asset Management Group Inc. ("NSAM") and NorthStar Realty Finance Corp. ("NRF"). The Company elected to be taxed as a REIT under the Internal Revenue Code for U.S. federal income tax purposes commencing with its initial taxable year ended December 31, 2017.

The Company conducts all of its activities and holds substantially all of its assets and liabilities through its operating subsidiary, Colony Capital Operating Company, LLC (the "Operating Company" or the "OP"). At September 30, 2020, the Company owned 90% of the OP, as its sole managing member. The remaining 10% is owned primarily by certain current and former employees of the Company as noncontrolling interests.

**Acceleration of Digital Transformation and COVID-19 Considerations**

The world continues to face significant healthcare and economic challenges arising from the coronavirus disease 2019, or COVID-19, global pandemic. Efforts to address the pandemic, such as social distancing, closures or reduced capacity of retail and service outlets, hotels, factories and public venues, often mandated by governments, are having a significant impact on the global economy and financial markets across major industries, including many sectors of real estate. In particular, the Company's real estate investments in the hospitality, wellness infrastructure and retail sectors have experienced a myriad of challenges, including, but not limited to: significant declines in operating cash flows at the Company's hotel and wellness infrastructure properties, which in turn, affect their ability to meet debt service and covenant requirements on investment-level debt (non-recourse to the Company) and ability to refinance or extend upcoming maturities (Note 10); flexible lease payment terms sought by tenants; incremental property operating costs such as labor and supplies in response to COVID-19; potential payment defaults on the Company's loans receivable; and a distressed market affecting real estate values in general. Such adverse impact may continue well beyond the containment of the COVID-19 pandemic. Furthermore, the COVID-19 crisis may also lead to heightened risk of litigation at the investment and corporate level, with an ensuing increase in litigation and related costs.

The sharp decline and volatility in equity and debt markets, and the economic recession due to COVID-19 have adversely affected the valuation of certain of the Company's financial assets carried at fair value, and also resulted in impairment on certain non-financial assets. Such effects include the determination that the Company's equity method investment in CLNC was other-than-temporarily impaired at June 30, 2020 (Note 6), decreases in fair value of debt securities (Note 6) and loans receivable (Note 12), and impairment of non-digital real estate assets (Note 4).

Additionally, the COVID-19 crisis has reinforced the critical role and the resilience of the digital real estate and infrastructure sector in a global economy that is increasingly reliant on digital infrastructure. Accordingly, in the second quarter of 2020, the Company determined that it would accelerate its shift to a digitally-focused strategy in order to better position the Company for growth. This digital transformation requires a rotation of the Company's non-digital assets into

digital-focused investments. As a result, the Company shortened its assumptions of holding periods on its non-digital assets, in particular its hotel and wellness infrastructure assets, which significantly reduced the undiscounted future net cash flows to be generated by these assets below their carrying values at June 30, 2020. The shortfall in estimated future net cash flows from these assets was further exacerbated by the negative effects of COVID-19 on property operations and market values, as noted above. As a result, significant impairment was recognized in the second quarter of 2020 on the Company's hotel and wellness infrastructure assets. In the third quarter of 2020, as the Company looks to exit its hospitality business through a sale of its hotel assets (as discussed further below), additional write-downs were recorded to align the hotel carrying values to the agreed upon selling price. The acceleration of the Company's digital transformation and the overall reduction in value of the Company's non-digital balance sheet also caused a shortfall in the fair value of the Company's other investment management reporting unit over its carrying value, resulting in significant impairment to the other investment management goodwill in the second quarter of 2020 (Note 7).

The various impairment and fair value decreases as a result of the acceleration of the Company's digital transformation collectively accounted for \$3.2 billion of charges in the nine months ended September 30, 2020, of which \$2.5 billion was attributable to the OP. These amounts are reflected within impairment loss, other loss, equity method losses and within impairment loss in discontinued operations on the statement of operations.

The Company believes that it has materially addressed overall recoverability in value across all of its non-digital assets as of September 30, 2020, applying the Company's best estimates and assumptions at this time based upon external factors known to date and the Company's expected digital transformation timeline. If the extent and duration of the economic effects of COVID-19 negatively affect the Company's financial condition and results of operations beyond the Company's current projections, the estimates and assumptions currently applied by the Company may change, which may lead to further impairment and fair value decreases in its non-digital assets that could be material in the future.

### **Exit of the Hospitality Business**

In September 2020, the Company entered into a definitive agreement with a third party to sell five of the six hotel portfolios in its Hospitality segment (the remaining portfolio is in receivership) and its 55.6% interest in the THL Hotel Portfolio in the Other segment (the remaining interests will continue to be held by investment vehicles managed by the Company), composed of 197 hotel properties in aggregate. Two of the hotel portfolios that are being sold in the Hospitality segment are held through joint ventures in which the Company holds a 90% and a 97.5% interest, respectively. The aggregate gross proceeds of \$67.5 million, subject to certain adjustments as provided in the sale agreement, as amended, represents a transaction value of approximately \$2.8 billion, with the acquirer's assumption of \$2.7 billion of investment-level debt. Consummation of the sale is subject to customary closing conditions, including but not limited to, acquirer's assumption of the outstanding mortgage notes encumbering the hotel properties and third party approvals. In October 2020, the parties amended the sale agreement to address certain payments made by the Company to lenders in order to cure certain defaults on the debt associated with a hotel portfolio, and, subject to the satisfaction of certain conditions, to provide the Company with a purchase price credit for a portion of such funded amount. The sale agreement provides that the closing will occur no earlier than January 15, 2021, which may be extended or accelerated by mutual agreement of the Company and the acquirer, provided that, if certain third party approvals have not been obtained by February 15, 2021, each of the Company and the acquirer has the right to extend the closing date until March 15, 2021. There can be no assurance that the sale will close in the timeframe contemplated or on the terms anticipated, if at all.

The Company's exit from the hospitality business represents a key milestone in its digital transformation. Accordingly, the sale of these hotel portfolios is a strategic shift that will have a significant effect on the Company's operations and financial results, and has met the criteria as held for sale and discontinued operations. For all current and prior periods presented, the related assets and liabilities are presented as assets and liabilities held for disposition on the consolidated balance sheets (Note 8) and the related operating results are presented as loss from discontinued operations on the consolidated statements of operations (Note 16).

### **Cooperation Agreement with Blackwells Capital**

In March 2020, the Company entered into a cooperation agreement with Blackwells Capital LLC ("Blackwells"), a stockholder of the Company. Pursuant to the cooperation agreement, Blackwells agreed to a standstill in its proxy contest with the Company, and to abide by certain voting commitments, including a standstill with respect to the Company until the expiration of the agreement in March 2030 and voting in favor of the Board of Director's recommendations until the third anniversary of the agreement.

Contemporaneously, the Company and Blackwells entered into a joint venture arrangement for the purpose of acquiring, holding and disposing of CLNY common stock. Distributions to be made through the joint venture arrangement effectively represent a settlement of the proxy contest with Blackwells. At the inception of the arrangement, the fair value of future distributions to Blackwells was estimated at \$3.9 million, included in other liabilities on the consolidated balance

sheet, and as a settlement loss on the consolidated statement of operations, along with \$1.2 million reimbursement of legal costs to Blackwells in March 2020. The settlement liability is remeasured at fair value each quarter until such time final distributions are made to Blackwells. Refer to Note 12 for further description of the settlement liability.

## 2. Summary of Significant Accounting Policies

The significant accounting policies of the Company are described below. The accounting policies of the Company's unconsolidated ventures are substantially similar to those of the Company.

### ***Basis of Presentation***

The accompanying unaudited interim financial statements have been prepared in accordance with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all information and footnotes required by accounting principles generally accepted in the United States of America ("GAAP") for complete financial statements. These statements reflect all normal and recurring adjustments which, in the opinion of management, are necessary to present fairly the financial position, results of operations and cash flows of the Company for the interim periods presented. However, the results of operations for the interim period presented are not necessarily indicative of the results that may be expected for the year ending December 31, 2020, or any other future period. These interim financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto included in, or presented as exhibits to, the Company's Annual Report on Form 10-K for the year ended December 31, 2019.

The accompanying consolidated financial statements include the accounts of the Company and its controlled subsidiaries. All significant intercompany accounts and transactions have been eliminated. The portions of equity, net income and other comprehensive income of consolidated subsidiaries that are not attributable to the parent are presented separately as amounts attributable to noncontrolling interests in the consolidated financial statements. A substantial portion of noncontrolling interests represents interests held by private investment funds or other investment vehicles managed by the Company and which invest alongside the Company and membership interests in OP primarily held by certain employees of the Company.

To the extent the Company consolidates a subsidiary that is subject to industry-specific guidance, the Company retains the industry-specific guidance applied by that subsidiary in its consolidated financial statements.

### ***Use of Estimates***

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates and assumptions.

### ***Principles of Consolidation***

The Company consolidates entities in which it has a controlling financial interest by first considering if an entity meets the definition of a variable interest entity ("VIE") for which the Company is deemed to be the primary beneficiary, or if the Company has the power to control an entity through a majority of voting interest or through other arrangements.

***Variable Interest Entities***—A VIE is an entity that either (i) lacks sufficient equity to finance its activities without additional subordinated financial support from other parties; (ii) whose equity holders lack the characteristics of a controlling financial interest; or (iii) is established with non-substantive voting rights. A VIE is consolidated by its primary beneficiary, which is defined as the party who has a controlling financial interest in the VIE through (a) power to direct the activities of the VIE that most significantly affect the VIE's economic performance, and (b) obligation to absorb losses or right to receive benefits of the VIE that could be significant to the VIE. The Company also considers interests held by its related parties, including de facto agents. The Company assesses whether it is a member of a related party group that collectively meets the power and benefits criteria and, if so, whether the Company is most closely associated with the VIE. In performing the related party analysis, the Company considers both qualitative and quantitative factors, including, but not limited to: the amount and characteristics of its investment relative to the related party; the Company's and the related party's ability to control or significantly influence key decisions of the VIE including consideration of involvement by de facto agents; the obligation or likelihood for the Company or the related party to fund operating losses of the VIE; and the similarity and significance of the VIE's business activities to those of the Company and the related party. The determination of whether an entity is a VIE, and whether the Company is the primary beneficiary, may involve significant judgment, including the determination of which activities most significantly affect the entities' performance, and estimates about the current and future fair values and performance of assets held by the VIE.

***Voting Interest Entities***—Unlike VIEs, voting interest entities have sufficient equity to finance their activities and equity investors exhibit the characteristics of a controlling financial interest through their voting rights. The Company

consolidates such entities when it has the power to control these entities through ownership of a majority of the entities' voting interests or through other arrangements.

At each reporting period, the Company reassesses whether changes in facts and circumstances cause a change in the status of an entity as a VIE or voting interest entity, and/or a change in the Company's consolidation assessment. Changes in consolidation status are applied prospectively. An entity may be consolidated as a result of this reassessment, in which case, the assets, liabilities and noncontrolling interest in the entity are recorded at fair value upon initial consolidation. Any existing equity interest held by the Company in the entity prior to the Company obtaining control will be remeasured at fair value, which may result in a gain or loss recognized upon initial consolidation. However, if the consolidation represents an asset acquisition of a voting interest entity, the Company's existing interest in the acquired assets, if any, is not remeasured to fair value but continues to be carried at historical cost. The Company may also deconsolidate a subsidiary as a result of this reassessment, which may result in a gain or loss recognized upon deconsolidation depending on the carrying values of deconsolidated assets and liabilities compared to the fair value of any interests retained.

### **Noncontrolling Interests**

*Redeemable Noncontrolling Interests*—This represents noncontrolling interests in the Company's digital investment management business and in consolidated open-end funds sponsored by the Company. The noncontrolling interests either have redemption rights that will be triggered upon the occurrence of certain events (Note 16) or have the ability to withdraw all or a portion of their interests from the consolidated open-end funds in cash with advance notice.

Redeemable noncontrolling interests is presented outside of permanent equity. Allocation of net income or loss to redeemable noncontrolling interests is based upon their ownership percentage during the period. The carrying amount of redeemable noncontrolling interests is adjusted to its redemption value at the end of each reporting period to an amount not less than its initial carrying value, except for amounts contingently redeemable which will be adjusted to redemption value only when redemption is probable. Such adjustments will be recognized in additional paid-in capital.

*Noncontrolling Interests in Investment Entities*—This represents predominantly interests in consolidated investment entities held by private investment funds or retail companies managed by the Company or held by third party joint venture partners. Allocation of net income or loss is generally based upon relative ownership interests held by equity owners in each investment entity, or based upon contractual arrangements that may provide for disproportionate allocation of economic returns among equity interests, including using a hypothetical liquidation at book value basis, where applicable and substantive.

*Noncontrolling Interests in Operating Company*—This represents membership interests in OP held primarily by certain employees of the Company. Noncontrolling interests in OP are allocated a share of net income or loss in OP based on their weighted average ownership interest in OP during the period. Noncontrolling interests in OP have the right to require OP to redeem part or all of such member's membership units in OP ("OP Units") for cash based on the market value of an equivalent number of shares of class A common stock at the time of redemption, or at the Company's election as managing member of OP, through issuance of shares of class A common stock (registered or unregistered) on a one-for-one basis. At the end of each reporting period, noncontrolling interests in OP is adjusted to reflect their ownership percentage in OP at the end of the period, through a reallocation between controlling and noncontrolling interests in OP, as applicable.

### **Business Combinations**

*Definition of a Business*—The Company evaluates each purchase transaction to determine whether the acquired assets meet the definition of a business. If substantially all of the fair value of gross assets acquired is concentrated in a single identifiable asset or a group of similar identifiable assets, then the set of transferred assets and activities is not a business. If not, for an acquisition to be considered a business, it would have to include an input and a substantive process that together significantly contribute to the ability to create outputs (i.e., there is a continuation of revenue before and after the transaction). A substantive process is not ancillary or minor, cannot be replaced without significant costs, effort or delay or is otherwise considered unique or scarce. To qualify as a business without outputs, the acquired assets would require an organized workforce with the necessary skills, knowledge and experience that performs a substantive process.

*Asset Acquisitions*—For acquisitions that are not deemed to be businesses, the assets acquired are recognized based on their cost to the Company as the acquirer and no gain or loss is recognized. The cost of assets acquired in a group is allocated to individual assets within the group based on their relative fair values and does not give rise to goodwill. Transaction costs related to acquisition of assets are included in the cost basis of the assets acquired.

**Business Combinations**—The Company accounts for acquisitions that qualify as business combinations by applying the acquisition method. Transaction costs related to acquisition of a business are expensed as incurred and excluded from the fair value of consideration transferred. The identifiable assets acquired, liabilities assumed and noncontrolling interests in an acquired entity are recognized and measured at their estimated fair values. The excess of the fair value of consideration transferred over the fair values of identifiable assets acquired, liabilities assumed and noncontrolling interests in an acquired entity, net of fair value of any previously held interest in the acquired entity, is recorded as goodwill. Such valuations require management to make significant estimates and assumptions.

**Contingent Consideration**—Contingent consideration is classified as a liability or equity, as applicable. Contingent consideration in connection with the acquisition of a business is measured at fair value on acquisition date, and unless classified as equity, is remeasured at fair value each reporting period thereafter until the consideration is settled, with changes in fair value included in net income. Contingent consideration in connection with the acquisition of assets is generally recognized only when the contingency is resolved, as part of the basis of the acquired assets.

### **Discontinued Operations**

If the disposition of a component, being an operating or reportable segment, business unit, subsidiary or asset group, represents a strategic shift that has or will have a major effect on the Company's operations and financial results, the operating profits or losses of the component when classified as held for sale, and the gain or loss upon disposition of the component, are presented as discontinued operations in the statements of operations.

A business or asset group acquired in connection with a purchase business combination that meets the criteria to be accounted for as held for sale at the date of acquisition is reported as discontinued operations, regardless of whether it meets the strategic shift criteria.

The pending disposition of the hotel business, composed of the Hospitality segment and the THL Hotel Portfolio in the Other segment, and the disposition of the industrial business in December 2019, including its related management platform, represent strategic shifts that have major effects on the Company's operations and financial results, and have met the criteria as held for sale and discontinued operations in September 2020 and June 2019, respectively. Accordingly, for all prior periods presented, the related assets and liabilities are presented as assets and liabilities held for disposition on the consolidated balance sheets (Note 8) and the related operating results are presented as income from discontinued operations on the consolidated statements of operations (Note 16).

### **Reclassifications**

Reclassifications were made related to discontinued operations as discussed above and to prior period segment reporting presentation as discussed in Note 22. Additionally, interest receivable, which was included in other assets as of December 31, 2019, has been reclassified to be presented as part of loans receivable to conform to current period presentation. These reclassification did not affect the Company's financial position, results of operations or cash flows.

## **Accounting Standards Adopted in 2020**

### **Credit Losses**

In June 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2016-13, *Financial Instruments—Credit Losses*, followed by subsequent amendments, which modifies the credit impairment model for financial instruments, and codified as Accounting Standards Codification ("ASC") Topic 326. The multiple existing incurred loss models are replaced with a lifetime current expected credit loss ("CECL") model for off-balance sheet credit exposures that are not unconditionally cancellable by the lender and financial instruments carried at amortized cost, such as loans, loan commitments, held-to-maturity ("HTM") debt securities, financial guarantees, net investment in sales-type and direct financing leases, reinsurance and trade receivables. Targeted changes are also made to the impairment model of available-for-sale ("AFS") debt securities which are not within the scope of CECL.

The CECL model, in estimating expected credit losses over the life of a financial instrument at the time of origination or acquisition, considers historical loss experience, current conditions and the effects of a reasonable and supportable expectation of changes in future macroeconomic conditions. Recognition of allowance for credit losses under the CECL model will generally be accelerated as it encompasses credit losses over the full remaining expected life of the affected financial instruments. For collateralized financial assets, measurement of credit losses under CECL is based on fair value of the collateral if foreclosure is probable or if the collateral-dependent practical expedient is elected for financial assets expected to be repaid substantially through operation or sale of the collateral when the borrower is experiencing financial difficulty. The accounting model for purchased credit-impaired loans and debt securities will be simplified to be consistent with the CECL model for originated and purchased non-credit-impaired assets. For AFS debt securities, unrealized credit

losses will be recognized as allowances rather than reductions in amortized cost basis and elimination of the other-than-temporary impairment ("OTTI") concept will result in more frequent estimation of credit losses. ASC 326 also requires expanded disclosures on credit risk, including credit quality indicators by vintage of financing receivables.

Transitional relief is provided through the ability, upon adoption of the new standard, to elect the fair value option for eligible financial instruments within the scope of the new standard, except for HTM and AFS debt securities. Transition will generally be on a modified retrospective basis, including the election of the fair value option, with a cumulative effect adjustment to beginning retained earnings, except for prospective application of the CECL model for other than temporarily impaired debt securities and purchased credit-impaired assets.

The Company adopted the new standard on January 1, 2020. The Company elected the fair value option for all of its outstanding loans receivable, with a cumulative effect adjustment to increase beginning retained earnings by \$3.3 million. Under the fair value option, the loans receivable are measured at each reporting period based upon their exit values in an orderly transaction and unrealized gains or losses from changes in fair value are recorded in other gain (loss) on the consolidated statement of operations. The loans are no longer subject to evaluation for impairment through an allowance for loan loss as such losses are captured through fair value changes. Additionally, there is no longer an amortization of loan origination fees or discounts on purchased loans as additional interest income.

The Company had no debt securities with unrealized loss in accumulated other comprehensive income ("AOCI") at December 31, 2019 and accordingly, there was no impact upon adoption of the new standard. As it relates to the Company's other accounts receivable that are subject to CECL, the effect of adoption was immaterial.

The Company reflected the effect of adoption of CECL by its equity method investee, CLNC, through an adjustment to decrease beginning retained earnings by approximately \$8.5 million on January 1, 2020, representing the Company's share of CLNC's cumulative effect adjustment.

#### **Fair Value Disclosures**

In August 2018, the FASB issued ASU No. 2018-13, *Fair Value Measurement (Topic 820): Disclosure Framework—Changes to the Disclosure Requirements for Fair Value Measurements*. The ASU requires new disclosures of changes in unrealized gains and losses in other comprehensive income for recurring Level 3 fair value measurements of instruments held at balance sheet date, as well as the range and weighted average or other quantitative information, if more relevant, of significant unobservable inputs for recurring and nonrecurring Level 3 fair values. Certain previously required disclosures are eliminated, specifically around the valuation process required for Level 3 fair values, policy for timing of transfers between levels of the fair value hierarchy, as well as amounts and reason for transfers between Levels 1 and 2. Additionally, the new guidance clarifies or modifies certain existing disclosures, including clarifying that information about measurement uncertainty of Level 3 fair values should be as of reporting date and requiring disclosures of the timing of liquidity events for investments measured under the net asset value ("NAV") practical expedient, but only if the investee has communicated this information or has announced it publicly. The provisions on new disclosures and modification to disclosure of Level 3 measurement uncertainty are to be applied prospectively, while all other provisions are to be applied retrospectively. The Company adopted ASU No. 2018-13 on January 1, 2020.

#### **Related Party Guidance for VIEs**

In November 2018, the FASB issued ASU No. 2018-17, *Targeted Improvements to Related Party Guidance for Variable Interest Entities*. The ASU amends the VIE guidance to align, throughout the VIE model, the evaluation of a decision maker's or service provider's fee held by a related party, whether or not they are under common control, in both the assessment of whether a fee qualifies as a variable interest and the determination of a primary beneficiary. Specifically, a decision maker or service provider considers interests in a VIE held by a related party under common control only if it has a direct interest in that related party under common control and considers such indirect interest in the VIE held by the related party under common control on a proportionate basis, rather than in its entirety. Transition is generally on a modified retrospective basis, with the cumulative effect adjusted to retained earnings at the beginning of the earliest period presented. The Company adopted ASU No. 2018-17 on January 1, 2020, with no transitional impact upon adoption.

#### **Reference Rate Reform**

In March 2020, the FASB issued ASU No. 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting*. The guidance in Topic 848 is optional, the election of which provides temporary relief for the accounting effects on contracts, hedging relationships and other transactions affected by the transition from interbank offered rates (such as the London Interbank Offered Rate ("LIBOR")) that are expected to be discontinued by the end of 2021 to alternative reference rates (such as the Secured Overnight Financing Rate ("SOFR")).

Modification of contractual terms to effect the reference rate reform transition on debt, leases, derivatives and other contracts is eligible for relief from modification accounting and accounted for as a continuation of the existing contract. Topic 848 is effective upon issuance through December 31, 2022, and may be applied retrospectively to January 1, 2020. The Company has elected to apply the hedge accounting expedients related to probability and assessment 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, which preserves existing derivative treatment and presentation. The Company may elect other practical expedients or exceptions as applicable over time as reference rate reform activities occur.

## **Future Application of Accounting Standards**

### ***Income Tax Accounting***

In December 2019, the FASB issued ASU No. 2019-12, *Simplifying Accounting for Income Taxes*. The ASU simplifies accounting for income taxes by eliminating certain exceptions to the general approach in ASC 740, *Income Taxes*, and clarifies certain aspects of the guidance for more consistent application. The simplifications relate to intraperiod tax allocations when there is a loss in continuing operations and a gain outside of continuing operations, accounting for tax law or tax rate changes and year-to-date losses in interim periods, recognition of deferred tax liability for outside basis difference when investment ownership changes, and accounting for franchise taxes that are partially based on income. The ASU also provides new guidance that clarifies the accounting for transactions resulting in a step-up in tax basis of goodwill, among other changes. Transition is generally prospective, other than the provision related to outside basis difference which is on a modified retrospective basis with cumulative effect adjusted to retained earnings at the beginning of the period adopted, and franchise tax provision which is on either full or modified retrospective. ASU No. 2019-12 is effective January 1, 2021, with early adoption permitted in an interim period, to be applied to all provisions. The Company is currently evaluating the impact of this new guidance.

### ***Accounting for Certain Equity Investments***

In January 2020, the FASB issued ASU No. 2020-01, *Clarifying the Interactions between Topic 321 Investments—Equity Securities, Topic 323—Investments Equity Method and Joint Ventures, and Topic 815—Derivatives and Hedging*. The ASU clarifies that if as a result of an observable transaction, an equity investment under the measurement alternative is transitioned into equity method and vice versa, an equity method investment is transitioned into measurement alternative, the investment is to be remeasured immediately before and after the transaction, respectively. The ASU also clarifies that certain forward contracts or purchased options to acquire equity securities that are not deemed to be derivatives or in-substance common stock will generally be measured using the fair value principles of ASC 321 before settlement or exercise, and that an entity should not be considering how it will account for the resulting investments upon eventual settlement or exercise. ASU No. 2020-01 is to be applied prospectively, effective January 1, 2021, with early adoption permitted in an interim period. The Company is currently evaluating the impact of this new guidance.

### ***Accounting for Convertible Instruments and Contracts on Entity's Own Equity***

In August 2020, the FASB issued ASU No. 2020-06, *Debt—Debt With Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*. The ASU (1) simplifies an issuer's accounting for convertible instruments as a single unit of account; (2) allows more contracts on an entity's own equity to qualify for equity classification and more embedded derivatives meeting the derivative scope exception; and (3) simplifies diluted earnings per share ("EPS") computation.

- The guidance eliminates the requirement to separate embedded conversion features in convertible instruments, except for (1) a convertible instrument that contains features requiring bifurcation as a derivative under ASC 815 or (2) a convertible debt instrument that was issued at a substantial premium.
- Under the new guidance, certain conditions under Subtopic ASC 815-40 that may result in contracts being settled in cash rather than shares and therefore preclude (1) equity classification for contracts on an entity's own equity; and (2) embedded derivatives from qualifying for the derivative scope exception, have been removed; for example, the requirement that equity contracts permit settlement in unregistered shares unless such contracts explicitly require settlement in cash if registered shares are unavailable. The guidance also clarifies that freestanding contracts on an entity's own equity that do not qualify for equity classification under the indexation criteria (ASC 815-4015) or settlement criteria (ASC 815-40-25) are to be measured at fair value through earnings, even if they do not meet the definition of a derivative under ASC 815.

- The ASU also amends certain guidance on computation of diluted EPS for convertible instruments and contracts on an entity's own equity that results in a more dilutive EPS, including (1) requiring the if converted method to be applied for all convertible instruments (the treasury stock method is no longer available), and (2) removing the ability to rebut the presumption of share settlement for contracts that may be settled in cash or stock and that are not liability classified share based payments.
- Expanded disclosures are required, including but not limited to, (1) terms and features of convertible instruments and contracts on entity's own equity; and (2) information about events, conditions, and circumstances that could affect amount or timing of future cash flows related to these instruments or contracts; and in the period of adoption (3) nature of and reason for the change in accounting principle; and (4) effects of the change on EPS.

Upon adoption, a one-time election may be made to apply the fair value option for any liability-classified convertible securities.

Adoption of the new standard may be made either on a full retrospective approach or a modified retrospective approach, with cumulative effect adjustment recorded to beginning retained earnings. ASU No. 2020-06 is effective January 1, 2022, with early adoption permitted on January 1, 2021. The Company is currently evaluating the effects of this new guidance.

### **3. Business Combinations**

#### ***DBH***

On July 25, 2019, the Company acquired DBH in a combination of: (a) cash, a portion of which was deferred until the expiration of certain customary seller indemnification obligations and was paid in full in May 2020 (Note 20); and (b) issuance of 21,478,515 OP Units, which were measured based upon the closing price of the Company's class A common stock on July 24, 2019 of \$5.21 per share.

The Company acquired the fee streams but not the equity interests related to the six portfolio companies managed by DBH. The principals of DBH retained their equity investments, including general partner interests in existing DBH investment vehicles and in Digital Colony Partners fund ("DCP"), which was previously co-sponsored by the Company and DBH.

The acquisition is a strategic transaction that is expected to generate meaningful accretion in value to the Company through expansion of the digital real estate management platform by combining the industry sector knowledge, experience and relationships from the DBH team with the capital raising resources of the Company, as represented by the goodwill value.

The Company's acquisition of DBH included the remaining 50% equity interest held by DBH in Digital Colony Management, LLC ("DCM"), previously an equity method joint venture with DBH, which manages DCP. Upon closing of the acquisition, the Company obtained a controlling interest in DCM and remeasured its existing 50% interest at a fair value of \$51.4 million. The full amount, representing the excess of fair value over carrying value of the Company's investment in DCM, was recognized in other gain on the Company's statement of operations, as the Company's carrying value of its investment in DCM prior to the business combination was nil. The fair value was based upon the value of 50% of estimated future net cash flows from the DCP fund management contract, discounted at 8%.

#### ***DataBank***

On December 20, 2019, the Company acquired from third party investors a 20% interest in DataBank, a portfolio company managed by DBH and invested in by the principals and senior professionals of DBH. The Company is deemed to have a controlling interest in DataBank as control over the operations of DataBank resides substantially with the Company. Consideration included the payment of cash to third parties for the Company's interests in DataBank and the issuance of 612,072 OP Units to the DBH principals, Marc Ganzi and Ben Jenkins, now the chief investment officer of the Company's digital real estate platform, for incentive units owned by the DBH principals and allocable to the Company's acquired interests, measured based upon the closing price of the Company's class A common stock on December 20, 2019 of \$4.84 per share. The OP Units were issued to the DBH principals who had previously received incentive units from DataBank, in exchange for certain of their incentive units such that the Company will not be subject to future carried interest payments to the DBH principals with respect to the Company's investment in DataBank (Note 20). The DBH principals otherwise retained their equity interests in DataBank.

### Allocation of Consideration Transferred

The following table summarizes the consideration and allocation to assets acquired, liabilities assumed and noncontrolling interests at acquisition. The estimated fair values and allocation of consideration are preliminary, based upon information available at the time of closing as the Company continues to evaluate underlying inputs and assumptions. Accordingly, these provisional values may be subject to adjustments during the measurement period, not to exceed one year, based upon new information obtained about facts and circumstances that existed at the time of closing.

(In thousands)	DBH	DataBank
	Final	As Reported June 30, 2020
<b>Consideration</b>		
Cash	\$ 181,167	\$ 182,731
Deferred consideration	35,500	—
OP Units issued	111,903	2,962
Total consideration for equity interest acquired	328,570	185,693
Fair value of equity interest in Digital Colony Manager	51,400	—
	\$ 379,970	\$ 185,693
<b>Assets acquired, liabilities assumed and noncontrolling interests</b>		
Cash	\$ —	\$ 10,366
Real estate	—	839,053
Assets held for disposition	—	29,266
Intangible assets	153,300	219,651
Other assets	13,008	108,896
Debt	—	(539,155)
Tax liabilities	(17,392)	(109,587)
Intangible and other liabilities	(16,194)	(120,178)
Fair value of net assets acquired	132,722	438,312
Noncontrolling interests in investment entities	—	(724,567)
Goodwill	\$ 247,248	\$ 471,948

#### DBH

- Intangible assets acquired included primarily management contracts, investor relationships and trade name.
  - The fair value of management contracts, including the Company's 50% interest in Digital Colony Manager, was estimated based upon estimated net cash flows generated from those contracts, discounted at 8%, with remaining lives estimated between 3 and 10 years.
  - Investor relationships represent the fair value of potential fees, net of operating costs, to be generated from repeat DBH investors in future sponsored funds, discounted at 11.5%, and potential carried interest discounted at 25%.
  - The Digital Bridge trade name was valued using a relief-from-royalty method, based upon estimated savings from avoided royalty at a rate of 1% on expected net income, discounted at 11.5%, with an estimated useful life of 10 years.
- Other liabilities assumed were primarily deferred revenues and deferred tax liabilities recognized upon acquisition, representing the tax effect on the book-to-tax basis difference associated with management contract intangibles.

#### DataBank

- Real estate was valued based upon (i) current replacement cost for buildings, improvements and data center infrastructure assets; (ii) recent comparable sales or current listings for land; and (iii) contracted price net of selling cost for real estate held for sale.
- Lease related intangibles include in-place leases, leasing commissions and tenant relationships which reflect the value of income foregone or cost incurred if the properties were otherwise vacant and the likelihood of lease renewal by existing tenants, as well as above- and below-market leases which represent the differential between market and contractual rents.

- The remaining intangible assets acquired are data center service contracts, customer relationships and trade name.
  - The value of data center service contracts was estimated based upon net income generated from these services that would otherwise have been foregone if such customer contracts were not in place.
  - Customer relationships were valued as the incremental net income attributable to these relationships considering the projected net cash flows of the business with and without the customer relationships in place, discounted at 9.5%.
  - The trade name of DataBank was valued based upon estimated savings from avoided royalty at a royalty rate of 2%, discounted at 9.5%, with a 5 year useful life.
- Other assets acquired and liabilities assumed include primarily right-of-use ("ROU") lease assets associated with leasehold data centers and corresponding lease liabilities. Deferred tax liabilities represent the tax effect on book-to-tax basis difference, primarily on real estate assets.
- All assumed debt bears variable rates, with carrying values approximating fair values based upon market rates and spreads that prevailed at the time of acquisition.
- Noncontrolling interests in investment entities were valued based upon their proportionate share of net assets of DataBank at fair value.

The excess of the fair value of consideration transferred over the fair values of identifiable assets acquired, liabilities assumed and noncontrolling interests was recorded as goodwill assigned to the DataBank reporting unit within the digital segment. Goodwill represents the value of the business acquired not already captured in identifiable assets, such as the potential for future customers, synergies, revenue and profit growth, as well as industry knowledge, experience and relationships that the DataBank management team brings.

#### 4. Real Estate

The following table summarizes the Company's real estate held for investment. Real estate held for disposition is presented in Note 8.

(In thousands)	September 30, 2020	December 31, 2019
Land	\$ 830,365	\$ 716,340
Buildings and improvements	4,773,492	5,068,639
Tenant improvements	112,140	105,440
Data center infrastructure	2,593,494	595,603
Furniture, fixtures and equipment	87,744	98,839
Construction in progress	91,651	115,933
	8,488,886	6,700,794
Less: Accumulated depreciation	(628,412)	(482,598)
Real estate assets, net <sup>(1)</sup>	<u>\$ 7,860,474</u>	<u>\$ 6,218,196</u>

<sup>(1)</sup> For real estate acquired in a business combination, the purchase price allocation may be subject to adjustments during the measurement period, not to exceed 12 months from date of acquisition, based upon new information obtained about facts and circumstances that existed at time of acquisition (Note 3).

#### Real Estate Sales

Results from sales of real estate, including discontinued operations (Note 16), are as follows:

(In thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Proceeds from sales of real estate	\$ 88,423	\$ 216,588	\$ 258,440	\$ 659,245
Gain on sale of real estate	12,248	12,899	15,261	71,824

### Real Estate Acquisitions

The following table summarizes the Company's real estate acquisitions, excluding real estate acquired in business combinations discussed in Note 3.

(\$ in thousands)				Purchase Price Allocation <sup>(1)</sup>					
Acquisition Date	Property Type and Location	Number of Buildings	Purchase Price <sup>(1)</sup>	Land	Buildings, Improvements and Infrastructure	Lease-Related Intangible Assets	ROU Lease and Other Assets	Lease Intangible Liabilities	Debt, Lease and Other Liabilities
<b>Nine Months Ended September 30, 2020</b>									
<i>Asset Acquisitions</i> <sup>(2)</sup>									
Various	Hotel—France <sup>(3)</sup>	6	\$ 21,231	\$ 2,955	\$ 18,436	\$ —	\$ 10,563	\$ —	\$ (10,723)
July	Hyperscale data centers—U.S. and Canada	12	1,524,610	103,036	2,606,305	776,666	181,260	(26,723)	(2,115,934)
Various	Easements—Various in U.S.	—	2,586	2,586	—	—	—	—	—
			<u>\$ 1,548,427</u>	<u>\$ 108,577</u>	<u>\$ 2,624,741</u>	<u>\$ 776,666</u>	<u>\$ 191,823</u>	<u>\$ (26,723)</u>	<u>\$ (2,126,657)</u>
<b>Year Ended December 31, 2019</b>									
<i>Asset Acquisitions</i>									
February	Bulk industrial—Various in U.S. <sup>(4)</sup>	6	\$ 373,182	\$ 49,446	\$ 296,348	\$ 27,553	\$ —	\$ (165)	\$ —
October	Wellness infrastructure—United Kingdom <sup>(5)</sup>	1	12,376	3,478	9,986	732	—	(1,820)	—
Various	Light industrial—Various in U.S. <sup>(6)</sup>	84	1,158,423	264,816	850,550	47,945	—	(4,888)	—
			<u>\$ 1,543,981</u>	<u>\$ 317,740</u>	<u>\$ 1,156,884</u>	<u>\$ 76,230</u>	<u>\$ —</u>	<u>\$ (6,873)</u>	<u>\$ —</u>

<sup>(1)</sup> Dollar amounts of purchase price and allocation to assets acquired and liabilities assumed are translated using foreign exchange rates as of the respective dates of acquisition, where applicable.

<sup>(2)</sup> Useful life of real estate acquired ranges from 40 to 50 years for buildings, 12 to 21 years for site improvements, 12 to 19 years for data center infrastructure, 1 to 7 years for furniture, fixtures, and equipment, 2 to 15 years for lease intangibles, and 5 to 6 years for ROU lease assets.

<sup>(3)</sup> Bids for hotels under receivership were accepted by the French courts in prior years, with the transactions closing in 2020. Amounts include acquisition of hotel operations pursuant to operating leases on real estate owned by third parties.

<sup>(4)</sup> The bulk industrial portfolio was classified as held for sale in June 2019.

<sup>(5)</sup> Properties acquired pursuant to purchase option under the Company's development facility to a healthcare operator at purchase price equivalent to outstanding loan balance.

<sup>(6)</sup> The entire light industrial portfolio was sold in December 2019.

### Investment in Hyperscale Data Centers

In July 2020 and following an additional investment in October 2020, the Company, alongside fee bearing third party capital, invested \$1.36 billion for approximately 90% equity interest (\$1.2 billion or approximately 80% at September 30, 2020) in entities that hold Vantage Data Centers' ("Vantage") portfolio of 12 stabilized hyperscale data centers in North America and \$2.0 billion of secured indebtedness ("Vantage SDC"). The Company's balance sheet investment is approximately \$200 million, representing approximately 13% equity interest (approximately 12% at September 30, 2020). Vantage SDC is a carve-out from Vantage's data center business, with the acquisition excluding Vantage's remaining portfolio of development-stage data centers and its employees, all of whom were retained by Vantage. The day-to-day operations of Vantage SDC will continue to be managed by Vantage's existing management company in exchange for management fees, and subject to certain approval rights held by the Company and the co-investors in connection with material actions.

Additional purchase price of up to an estimated \$240 million may be payable if Vantage SDC enters into additional leases for vacant inventory and expansion capacity. It is anticipated that all, if not most, of the additional purchase price will be funded by Vantage SDC from borrowings under its credit facilities and/or cash from operations.

## Depreciation and Impairment

The following table summarizes real estate depreciation and impairment.

(In thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Depreciation of real estate held for investment	\$ 73,862	\$ 42,549	\$ 187,746	\$ 132,844
Impairment of real estate and related asset group <sup>(1)</sup>				
Held for disposition	134,097	50,855	161,735	119,036
Held for investment <sup>(2)</sup>	9,345	127,044	1,764,235	168,531

<sup>(1)</sup> Includes impairment of real estate intangibles of \$9.3 million in the nine months ended September 30, 2020 and ROU on ground leases of \$1.4 million and \$15.1 million in the three and nine months ended September 30, 2020, respectively. For both the three and nine months ended September 30, 2019, amounts include impairment of real estate intangibles of \$0.9 million.

<sup>(2)</sup> Includes impairment of hotel properties prior to their reclassification as held for sale and discontinued operations.

### Impairment of Real Estate Held for Disposition

Real estate held for disposition is carried at the lower of amortized cost or fair value. Real estate carried at fair value totaled \$1.1 billion at September 30, 2020 and \$253.4 million at December 31, 2019 based upon impairments recorded during the nine months ended September 30, 2020 and year ended December 31, 2019, respectively, generally representing Level 3 fair values.

Real estate held for disposition that was written down was generally valued using either broker opinions of value, or a combination of market information, including third-party appraisals and indicative sale prices, adjusted as deemed appropriate by management to account for the inherent risk associated with specific properties. In all cases, fair value of real estate held for disposition is reduced for estimated selling costs ranging from 1% to 16%.

In 2020, the Company also considered the impact of a global economic downturn as a result of COVID-19, specifically as it affects real estate values, and where appropriate, factored in a reduction in potential sales prices, which resulted in additional impairment on real estate held for disposition in 2020.

### Impairment of Real Estate Held for Investment

Real estate held for investment that was written down to fair value during the nine months ended September 30, 2020 and year ended December 31, 2019 had carrying values totaling \$3.6 billion and \$355.0 million, respectively, at the time of impairment (including properties in the Hospitality segment that were impaired in 2020 and 2019 prior to their reclassification as held for sale and discontinued operations, and similarly including properties in the THL Hotel Portfolio that were impaired in 2019), representing Level 3 fair values.

Impairment was driven by shortened holding period assumptions made in connection with the preparation and review of the financial statements, particularly in the hotel and wellness infrastructure portfolios. The shortened holding period assumption is attributable to both the Company's accelerated digital transformation, and the risk that the Company is unable to obtain accommodation from lenders on non-recourse mortgage debt that is in default or at risk of default. The Company's assessment considered various strategic and financial alternatives to maximize the value of its non-digital real estate assets, while also balancing the need to preserve liquidity and prioritize the growth of its digital business. A shortened holding period was an indicator of impairment as it decreased the amount of carrying value recoverable from future cash flows, which was further exacerbated by a decline in property operating performance and market values as a result of the economic effects of COVID-19.

The Company compared the carrying values to the undiscounted future net cash flows expected to be generated by these properties over their holding periods. In performing this analysis, the Company considered the likelihood of possible outcomes under various holding period scenarios by applying a probability-weighted approach to different holding periods. For hotel properties, the Company applied a range of reductions to near term cash flow projections to account for uncertainties due to COVID-19. For properties for which undiscounted expected net cash flows over their respective holding periods fell short of carrying values, the Company expects that the carrying value of these properties would likely not be recoverable.

Fair values were estimated for these properties based upon one or a combination of the following: (i) third party appraisals, (ii) broker opinions of value with discounts applied based upon management judgment, (iii) income capitalization approach, using net operating income for each property and applying capitalization rates between 10.0% and 12.0%; or (iv) discounted cash flow analyses with terminal values determined using terminal capitalization rates between 7.0% and 11.3%, and discount rates between 8.5% and 12.0%. The Company considered the risk characteristics

of each property in determining capitalization rates and where applicable, used higher capitalization rates or discount rates to reflect the inherent stress on real estate values in a deteriorating economic environment. Impairment was measured as the excess of carrying value over fair value for each of these properties.

The Company believes that it has materially addressed overall recoverability in the value of its non-digital real estate assets, applying the Company's best estimates and assumptions at this time based upon external factors known to date and the Company's expected digital transformation timeline. If the extent and duration of the economic effects of COVID-19 negatively affect the Company's real estate operations and its ability to meet its non-recourse mortgage debt obligations beyond the Company's current projections, the estimates and assumptions currently applied by the Company may change, which may lead to further impairment of its non-digital real estate assets, in particular, its wellness infrastructure assets, that could be material in the future.

### **Property Operating Income**

Since December 2019, lease income includes: (i) fixed lease payments for interconnection services and a committed amount of power in connection with contracted data center leased space; and (ii) variable payments for additional metered power reimbursements based upon usage by data center tenants at prevailing rates.

The Company also earns data center service revenue, primarily composed of cloud services, data storage, data protection, network services, software licensing, and other related information technology services, which are recognized as services are provided to data center customers; and to a lesser extent, installation services that are recognized at a point in time upon completion of the installation and accompanying services.

For the three and nine months ended September 30, 2020 and 2019, components of property operating income are as follows, excluding amounts related to discontinued operations (Note 16).

(In thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Lease income:				
Fixed lease income	\$ 193,873	\$ 152,050	\$ 555,979	\$ 487,404
Variable lease income	37,827	13,641	70,934	44,881
	231,700	165,691	626,913	532,285
Hotel operating income	2,860	3,167	5,015	11,693
Data center service revenue	11,562	—	34,729	—
	\$ 246,122	\$ 168,858	\$ 666,657	\$ 543,978

### **Lease Concessions Related to COVID-19**

As a result of the COVID-19 crisis, a number of tenants failed to make rent payments or make timely payments, and some sought more flexible payment terms or rent concessions. Local governments in certain jurisdictions have implemented or are considering implementing programs that permit or require forbearance of rent payments by tenants affected by COVID-19. The Company is currently engaged with affected tenants on a case-by-case basis to evaluate and respond to the current environment.

For lease concessions resulting directly from the impact of COVID-19 that do not result in a substantial increase in the rights of the lessor or the obligations of the lessee, for example, where total payments required by the modified contract will be substantially the same as or less than the original contract, the Company made a policy election to account for the concessions as though the enforceable rights and obligations for those concessions existed in the lease contracts, under a relief provided by the FASB. Under the relief, the concessions will not be treated as lease modifications that are accounted for over the remaining term of the respective leases, as the Company believes this would not accurately reflect the temporary economic effect of the concessions. Instead, (i) rent deferrals that meet the criteria will be treated as if no changes were made to the lease contract, with continued recognition of lease income and receivable under the original terms of the contract; and (ii) rent forgiveness that meets the criteria will be accounted for as variable lease payments in the affected periods.

The Company has agreed to provide the affected tenants primarily with a deferral of full or partial rent for two to three months, generally with deferred rent to be repaid in monthly installments over periods of three to 17 months. This resulted in an increase in receivables totaling \$0.4 million as of September 30, 2020. All lease income receivable, including straight-line rents, are subject to the Company's policy for evaluation of collectability based upon creditworthiness of the lessee. In certain instances, the Company has also agreed to rent forgiveness, totaling \$0.6 million for both the nine months ended September 30, 2020 and full year 2020.

## 5. Loans Receivable

Effective January 1, 2020, the Company elected the fair value option for all of its outstanding loans receivable under a transitional relief upon adoption of ASC 326. The previous distinction of purchased credit-impaired ("PCI") loans and troubled debt restructurings ("TDR") are not applicable under fair value accounting. Refer to Note 12 for additional disclosures on loans receivable carried at fair value under the fair value option.

Loans receivable carried at fair value at September 30, 2020 are as follows:

(\$ in thousands)	September 30, 2020			
	Unpaid Principal Balance	Fair Value	Weighted Average Coupon	Weighted Average Maturity in Years
<i>Fixed rate</i>				
Mortgage loans	\$ 1,623,432	\$ 659,673	7.7 %	0.7
Mezzanine loans	592,120	327,025	11.0 %	0.7
Non-mortgage loans	189,296	172,249	13.9 %	4.5
	<u>2,404,848</u>	<u>1,158,947</u>		
<i>Variable rate</i>				
Mortgage loans	167,161	166,197	3.3 %	0.0
Mezzanine loans	—	—	— %	0.0
	<u>167,161</u>	<u>166,197</u>		
<b>Loans receivable</b>	<u>\$ 2,572,009</u>	<u>\$ 1,325,144</u>		

Loans receivable carried at amortized cost at December 31, 2019 were as follows:

(\$ in thousands)	December 31, 2019			
	Unpaid Principal Balance	Amortized Cost	Weighted Average Coupon	Weighted Average Maturity in Years
<b>Non-PCI Loans</b>				
<i>Fixed rate</i>				
Mortgage loans	\$ 471,472	\$ 492,709	10.7 %	1.6
Mezzanine loans	495,182	494,238	12.6 %	0.6
Non-mortgage loans	149,380	148,623	12.9 %	5.4
	<u>1,116,034</u>	<u>1,135,570</u>		
<i>Variable rate</i>				
Mortgage loans	171,848	172,269	4.1 %	0.3
Mezzanine loans	44,887	44,637	12.7 %	1.6
	<u>216,735</u>	<u>216,906</u>		
	<u>1,332,769</u>	<u>1,352,476</u>		
<b>PCI Loans</b>				
Mortgage loans	1,165,804	248,535		
Allowance for loan losses		(48,187)		
		<u>1,552,824</u>		
Interest receivable		13,504		
<b>Loans receivable</b>	<u>\$ 2,498,573</u>	<u>\$ 1,566,328</u>		

### *Past Due and Nonaccrual Loans*

Loans that are 90 days or more past due as to principal or interest, or where reasonable doubt exists as to timely collection, are generally considered nonperforming and placed on nonaccrual status.

The following table presents the fair value and unpaid principal balance by aging of loans held for investment at September 30, 2020 for which fair value option was elected.

(In thousands)	September 30, 2020		
	Fair Value	Unpaid Principal Balance	Fair Value less Unpaid Principal Balance
Loans receivable—fair value option			
Current or less than 30 days past due	\$ 350,372	\$ 361,387	\$ (11,015)
30-59 days past due	—	—	—
60-89 days past due	—	—	—
90 days or more past due or nonaccrual	974,772	2,210,622	(1,235,850)
	<u>\$ 1,325,144</u>	<u>\$ 2,572,009</u>	<u>\$ (1,246,865)</u>

The following table provides an aging summary of non-PCI loans at carrying values before allowance for loan losses and interest receivable at December 31, 2019:

(In thousands)	December 31, 2019
Non-PCI loans at carrying values before allowance for loan losses	
Current or less than 30 days past due	\$ 1,042,260
30-59 days past due	—
60-89 days past due	—
90 days or more past due or nonaccrual	310,216
	<u>\$ 1,352,476</u>

For the Three and Nine Months Ended September 30, 2019 and as of December 31, 2019

*Troubled Debt Restructuring*

During the three and nine months ended September 30, 2019, there were no loans modified in a troubled debt restructuring ("TDR"), in which the Company provided borrowers, who are experiencing financial difficulties, with concessions in interest rates, payment terms or default waivers.

At December 31, 2019, the Company had one existing TDR loan that was in maturity default with a carrying value before allowance for loan loss and interest receivable of \$37.8 million and an allowance for loan loss of \$37.8 million. The Company had no additional lending commitment on the TDR loan.

*Non-PCI Impaired Loans*

Non-PCI loans, excluding loans carried at fair value, are identified as impaired when it is no longer probable that interest or principal will be collected according to the contractual terms of the original loan agreement. Non-PCI impaired loans include predominantly loans under nonaccrual, performing and nonperforming TDRs, as well as loans in maturity default.

The following table summarizes the non-PCI impaired loans at December 31, 2019:

(In thousands)	Unpaid Principal Balance	Gross Carrying Value before Interest Receivable			Allowance for Loan Losses
		With Allowance for Loan Losses	Without Allowance for Loan Losses	Total	
December 31, 2019	\$ 326,151	\$ 71,754	\$ 259,011	\$ 330,765	\$ 48,146

The average carrying value and interest income recognized on non-PCI impaired loans for the three and nine months ended September 30, 2019 were as follows.

(In thousands)	Three Months Ended September 30, 2019	Nine Months Ended September 30, 2019
Average carrying value before allowance for loan losses and interest receivable	\$ 306,114	\$ 298,925
Total interest income recognized during the period impaired	1,651	5,943
Cash basis interest income recognized	—	447

### Purchased Credit-Impaired Loans

PCI loans are acquired loans with evidence of credit quality deterioration for which it is probable at acquisition that the Company will collect less than the contractually required payments. PCI loans are recorded at the initial investment in the loans and accreted to the estimated cash flows expected to be collected as measured at acquisition date. The excess of cash flows expected to be collected, measured as of acquisition date, over the estimated fair value represents the accretable yield and is recognized in interest income over the remaining life of the loan. The difference between contractually required payments as of the acquisition date and the cash flows expected to be collected, which represents the nonaccretable difference, is not recognized as an adjustment of yield, loss accrual or valuation allowance.

Factors that most significantly affect estimates of cash flows expected to be collected, and accordingly the accretable yield, include: (i) estimate of the remaining life of acquired loans which may change the amount of future interest income; (ii) changes to prepayment assumptions; (iii) changes to collateral value assumptions for loans expected to foreclose; and (iv) changes in interest rates on variable rate loans.

There were no PCI loans acquired in the nine months ended September 30, 2019.

Changes in accretable yield of PCI loans for the nine months ended September 30, 2019 were as follows:

<i>(In thousands)</i>	Nine Months Ended September 30, 2019
Beginning accretable yield	\$ 9,620
Changes in accretable yield	11,647
Accretion recognized in earnings	(9,471)
Effect of changes in foreign exchange rates	(270)
Ending accretable yield	<u>\$ 11,526</u>

At December 31, 2019, there were no PCI loans on the cash basis or cost recovery method for recognition of interest income.

### Allowance for Loan Losses

Allowance for loan losses and related carrying values before interest receivable of loans held for investment at December 31, 2019 were as follows:

<i>(In thousands)</i>	December 31, 2019	
	Allowance for Loan Losses	Carrying Value
Non-PCI loans	\$ 48,146	\$ 71,754
PCI loans	41	17,935
	<u>\$ 48,187</u>	<u>\$ 89,689</u>

Changes in allowance for loan losses for the nine months ended September 30, 2019 are presented below.

<i>(In thousands)</i>	Nine Months Ended September 30, 2019
Allowance for loan losses at January 1	\$ 32,940
Provision for loan losses, net	35,847
Charge-off	(16,929)
Allowance for loan losses at September 30	<u>\$ 51,858</u>

Provision for loan losses by loan type was as follows:

<i>(In thousands)</i>	Three Months Ended September 30, 2019	Nine Months Ended September 30, 2019
Non-PCI loans	\$ 17,228	\$ 30,035
PCI loans	5	5,812
Total provision for loan losses, net	<u>\$ 17,233</u>	<u>\$ 35,847</u>

### **Lending Commitments**

The Company has lending commitments to borrowers pursuant to certain loan agreements in which the borrower may submit a request for funding contingent on achieving certain criteria, which must be approved by the Company as lender, such as leasing, performance of capital expenditures and construction in progress with an approved budget. At September 30, 2020, total unfunded lending commitments was \$133.6 million, of which the Company's share was \$29.5 million, net of amounts attributable to noncontrolling interests.

### **6. Equity and Debt Investments**

The Company's equity investments and debt securities are represented by the following:

<i>(In thousands)</i>	September 30, 2020	December 31, 2019
<b>Equity Investments</b>		
Equity method investments		
Investment ventures	\$ 1,462,730	\$ 1,845,129
Private funds	237,750	142,386
	<u>1,700,480</u>	<u>1,987,515</u>
Other equity investments		
Marketable equity securities	147,051	138,586
Investment ventures	—	91,472
Private funds and non-traded REIT	36,559	38,641
Total equity investments	<u>1,884,090</u>	<u>2,256,214</u>
<b>Debt Securities</b>		
N-Star CDO bonds, available for sale	27,898	54,859
CMBS of consolidated fund, at fair value	—	2,732
Total debt securities	<u>27,898</u>	<u>57,591</u>
<b>Equity and debt investments</b>	<u>\$ 1,911,988</u>	<u>\$ 2,313,805</u>

#### **Equity Investments**

The Company's equity investments represent noncontrolling equity interests in various entities, including investments for which the Company has elected the fair value option.

#### ***Equity Method Investments***

The Company owns a significant interest in CLNC, a publicly-traded REIT that it manages. The Company accounts for its investment under the equity method as it exercises significant influence over operating and financial policies of CLNC through a combination of its ownership interest, its role as the external manager and board representation, but does not control CLNC. The Company also owns equity method investments that are structured as joint ventures with one or more private funds or other investment vehicles managed by the Company, or with third party joint venture partners. These investment ventures are generally capitalized through equity contributions from the members and/or leveraged through various financing arrangements. The Company elected the fair value option to account for its interests in certain investment ventures and limited partnership interests in third party private equity funds (Note 12).

The liabilities of the equity method investment entities may only be settled using the assets of these entities and there is no recourse to the general credit of either the Company or the other investors for the obligations of these investment entities. Neither the Company nor the other investors are required to provide financial or other support in excess of their capital commitments. The Company's exposure to the investment entities is limited to its equity method investment balance.

The Company's investments accounted for under the equity method are summarized below:

(\$ in thousands) Investments <sup>(1)</sup>	Description	Carrying Value at	
		September 30, 2020	December 31, 2019
Colony Credit Real Estate, Inc. <sup>(2)</sup>	Common equity in publicly traded commercial real estate credit REIT managed by the Company and membership units in its operating subsidiary (36.4% ownership)	\$ 365,872	\$ 725,443
RXR Realty, LLC	Common equity in investment venture with a real estate investor, developer and investment manager (sold in February 2020)	—	93,390
Preferred equity	Preferred equity investments with underlying real estate	126,706	138,428
ADC investments	Investments in acquisition, development and construction loans in which the Company participates in residual profits from the projects, and the risk and rewards of the arrangements are more similar to those associated with investments in joint ventures	625,999	543,296
Private funds	General partner and/or limited partner interests in private funds (excluding carried interest allocation)	234,765	115,055
Private funds—carried interest	Disproportionate allocation of returns to the Company as general partner or equivalent based on the extent to which cumulative performance of the fund exceeds minimum return hurdles	410	21,940
Other investment ventures	Interests in 11 investments at September 30, 2020	180,958	127,088
Fair value option	Interests in initial stage ventures, real estate development, hotel co-investments, and limited partnership interests in private equity funds	165,770	222,875
		<u>\$ 1,700,480</u>	<u>\$ 1,987,515</u>

<sup>(1)</sup> Each equity method investment has been determined to be either a VIE for which the Company was not deemed to be the primary beneficiary or a voting interest entity in which the Company does not have the power to control through a majority of voting interest or through other arrangements.

<sup>(2)</sup> CLNC is governed by its board of directors. The Company's role as manager is under the supervision and direction of CLNC's board of directors, which includes representatives from the Company but the majority of whom are independent directors.

### Significant Sales of Equity Method Investments

In February 2020, the Company sold its equity investment in RXR Realty, LLC for net proceeds after taxes of \$179.1 million, recording a gain of \$106.1 million, which is included in equity method earnings.

### Impairment of Equity Method Investments

The Company evaluates its equity method investments for OTTI at each reporting period and recorded impairment of \$26.0 million and \$3.1 million for the three months ended September 30, 2020 and 2019, respectively, and \$323.8 million and \$253.5 million for the nine months ended September 30, 2020 and 2019, respectively. Equity method investments that were written down to fair value during the nine months ended September 30, 2020 and year ended December 31, 2019 had carrying values totaling \$551.2 million and \$745.3 million, respectively, at the time of impairment. Impairment charges were generally determined using recoverable values for investments resolved or sold, or investment values based upon projected exit strategies, other than for CLNC as discussed below.

#### CLNC

*Other-Than-Temporary Impairment ("OTTI")*—In the third quarter of 2020, the Company determined that the decline in CLNC's stock price, closing at \$4.91 per share at September 30, 2020, does not represent further OTTI of its investment in CLNC.

In the second quarters of 2020 and 2019, the Company determined that its investment in CLNC was other-than-temporarily impaired and recorded an impairment charge, included in equity method losses, of \$274.7 million and \$227.9 million, respectively. In each case, the OTTI charge was measured as the excess of carrying value over market value of its investment in CLNC based upon CLNC's closing stock price on the last trading day of the quarter of \$7.02 per share on June 30, 2020 and \$15.50 per share on June 28, 2019.

At June 30, 2020, the Company's investment in CLNC had a carrying value of \$611.2 million prior to the OTTI charge, which was in excess of its market value of \$336.5 million. In March and April 2020, there was a significant decrease in CLNC's stock price, which reflected the significant volatility in equity markets and the significant decline in equity prices, for mortgage REITs and across industries, due to the COVID-19 crisis. Along with other publicly traded mortgage REITs, CLNC has seen a rebound in its stock price in May and June 2020, but its stock continues to trade below pre-COVID-19 levels. As of June 30, 2020, there was not a large disparity between the Company's carrying value in CLNC and CLNC's internal estimated NAV. Nevertheless, with increasing uncertainty over the extent and duration of the COVID-19 crisis, and the timeline for a recovery in the U.S economy, the Company believes that it is unlikely that the CLNC stock will recover and trade closer to its NAV in the near term. Accordingly, the Company also believes that it would

be unlikely that the shortfall in market value relative to carrying value of its investment in CLNC would recover in the near term. As a result, the Company recognized OTTI on its investment in CLNC.

**Basis Difference**—The impairment charges resulted in a basis difference between the Company's carrying value of its investment in CLNC and the Company's proportionate share of CLNC's book value of equity. The impairment charge was applied to the Company's investment in CLNC as a whole and was not determined based on an impairment assessment of individual assets held by CLNC. In order to address this basis difference, the impairment charges were generally allocated on a relative fair value basis across CLNC's various investments. Accordingly, for any future impairment charges taken by CLNC on these investments, the Company's share thereof will be applied to reduce the basis difference and will not be recorded as an equity method loss until such time the basis difference associated with the respective investments has been fully eliminated. For the three and nine months ended September 30, 2020, the Company reduced its share of net loss from CLNC by \$21.9 million and \$49.8 million, respectively, representing the basis difference allocated to investments that were resolved or impaired by CLNC during these periods. The remaining basis difference at September 30, 2020 was \$311.7 million.

### **Other Equity Investments**

Other equity investments consist of the following:

**Marketable Equity Securities**—These are primarily equity investment in a third party managed mutual fund and publicly traded equity securities held by a consolidated private open-end fund. The equity securities of the consolidated fund comprise listed stocks primarily in the U.S. and to a lesser extent, in Europe, and predominantly in the digital real estate and telecommunication sectors.

**Investment Ventures**—In April 2020, the Company recapitalized its co-investment venture, which holds common equity in the Albertsons supermarket chain, and reduced its interest in the venture from 50% to 2%, generating total proceeds of \$148.5 million and realizing a gain of \$60.7 million to the venture, of which the Company's share is 50%. The interest recapitalized by the venture entitles the Company and its original co-investors to potential future profit allocation, which takes the form of an allocation of returns from the venture in excess of a minimum return threshold achieved by the new venture partner. The potential future profit allocation, of which the Company shares in 49%, is assigned a fair value each reporting period assuming a liquidation of the venture as of the reporting date. Such fair value may fluctuate over time based upon achievement of the minimum return threshold. Additionally, a portion of the venture's interest in Albertsons was monetized in conjunction with Albertsons' recapitalization and subsequent initial public offering in June 2020. The Company's remaining equity interest in the venture is valued based upon the publicly traded stock price of Albertsons Companies, Inc. ("ACI"), adjusted for liquidity restrictions attributable to lock-up provisions on the venture's holdings in ACI.

**Private Funds and Non-Traded REIT**—This represents interests in a Company-sponsored private fund and a non-traded REIT, NorthStar Healthcare Income, Inc. ("NorthStar Healthcare"), and limited partnership interest in a third party private fund sponsored by an equity method investee, for which the Company elected the NAV practical expedient (Note 12).

### **Investment Commitments**

**Investment Ventures**—Pursuant to the operating agreements of certain unconsolidated ventures, the venture partners may be required to fund additional amounts for future investments, unfunded lending commitments, ordinary operating costs, guaranties or commitments of the venture entities. The Company also has lending commitments under ADC arrangements which are accounted for as equity method investments. At September 30, 2020, the Company's share of these commitments was \$18.9 million.

**Private Funds**—At September 30, 2020, the Company has unfunded commitments of \$147.7 million to Company sponsored and third party sponsored funds.

### **Debt Securities**

The Company's investment in debt securities is composed of available-for-sale N-Star CDO bonds, which are investment-grade subordinate bonds retained by NRF from its sponsored collateralized debt obligations ("CDOs"), and CDO bonds originally issued by NRF that were subsequently repurchased by NRF at a discount. These CDOs are collateralized primarily by commercial real estate ("CRE") debt and CRE securities.

Commercial mortgage-backed securities ("CMBS") held by a consolidated sponsored investment company, which is in the process of dissolution, were sold in the third quarter of 2020 and liquidating distributions made to its shareholders.

### AFS Debt Securities

The following tables summarize the balance and activities of the N-Star CDO bonds.

(in thousands)	Amortized Cost Without Allowance for Credit Loss	Allowance for Credit Loss	Gross Cumulative Unrealized		Fair Value
			Gains	Losses	
September 30, 2020	\$ 46,739	\$ (23,973)	\$ 5,132	\$ —	\$ 27,898
December 31, 2019	46,002	NA	8,857	—	54,859

There were no sales of N-Star CDO bonds during the nine months ended September 30, 2020 and year ended December 31, 2019.

These CDOs have long dated stated maturities through 2037 and 2041, however, the Company expects the N-Star CDO bonds to have remaining future cash flows up to 3.3 years from September 30, 2020.

### Impairment of AFS Debt Securities

AFS debt securities are considered to be impaired if their fair value is less than their amortized cost basis.

- If the Company intends to sell or is more likely than not required to sell the debt security before recovery of its amortized cost, the entire impairment amount is recognized in earnings within other gain (loss) as a write-off of the amortized cost basis of the debt security.
- If the Company does not intend to sell or is not more likely than not required to sell the debt security before recovery of its amortized cost:
  - Upon adoption of CECL effective January 1, 2020, the credit component of the loss is recognized in earnings within other gain (loss) as an allowance for credit loss, which may be subject to reversal for subsequent recoveries in fair value. The non-credit loss component is recognized in other comprehensive income or loss ("OCI"). The allowance is charged off against the amortized cost basis of the security if in a subsequent period, the Company intends to or is more likely than not required to sell the security, or if the Company deems the security to be uncollectible.
  - Prior to adoption of CECL on January 1, 2020, the Company evaluated if the decline in fair value is other than temporary, in which case, the credit loss component was recognized in earnings as a write-off of the amortized cost basis of the debt security that is not subject to subsequent reversal. The non-credit loss component was recognized in OCI. If the impairment is not other-than-temporary, the entire unrealized loss is recognized in OCI.

2020—For the three and nine months ended September 30, 2020, the Company recorded allowance for credit loss in other loss of \$1.7 million and \$24.0 million, respectively. The credit loss was determined based upon an analysis of the present value of contractual cash flows expected to be collected from the underlying collateral as compared to the amortized cost basis of the security. At September 30, 2020, there were no AFS debt securities in unrealized loss positions without allowance for credit loss.

2019—The Company recorded OTTI loss on AFS debt securities of \$6.4 million and \$7.1 million in other loss for the three and nine months ended September 30, 2019, respectively. The losses were due to an adverse change in expected cash flows on N-Star CDO bonds. The Company believed that it was not likely that it would recover the full amortized cost on these securities, primarily based upon the performance and value of the underlying collateral. At December 31, 2019, there were no AFS debt securities with unrealized loss in AOCI.

## 7. Goodwill, Deferred Leasing Costs and Other Intangibles

### Goodwill

The following table presents changes in the carrying value of goodwill.

(In thousands)	Nine Months Ended September 30,	
	2020	2019
Beginning balance	\$ 1,452,891	\$ 1,514,561
Business combination (Note 3) <sup>(1)</sup>	(7,134)	247,248
Impairment	(594,000)	(387,000)
Ending balance	\$ 851,757	\$ 1,374,809

<sup>(1)</sup> Includes the effects of measurement period adjustments within a one year period following the consummation of a business combination.

In the first quarter of 2020, \$51.0 million of goodwill was reassigned from the Other segment to the Digital Investment Management segment to reflect the value of expected future investment management economics associated with certain existing investment vehicles that were repurposed to execute an investment strategy focused on the digital sector, as well as a team of professionals dedicated to the strategy. The amount that was reassigned to the digital segment was determined based upon the fair value of this digital strategy platform relative to the overall fair value of the other investment management reporting unit prior to the reassignment.

Goodwill balance by reportable segment is as follows.

(In thousands)	September 30, 2020	December 31, 2019
Balance by reportable segment:		
Digital Operating	\$ 471,948	\$ 479,082
Digital Investment Management <sup>(1)</sup>	298,248	247,248
Other	81,561	726,561
	\$ 851,757	\$ 1,452,891

<sup>(1)</sup> At September 30, 2020 and December 31, 2019, goodwill of \$140.5 million related to the DBH acquisition was deductible for income tax purposes.

### Impairment of Goodwill

#### Digital Segments

The Company believes that the current shift and increased reliance on a digital economy positions the Company's digital business for further growth. Therefore, the Company determined that there were no indicators of impairment on goodwill in the digital reportable segments.

#### Other Segment

*Three Months Ended September 30, 2020*—The Company determined that there were no indicators of additional impairment in the third quarter of 2020 on the remaining balance of goodwill in its other investment management business.

*Six Months Ended June 30, 2020*—In connection with the review and preparation of the financial statements, the Company determined that the deterioration in economic conditions as a result of COVID-19 and the Company's acceleration of its digital transformation in the second quarter of 2020 represent indicators of impairment to the goodwill in its other investment management business. Accordingly, the Company updated its quantitative test of the other investment management goodwill, which indicated that the carrying value of the other investment management reporting unit including goodwill at March 31, 2020 and at June 30, 2020 exceeded its estimated fair value at the respective balance sheet date. As a result, the Company recognized impairment loss on its other investment management goodwill of \$79.0 million and \$515.0 million in the first and second quarters of 2020, respectively.

Valuation of the other investment management reporting unit contemplated a transition from certain of the Company's non-digital management business to a digitally-focused investment management business beginning in the fourth quarter of 2019. As discussed in Note 1, the Company determined in the second quarter of 2020 that it would accelerate the transition and focus on growing its digital investment management business. Consequently, as of June 30, 2020, the Company did not ascribe any value to future capital raising potential of the other investment management reporting unit, which represents the credit and opportunity fund management business, as it is no longer part of the

Company's long-term strategy. Regarding the CLNC management contract, the COVID-19 crisis has caused the Company to postpone its plan to sell the contract. At June 30, 2020, the contract is valued based upon its contractual termination value, which the Company believes approximates fair value.

As previously discussed, the acceleration of a digital strategy, combined with the negative economic effects of COVID-19 on property operations and market values in 2020, resulted in significant reduction in value of the Company's non-digital balance sheet. Such reduction in turn translated into a significant decrease in value of the other investment management reporting unit. The Company had previously considered the hypothetical value of its non-digital investment management business in a spinoff that would result in the Company becoming externally managed, and assigned a value to internally managing the Company's non-digital balance sheet assets. Under current circumstances, the Company determined that as of June 30, 2020, the hypothetical contract would have inconsequential, if any, remaining value to a market participant, and wrote off the value of internally managing its non-digital balance sheet.

The remaining balance of the other investment management goodwill in the Other segment of \$81.6 million as of September 30, 2020 is expected to be fully written off in the near future when a runoff of the credit management business is substantially completed.

2019—In the third and fourth quarters of 2019, the Company recognized impairment losses to its other investment management goodwill of \$387.0 million and \$401.0 million, respectively, reflecting:

- loss of future fee income from sale of the industrial business, and reduction in CLNC's fee base to reflect its reduced book value in the third quarter of 2019; and
- beginning of the Company's transition to a digital focused investment management business in the fourth quarter of 2019.

### Deferred Leasing Costs, Other Intangible Assets and Intangible Liabilities

Deferred leasing costs and identifiable intangible assets and liabilities, excluding those related to assets held for disposition, are as follows.

(In thousands)	September 30, 2020			December 31, 2019		
	Carrying Amount (Net of Impairment)	Accumulated Amortization <sup>(1)</sup>	Net Carrying Amount <sup>(1)</sup>	Carrying Amount (Net of Impairment)	Accumulated Amortization <sup>(1)</sup>	Net Carrying Amount <sup>(1)</sup>
<b>Deferred Leasing Costs and Intangible Assets</b>						
Deferred leasing costs and lease related intangible assets <sup>(2)</sup>	\$ 1,179,939	\$ (196,594)	\$ 983,345	\$ 424,987	\$ (123,649)	\$ 301,338
Investment management intangibles <sup>(3)</sup>	277,761	(123,055)	154,706	285,233	(96,466)	188,767
Customer relationships <sup>(4)</sup>	73,400	(4,818)	68,582	71,000	(250)	70,750
Trade names <sup>(5)</sup>	39,600	(3,504)	36,096	39,600	(185)	39,415
Other <sup>(6)</sup>	38,325	(6,015)	32,310	32,285	(398)	31,887
Total deferred leasing costs and intangible assets	\$ 1,609,025	\$ (333,986)	\$ 1,275,039	\$ 853,105	\$ (220,948)	\$ 632,157
<b>Intangible Liabilities</b>						
Lease intangible liabilities <sup>(2)</sup>	\$ 186,539	\$ (76,923)	\$ 109,616	\$ 174,208	\$ (62,724)	\$ 111,484

<sup>(1)</sup> For intangible assets and intangible liabilities recognized in connection with business combinations, purchase price allocations may be subject to adjustments during the measurement period, not to exceed 12 months from date of acquisition, based upon new information obtained about facts and circumstances that existed at time of acquisition (Note 3). Amounts are presented net of impairments and write-offs.

<sup>(2)</sup> Lease intangible assets are composed of in-place leases, above-market leases and lease incentives. Lease intangible liabilities are composed of below-market leases.

<sup>(3)</sup> Composed of investment management contracts and investor relationships.

<sup>(4)</sup> Represent DataBank customer relationships.

<sup>(5)</sup> Finite-lived trade names are amortized over estimated useful lives of 5 to 10 years. The Colony trade name with a carrying value of \$15.5 million is determined to have an indefinite useful life and is not currently subject to amortization.

<sup>(6)</sup> Represents primarily DataBank data center service contracts and hotel franchise agreements which are amortized over the term of the respective contracts or agreements, and value of certificates of need associated with certain wellness infrastructure portfolios which are not amortized.

### Impairment of Identifiable Intangible Assets

In the three and nine months ended September 30, 2020 and in the fourth quarter of 2019, management contract intangible assets were impaired \$8.2 million and \$8.6 million, respectively, and written down to aggregate fair value of \$12.4 million and \$62.4 million at the time of impairment, respectively. Fair value was generally based upon revised future net cash flows to be generated over the remaining life of the respective management contracts, representing Level 3 fair value.

Real estate intangibles are subject to impairment as part of the real estate asset group, as discussed in Note 4.

### Amortization of Intangible Assets and Liabilities

The following table summarizes amortization of deferred leasing costs and finite-lived intangible assets and intangible liabilities, excluding amounts related to discontinued operations (Note 16):

(In thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Net increase to rental income <sup>(1)</sup>	\$ 370	\$ 1,921	\$ 5,002	\$ 5,662
Amortization expense				
Deferred leasing costs and lease intangibles	\$ 11,189	\$ 7,580	\$ 69,058	\$ 24,119
Investment management intangibles	8,902	63,754	26,585	77,656
Customer relationships	1,572	1,327	4,569	2,999
Trade name	1,098	78	3,320	78
Other	4,169	80	5,617	184
	\$ 26,930	\$ 72,819	\$ 109,149	\$ 105,036

<sup>(1)</sup> Represents the impact of amortizing above- and below-market leases and lease incentives.

The following table presents the future amortization of deferred leasing costs and finite-lived intangible assets and intangible liabilities, excluding those related to assets and liabilities held for disposition.

(In thousands)	Year Ending December 31,						
	Remaining 2020	2021	2022	2023	2024	2025 and Thereafter	Total
Net increase (decrease) to rental income	\$ 123	\$ 3,350	\$ 4,671	\$ 5,857	\$ (6,380)	\$ (10,799)	\$ (3,178)
Amortization expense	56,992	201,216	156,612	128,763	94,469	487,474	1,125,526

## 8. Assets and Related Liabilities Held for Disposition

Total assets and related liabilities held for disposition are summarized below.

Assets and liabilities held for non-sale disposition in all periods presented represent a portfolio of 48 hotels in the Hospitality segment that has been placed in receivership following the lender's acceleration of the underlying debt that was defaulted in April 2020. Control over the operations and any eventual sale of these hotels has been transferred to the receivers, who are acting for the benefit of the lender. The Company has not been released from its debt obligations, however, the debt is non-recourse to the Company.

(In thousands)	September 30, 2020			December 31, 2019		
	Disposition by Sale	Non-Sale Disposition	Total Held for Disposition	Disposition by Sale	Non-Sale Disposition	Total Held for Disposition
<b>Assets</b>						
Restricted cash	\$ 59,802	\$ 14,029	\$ 73,831	\$ 122,663	\$ 5,782	\$ 128,445
Real estate, net	3,385,797	751,430	4,137,227	4,421,888	1,019,849	5,441,737
Loans receivable	42,985	—	42,985	—	—	—
Deferred leasing costs and intangible assets, net	29,919	437	30,356	37,399	2,533	39,932
Other assets	74,437	20,722	95,159	97,219	35,752	132,971
<b>Total assets held for disposition</b>	<b>\$ 3,592,940</b>	<b>\$ 786,618</b>	<b>\$ 4,379,558</b>	<b>\$ 4,679,169</b>	<b>\$ 1,063,916</b>	<b>\$ 5,743,085</b>
<b>Liabilities</b>						
Debt, net <sup>(1)</sup>	\$ 2,932,982	\$ 780,000	\$ 3,712,982	\$ 2,926,449	\$ 772,485	\$ 3,698,934
Lease intangibles and other liabilities	153,354	42,138	195,492	141,426	22,161	163,587
<b>Total liabilities related to assets held for disposition</b>	<b>\$ 3,086,336</b>	<b>\$ 822,138</b>	<b>\$ 3,908,474</b>	<b>\$ 3,067,875</b>	<b>\$ 794,646</b>	<b>\$ 3,862,521</b>

<sup>(1)</sup> Represents debt related to assets held for disposition if the debt is expected to be assumed by the acquirer upon sale or the debt is expected to be extinguished through lender's assumption of underlying collateral.

Included in the table above are assets and liabilities held for sale and for non-sale disposition that are related to discontinued operations (Note 16), as follows:

(In thousands)	September 30, 2020		December 31, 2019	
	Hotel	Industrial	Hotel	Industrial
<b>Assets</b>				
Restricted cash	\$ 69,033	\$ —	\$ 112,923	\$ —
Real estate, net	3,517,983	342,758	4,658,477	342,758
Deferred leasing costs and intangible assets, net	1,851	23,599	6,802	25,371
Other assets	80,198	4,247	111,229	3,917
<b>Total assets held for disposition—discontinued operations</b>	<b>\$ 3,669,065</b>	<b>\$ 370,604</b>	<b>\$ 4,889,431</b>	<b>\$ 372,046</b>
<b>Liabilities</b>				
Debt, net	\$ 3,479,355	\$ 233,627	\$ 3,465,990	\$ 232,944
Lease intangibles and other liabilities	165,010	2,230	128,155	2,090
<b>Total liabilities related to assets held for disposition—discontinued operations</b>	<b>\$ 3,644,365</b>	<b>\$ 235,857</b>	<b>\$ 3,594,145</b>	<b>\$ 235,034</b>

### Non-Recourse Investment-Level Debt in Default

Investment-level secured debt, which is non-recourse to the Company, totaling \$1.3 billion related to hotel assets held for disposition was in default as of the date of this filing, driven by the economic fallout from COVID-19. Of this amount, the Company is in negotiation with lenders to restructure \$0.5 billion of defaulted hotel debt, which is expected to be assumed by the buyer upon sale of the underlying hotel assets. The remaining \$0.8 billion of defaulted hotel debt relates to debt that has been accelerated by the lender, as discussed above.

In August 2020, \$0.8 billion of debt related to the THL Hotel Portfolio that is held for sale was modified in a troubled debt restructure with no resulting gain from the restructuring. The debt is no longer in default and will be assumed by the buyer upon sale of the THL Hotel Portfolio.

## 9. Restricted Cash, Other Assets and Other Liabilities

### Restricted Cash

The following table summarizes the Company's restricted cash balance:

(In thousands)	September 30, 2020	December 31, 2019
Capital expenditures reserves <sup>(1)</sup>	\$ 13,802	\$ 18,314
Real estate escrow reserves <sup>(2)</sup>	21,247	15,455
Borrower escrow deposits	6,707	8,079
Lender restricted cash <sup>(3)</sup>	87,155	27,409
Other <sup>(4)</sup>	38,198	21,806
Total restricted cash	<u>\$ 167,109</u>	<u>\$ 91,063</u>

<sup>(1)</sup> Represents primarily cash held by lenders for capital improvements, furniture, fixtures and equipment, tenant improvements, lease renewal and replacement reserves related to real estate assets.

<sup>(2)</sup> Represents primarily insurance, real estate tax, repair and maintenance, tenant security deposits and other escrows related to real estate assets.

<sup>(3)</sup> Represents operating cash from the Company's investment properties that are restricted by lenders in accordance with respective debt agreements.

<sup>(4)</sup> Includes investment sales proceeds held in escrow.

### Other Assets

The following table summarizes the Company's other assets:

(In thousands)	September 30, 2020	December 31, 2019
Straight-line rents	\$ 52,878	\$ 37,230
Investment deposits and pending deal costs	14,844	32,994
Prefunded capital expenditures for Vantage SDC	75,235	—
Deferred financing costs, net <sup>(1)</sup>	2,448	2,794
Derivative assets (Note 11)	6,007	21,382
Prepaid taxes and deferred tax assets, net	53,171	69,328
Receivables from resolution of investments <sup>(2)</sup>	3,049	63,984
Operating lease right-of-use asset, net	178,603	180,486
Accounts receivable, net <sup>(3)</sup>	63,241	53,387
Prepaid expenses	33,491	22,417
Other assets	22,965	29,219
Fixed assets, net <sup>(4)</sup>	28,802	44,768
Total other assets	<u>\$ 534,734</u>	<u>\$ 557,989</u>

<sup>(1)</sup> Deferred financing costs relate to revolving credit arrangements.

<sup>(2)</sup> Represents proceeds from loan repayments and real estate sales held in escrow, and sales of equity investments pending settlement.

<sup>(3)</sup> Includes receivables from tenants, resident fees, property level insurance, and asset management fees, net of allowance for doubtful accounts, where applicable, of \$1.5 million at September 30, 2020 and \$0.1 million at December 31, 2019.

<sup>(4)</sup> Reflects impairment of \$12.3 million on the corporate aircraft in the second quarter of 2020 to estimated recoverable value based upon a shortened holding period.

### Deferred Tax Asset

**Valuation Allowance**—During the nine months ended September 30, 2020, a net valuation allowance of \$60.3 million was established, including \$26.7 million of allowance related to deferred tax asset in the Company's discontinued hotel operations (Note 16), primarily as a result of uncertainties in future realization of tax benefit on net operating losses in the hotel and healthcare businesses, taking into consideration impairment losses on these assets. At September 30, 2020, total valuation allowance was \$92.4 million, of which \$32.5 million related to deferred tax asset of the Company's hotel business that is held for disposition (Note 8).

**Effect of CARES Act**—The Coronavirus Aid, Relief and Economic Security Act ("CARES Act") was enacted on March 27, 2020. Among other things, the CARES Act temporarily removed the 80% limitation on the amount of taxable income that can be offset with a net operating loss ("NOL") for 2019 and 2020, and allowed for a carryback of NOL generated in years 2018 through 2020 to the five taxable years preceding the taxable year of loss. The Company has approximately \$28.1 million of NOL available for carryback under the CARES Act and recorded \$3.3 million of income tax benefit to

reflect the carryback. The Company also reclassified \$8.8 million of deferred tax asset to current tax receivable as of September 30, 2020, which reflects refunds received in July 2020 or expected to be received in the next twelve months as a result of the carryback.

### Accrued and Other Liabilities

The following table summarizes the Company's accrued and other liabilities:

(In thousands)	September 30, 2020	December 31, 2019
Tenant security deposits and payable	\$ 13,676	\$ 12,457
Borrower escrow deposits	6,707	9,903
Deferred income <sup>(1)</sup>	40,067	30,040
Interest payable	28,072	28,902
Derivative liabilities (Note 11)	96,944	127,531
Current and deferred income tax liability	170,962	222,206
Operating lease liability	159,026	156,147
Accrued compensation	56,546	72,859
Accrued carried interest and incentive fee compensation	1,151	50,360
Accrued real estate and other taxes	34,444	22,091
Accounts payable and accrued expenses	111,840	91,614
Other liabilities	70,431	63,409
<b>Total accrued and other liabilities</b>	<b>\$ 789,866</b>	<b>\$ 887,519</b>

<sup>(1)</sup> Represents primarily prepaid rental income, prepaid interest from borrowers held in reserve accounts, and deferred management fees, primarily from digital investment vehicles. Deferred management fees totaling \$13.4 million at September 30, 2020 and \$18.3 million at December 31, 2019 will be recognized as fee income over a weighted average period of 1.6 years and 1.2 years, respectively. Deferred management fees recognized as income of \$6.2 million and \$0.3 million in the three months ended September 30, 2020 and 2019, respectively, and \$12.0 million and \$1.0 million in the nine months ended September 30, 2020 and 2019, respectively, pertain to the deferred management fee balance at the beginning of each respective period.

### 10. Debt

The Company's debt consists of the following components, excluding debt related to assets held for disposition that is expected to be assumed by the counterparty upon disposition, which is included in liabilities related to assets held for disposition (Note 8).

(In thousands)	Corporate Credit Facility <sup>(1)</sup>	Convertible and Exchangeable Senior Notes	Secured Debt <sup>(2)</sup>	Junior Subordinated Notes	Total Debt
<b>September 30, 2020</b>					
Debt at amortized cost					
Principal	\$ —	\$ 545,107	\$ 6,340,635	\$ 280,117	\$ 7,165,859
Premium (discount), net	—	(6,913)	47,648	(77,199)	(36,464)
Deferred financing costs	—	(2,598)	(40,803)	—	(43,401)
	<u>\$ —</u>	<u>\$ 535,596</u>	<u>\$ 6,347,480</u>	<u>\$ 202,918</u>	<u>\$ 7,085,994</u>
<b>December 31, 2019</b>					
Debt at amortized cost					
Principal	\$ —	\$ 616,105	\$ 4,766,594	\$ 280,117	\$ 5,662,816
Premium (discount), net	—	2,243	(12,598)	(78,927)	(89,282)
Deferred financing costs	—	(4,296)	(51,320)	—	(55,616)
	<u>\$ —</u>	<u>\$ 614,052</u>	<u>\$ 4,702,676</u>	<u>\$ 201,190</u>	<u>\$ 5,517,918</u>

<sup>(1)</sup> Deferred financing costs related to the corporate credit facility are included in other assets.

<sup>(2)</sup> Debt principal totaling \$180.2 million at September 30, 2020 and \$265.6 million at December 31, 2019 relates to financing of assets held for disposition, and are expected to be repaid upon disposition of the respective underlying assets. Debt associated with assets held for disposition that is expected to be assumed by the counterparty upon disposition is included in liabilities related to assets held for disposition (Note 8).

The following table summarizes certain information about debt carried at amortized cost.

(\$ in thousands)	Fixed Rate			Variable Rate			Total		
	Outstanding Principal	Weighted Average Interest Rate (Per Annum) <sup>(4)</sup>	Weighted Average Years Remaining to Maturity <sup>(5)</sup>	Outstanding Principal	Weighted Average Interest Rate (Per Annum) <sup>(4)</sup>	Weighted Average Years Remaining to Maturity <sup>(5)</sup>	Outstanding Principal	Weighted Average Interest Rate (Per Annum) <sup>(4)</sup>	Weighted Average Years Remaining to Maturity <sup>(5)</sup>
<b>September 30, 2020</b>									
<b>Recourse</b>									
Corporate credit facility	\$ —	N/A	N/A	\$ —	N/A	1.3	\$ —	N/A	1.3
Convertible and exchangeable senior notes <sup>(1)</sup>	545,107	5.36 %	3.9	—	N/A	N/A	545,107	5.36 %	3.9
Junior subordinated debt <sup>(2)</sup>	—	N/A	N/A	280,117	3.10 %	15.7	280,117	3.10 %	15.7
Secured debt <sup>(3)</sup>	33,388	5.02 %	5.2	—	N/A	N/A	33,388	5.02 %	5.2
	<u>578,495</u>			<u>280,117</u>			<u>858,612</u>		
<b>Non-recourse <sup>(6)</sup></b>									
Secured debt									
Digital Operating	1,711,314	3.89 %	3.0	835,045	4.67 %	3.8	2,546,359	4.15 %	3.3
Wellness Infrastructure <sup>(7)</sup>	403,490	4.55 %	4.4	2,370,198	4.00 %	3.7	2,773,688	4.08 %	3.8
Other	154,850	4.20 %	2.6	832,350	2.97 %	2.2	987,200	3.17 %	2.3
	<u>2,269,654</u>			<u>4,037,593</u>			<u>6,307,247</u>		
	<u>\$ 2,848,149</u>			<u>\$ 4,317,710</u>			<u>\$ 7,165,859</u>		
<b>December 31, 2019</b>									
<b>Recourse</b>									
Corporate credit facility	\$ —	N/A	N/A	\$ —	N/A	2.0	\$ —	N/A	2.0
Convertible and exchangeable senior notes <sup>(1)</sup>	616,105	4.27 %	2.0	—	N/A	N/A	616,105	4.27 %	2.0
Junior subordinated debt <sup>(2)</sup>	—	N/A	N/A	280,117	4.77 %	16.4	280,117	4.77 %	16.4
Secured debt <sup>(3)</sup>	35,072	5.02 %	5.9	—	N/A	N/A	35,072	5.02 %	5.9
	<u>651,177</u>			<u>280,117</u>			<u>931,294</u>		
<b>Non-recourse <sup>(6)</sup></b>									
Secured debt									
Digital Operating	—	N/A	N/A	539,155	6.98 %	4.8	539,155	6.98 %	4.8
Wellness Infrastructure <sup>(7)</sup>	405,980	4.55 %	5.1	2,547,726	5.22 %	4.3	2,953,706	5.13 %	4.4
Other	151,777	4.26 %	3.4	1,086,884	3.24 %	2.6	1,238,661	3.37 %	2.7
	<u>557,757</u>			<u>4,173,765</u>			<u>4,731,522</u>		
	<u>\$ 1,208,934</u>			<u>\$ 4,453,882</u>			<u>\$ 5,662,816</u>		

<sup>(1)</sup> Includes the 5.375% exchangeable senior notes which is an obligation of NRF Holdco, LLC as the issuer, a subsidiary of Colony Capital, Inc., as described further below.

<sup>(2)</sup> Represents an obligation of NRF Holdco, LLC as the junior subordinated debt was issued by certain of its subsidiaries, as described further below. Accordingly, Colony Capital, Inc. and its operating company, Colony Capital Operating Company, LLC, do not act as guarantors.

<sup>(3)</sup> The fixed rate recourse debt is secured by the Company's aircraft.

<sup>(4)</sup> Calculated based upon outstanding debt principal at balance sheet date and for variable rate debt, the applicable index plus spread at balance sheet date.

<sup>(5)</sup> Calculated based upon initial maturity dates of the respective debt, or extended maturity dates if extension criteria are met and extension option is at the Company's discretion as described above.

<sup>(6)</sup> Investment-level secured debt that is non-recourse to the Company of \$45.0 million financing wellness infrastructure assets and \$114.0 million financing the Other Equity and Debt portfolio in the Other segment based on outstanding balance at September 30, 2020 (\$235.6 million in total across both segments at December 31, 2019), was in default as of the date of this filing. The wellness infrastructure debt is expected to be repaid through a sale of the underlying property that is currently under negotiation. Of the defaulted debt in the Other Equity and Debt portfolio, the Company has received notice of acceleration on \$21.3 million of debt and the underlying property has been placed in receivership. In connection with the remaining defaulted debt, the Company is negotiating with its lenders to restructure the debt or make other arrangements, as appropriate, with no assurance that the Company will be successful in any of the negotiations.

<sup>(7)</sup> Previously referred to as Healthcare.

### *Conveyance to Lender*

In August 2020, the Company indirectly conveyed the equity of certain of its wellness infrastructure borrower subsidiaries, comprising 36 properties in its senior housing operating portfolio with a carrying value of \$156.3 million and \$157.5 million of outstanding principal (\$156.7 million carrying value) of previously defaulted wellness infrastructure debt, to an affiliate of the lender, which released the Company from all rights and obligations with respect to those wellness infrastructure assets and corresponding debt. The conveyance of equity in full satisfaction of the outstanding debt was deemed to be a troubled debt restructuring that resulted in an immaterial gain.

### **Corporate Credit Facility**

On June 29, 2020, the OP entered into the Fourth Amendment (the "Amendment") to the Second Amended and Restated Credit Agreement, dated as of January 10, 2017 (as amended, supplemented or otherwise modified from time to time prior to the date hereof, the "Credit Agreement"), with JPMorgan Chase Bank, N.A., as administrative agent, and the several lenders from time to time party thereto.

The Amendment modified the aggregate amount of revolving commitments available under the Credit Agreement to \$500 million (previously \$750 million). The credit facility is scheduled to mature in January 2021, with two 6-month extension options (representing no change to the overall term due to the Amendment), each subject to a fee of 0.10% of the commitment amount upon exercise. In the event that the Company exercises its first extension option, the aggregate amount of revolving commitments available under the Credit Agreement will be reduced to \$400 million on March 31, 2021.

Pursuant to the Amendment, advances under the Credit Agreement accrue interest at a per annum rate equal to, at the Company's election, either LIBOR plus a margin of 2.50% (previously 2.25%), or a base rate determined according to a prime rate or federal funds rate plus a margin of 1.50% (previously 1.25%). In the event that the OP exercises the first extension option, the foregoing rates will be permanently increased by 0.25% for periods from and after January 11, 2021. Unused amounts under the credit facility accrue a per annum commitment fee of 0.35%.

The maximum amount available to be drawn at any time under the credit facility is limited by a borrowing base of certain investment assets, with the valuation of such investment assets generally determined according to a percentage of adjusted net book value or a multiple of base management fee EBITDA (as defined in the Credit Agreement). As of the date of this filing, the full \$500 million is available to be drawn under the facility.

The Amendment provided for modifications to the financial covenants and the borrowing base including, among other things: exclusion of certain non-recourse debt and related assets in the calculation of certain financial ratios (such assets, the "Specified Excluded Assets"), exclusion of EBITDA and fixed charges of Specified Excluded Assets in the calculation of the OP's fixed charge coverage ratio, which must exceed 1.3 to 1.0, reduction of the minimum tangible net worth covenant from \$4.55 billion to \$1.74 billion, which must exclude the net worth of Specified Excluded Assets, and modification to the borrowing base to increase capacity for digital investment management and include digital infrastructure investments. As of September 30, 2020 and through the date of this filing, the Company was in compliance with all of the financial covenants.

The Credit Agreement also contains various additional affirmative and negative covenants, including financial covenants that require the Company to maintain minimum tangible net worth, liquidity levels and financial ratios, as defined in the Credit Agreement.

Further, as a result of modifications to the permitted investments and restricted payment provisions in the Amendment, during the term of the Credit Agreement, the Company is prohibited from, among other things, (i) making any investments other than (A) investments in digital infrastructure assets and (B) pre-existing obligations and protective investments in existing assets to preserve, administer or otherwise realize on such investment, (ii) repurchasing capital stock of the Company and (iii) paying dividends, other than for (A) paying dividends to maintain the Company's status as a REIT, (B) reducing the payment of income taxes and (C) paying dividends on the Company's preferred equity.

Certain of the Company's subsidiaries guarantee the obligations of the Company under the Credit Agreement. As security for the advances under the Credit Agreement, the Company and some of its affiliates pledged their equity interests in certain subsidiaries through which the Company directly or indirectly owns substantially all of its assets.

The Credit Agreement also includes customary events of default, in certain cases subject to reasonable and customary periods to cure. The occurrence of an event of default may result in the termination of the credit facility, accelerate the Company's repayment obligations, in certain cases limit the Company's ability to make distributions, and allow the lenders to exercise all rights and remedies available to them with respect to the collateral. There have been no events of default since the inception of the credit facility.

### Convertible and Exchangeable Senior Notes

Convertible and exchangeable senior notes (collectively, the senior notes) outstanding as of September 30, 2020 are as follows, each representing senior unsecured obligations of the respective issuers of the senior notes:

Description	Issuance Date	Due Date	Interest Rate (per annum)	Conversion or Exchange Price (per share of common stock)	Conversion or Exchange Ratio (in shares) <sup>(1)</sup>	Conversion or Exchange Shares (in thousands)	Earliest Redemption Date	Outstanding Principal	
								September 30, 2020	December 31, 2019
<b>Issued by Colony Capital, Inc.</b>									
5.00% Convertible Senior Notes	April 2013	April 15, 2023	5.00 %	\$ 15.76	63.4700	12,694	April 22, 2020	\$ 200,000	\$ 200,000
3.875% Convertible senior Notes	January and June 2014	January 15, 2021	3.875 %	16.57	60.3431	1,901	January 22, 2019	31,502	402,500
<b>Issued by Colony Capital Operating Company, LLC</b>									
5.75% Exchangeable Senior Notes	July 2020	July 15, 2025	5.750 %	2.30	434.7826	130,435	July 21, 2023	300,000	—
<b>Issued by NRF HoldCo, LLC</b>									
5.375% Exchangeable Senior Notes	June 2013	June 15, 2033	5.375 %	12.04	83.0837	1,130	June 15, 2023	13,605	13,605
								<u>\$ 545,107</u>	<u>\$ 616,105</u>

<sup>(1)</sup> The conversion or exchange rate for the senior notes is subject to periodic adjustments to reflect certain carried-forward adjustments relating to common stock splits, reverse stock splits, common stock adjustments in connection with spin-offs and cumulative cash dividends paid on the Company's common stock since the issuances of the respective senior notes. The conversion or exchange ratios are presented in shares of common stock per \$1,000 principal of each senior note.

The senior notes mature on their respective due dates, unless earlier redeemed, repurchased, converted or exchanged, as applicable. The outstanding senior notes are convertible or exchangeable at any time by holders of such notes into shares of the Company's common stock at the applicable conversion or exchange rate, which is subject to adjustment upon occurrence of certain events. In the case of the 5.375% exchangeable senior notes, NRF Holdco, LLC, a subsidiary of the Company, may elect to settle a holder's exchange into cash, the Company's common stock or a combination thereof.

To the extent certain trading conditions of the Company's common stock are met, the senior notes are redeemable by the applicable issuer thereof in whole or in part for cash at any time on or after their respective earliest redemption dates at a redemption price equal to 100% of the principal amount of such senior notes being redeemed, plus accrued and unpaid interest (if any) up to, but excluding, the redemption date. In addition, prior to June 15, 2023 and subject to certain trading conditions of the Company's common stock, NRF Holdco, LLC may redeem its 5.375% exchangeable senior notes at a make-whole redemption price.

In the event of certain change in control transactions and, for the 5.375% exchangeable senior notes only, on each of June 15, 2023 and June 15, 2028, holders of the senior notes have the right to require the applicable issuer to purchase all or part of such holder's senior notes for cash in accordance with terms of the governing documents of the respective senior notes.

#### Issuance of Exchangeable Senior Notes

In July 2020, the OP issued \$300.0 million of exchangeable senior notes with maturity in July 2025, bearing interest at 5.75% per annum, and exchangeable into shares of the Company's class A common stock at an initial exchange rate equal to 434.7826 shares of common stock per \$1,000 principal amount of notes, equivalent to an exchange price of approximately \$2.30 per share. The initial exchange rate is subject to adjustment upon occurrence of certain events, but will not be adjusted for any accrued and unpaid interest. Net proceeds from this issuance, after deducting underwriting discounts, commissions and offering expenses, were \$291.0 million.

#### Repurchase of Convertible Senior Notes

The Company repurchased \$371.0 million of the outstanding principal of the 3.875% convertible senior notes in the third quarter of 2020 for total purchase price of \$371.1 million, including accrued and unpaid interest, funded with net proceeds from issuance of the 5.75% exchangeable senior notes in July 2020 and cash on hand through a tender offer of the 3.875% convertible senior notes completed in September 2020.

### Secured Debt

These are primarily investment level financing, which are non-recourse to the Company, and secured by underlying commercial real estate and mortgage loans receivable.

In October 2020, Vantage SDC in the Digital Operating segment raised \$1.3 billion in aggregate across two tranches of securitized notes at a blended fixed rate of 1.8%, with a 6 year weighted average maturity. The proceeds were applied primarily to refinance outstanding debt, which will meaningfully reduce the cost of debt and extend debt maturities in Vantage SDC.

### Junior Subordinated Debt

A subsidiary of the Company (the "Issuer") assumed certain junior subordinated debt through the Merger at fair value. Prior to the Merger, subsidiaries of NRF, which were formed as statutory trusts, NorthStar Realty Finance Trust I through VIII (the "Trusts"), issued trust preferred securities ("TruPS") in private placement offerings. The sole assets of the Trusts consist of a like amount of junior subordinated notes issued by NRF at the time of the offerings (the "Junior Notes"). As Colony Capital, Inc. and its operating company, Colony Capital Operating Company, LLC, are not issuers of the junior subordinated debt, neither are obligors nor guarantors on the junior subordinated debt and TruPS.

The Issuer may redeem the Junior Notes at par, in whole or in part, for cash, after five years. To the extent the Issuer redeems the Junior Notes, the Trusts are required to redeem a corresponding amount of TruPS. The ability of the Trusts to pay dividends depends on the receipt of interest payments on the Junior Notes. The Issuer has the right, pursuant to certain qualifications and covenants, to defer payments of interest on the Junior Notes issued to NorthStar Realty Finance Trust I through III for up to six consecutive quarters. If payment of interest on the Junior Notes is deferred, the Trusts will defer the quarterly distributions on the TruPS for a corresponding period. Additional interest accrues on deferred payments at the annual rate payable on the Junior Notes, compounded quarterly.

## 11. Derivatives

The Company uses derivative instruments to manage the risk of changes in interest rates and foreign exchange rates, arising from both its business operations and economic conditions. Specifically, the Company enters into derivative instruments to manage differences in the amount, timing, and duration of the Company's known or expected cash receipts and cash payments, the values of which are driven by interest rates, principally relating to the Company's investments and borrowings. Additionally, the Company's foreign operations expose the Company to fluctuations in foreign interest rates and exchange rates. The Company enters into derivative instruments to protect the value or fix certain of these foreign denominated amounts in terms of its functional currency, the U.S. dollar. Derivative instruments used in the Company's risk management activities may be designated as qualifying hedge accounting relationships ("designated hedges") or otherwise used for economic hedging purposes ("non-designated hedges").

Fair value of derivative assets and derivative liabilities are as follows:

(In thousands)	September 30, 2020			December 31, 2019		
	Designated Hedges	Non-Designated Hedges	Total	Designated Hedges	Non-Designated Hedges	Total
<b>Derivative Assets</b>						
Foreign exchange contracts	\$ —	\$ 150	\$ 150	\$ 15,307	\$ 1,271	\$ 16,578
Interest rate contracts	55	127	182	78	237	315
Performance swaps	—	5,675	5,675	—	4,493	4,493
Included in other assets	\$ 55	\$ 5,952	\$ 6,007	\$ 15,385	\$ 6,001	\$ 21,386
<b>Derivative Liabilities</b>						
Foreign exchange contracts	\$ —	\$ —	\$ —	\$ 8,134	\$ 2,482	\$ 10,616
Forward contracts	—	96,944	96,944	—	116,915	116,915
Included in accrued and other liabilities	\$ —	\$ 96,944	\$ 96,944	\$ 8,134	\$ 119,397	\$ 127,531

Certain counterparties to the derivative instruments require the Company to deposit cash or other eligible collateral. The Company had cash collateral on deposit, included in other assets, of \$10.8 million at September 30, 2020 and \$10.0 million at December 31, 2019, all of which related to the forward contracts and performance swaps discussed below.

### Foreign Exchange Contracts

The following table summarizes the aggregate notional amounts and certain key terms of non-designated foreign exchange contracts in place at September 30, 2020:

Hedged Currency	Instrument Type	Notional Amount (in thousands)		FX Rates (\$ per unit of foreign currency)	Range of Expiration Dates
EUR	Put options	€	336,000	Min \$0.95 / Max \$1.00	November 2020 to May 2022
GBP	Put options	£	64,000	Min \$1.05 / Max \$1.10	November 2020 to May 2021

The Company's foreign denominated net investments in subsidiaries or joint ventures were €485.3 million and £262.7 million, or a total of \$0.9 billion at September 30, 2020, and €517.9 million and £275.5 million, or a total of \$0.9 billion at December 31, 2019.

The Company enters into foreign exchange contracts to hedge the foreign currency exposure of certain investments in foreign subsidiaries or equity method joint ventures, with notional amounts and termination dates based upon the anticipated return of capital from the investments. Prior to the second quarter of 2020, the Company utilized primarily (i) forward contracts whereby the Company agreed to sell an amount of foreign currency for an agreed upon amount of U.S. dollars and (ii) costless collars consisting of caps and floors, which consisted of a combination of currency options with single date expirations. Both types of hedging strategies were designated as net investment hedges.

During the second quarter of 2020, the Company unwound all of its existing foreign currency hedges and entered into foreign currency put options with upfront premiums whereby the Company gains protection against foreign currency weakening below a specified level. The put options are set to expire in increments according to the Company's expected monetization timeframe of the hedged investments, but the notional amounts are not identifiable to specific investments. Accordingly, the put options are not designated for hedge accounting purposes.

#### Designated Net Investment Hedges

Release of AOCI related to net investment hedges occurs upon losing a controlling financial interest in an investment or obtaining control over an equity method investment. Upon sale, complete or substantially complete liquidation of an investment in a foreign subsidiary, or partial sale of an equity method investment, the gain or loss on the related net investment hedge is reclassified from AOCI to other gain (loss) as summarized below.

(In thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
<b>Designated net investment hedges:</b>				
Realized gain transferred from AOCI to earnings	\$ 414	\$ —	\$ 414	\$ 1,026

#### Non-Designated Hedges

At the end of each quarter, the Company reassesses the effectiveness of its net investment hedges and as appropriate, dedesignates the portion of the derivative notional amount that is in excess of the beginning balance of its net investments. Any unrealized gain or loss on the dedesignated portion of net investment hedges and on non-designated foreign exchange contracts are recorded in other gain (loss).

(In thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
<b>Dedesignated net investment hedges:</b>				
Unrealized gain (loss) transferred from AOCI to earnings	\$ —	\$ 1,767	\$ 1,485	\$ 1,367
<b>Non-designated foreign exchange contracts:</b>				
Unrealized gain (loss) in earnings	(840)	—	(1,616)	—

### Interest Rate Contracts

The Company uses various interest rate contracts, some of which may be designated as cash flows hedges, to limit its exposure to changes in interest rates on various floating rate debt obligations. The following table summarizes the interest rate contracts held by the Company at September 30, 2020.

Instrument Type	Notional Amount (in thousands)		Index	Strike Rate / Forward Rate	Range of Expiration Dates
	Designated	Non-Designated			
Interest rate caps	\$ —	\$ 3,868,574	1-Month LIBOR	3.00% - 5.70%	November 2020 to November 2021
Interest rate caps	€ 232,845	€ 472,405	3-Month EURIBOR	0.25% - 1.50%	January 2021 to June 2024
Interest rate caps	£ —	£ 354,581	3-Month GBP LIBOR	1.50% - 2.25%	November 2020 to October 2022

The following table summarizes amounts recorded in the income statements related to interest rate contracts.

(In thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Interest expense on designated interest rate contracts <sup>(1)</sup>	\$ 6	\$ —	\$ 12	\$ —
Realized and unrealized gain (loss), net on non-designated interest rate contracts <sup>(2)</sup>	(197)	(91,574)	(123)	(240,710)

<sup>(1)</sup> Represents amortization of the cost of designated interest rate caps to interest expense based upon expected hedged interest payments on variable rate debt.

<sup>(2)</sup> For the three and nine months ended September 30, 2019, amounts include unrealized loss of \$91.5 million and \$237.6 million, respectively, on a \$2.0 billion notional forward starting swap assumed through the Merger, which was settled at the end of 2019.

### Forward Contracts and Performance Swaps

The Company has an equity investment in a third party managed real estate mutual fund, accounted for as marketable equity securities carried at fair value. The Company had previously entered into a series of forward contracts on its shares in the mutual fund in an aggregate notional amount of \$100 million, equal to its initial investment in the fund, and concurrently, entered into a series of swap contracts with the same counterparty to pay the return of the Dow Jones U.S. Select REIT Total Return Index. The Company settled the forwards and swaps in cash upon expiration in January 2020, realizing a gain of \$5.8 million. In January 2020, the Company entered into another series of forward and swap contracts with similar terms to the previous transaction. The forward contracts have a combined notional amount of \$119 million and expire in January 2021, to be settled in cash or through delivery of the mutual fund shares at the election of the Company. The new forward and swap transactions required an initial combined collateral deposit of \$14.3 million, subject to daily net settlements in net fair value changes in excess of a predetermined threshold.

The forwards and swaps are not designated as hedges for accounting purposes. All realized and unrealized gains (losses) are recorded in other gain (loss) as follows:

(In thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Realized and unrealized gain (loss), net on derivatives:				
Forward contracts	\$ (2,267)	\$ (8,191)	\$ 19,971	\$ (20,564)
Performance swaps	2,114	1,443	6,988	5,013
Unrealized gain (loss) on marketable equity securities held at period end:				
Real estate mutual fund	2,266	8,180	(20,007)	21,089

### Offsetting Assets and Liabilities

The Company enters into agreements subject to enforceable master netting arrangements with its derivative counterparties that allow the Company to offset the settlement of derivative assets and liabilities in the same currency by derivative instrument type or, in the event of default by the counterparty, to offset all derivative assets and liabilities with the same counterparty. The Company has elected not to net derivative asset and liability positions, notwithstanding the conditions for right of offset may have been met, and presents derivative assets and liabilities with the same counterparty on a gross basis on the consolidated balance sheets.

The following table sets forth derivative positions where the Company has a right of offset under netting arrangements with the same counterparty.

(In thousands)	Gross Assets (Liabilities) on Consolidated Balance Sheets	Gross Amounts Not Offset on Consolidated Balance Sheets		Net Amounts of Assets (Liabilities)
		(Assets) Liabilities	Cash Collateral Pledged	
<b>September 30, 2020</b>				
<b>Derivative Assets</b>				
Foreign exchange contracts	\$ 150	\$ —	\$ —	\$ 150
Interest rate contracts	182	—	—	182
Performance swaps	5,675	(5,675)	—	—
	<u>\$ 6,007</u>	<u>\$ (5,675)</u>	<u>\$ —</u>	<u>\$ 332</u>
<b>Derivative Liabilities</b>				
Forward contracts	<u>\$ (96,944)</u>	<u>\$ 5,675</u>	<u>\$ 10,752</u>	<u>\$ (80,517)</u>
<b>December 31, 2019</b>				
<b>Derivative Assets</b>				
Foreign exchange contracts	\$ 16,578	\$ (4,385)	\$ —	\$ 12,193
Interest rate contracts	315	—	—	315
Performance swaps	4,493	(4,493)	—	—
	<u>\$ 21,386</u>	<u>\$ (8,878)</u>	<u>\$ —</u>	<u>\$ 12,508</u>
<b>Derivative Liabilities</b>				
Foreign exchange contracts	\$ (10,616)	\$ 4,385	\$ —	\$ (6,231)
Forward contracts	(116,915)	4,493	9,981	(102,441)
	<u>\$ (127,531)</u>	<u>\$ 8,878</u>	<u>\$ 9,981</u>	<u>\$ (108,672)</u>

## 12. Fair Value

### Recurring Fair Values

The table below presents a summary of financial assets and financial liabilities carried at fair value on a recurring basis, including financial instruments for which the fair value option was elected, but excluding financial assets under the NAV practical expedient, categorized into the three tier fair value hierarchy that is prioritized based upon the level of transparency in inputs used in the valuation techniques, as follows:

*Level 1*—Quoted prices (unadjusted) in active markets for identical assets or liabilities.

*Level 2*—Observable inputs other than Level 1 prices, such as quoted prices for similar assets or liabilities, quoted prices in non-active markets, or valuation techniques utilizing inputs that are derived principally from or corroborated by observable data directly or indirectly for substantially the full term of the financial instrument.

*Level 3*—At least one assumption or input is unobservable and it is significant to the fair value measurement, requiring significant management judgment or estimate.

(In thousands)	Fair Value Measurements			
	Level 1	Level 2	Level 3	Total
<b>September 30, 2020</b>				
<b>Assets</b>				
Marketable equity securities	\$ 147,051	\$ —	\$ —	\$ 147,051
AFS debt securities	—	—	27,898	27,898
Other assets—derivative assets	—	6,007	—	6,007
<i>Fair Value Option:</i>				
Loans held for investment	—	—	1,325,144	1,325,144
Loans held for disposition	—	—	42,985	42,985
Equity method investments	—	—	165,770	165,770
<b>Liabilities</b>				
Other liabilities—derivative liabilities	—	96,944	—	96,944
Other liabilities—settlement liability	—	—	10,754	10,754
<b>December 31, 2019</b>				
<b>Assets</b>				
Marketable equity securities	\$ 138,586	\$ —	\$ —	\$ 138,586
AFS debt securities	—	—	54,859	54,859
CMBS of consolidated fund	—	2,732	—	2,732
Other assets—derivative assets	—	21,386	—	21,386
<i>Fair Value Option:</i>				
Equity method investments	—	—	222,875	222,875
<b>Liabilities</b>				
Other liabilities—derivative liabilities	—	127,531	—	127,531
Other liabilities—contingent consideration for THL Hotel Portfolio	—	—	9,330	9,330

#### *Marketable Equity Securities*

Marketable equity securities consist primarily of investment in a third party managed mutual fund and equity securities held by a consolidated fund. These marketable equity securities are valued based on listed prices in active markets and classified as Level 1 of the fair value hierarchy.

#### *Debt Securities*

N-Star CDO bonds—Fair value of N-Star CDO bonds are determined internally based on recent trades, if any with such securitizations, the Company's knowledge of the underlying collateral and are determined using an internal price interpolated based on third party prices of the senior N-Star CDO bonds of the respective CDOs. All N-Star CDO bonds are classified as Level 3 of the fair value hierarchy.

CMBS of consolidated fund—Fair value was determined based on broker quotes or third party pricing services, classified as Level 2 of the fair value hierarchy. These CMBS were fully disposed of in the third quarter of 2020.

#### *Derivatives*

Derivative instruments consist of interest rate contracts and foreign exchange contracts that are generally traded over-the-counter, and are valued using a third-party service provider. Quotations on over-the-counter derivatives are not adjusted and are generally valued using observable inputs such as contractual cash flows, yield curve, foreign currency rates and credit spreads, and are classified as Level 2 of the fair value hierarchy. Although credit valuation adjustments, such as the risk of default, rely on Level 3 inputs, these inputs are not significant to the overall valuation of its derivatives. As a result, derivative valuations in their entirety are classified as Level 2 of the fair value hierarchy.

#### *Other Liabilities—Contingent Consideration for THL Hotel Portfolio*

In connection with the consensual foreclosure in July 2017 of a portfolio of limited service hotels ("THL Hotel Portfolio"), contingent consideration is payable to the former preferred equity holder of the borrower in an amount up to \$13.0 million based upon the performance of the THL Hotel Portfolio, subject to meeting certain repayment and return thresholds to the Company and certain investment vehicles managed by the Company. The contingent consideration is measured based upon the probability of the former preferred equity holder receiving such payment, classified as Level 3 fair value. At September 30, 2020, the contingent consideration liability was determined to have zero value as it was no longer probable that such payment would be made following the adverse effect of COVID-19 on the operations and performance of the THL Hotel Portfolio. The liability, valued at \$9.3 million at December 31, 2019, was written off in the

second quarter of 2020 as a gain, recorded in other gain (loss) within income (loss) from discontinued operations (Note 16) on the consolidated statements of operations.

#### *Other Liabilities—Settlement Liability*

As discussed in Note 1, in connection with the cooperation agreement entered into with Blackwells in March 2020, the Company and Blackwells contemporaneously entered into a joint venture arrangement for the purpose of acquiring, holding and disposing of the Company's class A common stock. Pursuant to the arrangement, the Company contributed its class A common stock, valued at \$14.7 million by the venture, and Blackwells contributed \$1.47 million of cash that was then distributed to the Company, resulting in a net capital contribution of \$13.23 million by the Company in the venture. All of the class A common stock held in the venture had been repurchased by the Company in March 2020 (Note 14). Blackwells may cause the arrangement to be dissolved and all underlying assets distributed at any time, and the Company may do the same after three years. Distributions to be made through the joint venture arrangement effectively represent a settlement of the proxy contest with Blackwells. At the inception of the arrangement, the fair value of future distributions to Blackwells was estimated at \$3.9 million, included in other liabilities on the consolidated balance sheet, and as a settlement loss on the consolidated statement of operations, along with \$1.2 million reimbursement of legal costs to Blackwells in March 2020.

The settlement liability is a fair value measure of the disproportionate allocation of future profits distribution to Blackwells pursuant to the joint venture arrangement. Such profits will be derived from dividend payments and any appreciation in value of the Company's class A common stock, allocated between the Company and Blackwells based upon specified return hurdles. The profits distribution is payable in cash, the Company's class A common stock or a combination of both at the Company's election. The settlement liability, classified as a Level 3 fair value, is measured using a Monte Carlo simulation under a risk-neutral premise, assuming that the final distribution occurs at the end of the third year in March 2023, and is remeasured at each reporting period. At September 30, 2020, the settlement liability was valued at approximately \$10.8 million, applying the following assumptions: (a) expected volatility of the Company's class A common stock of 70.6% based upon a combination of historical and implied volatility of the Company's class A common stock; (b) zero expected dividend yield given the Company's suspension of its common stock dividend beginning the second quarter of 2020; and (c) risk free rate of 0.14% per annum based upon a compounded zero-coupon U.S. Treasury yield. The settlement liability increased approximately \$6.9 million from inception to September 30, 2020, recorded as other loss on the consolidated statement of operations.

#### *Fair Value Option*

##### *Loans Receivable*

Effective January 1, 2020, the Company elected the fair value option for all of its outstanding loans receivable. Loans receivable consist of mortgage loans, mezzanine loans and non-mortgage loans. Fair values were determined by comparing the current yield to the estimated yield of newly originated loans with similar credit risk or the market yield at which a third party might expect to purchase such investment; or based on discounted cash flow projections of principal and interest expected to be collected, which includes, but is not limited to, consideration of the financial standing of the borrower or sponsor as well as operating results and/or value of the underlying collateral.

##### *Equity Method Investments*

Equity method investments for which fair value option was elected are carried at fair value on a recurring basis. Fair values are determined using either discounted cash flow models based on expected future cash flows for income and realization events of the underlying assets, applying revenue multiples, based on transaction price for recently acquired investments, or pending or comparable market sales price on an investment, as applicable. In valuing the Company's investment in third party private equity funds, the Company considers cash flows provided by the general partners of the funds and the implied yields of the funds. The Company has not elected the practical expedient to measure the fair value of its investments in these private equity funds using NAV of the underlying funds. Fair value of equity method investments are classified as Level 3 of the fair value hierarchy, unless investments are valued based on contracted sales prices which are classified as Level 2 of the fair value hierarchy. Changes in fair value of equity method investments under the fair value option are recorded in equity method earnings.

### Level 3 Recurring Fair Value Measurements

Quantitative information about recurring Level 3 fair value assets are as follows.

Financial Instrument	Fair Value (In thousands)	Valuation Technique	Key Unobservable Inputs	Input Value Weighted Average <sup>(1)</sup> (Range)	Effect on Fair Value from Increase in Input Value <sup>(2)</sup>
<b>September 30, 2020</b>					
AFS debt securities	\$ 27,898	Discounted cash flows	Discount rate	28.4% (18.3% - 57.8%)	Decrease
<i>Fair Value Option:</i>					
Loans held for investment	1,295,444	Discounted cash flows	Discount rate	14.3% (8.1% - 26.7%)	Decrease
Loans held for investment	29,700	Transaction price <sup>(5)</sup>	N/A	N/A	N/A
Loans held for disposition	42,985	Transaction price <sup>(5)</sup>	N/A	N/A	N/A
Equity method investments—third party private equity funds	2,575	NAV <sup>(3)</sup>	N/A	N/A	N/A
Equity method investments—other	8,417	Discounted cash flows	Discount rate	18.3% (18.1% - 20.0%)	Decrease
Equity method investments—other	14,710	Multiple	Revenue multiple	4.1x	<sup>(4)</sup>
Equity method investments—other	140,068	Transaction price <sup>(5)</sup>	N/A	N/A	N/A
<b>December 31, 2019</b>					
AFS debt securities	\$ 54,859	Discounted cash flows	Discount rate	22.3% (16.8% - 65.0%)	Decrease
<i>Fair Value Option:</i>					
Equity method investments—third party private equity funds	5,391	NAV <sup>(3)</sup>	N/A	N/A	N/A
Equity method investments—other	18,574	Discounted cash flows	Discount rate	10.1% (5.1% - 15.8%)	Decrease
Equity method investments—other	25,000	Multiple	Revenue multiple	3.7x	<sup>(4)</sup>
Equity method investments—other	173,910	Transaction price <sup>(5)</sup>	N/A	N/A	N/A

<sup>(1)</sup> Weighted average discount rates are calculated based upon undiscounted cash flows.

<sup>(2)</sup> Represents the directional change in fair value that would result from an increase to the corresponding unobservable input. A decrease to the unobservable input would have the reverse effect. Significant increases or decreases in these inputs in isolation could result in significantly higher or lower fair value measures.

<sup>(3)</sup> Fair value was estimated based on underlying NAV of the respective funds on a quarter lag, adjusted as deemed appropriate by management.

<sup>(4)</sup> Fair value is affected by change in revenue multiple relative to change in rate of revenue growth.

<sup>(5)</sup> Valued based upon transaction price of investments recently acquired, settlement amounts under contract, or offer prices on loans, investments or underlying assets of investee pending sales. Transaction price approximates fair value for investee engaged in real estate development during the development stage.

The following table presents changes in recurring Level 3 fair value assets, including realized and unrealized gains (losses) included in other gain (loss) on the consolidated statement of operations and in AOCI.

(In thousands)	AFS Debt Securities	Fair Value Option	
		Loans Held for Investment	Equity Method Investments
<b>Fair value at December 31, 2018</b>	\$ 64,127		\$ 81,085
Purchases, contributions and accretion	5,272	—	101,203
Paydowns, distributions and sales	(8,727)	—	(8,082)
Realized and unrealized gains (losses) in earnings, net	(7,083)	—	(1,811)
Other comprehensive income	6,364	—	—
<b>Fair value at September 30, 2019</b>	<u>\$ 59,953</u>	<u>\$ —</u>	<u>\$ 172,395</u>
Net unrealized gains (losses) in earnings on instruments held at September 30, 2019	<u>\$ (7,083)</u>	<u>\$ —</u>	<u>\$ (2,589)</u>
<b>Fair value at December 31, 2019</b>	\$ 54,859	\$ —	\$ 222,875
Election of fair value option on January 1, 2020	—	1,556,131	—
Reclassification of accrued interest on January 1, 2020	—	13,504	—
Purchases, drawdowns, contributions and accretion	2,979	156,179	4,614
Paydowns, distributions and sales	(4,542)	(131,365)	(900)
Interest accrual, including capitalization of paid-in-kind interest	—	32,544	—
Transfer to held for disposition	—	(42,985)	—
Allowance for credit losses	(23,973)	—	—
Realized and unrealized gains (losses) in earnings, net <sup>(1)</sup>	—	(289,283)	(66,418)
Other comprehensive income (loss) <sup>(2)</sup>	(1,425)	30,419	5,599
<b>Fair value at September 30, 2020</b>	<u>\$ 27,898</u>	<u>\$ 1,325,144</u>	<u>\$ 165,770</u>
Net unrealized gains (losses) on instruments held at September 30, 2020:			
In earnings	\$ —	\$ (280,822)	\$ (66,418)
In other comprehensive income (loss)	\$ (1,425)	N/A	N/A

<sup>(1)</sup> Includes \$4.8 million of unrealized losses on loans held for disposition with aggregate fair value of \$43.0 million at September 30, 2020.

<sup>(2)</sup> Amounts recorded in OCI for loans receivable and equity method investments represent foreign currency translation differences on the Company's foreign subsidiaries that hold the respective foreign currency denominated investments.

### Investments Carried at Fair Value Using Net Asset Value

Investments in a Company-sponsored private fund and a non-traded REIT, and limited partnership interest in a third party private fund are valued using NAV of the respective vehicles.

(In thousands)	September 30, 2020		December 31, 2019	
	Fair Value	Unfunded Commitments	Fair Value	Unfunded Commitments
Private fund—real estate	\$ 15,668	\$ 9,137	\$ 16,271	\$ 11,058
Non-traded REIT—real estate	18,263	—	19,358	—
Private fund—emerging market private equity	2,628	—	3,012	—

The Company's interests in the private funds are not subject to redemption, with distributions to be received through liquidation of underlying investments of the funds. The private funds each have eight and ten year lives, respectively, at inception, both of which may be extended in one year increments up to two years.

No secondary market currently exists for shares of the non-traded REIT and the Company does not currently expect to seek liquidity of its shares of the non-traded REIT. Subject to then-existing market conditions, the board of directors of the non-traded REIT, along with the Company, as sponsor, expects to consider alternatives for providing liquidity to the non-traded REIT shares beginning five years from completion of the offering stage in January 2016, but with no definitive date by which it must do so. In addition, the Company has agreed that any right to have its shares redeemed is subordinated to third party stockholders for so long as its advisory agreement is in effect.

## Nonrecurring Fair Values

The Company measures fair value of certain assets on a nonrecurring basis when events or changes in circumstances indicate that the carrying value of the assets may not be recoverable. Adjustments to fair value generally result from the application of lower of amortized cost or fair value accounting for assets held for disposition or otherwise, write-down of asset values due to impairment. Impairments are discussed in Note 4 for real estate, Note 6 for equity method investments, and Note 7 for investment management intangible assets, including goodwill.

## Fair Value Information on Financial Instruments Reported at Cost

Carrying amounts and estimated fair values of financial instruments reported at amortized cost are presented below. The carrying values of cash, accounts receivable, due from and to affiliates, interest payable and accounts payable approximate fair value due to their short term nature and credit risk, if any, are negligible. There are no loans receivable carried at amortized cost in 2020 as the Company elected the fair value option for all loans receivable effective January 1, 2020.

(In thousands)	Fair Value Measurements				Carrying Value
	Level 1	Level 2	Level 3	Total	
<b>September 30, 2020</b>					
<b>Liabilities</b>					
Debt at amortized cost					
Convertible and exchangeable senior notes	\$ 671,421	\$ 13,095	\$ —	\$ 684,516	\$ 535,596
Secured debt	—	—	6,113,253	6,113,253	6,347,480
Secured debt related to assets held for disposition	—	—	3,660,152	3,660,152	3,712,982
Junior subordinated debt	—	—	197,460	197,460	202,918
<b>December 31, 2019</b>					
<b>Assets</b>					
Loans at amortized cost	\$ —	\$ —	\$ 1,557,850	\$ 1,557,850	\$ 1,552,824
<b>Liabilities</b>					
Debt at amortized cost					
Convertible and exchangeable senior notes	602,000	13,095	—	615,095	614,052
Secured debt	—	—	4,747,560	4,747,560	4,702,676
Secured debt related to assets held for disposition	—	—	3,700,990	3,700,990	3,698,934
Junior subordinated debt	—	—	225,835	225,835	201,190

*Debt*—Fair value of convertible notes and exchangeable notes were determined using the last trade price in active markets and unadjusted quoted prices in non-active market, respectively. Fair values of the corporate credit facility and secured debt were estimated by discounting expected future cash outlays at interest rates available to the Company for similar instruments. Fair value of junior subordinated debt was based on unadjusted quotations from a third party valuation firm, with such quotes derived using a combination of internal valuation models, comparable trades in non-active markets and other market data.

*Other*—Carrying values of cash, due from and to affiliates, other receivables and other payables generally approximate fair value due to their short term nature, and credit risk, if any, are negligible.

## 13. Variable Interest Entities

A VIE is an entity that lacks sufficient equity to finance its activities without additional subordinated financial support from other parties, or whose equity holders lack the characteristics of a controlling financial interest. The following discusses the Company's involvement with VIEs where the Company is the primary beneficiary and consolidates the VIEs or where the Company is not the primary beneficiary and does not consolidate the VIEs.

### Operating Subsidiary

The Company's operating subsidiary, OP, is a limited liability company that has governing provisions that are the functional equivalent of a limited partnership. The Company holds the majority of membership interest in OP, acts as the managing member of OP and exercises full responsibility, discretion and control over the day-to-day management of OP. The noncontrolling interests in OP do not have substantive liquidation rights, substantive kick-out rights without cause, or substantive participating rights that could be exercised by a simple majority of noncontrolling interest members (including by such a member unilaterally). The absence of such rights, which represent voting rights in a limited partnership

equivalent structure, would render OP to be a VIE. The Company, as managing member, has the power to direct the core activities of OP that most significantly affect OP's performance, and through its majority interest in OP, has both the right to receive benefits from and the obligation to absorb losses of OP. Accordingly, the Company is the primary beneficiary of OP and consolidates OP. As the Company conducts its business and holds its assets and liabilities through OP, the total assets and liabilities of OP represent substantially all of the total consolidated assets and liabilities of the Company.

### **Company-Sponsored Private Funds**

The Company sponsors private funds and other investment vehicles as general partner for the purpose of providing investment management services in exchange for management fees and performance-based fees. These private funds are established as limited partnerships or equivalent structures. Limited partners of the private funds do not have either substantive liquidation rights, or substantive kick-out rights without cause, or substantive participating rights that could be exercised by a simple majority of limited partners or by a single limited partner. Accordingly, the absence of such rights, which represent voting rights in a limited partnership, results in the private funds being considered VIEs. The nature of the Company's involvement with its sponsored funds comprise fee arrangements and equity interests. The fee arrangements are commensurate with the level of management services provided by the Company, and contain terms and conditions that are customary to similar at-market fee arrangements.

*Consolidated Company-Sponsored Private Funds*—The Company currently consolidates sponsored private funds in which it has more than an insignificant equity interest in the fund as general partner. As a result, the Company is considered to be acting in the capacity of a principal of the sponsored private fund and is therefore the primary beneficiary of the fund. The Company's exposure is limited to the value of its outstanding investment in the consolidated private funds of \$42.7 million at September 30, 2020 and \$18.5 million at December 31, 2019. The Company, as general partner, is not obligated to provide any financial support to the consolidated private funds. At September 30, 2020 and December 31, 2019, the consolidated private funds had total assets of \$101.4 million and \$24.7 million, respectively, and total liabilities of \$2.1 million and \$0.1 million, respectively. Assets and liabilities were made up primarily of cash, marketable equity securities and unsettled trades.

*Unconsolidated Company-Sponsored Private Funds*—The Company does not consolidate its sponsored private funds where it has insignificant direct equity interests or capital commitments to these funds as general partner. The Company may invest alongside certain of its sponsored private funds through joint ventures between the Company and these funds, or the Company may have capital commitments to its sponsored private funds that are satisfied directly through the co-investment joint ventures as an affiliate of the general partner. In these instances, the co-investment joint ventures are consolidated by the Company. As the Company's direct equity interests in its sponsored private funds as general partner absorb insignificant variability, the Company is considered to be acting in the capacity of an agent of these funds and is therefore not the primary beneficiary of these funds. The Company accounts for its equity interests in unconsolidated sponsored private funds under the equity method. The Company's maximum exposure to loss is limited to the carrying value of its investment in the unconsolidated sponsored private funds, totaling \$235.2 million at September 30, 2020 and \$137.0 million at December 31, 2019, included within equity and debt investments and additionally at December 31, 2019, within assets held for disposition, on the consolidated balance sheets.

### **Securitizations**

The Company previously securitized loans receivable and CRE debt securities using VIEs. Upon securitization, the Company had retained beneficial interests in the securitization vehicles, usually in the form of equity tranches or subordinate securities. The Company also acquired securities issued by securitization trusts that are VIEs. The securitization vehicles were structured as pass-through entities that receive principal and interest on the underlying mortgage loans and debt securities and distribute those payments to the holders of the notes, certificates or bonds issued by the securitization vehicles. The loans and debt securities were transferred into securitization vehicles such that these assets are restricted and legally isolated from the creditors of the Company, and therefore are not available to satisfy the Company's obligations but only the obligations of the securitization vehicles. The obligations of the securitization vehicles did not have any recourse to the general credit of the Company and its other subsidiaries.

*Unconsolidated Securitizations*—The Company does not consolidate the assets and liabilities of CDOs in which the Company has an interest but does not retain the collateral management function. NRF had previously delegated the collateral management rights for certain sponsored N-Star CDOs and third party-sponsored CDOs to a third party collateral manager or collateral manager delegate who is entitled to a percentage of the senior and subordinate collateral management fees. The Company continues to receive fees as named collateral manager or collateral manager delegate and retained administrative responsibilities. The Company determined that the fees paid to the third party collateral manager or collateral manager delegate represent a variable interest in the CDOs and that the third party is acting as a principal. The Company concluded that it does not have the power to direct the activities that most significantly impact the

economic performance of these CDOs, which include but are not limited to, the ability to sell distressed collateral, and therefore the Company is not the primary beneficiary of such CDOs and does not consolidate these CDOs. The Company's exposure to loss is limited to its investment in these unconsolidated CDOs, comprising CDO bonds, which aggregate to \$22.8 million at September 30, 2020 and \$46.0 million at December 31, 2019.

### Trusts

The Company, through the Merger, acquired the Trusts, wholly-owned subsidiaries of NRF formed as statutory trusts. The Trusts issued preferred securities in private placement offerings, and used the proceeds to purchase junior subordinated notes to evidence loans made to NRF (Note 10). The Company owns all of the common stock of the Trusts but does not consolidate the Trusts as the holders of the preferred securities issued by the Trusts are the primary beneficiaries of the Trusts. The Company accounts for its interest in the Trusts under the equity method and its maximum exposure to loss is limited to its investment carrying value of \$3.7 million at September 30, 2020 and December 31, 2019, recorded in investments in unconsolidated ventures on the consolidated balance sheet. The junior subordinated notes are recorded as debt on the consolidated balance sheet.

## 14. Stockholders' Equity

The table below summarizes the share activities of the Company's preferred and common stock.

(In thousands)	Number of Shares		
	Preferred Stock	Class A Common Stock	Class B Common Stock
<b>Shares outstanding at December 31, 2018</b>	57,464	483,347	734
Shares issued upon redemption of OP Units	—	188	—
Repurchase of common stock	—	(652)	—
Equity-based compensation, net of forfeitures	—	4,786	—
Shares canceled for tax withholding on vested stock awards	—	(651)	—
<b>Shares outstanding at September 30, 2019</b>	<b>57,464</b>	<b>487,018</b>	<b>734</b>
<b>Shares outstanding at December 31, 2019</b>	41,350	487,044	734
Shares issued upon redemption of OP Units	—	184	—
Repurchase of common stock, net <sup>(1)</sup>	—	(12,733)	—
Equity-based compensation, net of forfeitures	—	9,721	—
Shares canceled for tax withholding on vested stock awards	—	(2,554)	—
<b>Shares outstanding at September 30, 2020</b>	<b>41,350</b>	<b>481,662</b>	<b>734</b>

<sup>(1)</sup> Net of reissuance of 964,160 shares of class A common stock that had been repurchased by the Company during March 2020. Refer to discussion of settlement liability in Note 12.

### Preferred Stock

In the event of a liquidation or dissolution of the Company, preferred stockholders have priority over common stockholders for payment of dividends and distribution of net assets.

The table below summarizes the preferred stock issued and outstanding at September 30, 2020:

Description	Dividend Rate Per Annum	Initial Issuance Date	Shares Outstanding (in thousands)	Par Value (in thousands)	Liquidation Preference (in thousands)	Earliest Redemption Date
Series G	7.5 %	June 2014	3,450	\$ 35	\$ 86,250	Currently redeemable
Series H	7.125 %	April 2015	11,500	115	287,500	Currently redeemable
Series I	7.15 %	June 2017	13,800	138	345,000	June 5, 2022
Series J	7.125 %	September 2017	12,600	126	315,000	September 22, 2022
			<b>41,350</b>	<b>\$ 414</b>	<b>\$ 1,033,750</b>	

All series of preferred stock are at parity with respect to dividends and distributions, including distributions upon liquidation, dissolution or winding up of the Company. Dividends on Series G, H, I and J of preferred stock are payable quarterly in arrears in January, April, July and October. Prior to their full redemption as discussed below, dividends on Series B and E preferred stock were payable in February, May, August and November.

Each series of preferred stock is redeemable on or after the earliest redemption date for that series at \$25.00 per share plus accrued and unpaid dividends (whether or not declared) exclusively at the Company's option. The redemption

period for each series of preferred stock is subject to the Company's right under limited circumstances to redeem the preferred stock earlier in order to preserve its qualification as a REIT or upon the occurrence of a change of control (as defined in the articles supplementary relating to each series of preferred stock).

Preferred stock generally does not have any voting rights, except if the Company fails to pay the preferred dividends for six or more quarterly periods (whether or not consecutive). Under such circumstances, the preferred stock will be entitled to vote, together as a single class with any other series of parity stock upon which like voting rights have been conferred and are exercisable, to elect two additional directors to the Company's board of directors, until all unpaid dividends have been paid or declared and set aside for payment. In addition, certain changes to the terms of any series of preferred stock cannot be made without the affirmative vote of holders of at least two-thirds of the outstanding shares of each such series of preferred stock voting separately as a class for each series of preferred stock.

#### *Redemption of Preferred Stock*

The Company redeemed the remaining outstanding shares of Series B preferred stock and all outstanding shares of Series E preferred stock in December 2019, with settlement in January 2020, for \$402.9 million, applying proceeds from the sale of its light industrial business.

All preferred stock redemptions were at \$25.00 per share liquidation preference plus accrued and unpaid dividends prorated to their respective redemption dates. The excess or deficit of the \$25.00 per share liquidation preference over the carrying value of the respective preferred stock redeemed results in a decrease or increase to net income attributable to common stockholders, respectively.

#### **Common Stock**

Except with respect to voting rights, class A common stock and class B common stock have the same rights and privileges and rank equally, share ratably in dividends and distributions, and are identical in all respects as to all matters. Class A common stock has one vote per share and class B common stock has thirty-six and one-half votes per share. This gives the holders of class B common stock a right to vote that reflects the aggregate outstanding non-voting economic interest in the Company (in the form of OP Units) attributable to class B common stock holders and therefore, does not provide any disproportionate voting rights. Class B common stock was issued as consideration in the Company's acquisition in April 2015 of the investment management business and operations of its former manager, which was previously controlled by the Company's Executive Chairman. Each share of class B common stock shall convert automatically into one share of class A common stock if the Executive Chairman or his beneficiaries directly or indirectly transfer beneficial ownership of class B common stock or OP Units held by them, other than to certain qualified transferees, which generally includes affiliates and employees. In addition, each holder of class B common stock has the right, at the holder's option, to convert all or a portion of such holder's class B common stock into an equal number of shares of class A common stock.

The Company suspended dividends on its class A common stock beginning with the second quarter of 2020. Under the terms of the Company's amended credit facility, the Company is restricted from paying common dividends other than to maintain the Company's status as a REIT or to reduce income tax payments. The Company will continue to monitor its financial performance and liquidity position, and as economic conditions improve, the Company will reevaluate its dividend policy in consultation with its revolver lending group.

#### *Common Stock Repurchases*

During the first quarter of 2020 and for the year ended December 31, 2019, the Company repurchased its class A common stock totaling 12,733,204 shares at a cost of \$24.6 million and 652,311 shares at a cost of \$3.2 million, respectively, or a weighted average price of \$1.93 and \$4.84 per share, respectively.

All share repurchases were made pursuant to a \$300 million share repurchase program which expired in May 2020. The Company is restricted from repurchasing additional common shares, subject to certain exceptions, under the terms of its amended corporate credit facility.

#### *Dividend Reinvestment and Direct Stock Purchase Plan*

The Company's Dividend Reinvestment and Direct Stock Purchase Plan (the "DRIP Plan") provides existing common stockholders and other investors the opportunity to purchase shares (or additional shares, as applicable) of the Company's class A common stock by reinvesting some or all of the cash dividends received on their shares of the Company's class A common stock or making optional cash purchases within specified parameters. The DRIP Plan involves the acquisition of the Company's class A common stock either in the open market, directly from the Company as

newly issued common stock, or in privately negotiated transactions with third parties. There were no shares of class A common stock acquired under the DRIP Plan in the form of new issuances in 2020 and 2019.

### Accumulated Other Comprehensive Income (Loss)

The following tables present the changes in each component of AOCI attributable to stockholders and noncontrolling interests in investment entities, net of immaterial tax effect. AOCI attributable to noncontrolling interests in Operating Company is immaterial.

#### Changes in Components of AOCI—Stockholders

(In thousands)	Company's Share in AOCI of Equity Method Investments	Unrealized Gain (Loss) on AFS Debt Securities	Unrealized Gain (Loss) on Cash Flow Hedges	Foreign Currency Translation Gain (Loss)	Unrealized Gain (Loss) on Net Investment Hedges	Total
<b>AOCI at December 31, 2018</b>	\$ 3,629	\$ (3,175)	\$ (91)	\$ 6,618	\$ 7,018	\$ 13,999
Other comprehensive income (loss) before reclassifications	9,425	(606)	(2,670)	(36,511)	37,071	6,709
Amounts reclassified from AOCI	(3,554)	6,479	—	(1,128)	(1,617)	180
<b>AOCI at September 30, 2019</b>	<u>\$ 9,500</u>	<u>\$ 2,698</u>	<u>\$ (2,761)</u>	<u>\$ (31,021)</u>	<u>\$ 42,472</u>	<u>\$ 20,888</u>
<b>AOCI at December 31, 2019</b>	\$ 9,281	\$ 7,823	\$ (226)	\$ 139	\$ 30,651	\$ 47,668
Other comprehensive income (loss) before reclassifications	3,053	395	(3)	13,961	15,821	33,227
Amounts reclassified from AOCI	—	(3,585)	—	225	(925)	(4,285)
<b>AOCI at September 30, 2020</b>	<u>\$ 12,334</u>	<u>\$ 4,633</u>	<u>\$ (229)</u>	<u>\$ 14,325</u>	<u>\$ 45,547</u>	<u>\$ 76,610</u>

#### Changes in Components of AOCI—Noncontrolling Interests in Investment Entities

(In thousands)	Unrealized Gain (Loss) on Cash Flow Hedges	Foreign Currency Translation Gain (Loss)	Unrealized Gain (Loss) on Net Investment Hedges	Total
<b>AOCI at December 31, 2018</b>	\$ (390)	\$ (600)	\$ 9,644	\$ 8,654
Other comprehensive income (loss) before reclassifications	(6,190)	(57,492)	4,543	(59,139)
Amounts reclassified from AOCI	—	(465)	(653)	(1,118)
<b>AOCI at September 30, 2019</b>	<u>\$ (6,580)</u>	<u>\$ (58,557)</u>	<u>\$ 13,534</u>	<u>\$ (51,603)</u>
<b>AOCI at December 31, 2019</b>	\$ (1,005)	\$ (17,913)	\$ 10,659	\$ (8,259)
Other comprehensive income (loss) before reclassifications	(12)	43,170	5,313	48,471
Amounts reclassified from AOCI	—	(95)	(873)	(968)
<b>AOCI at September 30, 2020</b>	<u>\$ (1,017)</u>	<u>\$ 25,162</u>	<u>\$ 15,099</u>	<u>\$ 39,244</u>

#### Reclassifications out of AOCI—Stockholders

Information about amounts reclassified out of AOCI attributable to stockholders by component is presented below:

(In thousands)	Three Months Ended September 30,		Nine Months Ended September 30,		Affected Line Item in the Consolidated Statements of Operations
	2020	2019	2020	2019	
Component of AOCI reclassified into earnings					
Relief of basis of AFS debt securities	\$ 41	\$ —	\$ 3,585	\$ —	Other gain (loss), net
Other-than-temporary impairment	—	(5,853)	—	(6,479)	Other gain (loss), net
Release of foreign currency cumulative translation adjustments	21	—	(225)	1,128	Other gain (loss), net
Unrealized gain (loss) on dedesignated net investment hedges	—	608	552	654	Other gain (loss), net
Realized gain on net investment hedges	373	—	373	963	Other gain (loss), net
Release of equity in AOCI of unconsolidated ventures	—	3,554	—	3,554	Equity method earnings (losses)

## 15. Noncontrolling Interests

### **Redeemable Noncontrolling Interests**

The following table presents the activity in redeemable noncontrolling interests in the Company's digital investment management business and in consolidated open-end funds sponsored by the Company.

<i>(In thousands)</i>	Nine Months Ended September 30,	
	2020	2019
Beginning balance	\$ 6,107	\$ 9,385
Contributions	286,215	—
Distributions and redemptions	(2,775)	(5,715)
Net income (loss)	(2,316)	2,317
Ending balance	\$ 287,231	\$ 5,987

### *Strategic Partnership in the Company's Digital Investment Management Business*

In July 2020, the Company formed a strategic partnership with affiliates of Wafra, Inc. (collectively, "Wafra"), a private investment firm and a global partner for alternative asset managers, in which Wafra made a minority investment in substantially all of the Company's digital investment management business (as defined for purposes of this transaction, the "Digital IM Business"). The investment entitles Wafra to participate in approximately 31.5% of the net management fees and carried interest generated by the Digital IM Business.

Wafra has agreed to assume certain of the Company's existing commitments made to DCP and to make commitments to the successor fund to DCP and to the Company's initial digital credit fund, in an aggregate amount of at least \$130.0 million. Wafra has also agreed to make commitments to the Company's future digital funds and investment vehicles on a pro rata basis with the Company based on Wafra's percentage interest in the Digital IM Business, subject to certain caps.

In addition, the Company issued Wafra five warrants to purchase up to an aggregate of 5% (on a fully-diluted, post-transaction basis) of the Company's class A common stock. Each warrant entitles Wafra to purchase up to 5,352,000 shares of the Company's class A common stock, with staggered strike prices between \$2.43 and \$6.00 for each warrant, exercisable until July 17, 2026.

Consideration paid by Wafra in exchange for its investment in the Digital IM Business and for the warrants is composed of: (i) cash consideration of \$253.6 million paid at closing; and (ii) contingent consideration of approximately \$29.9 million to be paid if the run-rate of earnings before interest, tax, depreciation and amortization ("EBITDA") of the digital investment management business, as defined, is equal to or greater than \$72.0 million as of December 31, 2020.

Under certain circumstances following such time as the Digital IM Business comprises 90% or more of the Company's assets, the Company has agreed to use commercially reasonable efforts to facilitate the conversion of Wafra's interest into shares of the Company's class A common stock. There can be no assurances that such conversion would occur or on what terms and conditions such conversion would occur, including whether such conversion, if it did occur in the future, would have any adverse impact on the Company, the Company's stock price, governance and other matters.

Wafra has customary minority rights and certain other structural protections designed to protect its interests, including redemption rights with respect to its investment in the Digital IM Business and its funded commitments in certain digital funds. Wafra's redemption rights will be triggered upon the occurrence of certain events, including key person or cause events under the governing documents of certain digital funds and for a limited period, upon Mr. Ganzi and Mr. Jenkins ceasing to fulfill certain time and attention commitments to the Digital IM business.

To further enhance the alignment of interests, the Company entered into an amended and restated restrictive covenant agreement with each of Marc Ganzi and Ben Jenkins, pursuant to which each of Messrs. Ganzi and Jenkins agreed to certain enhanced non-solicitation provisions and extension of the term of existing non-competition agreements.

Wafra's investment provides the Company with permanent capital to pursue strategic digital infrastructure investments and grow the Digital IM Business.

### **Noncontrolling Interests in Investment Entities**

These are interests in consolidated investment entities held by private investment funds managed by the Company, or by third party joint venture partners.

The Company's investment in its light industrial portfolio, prior to its sale in December 2019, was made alongside third party limited partners through a joint venture consolidated by the Company. The Company's ownership interest

changed over time as result of capital contributions from or redemptions of limited partner interests. Limited partners were admitted or redeemed at the net asset value of the joint venture, based upon valuations determined by independent third parties, at the time of their contributions or redemptions. For the year ended December 31, 2019, the difference between contributions or redemptions and the respective limited partners' share of the joint venture resulted in a net increase to additional paid-in capital of \$12.4 million.

### ***Noncontrolling Interests in Operating Company***

Certain current and past employees of the Company directly or indirectly own interests in OP, presented as noncontrolling interests in the Operating Company. Noncontrolling interests in OP have the right to require OP to redeem part or all of such member's OP Units for cash based on the market value of an equivalent number of shares of class A common stock at the time of redemption, or at the Company's election as managing member of OP, through issuance of shares of class A common stock (registered or unregistered) on a one-for-one basis. At the end of each period, noncontrolling interests in OP is adjusted to reflect their ownership percentage in OP at the end of the period, through a reallocation between controlling and noncontrolling interests in OP.

*Issuance of OP Units*—The Company issued 21,478,515 OP Units in July 2019 and 612,072 OP Units in December 2019 as part of the consideration for the acquisitions of DBH, valued at \$111.9 million, and DataBank, valued at \$3.0 million, based upon the closing price of the Company's class A common stock on July 24, 2019 and December 20, 2019, respectively (Note 3). There were no OP Units issued in the nine months ended September 30, 2020.

*Redemption of OP Units*—The Company redeemed 184,395 OP Units during the nine months ended September 30, 2020 and 187,995 OP Units during the year ended December 31, 2019, with the issuance of an equal number of shares of class A common stock on a one-for-one basis.

## **16. Discontinued Operations**

Discontinued operations represent results of operations of the following:

- *Hotel*—in 2020 and 2019, the Company's Hospitality segment and the THL Hotel Portfolio in the Other segment; and
- *Industrial*—(i) light industrial portfolio and related management platform in 2019 prior to its sale in December 2019, which included fee income and general partner interest in the industrial open-end fund that earned carried interest, and interests of all limited partners in the industrial closed-end and open-end funds who represented noncontrolling interests, and (ii) bulk industrial portfolio in 2020 and 2019. In the second quarter of 2020, final adjustments were made to net sales proceeds from the light industrial business upon release of escrowed funds, resulting in a net loss of \$7.4 million. In November 2020, the Company entered into an agreement to sell its 51% interest in the bulk industrial portfolio to its joint venture partner, with the sale expected to close by the end of 2020.

Income (loss) from discontinued operations is presented below.

(In thousands)	Three Months Ended September 30, 2020			Three Months Ended September 30, 2019		
	Hotel	Industrial	Total	Hotel	Industrial	Total
<b>Revenues</b>						
Property operating income	\$ 144,130	\$ 5,866	\$ 149,996	\$ 293,297	\$ 97,188	\$ 390,485
Fee income	—	—	—	—	3,400	3,400
Interest and other income	40	5	45	198	1,454	1,652
<b>Revenues from discontinued operations</b>	<b>144,170</b>	<b>5,871</b>	<b>150,041</b>	<b>293,495</b>	<b>102,042</b>	<b>395,537</b>
<b>Expenses</b>						
Property operating expense	119,868	1,712	121,580	193,474	26,051	219,525
Interest expense	34,747	1,530	36,277	55,442	21,130	76,572
Investment and servicing expense	6,053	20	6,073	4,491	54	4,545
Transaction costs	4,500	—	4,500	—	—	—
Depreciation and amortization	39,978	639	40,617	42,073	12,342	54,415
Impairment loss	115,792	—	115,792	31,868	—	31,868
Compensation expense—cash and equity-based	863	—	863	1,243	3,914	5,157
Compensation expense—carried interest	—	—	—	—	17,796	17,796
Administrative expenses	192	259	451	109	960	1,069
<b>Expenses from discontinued operations</b>	<b>321,993</b>	<b>4,160</b>	<b>326,153</b>	<b>328,700</b>	<b>82,247</b>	<b>410,947</b>
<b>Other income (loss)</b>						
Gain (loss) on sale of real estate	(10)	(1,000)	(1,010)	3	4,675	4,678
Other gain (loss), net	(113)	(2)	(115)	378	(12)	366
Equity method earnings, including carried interest	—	—	—	—	35,765	35,765
<b>Income (loss) from discontinued operations before income taxes</b>	<b>(177,946)</b>	<b>709</b>	<b>(177,237)</b>	<b>(34,824)</b>	<b>60,223</b>	<b>25,399</b>
Income tax benefit (expense)	225	(2)	223	128	127	255
<b>Income (loss) from discontinued operations</b>	<b>(177,721)</b>	<b>707</b>	<b>(177,014)</b>	<b>(34,696)</b>	<b>60,350</b>	<b>25,654</b>
Income (loss) from discontinued operations attributable to:						
Noncontrolling interests in investment entities	(60,938)	82	(60,856)	(3,470)	27,728	24,258
Noncontrolling interests in Operating Company	(11,581)	62	(11,519)	(2,817)	2,870	53
<b>Income (loss) from discontinued operations attributable to Colony Capital, Inc.</b>	<b>\$ (105,202)</b>	<b>\$ 563</b>	<b>\$ (104,639)</b>	<b>\$ (28,409)</b>	<b>\$ 29,752</b>	<b>\$ 1,343</b>

<sup>(1)</sup> Includes equity-based compensation of \$0.2 million and \$1.0 million for the three months ended September 30, 2020 and 2019, respectively.

(In thousands)	Nine Months Ended September 30, 2020			Nine Months Ended September 30, 2019		
	Hotel	Industrial	Total	Hotel	Industrial	Total
<b>Revenues</b>						
Property operating income	\$ 442,827	\$ 16,169	\$ 458,996	\$ 865,863	\$ 270,161	\$ 1,136,024
Fee income	—	—	—	—	8,849	8,849
Interest and other income	149	78	227	420	3,822	4,242
<b>Revenues from discontinued operations</b>	<b>442,976</b>	<b>16,247</b>	<b>459,223</b>	<b>866,283</b>	<b>282,832</b>	<b>1,149,115</b>
<b>Expenses</b>						
Property operating expense	375,984	4,577	380,561	575,619	74,058	649,677
Interest expense	122,834	5,654	128,488	169,905	55,482	225,387
Investment and servicing expense	12,514	20	12,534	12,347	592	12,939
Transaction costs	4,500	—	4,500	—	—	—
Depreciation and amortization	135,944	1,914	137,858	137,249	97,147	234,396
Impairment loss	1,095,878	—	1,095,878	39,347	—	39,347
Compensation expense—cash and equity-based	2,998	82	3,080	3,707	10,253	13,960
Compensation expense—carried interest	—	(524)	(524)	—	18,136	18,136
Administrative expenses	1,294	892	2,186	1,513	3,976	5,489
<b>Expenses from discontinued operations</b>	<b>1,751,946</b>	<b>12,615</b>	<b>1,764,561</b>	<b>939,687</b>	<b>259,644</b>	<b>1,199,331</b>
<b>Other income (loss)</b>						
Gain (loss) on sale of real estate	(10)	(8,787)	(8,797)	913	28,070	28,983
Other gain (loss), net	9,727	—	9,727	(577)	(69)	(646)
Equity method earnings (losses), including carried interest	—	(164)	(164)	—	35,121	35,121
<b>Income (loss) from discontinued operations before income taxes</b>	<b>(1,299,253)</b>	<b>(5,319)</b>	<b>(1,304,572)</b>	<b>(73,068)</b>	<b>86,310</b>	<b>13,242</b>
Income tax expense	(2,651)	(2)	(2,653)	(2,028)	(171)	(2,199)
<b>Income (loss) from discontinued operations</b>	<b>(1,301,904)</b>	<b>(5,321)</b>	<b>(1,307,225)</b>	<b>(75,096)</b>	<b>86,139</b>	<b>11,043</b>
Income (loss) from discontinued operations attributable to:						
Noncontrolling interests in investment entities	(167,333)	(4,547)	(171,880)	(10,455)	45,711	35,256
Noncontrolling interests in Operating Company	(112,451)	(77)	(112,528)	(4,872)	3,344	(1,528)
<b>Income (loss) from discontinued operations attributable to Colony Capital, Inc.</b>	<b>\$ (1,022,120)</b>	<b>\$ (697)</b>	<b>\$ (1,022,817)</b>	<b>\$ (59,769)</b>	<b>\$ 37,084</b>	<b>\$ (22,685)</b>

<sup>(1)</sup> Includes equity-based compensation of \$0.6 million and \$3.1 million for the nine months ended September 30, 2020 and 2019, respectively.

## 17. Earnings per Share

The following table provides the basic and diluted earnings per common share computations:

(In thousands, except per share data)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
<b>Net loss allocated to common stockholders</b>				
Loss from continuing operations	\$ (184,216)	\$ (591,496)	\$ (2,177,055)	\$ (1,091,686)
Loss from continuing operations attributable to noncontrolling interests	101,588	62,337	646,172	69,827
Loss from continuing operations attributable to Colony Capital, Inc.	(82,628)	(529,159)	(1,530,883)	(1,021,859)
Income (loss) from discontinued operations attributable to Colony Capital, Inc.	(104,639)	1,343	(1,022,817)	(22,685)
Net loss attributable to Colony Capital, Inc.	(187,267)	(527,816)	(2,553,700)	(1,044,544)
Preferred dividends	(18,517)	(27,137)	(56,507)	(81,412)
Net loss attributable to common stockholders	(205,784)	(554,953)	(2,610,207)	(1,125,956)
Net income allocated to participating securities	—	(948)	(1,250)	(2,621)
Net loss allocated to common stockholders—basic	(205,784)	(555,901)	(2,611,457)	(1,128,577)
Interest expense attributable to convertible and exchangeable notes <sup>(1)</sup>	—	—	—	—
Net loss allocated to common stockholders—diluted	\$ (205,784)	\$ (555,901)	\$ (2,611,457)	\$ (1,128,577)
<b>Weighted average common shares outstanding</b>				
Weighted average number of common shares outstanding—basic	471,739	479,776	474,081	479,412
Weighted average effect of dilutive shares <sup>(1)(2)(3)</sup>	—	—	—	—
Weighted average number of common shares outstanding—diluted	471,739	479,776	474,081	479,412
<b>Basic loss per share</b>				
Loss from continuing operations	\$ (0.22)	\$ (1.16)	\$ (3.35)	\$ (2.30)
Loss from discontinued operations	(0.22)	—	(2.16)	(0.05)
Net loss attributable to common stockholders per basic common share	\$ (0.44)	\$ (1.16)	\$ (5.51)	\$ (2.35)
<b>Diluted loss per share</b>				
Loss from continuing operations	\$ (0.22)	\$ (1.16)	\$ (3.35)	\$ (2.30)
Loss from discontinued operations	(0.22)	—	(2.16)	(0.05)
Net loss attributable to common stockholders per diluted common share	\$ (0.44)	\$ (1.16)	\$ (5.51)	\$ (2.35)

<sup>(1)</sup> For the three months ended September 30, 2020 and 2019, excluded from the calculation of diluted earnings per share is the effect of adding back \$8.2 million and \$7.1 million, respectively, of interest expense and 126,454,900 and 38,112,100, respectively, weighted average dilutive common share equivalents for the assumed conversion or exchange of the Company's outstanding convertible and exchangeable notes, as their inclusion would be antidilutive. For the nine months ended September 30, 2020 and 2019, excluded from the calculation of diluted earnings per share is the effect of adding back \$22.4 million and \$21.2 million, respectively, and 67,774,600 and 38,112,100, respectively, weighted average dilutive common share equivalents for the assumed conversion or exchange of the Company's outstanding convertible and exchangeable notes, as their inclusion would be antidilutive.

<sup>(2)</sup> The calculation of diluted earnings per share excludes the effect of weighted average unvested non-participating restricted shares of 67,300 and 99,100 for the three and nine months ended September 30, 2019, respectively, as the effect would be antidilutive. No unvested non-participating restricted shares were outstanding during the nine months ended September 30, 2020. The calculation of diluted earnings per share also excludes the effect of weighted average shares of class A common stock that are contingently issuable in relation to performance stock units (Note 19) of 5,183,400 and 2,451,400 for the three months ended September 30, 2020 and 2019, respectively, and 4,250,400 and 1,320,900 for the nine months ended September 30, 2020 and 2019, respectively.

<sup>(3)</sup> OP Units, subject to lock-up agreements, may be redeemed for registered or unregistered class A common stock on a one-for-one basis. At September 30, 2020 and 2019 there were 53,076,700 and 52,649,000 redeemable OP Units, respectively. These OP Units would not be dilutive and were not included in the computation of diluted earnings per share for all periods presented.

## 18. Fee Income

The Company's real estate investment management platform manages capital on behalf of institutional and retail investors in private funds, traded and non-traded REITs, and other investment vehicles for which the Company earns fee income. For investment vehicles in which the Company co-sponsors with a third party or for which the Company engages a third party sub-advisor, such fee income is shared with the respective co-sponsor or sub-advisor.

Fee income as presented in 2019 excluded management fees from the Company's open-end light industrial fund which was included in income from discontinued operations (Note 16) prior to the sale of the Company's light industrial platform in December 2019.

The Company's fee income is earned from the following sources:

(In thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Institutional funds and other investment vehicles	\$ 31,648	\$ 26,612	\$ 93,461	\$ 50,283
Public companies (CLNC, and NRE prior to its sale in September 2019)	7,355	79,633	22,636	109,777
Non-traded REIT	4,431	4,994	13,293	15,089
Other	485	615	1,574	3,166
	<u>\$ 43,919</u>	<u>\$ 111,854</u>	<u>\$ 130,964</u>	<u>\$ 178,315</u>

The following table presents the Company's fee income by type:

(In thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Base management fees (\$42,009, \$45,572, \$124,457 and \$108,192 from affiliates, respectively)	\$ 42,085	\$ 45,763	\$ 124,742	\$ 108,739
Asset management fees (\$525, \$539, \$1,784 and \$1,775 from affiliates, respectively)	818	819	2,629	2,684
Incentive and termination fee—from affiliates	—	64,555	—	64,555
Other fee income (\$993, \$693, \$3,524 and \$955 from affiliates, respectively)	1,016	717	3,593	2,337
Total fee income	<u>\$ 43,919</u>	<u>\$ 111,854</u>	<u>\$ 130,964</u>	<u>\$ 178,315</u>

**Base Management Fees**—The Company earns base management fees for the day-to-day operations and administration of its managed private funds, traded and non-traded REITs, and other investment vehicles, calculated as follows:

- Private Funds and similar investment vehicles—generally (a) 1% per annum of limited partners' net funded capital, or (b) 0.9% to 1.75% per annum of investors' committed capital during commitment or investment period and thereafter, of contributed or invested capital;
- CLNC—1.5% per annum of CLNC's stockholders' equity (as defined in its management agreement), with a reduction in fee base to reflect CLNC's reduced book value effective in the beginning of the fourth quarter of 2019;
- Non-Traded REIT—1.5% per annum of most recently published NAV (as may be subsequently adjusted for any special distribution) for NorthStar Healthcare, with \$2.5 million per quarter paid in shares of NorthStar Healthcare common stock at a price per share equal to its most recently published NAV per share (as may be subsequently adjusted for any special distribution); and
- NorthStar Realty Europe ("NRE")—prior to termination of the management contract in connection with the sale of NRE on September 30, 2019, a variable fee of 1.5% per annum of NRE's reported European Public Real Estate Association NAV ("EPRA NAV" as defined in its management agreement) for EPRA NAV up to and including \$2.0 billion, and 1.25% per annum for EPRA NAV amounts exceeding \$2.0 billion.

**Asset Management Fees**—The Company earns asset management fees from its managed private funds, which represents a one-time fee upon closing of each investment, calculated as a fixed percentage, generally 0.5% of the limited partners' net funded capital on each investment.

**Incentive Fees**—The Company may earn incentive fees from CLNC, and prior to its termination, from NRE, determined based on the performance of the investment vehicles subject to the achievement of minimum return hurdles in accordance with the terms set out in their respective governing agreements. A portion of the incentive fees earned by the Company (generally 40% to 50%) is allocable to senior management, investment professionals and certain other employees of the Company, included in carried interest and incentive fee compensation expense. There were no incentive fees earned in the three and nine months ended September 30, 2020.

Termination of the NRE management contract in September 2019 resulted in payment and recognition of a termination fee to the Company of \$64.6 million, of which \$21.5 million represents incentive fees earned for fiscal year 2019 through the date of termination.

*Other Fee Income*—Other fees include service fees for information technology and operational support services and facilities to portfolio companies, advisory fees, and licensing fee on the Company's proprietary real estate index, a rules-based strategy that invests in common stock of U.S. REITs.

## 19. Equity-Based Compensation

The Colony Capital, Inc. 2014 Omnibus Stock Incentive Plan (the "Equity Incentive Plan") provides for the grant of restricted stock, performance stock units ("PSUs"), Long Term Incentive Plan ("LTIP") units, RSUs, deferred stock units ("DSUs"), options, warrants or rights to purchase shares of the Company's common stock, cash incentives and other equity-based awards to the Company's officers, directors (including non-employee directors), employees, co-employees, consultants or advisors of the Company or of any parent or subsidiary who provides services to the Company. Shares reserved for the issuance of awards under the Equity Incentive Plan are subject to equitable adjustment upon the occurrence of certain corporate events, provided that this number automatically increases each January 1st by 2% of the outstanding number of shares of the Company's class A common stock on the immediately preceding December 31st. At September 30, 2020, an aggregate 64.1 million shares of the Company's class A common stock were reserved for the issuance of awards under the Equity Incentive Plan.

*Restricted Stock*—Restricted stock awards relating to the Company's class A common stock are granted to senior executives, directors and certain employees, with a service condition only and are generally subject to annual time-based vesting in equal tranches over a three-year period. Restricted stock is entitled to dividends declared and paid on the Company's class A common stock and such dividends are not forfeitable prior to vesting of the award. Restricted stock awards are valued based on the Company's class A common stock price on grant date and equity-based compensation expense is recognized on a straight-line basis over the requisite three-year service period.

*Restricted Stock Units ("RSUs")*—RSUs relating to the Company's class A common stock are subject to a performance condition. Vesting of performance-based RSUs occur upon achievement of certain Company-specific metrics over a performance measurement period. Only vested RSUs are entitled to dividends declared and paid on the Company's class A common stock. Fair value of RSUs are based on the Company's class A common stock price on grant date. Equity-based compensation expense is recognized when it becomes probable that the performance condition will be met.

*Performance Stock Units ("PSUs")*—PSUs are granted to senior executives and certain employees, and are subject to both a service condition and market condition. Following the end of the measurement period for the PSUs, the recipients of PSUs who remain employed will vest in, and be issued a number of shares of the Company's class A common stock, ranging from 0% to 200% of the number of PSUs granted, to be determined based upon the performance of the Company's class A common stock either relative to that of a specified peer group or against a target stock price over a three-year measurement period (such measurement metric the "total shareholder return"). In addition, recipients of PSUs whose employment is terminated after the first anniversary of the PSU grant are eligible to vest in a portion of the PSU award following the end of the measurement period based on achievement of the total shareholder return metric otherwise applicable to the award. PSUs also contain dividend equivalent rights which entitle the recipients to a payment equal to the amount of dividends that would have been paid on the shares that are ultimately issued at the end of the measurement period.

Fair value of PSUs, including dividend equivalent rights, was determined using a Monte Carlo simulation under a risk-neutral premise, with the following assumptions:

	2020 PSU Grants	2019 PSU Grants	2018 PSU Grant <sup>(4)</sup>
Expected volatility of the Company's class A common stock <sup>(1)</sup>	34.1%	26.2%	29.0%
Expected annual dividend yield <sup>(2)</sup>	9.3%	8.5% - 8.7%	7.3%
Risk-free rate (per annum) <sup>(3)</sup>	0.4%	2.2% - 2.4%	2.1%

<sup>(1)</sup> Based upon the Company's historical stock volatility or in combination with historical stock volatility of a specified peer group, or a combination of historical volatility and implied volatility on actively traded stock options of a specified peer group.

<sup>(2)</sup> Based upon a combination of historical dividend yields and current annualized dividends.

<sup>(3)</sup> Based upon the continuously compounded zero-coupon U.S. Treasury yield for the term coinciding with the remaining measurement period of the award as of valuation date.

<sup>(4)</sup> Reflects assumptions applied in valuing the award upon modification in February 2019.

Fair value of PSU awards, excluding dividend equivalent rights, is recognized on a straight-line basis over their measurement period as compensation expense, and is not subject to reversal even if the market condition is not achieved. The dividend equivalent right is accounted for as a liability-classified award. The fair value of the dividend

equivalent right is recognized as compensation expense on a straight-line basis over the measurement period, and is subject to adjustment to fair value at each reporting period.

**LTIP Units**—LTIP units are units in the Operating Company that are designated as profits interests for federal income tax purposes. Unvested LTIP units do not accrue distributions. Each vested LTIP unit is convertible, at the election of the holder (subject to capital account limitation), into one common OP Unit and upon conversion, subject to the redemption terms of OP Units (Note 15).

LTIP units issued have either (1) a service condition only, valued based upon the Company's class A common stock price on grant date; or (2) both a service condition and a market condition based upon the Company's class A common stock achieving target closing prices over predetermined measurement periods subject to continuous employment to the time of vesting, valued using a Monte Carlo simulation.

The following assumptions were applied in the Monte Carlo model under a risk-neutral premise:

	2020 LTIP Grant	2019 LTIP Grant <sup>(1)</sup>
Expected volatility of the Company's class A common stock <sup>(2)</sup>	43.1%	28.3%
Expected dividend yield <sup>(3)</sup>	0.0%	8.1%
Risk-free rate (per annum) <sup>(4)</sup>	0.2%	1.8%

<sup>(1)</sup> Represents 10 million LTIP units granted to Marc Ganzi in connection with the acquisition of DBH in July 2019, with vesting based upon achievement of the Company's class A common stock price closing at or above \$10.00 over any 90 consecutive trading days prior to the fifth anniversary of the grant date.

<sup>(2)</sup> Based upon historical volatility of the Company's stock and those of a specified peer group.

<sup>(3)</sup> Based upon the Company's most recently issued dividend prior to grant date and closing price of the Company's class A common stock on grant date. Expected dividend yield is zero for the 2020 LTIP award as the Company suspended common dividends beginning with the second quarter of 2020.

<sup>(4)</sup> Based upon the continuously compounded zero-coupon US Treasury yield for the term coinciding with the measurement period of the award as of valuation date.

Equity-based compensation cost on LTIP units is recognized on a straight-line basis either over (1) the service period for awards with a service condition only; or (2) the derived service period for awards with both a service condition and a market condition, irrespective of whether the market condition is satisfied. The derived service period is a service period that is inferred from the application of the simulation technique used in the valuation of the award, and represents the median of the terms in the simulation in which the market condition is satisfied.

**Deferred Stock Units**—Certain non-employee directors may elect to defer the receipt of annual base fees and/or restricted stock awards, and in lieu, receive awards of DSUs. DSUs awarded in lieu of annual base fees are fully vested on their grant date, while DSUs awarded in lieu of restricted stock awards vest one year from their grant date. DSUs are entitled to a dividend equivalent, in the form of additional DSUs based on dividends declared and paid on the Company's class A common stock. Any such additional DSUs will also be credited with additional DSUs as cash dividends are paid, subject to the same restrictions and vesting conditions, if any. Upon separation of service from the Company, vested DSUs are to be settled in shares of the Company's class A common stock. Fair value of DSUs are determined based on the price of the Company's class A common stock on grant date and recognized immediately if fully vested upon grant, or on a straight-line basis over the vesting period as equity based compensation expense and equity.

Equity-based compensation expense, excluding amounts related to the industrial and hotel businesses which are presented as discontinued operations (Note 16), is as follows:

(In thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Compensation expense (including \$358, \$345, \$1,221 and \$777 amortization of fair value of dividend equivalent rights)	\$ 7,542	\$ 9,119	\$ 25,794	\$ 21,957

Changes in the Company's unvested equity awards are summarized below:

	Restricted Stock	LTIP Units	DSUs	RSUs <sup>(1)</sup>	PSUs <sup>(2)</sup>	Total	Weighted Average Grant Date Fair Value	
							PSUs	All Other Awards
Unvested shares and units at December 31, 2019	7,641,708	10,000,000	265,784	—	5,680,195	23,587,687	\$ 3.66	\$ 3.25
Granted	10,130,282	1,845,018	655,468	10,799,244	4,324,375	27,754,387	1.64	2.20
Vested	(5,894,704)	—	(474,547)	—	—	(6,369,251)	—	5.19
Forfeited	(575,304)	—	—	(1,209,680)	(53,220)	(1,838,204)	4.27	3.78
Unvested shares and units at September 30, 2020	<u>11,301,982</u>	<u>11,845,018</u>	<u>446,705</u>	<u>9,589,564</u>	<u>9,951,350</u>	<u>43,134,619</u>	<u>2.78</u>	<u>2.11</u>

<sup>(1)</sup> Represents the number of RSUs granted that are subject to vesting only upon achievement of performance condition. RSUs that do not meet the performance condition at the end of the measurement period will be forfeited.

<sup>(2)</sup> Represents the number of PSUs granted, which does not reflect potential increases or decreases that could result from the final outcome of the total shareholder return measured at the end of the performance period.

Fair value of equity awards that vested, determined based on their respective fair values at vesting date, was \$1.4 million and \$1.2 million for the three months ended September 30, 2020 and 2019, respectively, and \$14.8 million and \$11.0 million for the nine months ended September 30, 2020 and 2019, respectively.

At September 30, 2020, aggregate unrecognized compensation cost for all unvested equity awards was \$65.5 million, which is expected to be recognized over a weighted average period of 2.6 years.

### **Awards Granted by Managed Companies**

CLNC and NRE, both managed by the Company prior to termination of NRE's management agreement concurrent with the sale of NRE in September 2019, issued restricted stock and performance stock units to the Company and certain of the Company's employees (collectively, "managed company awards"). CLNC awards are primarily restricted stock grants that typically vest over a three-year period, subject to service conditions. NRE awards generally had similar terms as the Company's stock awards, except that the NRE performance stock units measured NRE's stock performance against either an absolute total shareholder return threshold or relative to the performance of a specified market index. Employees were entitled to receive shares of NRE common stock if service conditions and/or market conditions were met. Generally, the Company grants the managed company awards that it receives in its capacity as manager to its employees with substantially the same terms and service requirements. Such grants are made at the discretion of the Company, and the Company may consult with the board of directors or compensation committees of the respective managed companies as to final allocation of awards to its employees.

Managed company awards granted to the Company, pending grant by the Company to its employees, are recognized based upon their fair value at grant date as other assets and other liabilities on the consolidated balance sheet. The deferred revenue liability is amortized into other income as the awards vest to the Company.

Managed company awards granted to employees, either directly or through the Company, are recorded as other asset and other liability, and amortized on a straight-line basis as equity-based compensation expense and as other income, respectively, as the awards vest to the employees. The other asset and other liability associated with managed company awards granted to employees are subject to adjustment to fair value at each reporting period, with changes reflected in equity-based compensation and other income, respectively.

Equity-based compensation recognized related to managed company awards was an expense reversal of \$0.9 million and \$1.3 million for the three and nine months ended September 30, 2020, respectively, an expense of \$24.3 million and \$30.6 million for the three and nine months ended September 30, 2019, respectively. A corresponding amount is recognized in other income for managed company awards granted to employees (Note 20). At September 30, 2020, aggregate unrecognized compensation cost for unvested managed company awards of CLNC was \$2.3 million, which is expected to be recognized over a weighted average period of 1.1 years.

## **20. Transactions with Affiliates**

Affiliates include (i) private funds, traded and non-traded REITs and investment companies that the Company manages or sponsors, and in which the Company may have an equity interest or co-invests with; (ii) the Company's investments in unconsolidated ventures; and (iii) directors, senior executives and employees of the Company (collectively, "employees").

Amounts due from and due to affiliates consist of the following:

(In thousands)	September 30, 2020	December 31, 2019
<b>Due from Affiliates</b>		
Investment vehicles, portfolio companies and unconsolidated ventures		
Fee income	\$ 32,633	\$ 36,106
Cost reimbursements and recoverable expenses	10,571	14,624
Loan and interest receivable	35,000	—
Employees and other affiliates	597	750
	<u>\$ 78,801</u>	<u>\$ 51,480</u>
<b>Due to Affiliates</b>		
Employees and other affiliates	<u>\$ 1,279</u>	<u>\$ 34,064</u>

Transactions with affiliates include the following:

*Fee Income*—Fee income earned from investment vehicles that the Company manages and/or sponsors, and may have an equity interest or co-investment, are presented in Note 18.

*Cost Reimbursements*—The Company received cost reimbursement income related primarily to the following arrangements:

- Direct and indirect operating costs, including but not limited to compensation, overhead and other administrative costs, for managing the operations of non-traded REITs and CLNC, with reimbursements for non-traded REITs limited to the greater of 2% of average invested assets or 25% of net income (net of base management fees);
- Direct costs of personnel dedicated solely to NRE (prior to termination of management agreement concurrent with sale of NRE in September 2019) plus 20% of such personnel costs for related overhead charges, not to exceed, in aggregate, specified thresholds as set out in the NRE management agreement;
- Costs incurred in performing investment due diligence for NorthStar Healthcare and private funds managed by the Company;
- Equity awards granted to employees of the Company by CLNC and NRE (prior to termination of the NRE management agreement), which are presented gross as other income and compensation expense (Note 19);
- Services provided to the Company's unconsolidated investment ventures for servicing and managing their loan portfolios, including foreclosed properties, and services to the Digital Colony Manager joint venture prior to the Company's acquisition of DBH in July 2019; and
- Administrative services provided to certain senior executives of the Company.

Cost reimbursements, included in other income, are as follows. Amounts related to NRE pertain to periods prior to termination of its management agreement in September 2019.

(In thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Retail companies	\$ 771	\$ 681	\$ 2,618	\$ 2,108
Public companies (CLNC, NRE)	1,479	6,592	6,007	11,887
Private investment vehicles and other	4,283	2,736	9,517	10,615
Equity awards of CLNC and NRE (Note 19)	(1,005)	24,049	(1,605)	30,632
	<u>\$ 5,528</u>	<u>\$ 34,058</u>	<u>\$ 16,537</u>	<u>\$ 55,242</u>

*Recoverable Expenses*—The Company pays organization and offering costs associated with the formation and capital raising of the retail companies and private funds sponsored by the Company, for which the Company recovers from these investment vehicles, up to specified thresholds for certain private funds and up to 1% of proceeds expected to be raised from the offering of retail companies (excluding shares offered pursuant to distribution reinvestment plans).

*NorthStar Healthcare Credit Facility*—The Company has committed to provide NorthStar Healthcare with an unsecured revolving credit facility at market terms with a maximum principal amount of \$35.0 million. The credit facility matures in December 2021 (extended to December 2022 in July 2020), with a six-month extension option. Advances under the credit facility accrue interest at LIBOR plus 3.5%. There is no commitment fee for the unused portion of the facility. The credit facility is intended to provide additional liquidity to NorthStar Healthcare on an as needed basis. In April 2020, the credit facility was drawn for the full amount of \$35.0 million and remained outstanding at September 30, 2020. There were no amounts outstanding at December 31, 2019.

*Liquidating Trust*—In the formation of CLNC through a merger with NorthStar Real Estate Income Trust, Inc. ("NorthStar I") and NorthStar Real Estate Income II, Inc., non-traded REITs previously sponsored by the Company, a certain loan receivable previously held by NorthStar I was not transferred to CLNC, for which the Company acquired a senior participation interest at par, and the remaining junior participation interest ("NorthStar I Retained Asset") was transferred to a liquidating trust. The Company entered into a management services agreement with the liquidating trust to service and assist in the potential sale of the NorthStar I Retained Asset, and to provide administrative services on such terms and conditions as approved by the trustees for a management fee of 1.25% per annum of the net assets of the liquidating trust. Such fee amount is immaterial. In October 2020, the loan was paid off at a discount and the liquidating trust is expected to be liquidated by the end of the year.

*Deferred Consideration*—In the acquisition of DBH in July 2019 (Note 3), payment of a portion of the cash consideration to the principals of DBH, including Marc Ganzi, who became employees or affiliate of the Company post-acquisition, was deferred until the expiration of certain customary seller indemnification obligations. The entire deferred consideration of \$32.5 million was paid in May 2020.

*Digital Real Estate Acquisitions*—In connection with the acquisition of third party interests in DataBank in December 2019 (Note 3), Marc Ganzi and Ben Jenkins entered into voting agreements with the Company, which provided the Company with majority voting power over DataBank's board of directors. Additionally, in exchange for incentive units owned by Messrs. Ganzi and Jenkins allocable to the DataBank stake acquired by the Company, the Company issued OP Units with a value of \$3 million, which are subject to a multi-year lockup. The value represents consideration paid to Messrs. Ganzi and Jenkins by the Company for such incentive units in connection with its investment in DataBank, which was in addition to the cash consideration paid to third parties by the Company for its acquired interests in DataBank. As a result, the Company will not be subject to future carried interest payments to Messrs. Ganzi and Jenkins with respect to the Company's investment in DataBank.

In connection with acquisition of Vantage SDC in July 2020 (Note 4), the Company entered into a series of agreements with Messrs. Ganzi and Jenkins, and their respective affiliates, pursuant to which Messrs. Ganzi and Jenkins invested \$8.7 million and \$2.1 million, respectively, in Vantage SDC alongside the Company and the co-investors on the same economic terms. Such amounts invested represented 40% of carried interest payments received by each of Messrs. Ganzi and Jenkins in connection with Vantage SDC acquisition as a result of their respective personal investments in Vantage made prior to the Company's acquisition of DBH (such carried interest was determined excluding any additional purchase price that may be payable if certain leasing milestones are achieved). Additionally, the day-to-day operations of Vantage SDC will continue to be managed by Vantage's existing management company, in which Messrs. Ganzi and Jenkins own a 50% interest in the aggregate. Fees paid to Vantage's management company for Vantage SDC was \$2.3 million for the three and nine months ended September 30, 2020.

In the aforementioned transactions, the Company took a series of steps to mitigate conflicts in the transactions, including receiving fairness opinions on the purchase price from a nationally recognized third party valuation firm. Additionally, the transactions, specifically the related party aspects of the transactions, were subjected to the approval of either the Company's board of directors or the audit committee of the board of directors.

*Arrangements with Company-Sponsored Private Funds*—The Company co-invests alongside its sponsored private funds through joint ventures between the Company and the sponsored private fund. These co-investment joint ventures are consolidated by the Company. The Company has capital commitments, as general partner, directly into the private funds and as an affiliate of the general partner, capital commitments satisfied through co-investment joint ventures. In connection with the Company's commitments as an affiliate of the general partner, the Company is allocated a proportionate share of the costs of the private funds such as financing and administrative costs. Such costs expensed during the three and nine months ended September 30, 2020 and 2019 were immaterial and relate primarily to the Company's share of the fund's operating costs and deferred financing costs on borrowings of the fund.

*Equity Awards of CLNC and NRE*—As discussed in Note 19, CLNC and NRE (prior to termination of the NRE management agreement) grant equity awards to the Company and certain of the Company's employees, either directly or indirectly through the Company, are recognized as a gross-up of equity-based compensation expense over the vesting period with a corresponding amount in other income.

*Investment in Managed Investment Vehicles*—Subject to the Company's related party policies and procedures, senior management, investment professionals and certain other employees may invest on a discretionary basis in investment vehicles sponsored by the Company, either directly in the vehicle or indirectly through the general partner entity. These investments are generally not subject to management fees, but otherwise bear their proportionate share of other operating expenses of the investment vehicles. At September 30, 2020 and December 31, 2019, such investments in consolidated investment vehicles and general partner entities totaled \$13.2 million and \$4.0 million, respectively, reflected in redeemable noncontrolling interests and noncontrolling interests on the balance sheet. Their share of net

income was \$4.4 million and \$0.3 million for the three months ended September 30, 2020 and 2019, respectively, and \$4.2 million and \$1.3 million for the nine months ended September 30, 2020 and 2019, respectively.

**Aircraft**—The Company, through its subsidiary, Colony Capital Advisors, LLC, has entered into a time sharing agreement with Thomas J. Barrack, Jr., the Company's Executive Chairman, under which Mr. Barrack may use the Company's aircraft for personal travel. Under this arrangement, Mr. Barrack pays the Company for personal usage based on the incremental cost to the Company, including direct and indirect variable costs, but in no case more than the maximum reimbursement permitted by the Federal Aviation Regulations under the agreement. Mr. Barrack reimbursed the Company \$0.2 million for both the three months ended September 30, 2020 and 2019, and \$0.6 million and \$0.8 million for the nine months ended September 30, 2020 and 2019, respectively.

Separately, pursuant to Mr. Ganzi's employment agreement, the Company has agreed to reimburse Mr. Ganzi for certain variable operational costs of business travel on a chartered or private jet (including any aircraft that Mr. Ganzi may partially or fully own); provided that the Company will not reimburse the allocable share (based on the number of passengers) of variable operational costs for any passenger on such flight who is not traveling on Company business. The Company reimbursed Mr. Ganzi \$39,000 and \$0.1 million for the three months ended September 30, 2020 and 2019, respectively, and \$0.4 million and \$0.1 million for the nine months ended September 30, 2020 and 2019, respectively. In November 2020, the Company's board of directors approved an amendment to Mr. Ganzi's employment agreement to provide for the reimbursement by the Company of certain defined fixed costs of any aircraft owned by Mr. Ganzi.

## 21. Commitments and Contingencies

### *Litigation and Claims*

The Company may be involved in litigation and claims in the ordinary course of business. As of September 30, 2020, the Company was not involved in any legal proceedings that are expected to have a material adverse effect on the Company's results of operations, financial position or liquidity.

## 22. Segment Reporting

The Company's five reportable segments are as follows:

- **Digital Investment Management ("Digital IM")**—This business encompasses the investment and stewardship of third party capital in digital infrastructure and real estate. The Company's flagship opportunistic strategy is conducted through DCP and separately capitalized vehicles while other strategies, including digital credit and public equities, will be or are conducted through other investment vehicles. The Company earns management fees, generally based on the amount of assets or capital managed in investment vehicles, and have the potential to earn carried interest based on the performance of such investment vehicles subject to achievement of minimum return hurdles.
- **Digital Operating**—This business is composed of balance sheet equity interests in digital infrastructure and real estate operating companies, which generally earns rental income from providing use of space and/or capacity in or on digital assets through leases, services and other agreements. The Company currently owns interests in two companies, DataBank's edge colocation data centers and Vantage stabilized hyperscale data centers, which are also portfolio companies under Digital IM for the equity interests owned by third party capital.
- **Digital Other**—This segment is composed of equity interests in digital investment vehicles, the largest of which is the Company's investment and commitment to DCP. This segment also includes the Company's investment and commitment to the digital liquid strategies and seed investments for future digital investment vehicles.
- **Wellness Infrastructure (previously referred to as Healthcare)**—This segment is composed of a diverse portfolio of senior housing, skilled nursing facilities, medical office buildings, and hospitals. The Company earns rental income from senior housing, skilled nursing facilities and hospital assets that are under net leases to single tenants/operators and from medical office buildings which are both single tenant and multi-tenant. In addition, certain of the Company's senior housing properties are managed by operators under a RIDEA (REIT Investment Diversification and Empowerment Act) structure, which allows the Company to gain financial exposure to underlying operations of the facility in a tax efficient manner versus receiving contractual rent under a net lease arrangement.
- **Other**—This segment is composed of other equity and debt investments ("OED") and non-digital investment management business ("Other IM"). OED encompasses a diversified group of non-digital real estate and real estate-related equity and debt investments, including investments for which the Company acts as a general partner and/or manager ("GP co-investments") and receives various forms of investment management economics on related third-party capital on such investments (including CLNC), other real estate equity and debt investments and

other real estate related securities, among other holdings. Over time, the Company expects to monetize the bulk of its OED portfolio as it completes its digital evolution. Other IM, which is separate from Digital IM, encompasses the Company's management of private real estate credit funds and related co-investment vehicles, CLNC, and NorthStar Healthcare, a public non-traded healthcare REIT. Many of the investments underlying these vehicles are co-owned by the Company's balance sheet and categorized under OED. The Company earns management fees, generally based on the amount of assets or capital managed, and contractual incentive fees or potential carried interest based on the performance of the investment vehicles managed subject to achievement of minimum return hurdles.

Amounts not allocated to specific segments generally include corporate level cash and corresponding interest income, fixed assets for administrative use, corporate level financing and related interest expense, income and expense related to cost reimbursement arrangements with certain affiliates, costs in connection with unconsummated investments, compensation expense not directly attributable to reportable segments, corporate level administrative and overhead costs as well as corporate level transaction costs. Costs which are directly attributable, or otherwise can be subjected to a reasonable and systematic allocation, have been allocated to each of the reportable segments. In the third quarter of 2020, the Company applied a more specific identification of individual compensation and administrative costs to more precisely attribute these costs to the respective reportable segments. The more refined cost attribution methodology is a better reflection of the underlying cost of operations of the individual reportable segments and was retrospectively applied to prior periods.

Aligned with the Company's acceleration of its digital transformation, the Company disaggregated its digital operating segments and beginning the third quarter of 2020, presents three digital reportable segments, as described further below. Concurrently, the Company aggregated three of its non-digital operating segments, that is CLNC, OED and Other IM, and presents a single reportable segment, renamed as Other. These changes reflect the different business strategies for the various digital operating segments and collectively, for the non-digital operating segments, and also reflect the Company's focus on its digital business which represents the future growth of the Company.

Additionally, effective the first and third quarters of 2020, the Industrial segment and the Hospitality segment, respectively, no longer constitute reportable segments. In December 2019, the Company completed the sale of the light industrial portfolio and its related management platform, which represented the vast majority of the industrial segment. The Company continues to own the bulk industrial assets which remain held for sale. In September 2020, the Company entered into a definitive agreement to sell five of the six hotel portfolios in its Hospitality segment (remaining portfolio is in receivership) and the THL Hotel Portfolio in the Other segment. Current and prior period results of the Industrial segment, Hospitality segment and THL Hotel Portfolio in the Other segment are presented as discontinued operations on the consolidated statements of operations (Note 16).

## Segment Results of Operations

The following table presents results of operations of the Company's reportable segments.

(In thousands)	Digital Operating	Digital Investment Management	Digital Other	Wellness Infrastructure	Other	Amounts Not Allocated to Segments	Total
<b>Three Months Ended September 30, 2020</b>							
Total revenues	\$ 98,549	\$ 20,137	\$ 736	\$ 124,193	\$ 69,298	\$ 3,764	\$ 316,677
Income (loss) from continuing operations	(38,479)	3,539	6,757	(6,969)	(101,128)	(47,936)	(184,216)
Net income (loss) from continuing operations attributable to Colony Capital, Inc.	(4,797)	1,730	5,616	(11,349)	(32,481)	(41,347)	(82,628)
Net loss from discontinued operations attributable to Colony Capital, Inc.							(104,639)
Net loss attributable to Colony Capital, Inc.							<u>\$ (187,267)</u>
<b>Three Months Ended September 30, 2019</b>							
Total revenues	\$ —	\$ 14,517	\$ —	\$ 136,091	\$ 205,706	\$ 2,686	\$ 359,000
Income (loss) from continuing operations	—	41,841	(251)	(114,154)	(369,511)	(149,421)	(591,496)
Net income (loss) from continuing operations attributable to Colony Capital, Inc.	—	38,160	(229)	(84,222)	(348,898)	(133,970)	(529,159)
Net income from discontinued operations attributable to Colony Capital, Inc.							1,343
Net loss attributable to Colony Capital, Inc.							<u>\$ (527,816)</u>
<b>Nine Months Ended September 30, 2020</b>							
Total revenues	\$ 185,737	\$ 60,045	\$ 1,559	\$ 406,055	\$ 231,205	\$ 13,149	\$ 897,750
Income (loss) from continuing operations	(77,916)	7,953	16,014	(755,254)	(1,192,092)	(175,760)	(2,177,055)
Net income (loss) from continuing operations attributable to Colony Capital, Inc.	(12,384)	5,597	14,097	(497,371)	(888,049)	(152,773)	(1,530,883)
Net loss from discontinued operations attributable to Colony Capital, Inc.							(1,022,817)
Net loss attributable to Colony Capital, Inc.							<u>\$ (2,553,700)</u>
<b>Nine Months Ended September 30, 2019</b>							
Total revenues	\$ —	\$ 14,517	\$ —	\$ 427,761	\$ 455,174	\$ 10,258	\$ 907,710
Income (loss) from continuing operations	—	46,655	(92)	(205,080)	(548,218)	(384,951)	(1,091,686)
Net income (loss) from continuing operations attributable to Colony Capital, Inc.	—	42,683	(80)	(152,375)	(559,982)	(352,105)	(1,021,859)
Net loss from discontinued operations attributable to Colony Capital, Inc.							(22,685)
Net loss attributable to Colony Capital, Inc.							<u>\$ (1,044,544)</u>

The following table presents selected income and expense items of reportable segments.

(In thousands)	Digital Operating	Digital Investment Management	Digital Other	Wellness Infrastructure	Other	Amounts Not Allocated to Segments	Total
<b>Three Months Ended September 30, 2020</b>							
Interest income	\$ —	\$ 2	\$ 2	\$ 992	\$ 12,566	\$ 1,254	\$ 14,816
Interest expense	18,589	—	—	32,310	6,479	14,471	71,849
Depreciation and amortization	73,032	6,427	—	31,961	13,208	1,105	125,733
Impairment loss	—	3,832	—	2,451	29,886	—	36,169
Gain on sale of real estate	—	—	—	186	13,072	—	13,258
Equity method earnings (losses), including carried interest	—	6,134	4,400	—	(67,450)	—	(56,916)
Income tax benefit (expense)	6,091	(144)	(73)	(5,868)	10,053	(137)	9,922
<b>Three Months Ended September 30, 2019</b>							
Interest income	\$ —	\$ 7	\$ —	\$ 956	\$ 38,828	\$ 446	\$ 40,237
Interest expense	—	1,585	—	46,029	12,627	14,351	74,592
Depreciation and amortization	—	4,753	—	38,998	71,678	1,503	116,932
Impairment loss	—	—	—	92,885	440,146	—	533,031
Gain on sale of real estate	—	—	—	833	7,388	—	8,221
Equity method earnings (losses), including carried interest	—	848	(251)	—	45,706	—	46,303
Income tax benefit (expense)	—	(13,090)	—	566	2,717	(289)	(10,096)
<b>Nine Months Ended September 30, 2020</b>							
Interest income	\$ —	\$ 36	\$ 11	\$ 2,967	\$ 61,972	\$ 5,074	\$ 70,060
Interest expense	36,161	—	—	106,875	26,341	44,570	213,947
Depreciation and amortization	131,634	19,635	—	106,401	39,817	4,118	301,605
Impairment loss	—	3,832	—	712,238	716,541	12,297	1,444,908
Gain on sale of real estate	—	—	—	186	23,872	—	24,058
Equity method earnings (losses), including carried interest	—	6,295	12,647	—	(353,426)	—	(334,484)
Income tax benefit (expense)	14,494	(817)	(752)	(17,874)	1,749	(46)	(3,246)
<b>Nine Months Ended September 30, 2019</b>							
Interest income	\$ —	\$ 7	\$ —	\$ 2,833	\$ 116,579	\$ 1,937	\$ 121,356
Interest expense	—	1,585	—	150,691	42,889	41,591	236,756
Depreciation and amortization	—	4,753	—	119,907	113,294	4,536	242,490
Impairment loss	—	—	—	144,209	491,011	649	635,869
Gain on sale of real estate	—	—	—	833	42,008	—	42,841
Equity method earnings (losses), including carried interest	—	7,112	(92)	—	(179,210)	—	(172,190)
Income tax benefit (expense)	—	(13,090)	—	1,844	(89)	(388)	(11,723)

Total assets and equity method investments of the reportable segments are summarized as follows:

(In thousands)	September 30, 2020		December 31, 2019	
	Total Assets	Equity Method Investments	Total Assets	Equity Method Investments
Digital Operating	\$ 5,314,920	\$ —	\$ 1,684,867	\$ —
Digital Investment Management	487,898	11,640	428,703	1,059
Digital Other	396,429	177,745	46,832	46,832
Wellness Infrastructure	3,930,425	—	4,886,374	—
Other	4,516,516	1,507,353	6,403,002	1,935,882
Amounts not allocated to segments	357,193	3,742	1,120,929	3,742
Assets held for disposition related to discontinued operations	4,039,669	—	5,261,477	—
	<u>\$ 19,043,050</u>	<u>\$ 1,700,480</u>	<u>\$ 19,832,184</u>	<u>\$ 1,987,515</u>

### Geography

Geographic information about the Company's total income and long-lived assets are as follows. Geography is generally presented as the location in which the income producing assets reside or the location in which income generating services are performed.

(In thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
<b>Total income by geography:</b>				
United States	\$ 271,480	\$ 283,323	\$ 767,141	\$ 673,309
Europe	7,022	88,561	98,840	256,064
Other	1,744	2,472	4,554	4,450
Total <sup>(1)</sup>	<u>\$ 280,246</u>	<u>\$ 374,356</u>	<u>\$ 870,535</u>	<u>\$ 933,823</u>

(In thousands)	September 30, 2020		December 31, 2019	
	<b>Long-lived assets by geography:</b>			
United States	\$ 7,663,900	\$ 5,267,189		
Europe	1,418,881	1,508,347		
Total <sup>(2)</sup>	<u>\$ 9,082,781</u>	<u>\$ 6,775,536</u>		

<sup>(1)</sup> Total income includes the Company's share of earnings (loss) from its equity method investments (but excludes the Company's impairment of its equity method investments of \$26.0 million and \$3.1 million for the three months ended September 30, 2020 and 2019, respectively, and \$323.8 million and \$253.5 million for the nine months ended September 30, 2020 and 2019, respectively); and excludes cost reimbursement income from affiliates and income from discontinued operations. All income from discontinued operations is generated in the United States.

<sup>(2)</sup> Long-lived assets comprise real estate held for investment, real estate related intangible assets, operating lease right-of-use assets and fixed assets, and exclude financial instruments, assets held for disposition and investment management related intangible assets. Long-lived assets that are held for disposition at September 30, 2020 and December 31, 2019 included \$4.0 billion and \$5.2 billion located in the United States, respectively, and \$0.2 billion and \$0.3 billion located in Europe, respectively.

### 23. Supplemental Disclosure of Cash Flow Information

(In thousands)	Nine Months Ended September 30,	
	2020	2019
<b>Supplemental Disclosure of Cash Flow Information</b>		
Cash paid for interest, net of amounts capitalized of \$655 and \$2,569	\$ 258,508	\$ 397,475
Cash paid for income taxes, net	36,098	6,377
Cash paid for operating leases	21,022	11,777
<b>Supplemental Disclosure of Cash Flows from Discontinued Operations</b>		
Hotel:		
Net cash provided by (used in) operating activities of discontinued operations	\$ 9,989	\$ 130,039
Net cash provided by (used in) investing activities of discontinued operations	(79,173)	(70,802)
Net cash provided by (used in) financing activities of discontinued operations	1,280	(28,211)
Industrial:		
Net cash provided by (used in) operating activities of discontinued operations	(35,073)	142,635
Net cash provided by (used in) investing activities of discontinued operations	37,074	(1,434,477)
Net cash provided by (used in) financing activities of discontinued operations	(34,546)	1,271,866
<b>Supplemental Disclosure of Cash Flows from Investing and Financing Activities</b>		
Dividends and distributions payable	\$ 18,516	\$ 86,588
Improvements in operating real estate in accrued and other liabilities	19,806	22,253
Proceeds from loan repayments and asset sales held in escrow	3,049	16,692
Right-of-use assets and operating lease liabilities established	14,683	138,731
Redemption of OP Units for common stock	1,423	2,104
Assets and liabilities of investment entities deconsolidated	172,927	—
Assets consolidated in real estate acquisition, net of cash and restricted cash	3,597,271	—
Liabilities assumed in real estate acquisition	2,142,657	—
Noncontrolling interests assumed in real estate acquisition	366,136	—
Deferred cash consideration for acquisition of DBH (Note 3)	—	35,500
Issuance of OP Units for business combinations (Note 3)	—	111,903
Foreclosures and exchanges of loans receivable for real estate	—	16,000
Financing provided to buyer in sale of real estate	—	4,000
Fair value of Digital Colony Manager contract intangible consolidated (Note 3)	—	51,400

### 24. Subsequent Events

Other than as disclosed elsewhere, no subsequent events have occurred that would require recognition in the consolidated financial statements or disclosure in the accompanying notes.

## FORWARD-LOOKING STATEMENTS

Some of the statements contained in this Quarterly Report on Form 10-Q (this "Quarterly Report") constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and we intend such statements to be covered by the safe harbor provisions contained therein. Forward-looking statements relate to expectations, beliefs, projections, future plans and strategies, anticipated events or trends and similar expressions concerning matters that are not historical facts. In some cases, you can identify forward-looking statements by the use of forward-looking terminology such as "may," "will," "should," "expects," "intends," "plans," "anticipates," "believes," "estimates," "predicts," or "potential" or the negative of these words and phrases or similar words or phrases which are predictions of or indicate future events or trends and which do not relate solely to historical matters. You can also identify forward-looking statements by discussions of strategy, plans or intentions.

The forward-looking statements contained in this Quarterly Report reflect our current views about future events and are subject to numerous known and unknown risks, uncertainties, assumptions and changes in circumstances that may cause our actual results to differ significantly from those expressed in any forward-looking statement. The following factors, among others, could cause actual results and future events to differ materially from those set forth or contemplated in the forward-looking statements:

- the duration and severity of the current novel coronavirus (COVID-19) pandemic, and its impact on the global market, economic and environmental conditions generally and in the digital and communications technology, wellness infrastructure and hospitality real estate, other commercial real estate equity and debt, and investment management sectors;
- the impact of COVID-19 on the Company's operating cash flows, debt service obligations and covenants, liquidity position and valuations of its real estate investments, as well as the increased risk of claims, litigation and regulatory proceedings and uncertainty that may adversely affect the Company;
- whether we will successfully execute our strategic transformation to become a digital infrastructure and real estate focused company within the timeframe contemplated or at all, and the impact of such transformation on the Company's legacy portfolios and assets, including whether such transformation will result in significant further impairments to certain of our investments, including wellness infrastructure and hospitality assets and whether such transformation and any resulting impairments or dispositions will be consistent with the Company's REIT status;
- our ability to obtain and maintain financing arrangements, including securitizations, on favorable or comparable terms or at all, including our ability to obtain forbearances and/or debt modifications on our corporate credit facility and our non-recourse mortgage debt;
- the Company's ability to complete anticipated monetizations of non-core assets within the timeframe and on the terms contemplated, if at all;
- the Company's ability to complete the pending exit of the Company's hospitality business within the timeframe and on the terms contemplated, if at all, and the amount of proceeds, if any, the Company will receive as a result of the exit after the impact of transaction costs and other transaction related expenses, including any required capital contributions to the hotel portfolios;
- whether we will realize any of the anticipated benefits of the Company's pending exit from its hospitality business, if consummated;
- the impact of completed or anticipated initiatives related to our strategic shift to the digital industry, including the acquisitions of Digital Bridge Holdings, LLC and an ownership interest in Data Bridge Holdings, LLC, the strategic investment by Wafra, and the formation of certain other investment management platforms, on our company's growth and earnings profile;
- whether we will realize any of the anticipated benefits of our strategic partnership with Wafra, including whether Wafra will make additional investments in our Digital Other and Digital Operating segments;
- our ability to integrate and maintain consistent standards and controls, including our ability to manage our acquisitions in the digital industry effectively (such as Digital Bridge Holdings, LLC and Data Bridge Holdings, LLC);
- the impact to our business operations and financial condition of realized or anticipated compensation and administrative cost reductions in connection with corporate restructuring;

- our ability to redeploy any proceeds received from the sale of our non-digital or other legacy assets within the timeframe and manner contemplated or at all;
- our business and investment strategy, including the ability of the businesses in which we have a significant investment (such as Colony Credit Real Estate, Inc. (NYSE:CLNC)) to execute their business strategies, particularly in light of the current COVID-19 pandemic;
- CLNC's trading price and its impact on the carrying value of the Company's investment in CLNC, including whether the Company will recognize further other-than-temporary impairments on such CLNC investment;
- performance of our investments relative to our expectations and the impact on our actual return on invested equity, as well as the cash provided by these investments and available for distribution;
- our ability to grow our business by raising capital for the companies that we manage;
- our ability to deploy capital into new investments consistent with our digital business strategies, including the earnings profile of such new investments;
- the impact of adverse conditions affecting a specific asset class in which we have investments;
- the availability of, and competition for, attractive investment opportunities;
- our ability to achieve any of the anticipated benefits of certain joint ventures, including any ability for such ventures to create and/or distribute new investment products;
- our ability to satisfy and manage our capital requirements;
- our expected holding period for our assets and the impact of any changes in our expectations on the carrying value of such assets;
- the general volatility of the securities markets in which we participate;
- stability of the capital structure of our wellness infrastructure and hospitality portfolios;
- changes in interest rates and the market value of our assets;
- interest rate mismatches between our assets and any borrowings used to fund such assets;
- effects of hedging instruments on our assets;
- the impact of economic conditions on third parties on which we rely;
- any litigation and contractual claims against us and our affiliates, including potential settlement and litigation of such claims;
- our levels of leverage;
- adverse domestic or international economic conditions, including the COVID-19 pandemic, and the impact on the commercial real estate or real-estate related sectors;
- the impact of legislative, regulatory and competitive changes;
- actions, initiatives and policies of the U.S. and non-U.S. governments and changes to U.S. or non-U.S. government policies and the execution and impact of these actions, initiatives and policies, including regulations permitting or requiring forbearance of rent obligations and inhibiting the ability to pursue evictions and obtain late fees from non-paying tenants;
- whether we will maintain our qualification as a real estate investment trust for U.S. federal income tax purposes and our ability to do so;
- our ability to maintain our exemption from registration as an investment company under the Investment Company Act of 1940, as amended (the "1940 Act");
- changes in our board of directors or management team, and availability of qualified personnel;
- our ability to make or maintain distributions to our stockholders; and
- our understanding of our competition.

While forward-looking statements reflect our good faith beliefs, assumptions and expectations, they are not guarantees of future performance. Furthermore, we disclaim any obligation to publicly update or revise any forward-

looking statement to reflect changes in underlying assumptions or factors, of new information, data or methods, future events or other changes. Moreover, because we operate in a very competitive and rapidly changing environment, new risk factors are likely to emerge from time to time. We caution investors not to place undue reliance on these forward-looking statements and urge you to carefully review the disclosures we make concerning risks in Part I, Item 1A. "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2019 and in Part I, Item 2. "Management's Discussion and Analysis of Financial Condition and Results of Operations" and Part II, Item 1A. "Risk Factors" in this Quarterly Report. Readers of this Quarterly Report should also read our other periodic filings made with the Securities and Exchange Commission and other publicly filed documents for further discussion regarding such factors.

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion should be read in conjunction with our unaudited consolidated financial statements and accompanying notes thereto, which are included in Item 1 of this Quarterly Report, as well as information contained in our Annual Report on Form 10-K for the year ended December 31, 2019, which is accessible on the SEC's website at [www.sec.gov](http://www.sec.gov).

### Overview

We are a leading global investment firm with a focus on identifying and capitalizing on key secular trends in digital real estate. We are headquartered in Los Angeles, with key offices in Boca Raton, New York and London, and have over 350 employees across 20 locations in 12 countries.

We were organized on May 31, 2016 as a Maryland corporation, and were formed through a tri-party merger (the "Merger") among Colony Capital, Inc. ("Colony"), NorthStar Asset Management Group Inc. ("NSAM") and NorthStar Realty Finance Corp. ("NRF").

We elected to be taxed as a real estate investment trust ("REIT") for U.S. federal income tax purposes commencing with its initial taxable year ended December 31, 2017. We conduct our operations as a REIT, and generally are not subject to U.S. federal income taxes on our taxable income to the extent that we annually distribute all of our taxable income to stockholders and maintain qualification as a REIT, although we are subject to U.S. federal income tax on income earned through our taxable subsidiaries. We also operate our business in a manner that will permit us to maintain our exemption from registration as an investment company under the 1940 Act.

We conduct substantially all of our activities and hold substantially all of our assets and liabilities through our Operating Company. At September 30, 2020, we owned 90% of the Operating Company, as its sole managing member.

### Our Business

Our vision is to establish the Company as a leading owner, operator and investment manager of digital infrastructure and real estate. We are currently the only global REIT that owns, manages, and/or operates across all major infrastructure components of the digital ecosystem including data centers, cell towers, fiber networks and small cells.

To execute this vision, the Company combined with Digital Bridge Holdings, LLC ("DBH") in July 2019. DBH is an investment manager dedicated to digital real estate and infrastructure, managing approximately \$14 billion of assets under management ("AUM") and approximately \$7 billion of fee earning equity under management ("FEEUM") across six separately capitalized and managed portfolio companies and the \$4 billion Digital Colony Partners fund ("DCP"). As previously disclosed, Marc C. Ganzi, who co-founded DBH, became the Chief Executive Officer ("CEO") of the Company effective July 1, 2020. In connection with Mr. Ganzi's appointment as the Company's CEO, on June 30, 2020, the Board of Directors of the Company (the "Board") appointed Mr. Ganzi to the Board and to serve as President of the Company (in addition to his role as CEO), also effective as of July 1, 2020. Mr. Ganzi is poised to lead the Company's strategic repositioning in becoming the leading platform for digital infrastructure and real estate. Further, the combination with DBH brings its world-class team of investment professionals and management of the DBH portfolio of high performing assets under the combined Digital Colony franchise. Thomas J. Barrack, Jr., who, prior to July 1, 2020, served as the Company's CEO and President, continues to serve in his role as Executive Chairman of the Company and the Board. In addition, Jacky Wu was appointed as the Company's Chief Financial Officer and Treasurer, effective July 1, 2020.

At September 30, 2020, the Company has \$46.8 billion of assets under management, of which \$23.3 billion is dedicated to digital real estate and infrastructure, managed on behalf of third party investors, and the Company's own balance sheet on behalf of its stockholders.

The Company's five reportable segments are as follows:

- *Digital Investment Management ("Digital IM")*—This business encompasses the investment and stewardship of third party capital in digital infrastructure and real estate. The Company's flagship opportunistic strategy is conducted through DCP and separately capitalized vehicles while other strategies, including digital credit and public equities, will be or are conducted through other investment vehicles. The Company earns management fees, generally based on the amount of assets or capital managed in investment vehicles, and have the potential to earn carried interest based on the performance of such investment vehicles subject to achievement of minimum return hurdles.
- *Digital Operating*—This business is composed of balance sheet equity interests in digital infrastructure and real estate operating companies, which generally earns rental income from providing use of space and/or capacity in or on digital assets through leases, services and other agreements. The Company currently owns interests in two

companies, DataBank's edge colocation data centers and Vantage stabilized hyperscale data centers, which are also portfolio companies under Digital IM for the equity interests owned by third party capital.

- *Digital Other*—This segment is composed of equity interests in digital investment vehicles, the largest of which is the Company's investment and commitment to DCP. This segment also includes the Company's investment and commitment to the digital liquid strategies and seed investments for future digital investment vehicles.
- *Wellness Infrastructure (previously referred to as Healthcare)*—This segment is composed of a diverse portfolio of senior housing, skilled nursing facilities, medical office buildings, and hospitals. The Company earns rental income from senior housing, skilled nursing facilities and hospital assets that are under net leases to single tenants/operators and from medical office buildings which are both single tenant and multi-tenant. In addition, certain of the Company's senior housing properties are managed by operators under a RIDEA (REIT Investment Diversification and Empowerment Act) structure, which allows the Company to gain financial exposure to underlying operations of the facility in a tax efficient manner versus receiving contractual rent under a net lease arrangement.
- *Other*—This segment is composed of other equity and debt investments ("OED") and non-digital investment management business ("Other IM"). OED encompasses a diversified group of non-digital real estate and real estate-related equity and debt investments, including investments for which the Company acts as a general partner and/or manager ("GP co-investments") and receives various forms of investment management economics on related third-party capital on such investments (including CLNC), other real estate equity and debt investments and other real estate related securities, among other holdings. Over time, the Company expects to monetize the bulk of its OED portfolio as it completes its digital evolution. Other IM, which is separate from Digital IM, encompasses the Company's management of private real estate credit funds and related co-investment vehicles, CLNC, and NorthStar Healthcare, a public non-traded healthcare REIT. Many of the investments underlying these vehicles are co-owned by the Company's balance sheet and categorized under OED. The Company earns management fees, generally based on the amount of assets or capital managed, and contractual incentive fees or potential carried interest based on the performance of the investment vehicles managed subject to achievement of minimum return hurdles.

### **Acceleration of Digital Transformation and COVID-19 Considerations**

The world continues to face significant healthcare and economic challenges arising from the coronavirus disease 2019, or COVID-19, global pandemic. Efforts to address the pandemic, such as social distancing, closures or reduced capacity of retail and service outlets, hotels, factories and public venues, often mandated by governments, are having a significant impact on the global economy and financial markets across major industries, including many sectors of real estate. In particular, the Company's real estate investments in the hospitality, wellness infrastructure and retail sectors have experienced a myriad of challenges, including, but not limited to: significant declines in operating cash flows at the Company's hotel and wellness infrastructure properties, which in turn, affect their ability to meet debt service and covenant requirements on investment-level debt (non-recourse to the Company) and ability to refinance or extend upcoming maturities (Note 10); flexible lease payment terms sought by tenants; incremental property operating costs such as labor and supplies in response to COVID-19; potential payment defaults on the Company's loans receivable; and a distressed market affecting real estate values in general. Such adverse impact may continue well beyond the containment of the COVID-19 pandemic. Furthermore, the COVID-19 crisis may also lead to heightened risk of litigation at the investment and corporate level, with an ensuing increase in litigation and related costs.

The sharp decline and volatility in equity and debt markets, and the economic recession due to COVID-19 have adversely affected the valuation of certain of the Company's financial assets carried at fair value, and also resulted in impairment on certain non-financial assets. Such effects include the determination that the Company's equity method investment in CLNC was other-than-temporarily impaired at June 30, 2020 (Note 6), decreases in fair value of debt securities (Note 6) and loans receivable (Note 12), and impairment of non-digital real estate assets (Note 4).

Additionally, the COVID-19 crisis has reinforced the critical role and the resilience of the digital real estate and infrastructure sector in a global economy that is increasingly reliant on digital infrastructure. Accordingly, in the second quarter of 2020, the Company determined that it would accelerate its shift to a digitally-focused strategy in order to better position the Company for growth. This digital transformation requires a rotation of the Company's non-digital assets into digital-focused investments. As a result, the Company shortened its assumptions of holding periods on its non-digital assets, in particular its hotel and wellness infrastructure assets, which significantly reduced the undiscounted future net cash flows to be generated by these assets below their carrying values at June 30, 2020. The shortfall in estimated future net cash flows from these assets was further exacerbated by the negative effects of COVID-19 on property operations and market values, as noted above. As a result, significant impairment was recognized in the second quarter of 2020 on the

Company's hotel and wellness infrastructure assets. In the third quarter of 2020, as the Company looks to exit its hospitality business through a sale of its hotel assets (as discussed further below), additional write-downs were recorded to align the hotel carrying values to the agreed upon selling price. The acceleration of the Company's digital transformation and the overall reduction in value of the Company's non-digital balance sheet also caused a shortfall in the fair value of the Company's other investment management reporting unit over its carrying value, resulting in significant impairment to the other investment management goodwill in the second quarter of 2020 (Note 7).

The various impairment and fair value decreases as a result of the acceleration of the Company's digital transformation collectively accounted for \$3.2 billion of charges in the nine months ended September 30, 2020, of which \$2.5 billion was attributable to the OP. These amounts are reflected within impairment loss, other loss, equity method losses and within impairment loss in discontinued operations on the statement of operations.

The Company believes that it has materially addressed overall recoverability in value across all of its non-digital assets as of September 30, 2020, applying the Company's best estimates and assumptions at this time based upon external factors known to date and the Company's expected digital transformation timeline. If the extent and duration of the economic effects of COVID-19 negatively affect the Company's financial condition and results of operations beyond the Company's current projections, the estimates and assumptions currently applied by the Company may change, which may lead to further impairment and fair value decreases in its non-digital assets that could be material in the future.

While the Company will remain a REIT through 2020, in light of its strategy to accelerate the digital transformation, the Company will continue to evaluate whether to maintain REIT status beyond 2020.

### **Exit of the Hospitality Business**

In September 2020, the Company entered into a definitive agreement with a third party to sell five of the six hotel portfolios in its Hospitality segment (the remaining portfolio is in receivership) and its 55.6% interest in the THL Hotel Portfolio in the Other segment (the remaining interests will continue to be held by investment vehicles managed by the Company), composed of 197 hotel properties in aggregate. Two of the hotel portfolios that are being sold in the Hospitality segment are held through joint ventures in which the Company holds a 90% and a 97.5% interest, respectively. The aggregate gross proceeds of \$67.5 million, subject to certain adjustments as provided in the sale agreement, as amended, represents a transaction value of approximately \$2.8 billion, with the acquirer's assumption of \$2.7 billion of investment-level debt. Consummation of the sale is subject to customary closing conditions, including but not limited to, acquirer's assumption of the outstanding mortgage notes encumbering the hotel properties and third party approvals. In October 2020, the parties amended the sale agreement to address certain payments made by the Company to lenders in order to cure certain defaults on the debt associated with a hotel portfolio, and, subject to the satisfaction of certain conditions, to provide the Company with a purchase price credit for a portion of such funded amount. The sale agreement provides that the closing will occur no earlier than January 15, 2021, which may be extended or accelerated by mutual agreement of the Company and the acquirer, provided that, if certain third party approvals have not been obtained by February 15, 2021, each of the Company and the acquirer has the right to extend the closing date until March 15, 2021. There can be no assurance that the sale will close in the timeframe contemplated or on the terms anticipated, if at all.

The Company's exit from the hospitality business represents a key milestone in its digital transformation. Accordingly, the sale of these hotel portfolios is a strategic shift that will have a significant effect on the Company's operations and financial results, and has met the criteria as held for sale and discontinued operations. For all current and prior periods presented, the related assets and liabilities are presented as assets and liabilities held for disposition on the consolidated balance sheets (Note 8) and the related operating results are presented as loss from discontinued operations on the consolidated statements of operations (Note 16).

### **Cooperation Agreement with Blackwells Capital**

In March 2020, the Company entered into a cooperation agreement with Blackwells Capital LLC ("Blackwells"), a stockholder of the Company. Pursuant to the cooperation agreement, the Company nominated Jeannie Diefenderfer for election to its board of directors (the "Board") at the 2020 Annual Meeting of Stockholders (the "Annual Meeting") on May 5, 2020, at which Ms. Diefenderfer was elected to the Board. In addition to withdrawing its previously submitted director nominees for election at the Annual Meeting, Blackwells agreed to vote its and its affiliates shares of the Company's stock in accordance with the Board's voting recommendations on all proposals (including in favor of the Board's director nominees), subject to certain limited exceptions, prior to the third anniversary of the agreement. Furthermore, Blackwells agreed to a standstill with respect to the Company until the expiration of the cooperation agreement in March 2030.

Contemporaneously, the Company and Blackwells entered into a joint venture arrangement for the purpose of acquiring, holding and disposing of CLNY common stock. Distributions to be made through the joint venture arrangement effectively represent a settlement of the proxy contest with Blackwells. At the inception of the arrangement, the fair value

of future distributions to Blackwells was estimated at \$3.9 million, included in other liabilities on the consolidated balance sheet, and as a settlement loss on the consolidated statement of operations, along with \$1.2 million reimbursement of legal costs to Blackwells in March 2020. The settlement liability is subject to remeasurement at the end of each quarter. Refer to Note 12 of the consolidated financial statements for further description of the settlement liability.

## Developments in 2020

During the nine months ended September 30, 2020 and through this filing, significant developments affecting our business and results of operations included the following, in addition to the effects of COVID-19 as discussed throughout this Quarterly Report.

### *Liquidity*

We addressed near-term corporate maturities and enhanced our long-term capital structure and liquidity profile as follows:

- Amended our Credit Agreement in June 2020, which reduced aggregate revolving commitments from \$750 million to \$500 million and increased the interest rate on borrowings from LIBOR plus 2.25% to LIBOR plus 2.5% per annum. The amended terms provide for greater financial covenant flexibility and more borrowing base credit for digital investments. The credit facility is still scheduled to expire in January 2021, with two 6-month extension options. During the extension term(s), the interest rate would increase by 0.25%, and effective March 31, 2021, credit availability would be reduced to \$400 million.
- In July 2020, OP issued \$300 million of exchangeable senior notes with maturity in July 2025, bearing interest at 5.75% per annum. We repurchased \$371 million of the outstanding principal of the 3.875% convertible senior notes in the third quarter of 2020 for total purchase price of \$371 million, funded with net proceeds from issuance of the 5.75% exchangeable senior notes in July 2020 and cash on hand through a tender offer of the 3.875% convertible senior notes completed in September 2020. This substantially addresses the January 2021 maturity of the 3.875% convertible notes, with the remaining \$31.5 million outstanding principal expected to be addressed through cash on hand and/or proceeds from future asset monetization.

### *Path To Digital*

#### *Strategic Partnership in Our Digital Investment Management Business*

- In July 2020, formed a strategic partnership with affiliates of Wafra, Inc. (collectively, "Wafra") in which Wafra made a minority investment representing an approximate 31.5% interest in substantially all of our digital investment management business (as defined for the purpose of this transaction, the "Digital IM Business"). Wafra paid consideration of \$254 million for its investment in the Digital IM Business and for warrants issued by the Company to Wafra (assuming the consideration excludes the warrants, this implies an approximately \$805 million valuation of the Digital IM Business). Wafra has agreed to assume certain of the Company's existing commitments made to DCP and to make commitments to the successor fund to DCP and to the Company's initial digital credit fund, in an aggregate amount of at least \$130 million. Wafra has also agreed to make commitments to the Company's future digital funds and investment vehicles on a pro rata basis with the Company based on Wafra's percentage interest in the Digital IM Business, subject to certain caps. Wafra's investment provides us with permanent capital to pursue strategic digital infrastructure investments and grow the Digital IM Business. Refer to Note 15 to the consolidated financial statements for further discussion of the Wafra transaction.

#### *Investment in Hyperscale Data Centers*

- In July 2020 and following an additional investment in October 2020, the Company, alongside fee bearing third party capital, invested \$1.36 billion for approximately 90% equity interest in entities that hold Vantage Data Centers' ("Vantage") portfolio of 12 stabilized hyperscale data centers in North America and \$2.0 billion of secured indebtedness (the "Vantage SDC"). Our balance sheet investment is approximately \$200 million, representing approximately 13% equity interest. Vantage SDC is our second significant balance sheet investment in a digital operating business and achieves our transformation goals on two fronts, that is the rotation of our balance sheet to digital assets and growing our digital investment management business.

#### *DataBank's Strategic Investment*

- In September 2020, our DataBank subsidiary entered into a definitive agreement to acquire zColo, the colocation business of Zayo Group Holdings, Inc. ("Zayo"), for \$1.4 billion through a combination of debt and equity financing, including \$0.5 billion of third party co-invest capital raised by us and an expected \$145 million commitment from our

balance sheet. The acquisition is expected to close by the end of 2020, and will complement DataBank's edge strategy and significantly expand its footprint.

### **Non-Digital Assets**

- In September 2020, entered into a definitive agreement to sell five of the six hotel portfolios in our Hospitality segment and our 55.6% interest in the THL Hotel Portfolio in the Other segment, with closing expected in the first quarter of 2021. The transaction is valued at approximately \$2.8 billion, including gross aggregate selling price of \$67.5 million (of which we expect to receive approximately 96% before transaction costs, net of noncontrolling interests) and acquirer's assumption of \$2.7 billion of investment-level debt (of which OP share is approximately \$2.3 billion).
- In February 2020, sold our equity investment in RXR Realty, LLC for proceeds of \$179 million, net of tax, recording a gain of \$97 million, net of tax.
- In April 2020, recapitalized a co-investment venture which holds common equity in the Albertsons supermarket chain, generating \$73 million of proceeds to us and realizing our share of gain of approximately \$30 million, which allowed us to harvest approximately 70% of the expected eventual value upfront.
- In August 2020, conveyed to a lender 36 properties in our senior housing operating portfolio, which served as underlying collateral, in satisfaction of \$157.5 million of outstanding wellness infrastructure debt.
- In November 2020, entered into an agreement to sell our 51% interest in the bulk industrial portfolio to our joint venture partner, with the sale expected to close by the end of 2020.
- Recognized approximately \$3.3 billion (\$2.6 billion attributable to OP) of impairment charges and unrealized fair value losses on our non-digital assets in the first nine months of 2020, recorded in impairment loss, other loss, equity method losses, and within impairment loss in discontinued operations on the statement of operations, primarily:
  - \$1.9 billion (\$1.5 billion attributable to OP) impairment on real estate and related asset group, primarily hotel and wellness infrastructure properties, based upon (i) shortened holding periods on the assets, attributed primarily to the Company's accelerated digital transformation and further exacerbated by a decline in property operating performance and market values as a result of the economic effects of COVID-19, and (ii) selling price of the THL Hotel Portfolio;
  - \$594 million impairment on goodwill in the Other Investment Management segment, driven by acceleration of the Company's digital transformation and significant reduction in the value of its non-digital balance sheet assets;
  - \$275 million impairment on our equity investment in CLNC as the shortfall in market value over carrying value of our CLNC investment is not expected to recover in the near term; and
  - \$314 million (\$71 million attributable to OP) of net unrealized and realized losses on loans receivable carried at fair value as recoverability is affected by increasing uncertainty and deterioration in the economic environment arising from the effects of COVID-19.

### **Results of Operations**

The following table summarizes our results from continuing operations by reportable segment.

Excluded are discontinued operations (Note 16 to the consolidated financial statements) which generated net losses attributable to Colony Capital, Inc. of \$104.6 million for the three months ended September 30, 2020 and \$1.0 billion and \$22.7 million for the nine months ended September 30, 2020 and 2019, respectively, and net income attributable to Colony Capital, Inc. of \$1.3 million for the three months ended September 30, 2019.

(In thousands)	Total Revenues		Income (Loss) from Continuing Operations		Net Income (Loss) Attributable to Colony Capital, Inc. from Continuing Operations	
	2020	2019	2020	2019	2020	2019
<b>Three Months Ended September 30,</b>						
Digital Operating	\$ 98,549	\$ —	\$ (38,479)	\$ —	\$ (4,797)	\$ —
Digital Investment Management	20,137	14,517	3,539	41,841	1,730	38,160
Digital Other	736	—	6,757	(251)	5,616	(229)
Wellness Infrastructure	124,193	136,091	(6,969)	(114,154)	(11,349)	(84,222)
Other	69,298	205,706	(101,128)	(369,511)	(32,481)	(348,898)
Amounts not allocated to segments	3,764	2,686	(47,936)	(149,421)	(41,347)	(133,970)
	<u>\$ 316,677</u>	<u>\$ 359,000</u>	<u>\$ (184,216)</u>	<u>\$ (591,496)</u>	<u>\$ (82,628)</u>	<u>\$ (529,159)</u>
<b>Nine Months Ended September 30,</b>						
Digital Operating	\$ 185,737	\$ —	\$ (77,916)	\$ —	\$ (12,384)	\$ —
Digital Investment Management	60,045	14,517	7,953	46,655	5,597	42,683
Digital Other	1,559	—	16,014	(92)	14,097	(80)
Wellness Infrastructure	406,055	427,761	(755,254)	(205,080)	(497,371)	(152,375)
Other	231,205	455,174	(1,192,092)	(548,218)	(888,049)	(559,982)
Amounts not allocated to segments	13,149	10,258	(175,760)	(384,951)	(152,773)	(352,105)
	<u>\$ 897,750</u>	<u>\$ 907,710</u>	<u>\$ (2,177,055)</u>	<u>\$ (1,091,686)</u>	<u>\$ (1,530,883)</u>	<u>\$ (1,021,859)</u>

### Selected Balance Sheet Data

The following table summarizes key balance sheet data by reportable segment, excluding assets and related liabilities held for disposition (Note 8 to the consolidated financial statements).

(In thousands)	Real Estate, net		Loans Receivable <sup>(1)</sup>		Equity and Debt Investments		Debt, net	
	September 30, 2020	December 31, 2019	September 30, 2020	December 31, 2019	September 30, 2020	December 31, 2019	September 30, 2020	December 31, 2019
	Digital Operating	\$ 3,557,061	\$ 846,393	\$ —	\$ —	\$ —	\$ —	\$ 2,595,799
Digital Investment Management	—	—	—	—	11,640	1,059	—	—
Digital Other	2,586	—	—	—	324,796	46,832	—	—
Wellness Infrastructure	3,484,033	4,433,825	52,324	48,270	—	—	2,739,140	2,910,032
Other	816,794	937,978	1,272,820	1,518,058	1,571,810	2,262,172	979,153	1,218,417
Amounts not allocated to segments	—	—	—	—	3,742	3,742	771,902	850,314
<b>Total</b>	<u>\$ 7,860,474</u>	<u>\$ 6,218,196</u>	<u>\$ 1,325,144</u>	<u>\$ 1,566,328</u>	<u>\$ 1,911,988</u>	<u>\$ 2,313,805</u>	<u>\$ 7,085,994</u>	<u>\$ 5,517,918</u>

<sup>(1)</sup> Carried at fair value upon adoption of fair value option on January 1, 2020.

## Consolidated Results of Operations

### Comparison of Three Months Ended September 30, 2020 to Three Months Ended September 30, 2019

(In thousands)	Three Months Ended September 30,		Change
	2020	2019	
<b>Revenues</b>			
Property operating income	\$ 246,122	\$ 168,858	\$ 77,264
Interest income	14,816	40,237	(25,421)
Fee income	43,919	111,854	(67,935)
Other income	11,820	38,051	(26,231)
<b>Total revenues</b>	<b>316,677</b>	<b>359,000</b>	<b>(42,323)</b>
<b>Expenses</b>			
Property operating expense	108,393	80,877	27,516
Interest expense	71,849	74,592	(2,743)
Investment and servicing expense	30,532	8,605	21,927
Transaction costs	3,310	100	3,210
Depreciation and amortization	125,733	116,932	8,801
Provision for loan loss	—	17,233	(17,233)
Impairment loss	36,169	533,031	(496,862)
Compensation expense—cash and equity-based	53,780	85,800	(32,020)
Compensation expense—carried interest and incentive fee	912	10,846	(9,934)
Administrative expenses	23,500	21,968	1,532
<b>Total expenses</b>	<b>454,178</b>	<b>949,984</b>	<b>(495,806)</b>
<b>Other income (loss)</b>			
Gain on sale of real estate	13,258	8,221	5,037
Other gain (loss), net	(12,979)	(44,940)	31,961
Equity method earnings (losses)	(62,998)	46,777	(109,775)
Equity method earnings (losses)—carried interest	6,082	(474)	6,556
<b>Loss before income taxes</b>	<b>(194,138)</b>	<b>(581,400)</b>	<b>387,262</b>
Income tax benefit (expense)	9,922	(10,096)	20,018
<b>Loss from continuing operations</b>	<b>(184,216)</b>	<b>(591,496)</b>	<b>407,280</b>
Income (loss) from discontinued operations	(177,014)	25,654	(202,668)
<b>Net loss</b>	<b>(361,230)</b>	<b>(565,842)</b>	<b>204,612</b>
Net income (loss) attributable to noncontrolling interests:			
Redeemable noncontrolling interests	(2,158)	364	(2,522)
Investment entities	(149,154)	15,170	(164,324)
Operating Company	(22,651)	(53,560)	30,909
<b>Net loss attributable to Colony Capital, Inc.</b>	<b>(187,267)</b>	<b>(527,816)</b>	<b>340,549</b>
Preferred stock dividends	18,517	27,137	(8,620)
<b>Net loss attributable to common stockholders</b>	<b>\$ (205,784)</b>	<b>\$ (554,953)</b>	<b>349,169</b>

### Property Operating Income and Property Operating Expenses

(In thousands)	Three Months Ended September 30,		Change
	2020	2019	
Property operating income:			
Digital Operating	\$ 98,506	\$ —	\$ 98,506
Wellness Infrastructure	120,479	135,017	(14,538)
Other	27,121	33,841	(6,720)
	<u>\$ 246,106</u>	<u>\$ 168,858</u>	77,248
Property operating expenses:			
Digital Operating	\$ 37,544	\$ —	\$ 37,544
Wellness Infrastructure	57,459	66,042	(8,583)
Other	13,390	14,835	(1,445)
	<u>\$ 108,393</u>	<u>\$ 80,877</u>	27,516

*Digital Operating*—Amounts represent income from data center leases and related services, and associated operating expenses from our acquisitions of DataBank and Vantage SDC in December 2019 and July 2020, respectively.

*Wellness Infrastructure*—Property operating income decreased \$14.5 million due to conveyance to a lender of 36 properties in a senior housing portfolio in August 2020, and sales of 25 net lease properties in 2019 and one in the first quarter of 2020. On a same store basis, however, property operating income was slightly higher in 2020 as the third quarter of 2019 included reversals of straight-line rent receivables. While the conversion of a senior housing net lease to a RIDEA structure in April 2020 resulted in a gross up of resident fee income and expense, this was more than offset by decreases due to a decline in occupancy as a result of restrictions on new admissions across our senior housing portfolio in an effort to contain COVID-19.

Property operating expenses decreased \$8.6 million, similarly due to conveyance to a lender of 36 properties in a senior housing portfolio. On a same store basis, however, there was a slight increase in property operating expenses due to a gross up of expenses following the conversion of a senior housing net lease to a RIDEA structure in April 2020, and \$1.9 million of incremental costs incurred in our senior housing facilities in response to COVID-19. These incremental costs were abated by \$2.7 million of government stimulus funding under the CARES Act Provider Relief Fund, reflected as other income.

Refer to further discussion in "*—Segment Results—Wellness Infrastructure.*"

*Other*—Property operating income and expenses decreased \$6.7 million and \$1.4 million, respectively, driven by sales of properties in our European portfolio and U.S. multi-tenant offices.

#### Interest Income

Interest income decreased \$25.4 million, attributed primarily to loans placed on nonaccrual in 2020 as the COVID-19 crisis has led to increased uncertainty over collectability.

#### Fee Income

Fee income is earned from the following sources:

(In thousands)	Three Months Ended September 30,		Change
	2020	2019	
<u>Digital Investment Management segment</u>			
Institutional funds and other investment vehicles	\$ 20,048	\$ 13,989	\$ 6,059
<u>Other segment</u>			
Institutional funds and other investment vehicles	11,600	12,623	(1,023)
Public companies (CLNC, NRE prior to its sale in September 2019)	7,355	79,633	(72,278)
Non-traded REITs	4,431	4,994	(563)
Other	485	615	(130)
Subtotal—Other segment	<u>23,871</u>	<u>97,865</u>	(73,994)
	<u>\$ 43,919</u>	<u>\$ 111,854</u>	(67,935)

There was a \$6.1 million increase in fees from digital institutional funds and investment vehicles as 50% of fees from DCP was recognized as equity method income prior to our acquisition of DBH in July 2019. Additionally, there was an increase in the fee basis of DCP following its acquisition of Zayo in February 2020.

However, there was a \$74.0 million decrease in fee income from the non-digital investment management business in the Other segment, driven by the following:

- 2019 had included termination fee of \$64.6 million from NorthStar Realty Europe ("NRE"), inclusive of \$21.5 million of incentive fees, received upon sale of NRE and concurrent termination of our management agreement, and management fees of \$3.8 million for the third quarter of 2019 prior to sale; and
- \$4.1 million decrease in fees from CLNC due to a lower stockholders' equity fee base..

### Other Income

Other income was \$26.2 million lower attributed primarily to (i) higher amounts grossed up in 2019 in other income and compensation expense of \$26.1 million related to NRE equity awards and other cash compensation paid by NRE to employees in connection with the NRE sale; and (ii) reversal of other income and compensation expense on CLNC equity awards in 2020 as a result of remeasurement at fair value based upon CLNC's stock price at period end (refer to Note 19 to the consolidated financial statements for a description of the accounting treatment of managed company awards).

### Interest Expense

(In thousands)	Three Months Ended September 30,		Change
	2020	2019	
Investment-level financing:			
Digital Operating	\$ 18,589	\$ —	\$ 18,589
Digital Investment Management	—	1,585	(1,585)
Wellness Infrastructure	32,310	46,029	(13,719)
Other	6,479	12,627	(6,148)
Corporate-level debt	14,471	14,351	120
	<u>\$ 71,849</u>	<u>\$ 74,592</u>	<u>(2,743)</u>

Net decrease in interest expense of \$2.7 million is attributed to the following:

*Digital Operating*—Amount represents interest expense on debt financing our DataBank and Vantage SDC acquired in December 2019 and July 2020, respectively.

*Digital Investment Management*—Interest expense in 2019 was related to borrowings on our corporate credit facility to partially finance the DBH acquisition in July 2019, with such borrowings repaid in December 2019 using proceeds from sale of the industrial business.

*Wellness Infrastructure*—Interest expense was \$13.7 million lower as a result of: (i) conveyance of underlying collateral to lender in satisfaction of \$157.5 million of outstanding debt principal in August 2020; (ii) decrease in LIBOR on predominantly variable rate debt in the wellness infrastructure portfolio; and (iii) debt repayments due to sale of net lease properties in 2019.

*Other*—Interest expense decreased \$6.1 million due to debt payoffs from sale of investments.

*Corporate-level Debt*—There was a marginal increase in interest expense as additional interest from the new exchangeable notes issued in July 2020 and a higher average outstanding balance on our corporate credit facility were largely offset by partial repurchase of our convertible notes in the third quarter of 2020 and the effects of a decline in LIBOR on our junior subordinated debt.

### Investment and Servicing Expense

Investment and servicing costs increased \$21.9 million, attributed primarily to write-off of investment deposit and third party fees related to investments in our Other segment, fees paid for management of Vantage SDC, and higher bad debt allowance.

### Depreciation and Amortization

Increase in depreciation and amortization expense is attributed to data centers and real estate intangibles from the acquisition of DataBank in December 2019 and Vantage SDC in July 2020. This was partially offset by decreases due to the effect of lower real estate basis after impairment charges, sales of non-core properties, termination of NRE

management contract in September 2019 and write-down of NorthStar Healthcare management contract in December 2019.

### Impairment Loss

(In thousands)	Three Months Ended September 30,		Change
	2020	2019	
Digital Investment Management	\$ 3,832	\$ —	\$ 3,832
Wellness Infrastructure	2,451	92,885	(90,434)
Other	29,886	440,146	(410,260)
	<u>\$ 32,337</u>	<u>\$ 533,031</u>	<u>(500,694)</u>
Impairment loss attributable to OP	<u>\$ 15,369</u>	<u>\$ 491,425</u>	

*Digital Investment Management*—Impairment reflects reduced cash flows from the original Vantage management contract, replaced by new fee stream from third party capital raised in the Company's acquisition of the Vantage stabilized portfolio from its existing owners.

*Wellness Infrastructure*—In 2020, impairment was recorded on a portfolio of net lease skilled nursing facilities that is held for disposition based upon ongoing sale negotiations. In 2019, a senior housing portfolio and a net lease property were impaired due to a shortened holding period assumption which resulted in a shortfall in estimated future recoverable cash flows, and written-down based upon offer prices received by the Company.

*Other*—The significant impairment loss in 2019 was driven by \$387.0 million of impairment on the other investment management goodwill and write-down on U.S. multi-tenant office properties. In 2020, there was higher impairment on our European properties and the NorthStar Healthcare management contract was written down in consideration of the effects of COVID-19 on NorthStar Healthcare's asset values which will affect future fee income.

### Compensation Expense

The following table provides the components of compensation expense:

(In thousands)	Three Months Ended September 30,		Change
	2020	2019	
Cash compensation and benefits	\$ 47,109	\$ 48,826	\$ (1,717)
Equity-based compensation	7,542	9,119	(1,577)
Incentive and carried interest compensation	912	10,846	(9,934)
	<u>55,563</u>	<u>68,791</u>	<u>(13,228)</u>
Compensation grossed up in income and expense			
NRE related cash compensation	—	3,576	(3,576)
Equity-based compensation—CLNC and NRE (prior to September 2019) awards	(871)	24,279	(25,150)
	<u>(871)</u>	<u>27,855</u>	<u>(28,726)</u>
Total compensation expense	<u>\$ 54,692</u>	<u>\$ 96,646</u>	<u>(41,954)</u>

Total compensation expense was \$42.0 million lower, attributed to: (i) \$48.2 million of incremental compensation in 2019 in connection with NRE equity awards, including awards accelerated upon sale of NRE, along with retention and termination payments, and incentive compensation; (ii) lower severance costs in 2020; (iii) reversal of compensation on CLNC equity awards in 2020 as a result of remeasurement at fair value based upon CLNC's stock price at period end; and (iv) decrease in compensation cost following the Company's cost reduction initiative, and sales of NRE in September 2019 and the industrial business in December 2019. These decreases were partially offset by additional compensation cost following the acquisition of DataBank in December 2019.

### Administrative Expenses

There was a marginal increase in administrative expense of \$1.5 million, attributable to higher legal and professional service costs.

### Gain on Sale of Real Estate

The higher gains in 2020 were from sales of our European properties.

**Equity Method Earnings (Losses)**

(In thousands)	Three Months Ended September 30,		Change
	2020	2019	
Digital Investment Management (including carried interest income of \$6,082 and \$0, respectively)	\$ 6,134	\$ 848	\$ 5,286
Digital Other	4,400	(251)	4,651
Other (including carried interest reversal of \$0 and \$474, respectively)	(67,450)	45,706	(113,156)
	<u>\$ (56,916)</u>	<u>\$ 46,303</u>	(103,219)

*Digital Investment Management*—Amount represents gross unrealized carried interest from a digital investment vehicle in 2020, of which the Company ultimately shares in 15%, net of carried interest compensation and noncontrolling interest represented by general partner equity retained by the former principals and employees of DBH.

*Digital Other*—Amount represents net earnings from interests in our sponsored DCP fund and certain existing Colony investment vehicles that were repurposed to execute an investment strategy focused around the digital sector beginning March 31, 2020.

*Other*—Equity method earnings decreased \$113.2 million, arising from (i) decrease in fair value of investments under the fair value option, driven by expected recoverable value from investee's sale of real estate and also reflect the economic effects of COVID-19; (ii) an investee's early redemption of our preferred equity investment at a discount; (iii) impairment of an acquisition, development and construction ("ADC") loan based upon lower real estate valuation in an accelerated disposition strategy; (iv) our share of investee net losses; and (v) additionally, 2019 included a gain from sale of our equity investment in NRE. These decreases were partially offset by \$21.9 million of basis difference applied to reduce our share of net loss from CLNC (Note 6 to the consolidated financial statements).

**Other Loss, Net**

We recorded other net loss of \$13.0 million in 2020 and \$44.9 million in 2019, driven primarily by the following:

*Three Months Ended September 30, 2020*

- \$16.9 million (\$6.4 million attributable to OP) of unrealized and realized losses on loans receivable carried at fair value (fair value option was elected on loans receivable beginning 2020); and
- \$8.6 million write-down in value of our equity investment in NorthStar Healthcare; partially offset by
- \$3.9 million gain on remeasurement of a foreign currency loan receivable in our Wellness Infrastructure segment.

*Three Months Ended September 30, 2019*

- unrealized loss of \$91.5 million on a non-designated interest rate swap assumed through the Merger that was intended to hedge future refinancing on certain wellness infrastructure mortgage debt. Such debt was refinanced in June 2019 and the swap was terminated at the end of 2019; partially offset by
- \$51.4 million gain from remeasurement of our 50% interest in Digital Colony Management, LLC ("DCM"), the investment manager of DCP, upon closing of the DBH acquisition (see Note 3 to the consolidated financial statements).

**Income Tax Benefit (Expense)**

We recorded income tax benefit of \$9.9 million compared to income tax expense of \$10.1 million in the three months ended September 30, 2020 and 2019, respectively. In the third quarter of 2020, deferred tax benefit was recognized in relation to our DataBank subsidiary and our OED portfolio, partially offset by deferred tax expense related to our wellness infrastructure business due to revaluation of deferred tax balances necessitated by a change in income tax rates in the United Kingdom. Conversely, the third quarter of 2019 included deferred tax expense arising from a gain recognized on remeasurement of our preexisting interest in DCM upon the acquisition of DBH.

### Income (Loss) from Discontinued Operations

(In thousands)	Three Months Ended September 30, 2020			Three Months Ended September 30, 2019			Change	
	Hotel	Industrial	Total	Hotel	Industrial	Total	Hotel	Industrial
<b>Revenues</b>								
Property operating income	\$ 144,130	\$ 5,866	\$ 149,996	\$ 293,297	\$ 97,188	\$ 390,485	\$ (149,167)	\$ (91,322)
Fee income	—	—	—	—	3,400	3,400	—	(3,400)
Interest and other income	40	5	45	198	1,454	1,652	(158)	(1,449)
<b>Revenues from discontinued operations</b>	<b>144,170</b>	<b>5,871</b>	<b>150,041</b>	<b>293,495</b>	<b>102,042</b>	<b>395,537</b>	<b>(149,325)</b>	<b>(96,171)</b>
<b>Expenses</b>								
Property operating expense	119,868	1,712	121,580	193,474	26,051	219,525	(73,606)	(24,339)
Interest expense	34,747	1,530	36,277	55,442	21,130	76,572	(20,695)	(19,600)
Investment and servicing expense	6,053	20	6,073	4,491	54	4,545	1,562	(34)
Transaction costs	4,500	—	4,500	—	—	—	4,500	—
Depreciation and amortization	39,978	639	40,617	42,073	12,342	54,415	(2,095)	(11,703)
Impairment loss	115,792	—	115,792	31,868	—	31,868	83,924	—
Compensation expense—cash and equity-based <sup>(3)</sup>	863	—	863	1,243	3,914	5,157	(380)	(3,914)
Compensation expense—carried interest	—	—	—	—	17,796	17,796	—	(17,796)
Administrative expenses	192	259	451	109	960	1,069	83	(701)
<b>Expenses from discontinued operations</b>	<b>321,993</b>	<b>4,160</b>	<b>326,153</b>	<b>328,700</b>	<b>82,247</b>	<b>410,947</b>	<b>(6,707)</b>	<b>(78,087)</b>
<b>Other income (loss)</b>								
Gain (loss) on sale of real estate	(10)	(1,000)	(1,010)	3	4,675	4,678	(13)	(5,675)
Other gain (loss), net	(113)	(2)	(115)	378	(12)	366	(491)	10
Equity method earnings (losses), including carried interest	—	—	—	—	35,765	35,765	—	(35,765)
<b>Income (loss) from discontinued operations before income taxes</b>	<b>(177,946)</b>	<b>709</b>	<b>(177,237)</b>	<b>(34,824)</b>	<b>60,223</b>	<b>25,399</b>	<b>(143,122)</b>	<b>(59,514)</b>
Income tax benefit (expense)	225	(2)	223	128	127	255	97	(129)
<b>Income (loss) from discontinued operations</b>	<b>(177,721)</b>	<b>707</b>	<b>(177,014)</b>	<b>(34,696)</b>	<b>60,350</b>	<b>25,654</b>	<b>(143,025)</b>	<b>(59,643)</b>
Income (loss) from discontinued operations attributable to:								
Noncontrolling interests in investment entities	(60,938)	82	(60,856)	(3,470)	27,728	24,258	(57,468)	(27,646)
Noncontrolling interests in Operating Company	(11,581)	62	(11,519)	(2,817)	2,870	53	(8,764)	(2,808)
<b>Income (loss) from discontinued operations attributable to Colony Capital, Inc.</b>	<b>\$ (105,202)</b>	<b>\$ 563</b>	<b>\$ (104,639)</b>	<b>\$ (28,409)</b>	<b>\$ 29,752</b>	<b>\$ 1,343</b>	<b>(76,793)</b>	<b>\$ (29,189)</b>

#### Hotel

Discontinued operations of the hotel business represent our Hospitality segment and the THL Hotel Portfolio, which was previously reported in the Other segment.

Loss from discontinued operations increased \$143.0 million, attributed to the following:

- Additional impairment of \$115.8 million, attributed to the THL Hotel Portfolio in September 2020 based upon its pending sales price, net of selling costs. In comparison, \$31.9 million of impairment was recorded in 2019 based upon shortened hold period assumptions and unfavorable operating performance on our hotel assets.
- Operating losses in 2020 reflect the loss of net income from sale of hotel properties in 2019 and the economic effects of COVID-19. There was a significant decline in room demand for our hotel properties with average occupancy at 51% in the third quarter of 2020 compared to 77% in the same period last year. This was further compounded by a lower average daily rate ("ADR"), resulting in a 49% decline in average revenue per available room ("RevPAR") compared to the same period last year. Notwithstanding, room demand has experienced some recovery from the trough levels in April 2020.
- Write-off of property level insurance receivables on our THL Hotel Portfolio in 2020.
- Fees incurred for advisory services in connection with debt refinancing and pending sale of the hotel portfolios.

- The increase in net loss was partially offset by:
  - Decrease in interest expense, driven by a decline in LIBOR on predominantly variable rate debt on our hotel portfolio; and
  - Decrease in depreciation and amortization expense due to a lower basis on our hotel properties after significant impairment charges in the first six months of 2020, partially offset by capital improvements and fixed asset additions in our hotel properties that were completed throughout 2019 and beginning of 2020.

*Industrial*

Results of discontinued operations represent the bulk industrial portfolio in 2020, and in 2019, included the light industrial portfolio and associated management platform. In 2019, significant carried interest was recognized in the third quarter, included in equity method earnings, due to a substantial increase in net asset value of the industrial open-end fund in contemplation of the sale of the light industrial business, with a corresponding recognition of carried interest compensation.

## Consolidated Results of Operations

### Comparison of Nine Months Ended September 30, 2020 to Nine Months Ended September 30, 2019

(In thousands)	Nine Months Ended September 30,		Change
	2020	2019	
<b>Revenues</b>			
Property operating income	\$ 666,657	\$ 543,978	\$ 122,679
Interest income	70,060	121,356	(51,296)
Fee income	130,964	178,315	(47,351)
Other income	30,069	64,061	(33,992)
<b>Total revenues</b>	<b>897,750</b>	<b>907,710</b>	<b>(9,960)</b>
<b>Expenses</b>			
Property operating expense	309,553	248,714	60,839
Interest expense	213,947	236,756	(22,809)
Investment and servicing expense	47,897	39,215	8,682
Transaction costs	3,806	2,922	884
Depreciation and amortization	301,605	242,490	59,115
Provision for loan loss	—	35,847	(35,847)
Impairment loss	1,444,908	635,869	809,039
Compensation expense—cash and equity-based	169,192	157,283	11,909
Compensation expense—carried interest and incentive fee	(9,431)	13,264	(22,695)
Administrative expenses	75,246	63,404	11,842
Settlement loss	5,090	—	5,090
<b>Total expenses</b>	<b>2,561,813</b>	<b>1,675,764</b>	<b>886,049</b>
<b>Other income (loss)</b>			
Gain on sale of real estate	24,058	42,841	(18,783)
Other loss, net	(199,320)	(182,560)	(16,760)
Equity method losses	(319,831)	(178,448)	(141,383)
Equity method earnings (losses)—carried interest	(14,653)	6,258	(20,911)
<b>Loss before income taxes</b>	<b>(2,173,809)</b>	<b>(1,079,963)</b>	<b>(1,093,846)</b>
Income tax expense	(3,246)	(11,723)	8,477
<b>Loss from continuing operations</b>	<b>(2,177,055)</b>	<b>(1,091,686)</b>	<b>(1,085,369)</b>
Income (loss) from discontinued operations	(1,307,225)	11,043	(1,318,268)
<b>Net loss</b>	<b>(3,484,280)</b>	<b>(1,080,643)</b>	<b>(2,403,637)</b>
Net income (loss) attributable to noncontrolling interests:			
Redeemable noncontrolling interests	(2,316)	2,317	(4,633)
Investment entities	(640,955)	51,744	(692,699)
Operating Company	(287,309)	(90,160)	(197,149)
<b>Net loss attributable to Colony Capital, Inc.</b>	<b>(2,553,700)</b>	<b>(1,044,544)</b>	<b>(1,509,156)</b>
Preferred stock dividends	56,507	81,412	(24,905)
<b>Net loss attributable to common stockholders</b>	<b>\$ (2,610,207)</b>	<b>\$ (1,125,956)</b>	<b>(1,484,251)</b>

## Property Operating Income and Property Operating Expenses

(In thousands)	Nine Months Ended September 30,		Change
	2020	2019	
Property operating income:			
Digital Operating	\$ 185,672	\$ —	\$ 185,672
Wellness Infrastructure	398,711	424,570	(25,859)
Other	82,258	119,408	(37,150)
	<u>\$ 666,641</u>	<u>\$ 543,978</u>	122,663
Property operating expenses:			
Digital Operating	\$ 72,505	\$ —	\$ 72,505
Wellness Infrastructure	198,778	194,268	4,510
Other	38,270	54,446	(16,176)
	<u>\$ 309,553</u>	<u>\$ 248,714</u>	60,839

*Digital Operating*—Amounts represent income from data center leases and related services, and associated operating expenses from our acquisitions of DataBank and Vantage SDC in December 2019 and July 2020, respectively.

*Wellness Infrastructure*—Property operating income decreased \$25.9 million due to conveyance to a lender of 36 properties in a senior housing portfolio in August 2020, and sales of 25 net lease properties in 2019 and one in the first quarter of 2020. On a same store basis, however, property operating income was slightly higher as the conversion of a senior housing net lease to a RIDEA structure in April 2020 resulted in a gross up of resident fee income and expense, which was partially offset by decreases due to a decline in occupancy as a result of restrictions on new admissions across our senior housing portfolio in an effort to contain COVID-19. Additionally, rental income in 2019 was lower due to reversals of straight-line rent receivables.

Property operating expenses increased \$4.5 million, driven by incremental costs of \$9.6 million incurred in our senior housing facilities in response to COVID-19, and to a lesser extent, gross up of expenses following the conversion of a senior housing net lease to a RIDEA structure in April 2020, higher property taxes and higher insurance premiums. These increases were partially offset by lower expenses incurred resulting from the conveyance to a lender of 36 properties in a senior housing portfolio. The incremental COVID-19 related costs were partially abated by \$4.4 million of government stimulus funding under the CARES Act Provider Relief Fund, reflected in other income.

Refer to further discussion in “—Segment Results—Wellness Infrastructure.”

*Other*—Property operating income and expenses decreased \$37.2 million and \$16.2 million, respectively, driven by sales of properties in our European portfolio and U.S. multi-tenant offices.

### Interest Income

Interest income decreased \$51.3 million, attributed to loans placed on nonaccrual in 2020 as the COVID-19 crisis has led to increased uncertainty over collectability, and loan payoffs and sales.

### Fee Income

Fee income is earned from the following sources:

(In thousands)	Nine Months Ended September 30,		Change
	2020	2019	
<u>Digital Investment Management segment</u>			
Institutional funds and other investment vehicles	\$ 59,165	\$ 13,989	\$ 45,176
<u>Other segment</u>			
Institutional funds and other investment vehicles	34,296	36,294	(1,998)
Public companies (CLNC, and NRE prior to its sale in September 2019)	22,636	109,777	(87,141)
Non-traded REIT	13,293	15,089	(1,796)
Other	1,574	3,166	(1,592)
Subtotal—Other segment	<u>71,799</u>	<u>164,326</u>	<u>(92,527)</u>
	<u>\$ 130,964</u>	<u>\$ 178,315</u>	<u>(47,351)</u>

Fee income from Digital Investment Management was \$45.2 million higher as 50% of fees from DCP was recognized as equity method income prior to our acquisition of DBH in July 2019. Additionally, there was an increase in the fee basis of DCP following its acquisition of Zayo in February 2020.

However, fee income from the non-digital investment management business in the Other segment decreased \$92.5 million, driven primarily by the following:

- 2019 had included termination fee of \$64.6 million from NRE, inclusive of \$21.5 million of incentive fees, received upon sale of NRE and concurrent termination of our management agreement, and management fees of \$11.5 million in 2019 prior to sale; and
- \$11.2 million decrease in fees from CLNC due to a lower stockholders' equity fee base.

### Other Income

Other income decreased \$34.0 million, attributed primarily to (i) higher amounts grossed up in 2019 in other income and compensation expense of \$29.2 million related to NRE equity awards and other cash compensation paid by NRE to employees in connection with the NRE sale; and (ii) reversal of other income and compensation expense on CLNC equity awards as a result of remeasurement at fair value based upon CLNC's stock price at period end (refer to Note 19 to the consolidated financial statements for a description of the accounting treatment of managed company awards).

### Interest Expense

(In thousands)	Nine Months Ended September 30,		Change
	2020	2019	
Investment-level financing:			
Digital Operating	\$ 36,161	\$ —	\$ 36,161
Digital Investment Management	—	1,585	(1,585)
Wellness Infrastructure	106,875	150,691	(43,816)
Other	26,341	42,889	(16,548)
Corporate-level debt	44,570	41,591	2,979
	<u>\$ 213,947</u>	<u>\$ 236,756</u>	<u>(22,809)</u>

Net decrease in interest expense \$22.8 million is attributed to the following:

*Digital Operating*—Amount represents interest expense on debt financing our DataBank and Vantage SDC acquired in December 2019 and July 2020, respectively.

*Digital Investment Management*—Interest expense in 2019 was related to borrowings on our corporate credit facility to partially finance the DBH acquisition in July 2019, with such borrowings repaid in December 2019 using proceeds from sale of the industrial business.

*Wellness Infrastructure*—Interest expense was \$43.8 million lower as a result of: (i) decrease in LIBOR on predominantly variable rate debt in the wellness infrastructure portfolio; (ii) debt repayment upon sale of net lease properties in 2019; (iii) conveyance of underlying collateral to lender in satisfaction of \$157.5 million of outstanding debt principal in August 2020; (iv) interest expense recognized in 2019 from write-off of debt discount in connection with a June 2019 refinancing; and (v) prepayment penalties incurred in 2019. These decreases were partially offset by interest expense recognized from amortization of deferred financing costs incurred in connection with the June 2019 refinancing.

*Other*—Interest expense decreased \$16.5 million due to debt payoffs from sale of investments.

*Corporate-level Debt*—Interest expense increased \$3.0 million as a result of writing off a portion of deferred financing costs on our corporate credit facility to reflect a reduction in the facility amount in June 2020, along with a higher average outstanding balance on the facility, and new exchangeable notes issued in July 2020. This increase was partially offset by the effect of a decline in LIBOR on our junior subordinated debt, partial repurchase of our convertible notes in the third quarter of 2020 and lower unused fees on our credit facility in 2020.

### Investment and Servicing Expense

Investment and servicing costs were \$8.7 million higher, attributed primarily to write-off of investment deposit and third party fees related to investments in our Other segment, and fees paid for management of Vantage SDC. These increases were partially offset by higher costs in 2019 related to refinancing of our wellness infrastructure debt, unconsummated deal costs and bad debt expense.

**Transaction Costs**

Transaction costs in 2020 represent primarily fees incurred for advisory services in connection with the Company's corporate debt strategy and the partial repurchase of the 3.875% convertible notes, while the costs in 2019 was related primarily to our acquisition of the Latin American investment management business of The Abraaj Group.

**Depreciation and Amortization**

Increase in depreciation and amortization expense is attributed to real estate and intangible assets from acquisitions of DBH in July 2019, DataBank in December 2019 and Vantage SDC in July 2020. This was partially offset by decreases due to the effects of lower real estate basis after impairment charges, sales of non-core properties, termination of NRE management contract in September 2019 and write-down of NorthStar Healthcare management contract in December 2019.

**Impairment Loss**

(In thousands)	Nine Months Ended September 30,		Change
	2020	2019	
Digital Investment Management	\$ 3,832	\$ —	\$ 3,832
Wellness Infrastructure	712,238	144,209	568,029
Other	716,541	491,011	225,530
Unallocated	12,297	649	11,648
	<u>\$ 1,441,076</u>	<u>\$ 635,869</u>	805,207
Impairment loss attributable to OP	<u>\$ 1,193,825</u>	<u>\$ 544,357</u>	

Impairment loss on real estate and goodwill are discussed further in Notes 4 and 7, respectively, to the consolidated financial statements.

*Digital Investment Management*—Impairment reflects reduced cash flows from the original Vantage management contract, replaced by new fee stream from third party capital raised in the Company's acquisition of the Vantage stabilized portfolio from its existing owners.

*Wellness Infrastructure*—In 2020, impairment was recognized on wellness infrastructure assets resulting primarily from shortened holding period assumptions, attributable to both the Company's accelerated digital transformation, and in contemplation of debt that is at risk of default. This resulted in a shortfall in projected future cash flows, which was further exacerbated by a decline in property operating performance and market values as a result of the economic effects of COVID-19, such that the carrying value of these assets would not be recoverable. Additional impairment was also recorded on a held for disposition portfolio based upon ongoing sale negotiations.

Impairment in 2019 arose from shortened holding period assumptions on a senior housing portfolio and a net lease property, a negotiated purchase option exercised by a tenant on three hospitals, and offers received on certain net lease properties.

*Other*—There was higher impairment in both our other investment management business and our other equity and debt investments.

In our other investment management business, impairment of \$594.0 million in 2020 and \$387.0 million in 2019 reflect the write-down of goodwill, driven by acceleration of the Company's digital transformation and significant reduction in the value of its non-digital balance sheet assets in 2020, and in 2019, the loss of future fee income from sale of the industrial business and reduction in CLNC's fee base to reflect its reduced book value.

Within our other equity and debt portfolio, impairment was \$18.5 million higher, driven by impairment on U.S. net lease properties, partially offset by lower write-down on our European properties. The higher impairment in 2020 was driven by a shortened holding period assumption due to the Company's accelerated digital transformation or risk of default on non-recourse investment level debt; and/or the economic effects of COVID-19 on property operating cash flows and market values.

*Unallocated*—Impairment was recorded on the corporate aircraft in 2020 to reflect recoverable value based upon a shortened holding period and on an office operating lease asset in 2019.

### Compensation Expense

The following table provides the components of compensation expense.

(In thousands)	Nine Months Ended September 30,		Change
	2020	2019	
Cash compensation and benefits	\$ 144,655	\$ 101,101	\$ 43,554
Equity-based compensation	25,794	21,957	3,837
Incentive and carried interest compensation	(9,431)	13,264	(22,695)
	161,018	136,322	24,696
Compensation grossed up in income and expense			
NRE related cash compensation	—	3,576	(3,576)
Equity-based compensation—CLNC and NRE (prior to September 2019) awards	(1,257)	30,649	(31,906)
	(1,257)	34,225	(35,482)
Total compensation expense	\$ 159,761	\$ 170,547	(10,786)

Total compensation expense was \$10.8 million lower, attributed to (i) \$51.4 million of incremental compensation in 2019 in connection with NRE equity awards, including awards accelerated upon sale of NRE, along with retention and termination payments, and incentive compensation; (ii) lower severance costs in 2020; (iii) reversal of compensation on CLNC equity awards in 2020 as a result of remeasurement at fair value based upon CLNC's stock price at period end; and (iv) decrease in compensation cost following the Company's cost reduction initiative, sales of NRE in September 2019 and the industrial business in December 2019. These decreases were partially offset by additional compensation cost following the acquisition of DBH in July 2019 and DataBank in December 2019.

### Administrative Expenses

Administrative expense was \$11.8 million higher, largely attributable to higher insurance, legal and professional service costs.

### Settlement Loss

Amount represents fair value of the settlement arrangement with Blackwells at inception in March 2020, including reimbursement of legal costs. Refer to additional discussion in Note 12 to the consolidated financial statements.

### Gain on Sale of Real Estate

There were higher gains in 2019 from sales of our European properties and U.S. multi-tenant office buildings.

Gain on sale of \$7.9 million and \$18.2 million in the nine months ended September 30, 2020 and 2019, respectively, were attributable to OP.

### Equity Method Earnings (Losses)

(In thousands)	Nine Months Ended September 30,		Change
	2020	2019	
Digital Investment Management (including carried interest income of \$6,082 and \$0, respectively)	\$ 6,295	\$ 7,112	\$ (817)
Digital Other	12,647	(92)	12,739
Other (including carried interest reversal of \$20,735 and income of \$6,258, respectively)	(353,426)	(179,210)	(174,216)
	\$ (334,484)	\$ (172,190)	(162,294)

*Digital Investment Management*—Amount represents primarily (i) gross unrealized carried interest in 2020 from a digital investment vehicle, of which the Company ultimately shares in 15%, net of carried interest compensation and noncontrolling interest represented by general partner equity retained by the former principals and employees of DBH; and (ii) through July 25, 2019, Digital Colony Manager, the manager of DCP, prior to its consolidation upon acquisition of DBH.

*Digital Other*—Amount represents net earnings from interests in our sponsored DCP fund and certain existing Colony investment vehicles that were repurposed to execute an investment strategy focused around the digital sector beginning March 31, 2020.

*Other*—We recorded other-than-temporary impairment on our investment in CLNC of \$274.7 million and \$227.9 million in the second quarters of 2020 and 2019, respectively (refer to Note 6 to the consolidated financial statements for further discussion).

Excluding the CLNC impairment, equity method losses of \$78.8 million in 2020 compared to earnings of \$48.7 million in 2019, arose from (i) decrease in fair value of investments under the fair value option, driven by expected recoverable value from investee's sale of real estate and also reflect the economic effects of COVID-19; (ii) impairment of investments based upon current exit strategies; (iii) our share of investee net losses; and (iv) reversal of unrealized carried interest allocation. The losses in 2020 were partially offset primarily by \$106.1 million gain from sale of our equity investment in RXR Realty in February 2020, and \$49.8 million of basis difference applied to reduce our share of net loss from CLNC (Note 6 to the consolidated financial statements).

### ***Other Loss, Net***

We recognized other net loss of \$199.3 million in 2020 and \$182.6 million in 2019, driven primarily by the following:

#### *Nine Months Ended September 30, 2020*

- \$313.6 million (\$71.4 million attributable to OP) of unrealized and realized losses on loans receivable carried at fair value as recoverability is affected by increasing uncertainty and deterioration in the economic environment arising from the effects of COVID-19 (fair value option was elected on loans receivable beginning 2020); and
- \$24.0 million of unrealized credit losses on CRE debt securities; partially offset by
- realized gain of \$60.7 million and recognition of future profit allocation at fair value of \$66.0 million (\$32.3 million attributable to OP) from recapitalization in April 2020 of our co-investment venture which holds common equity in the Albertsons supermarket chain (refer to Note 6 to the consolidated financial statements).

#### *Nine Months Ended September 30, 2019*

- unrealized loss of \$237.6 million on a non-designated interest rate swap assumed through the Merger that was intended to hedge future refinancing on certain wellness infrastructure mortgage debt. Such debt was refinanced in June 2019 and the swap was terminated at the end of 2019; partially offset by
- \$51.4 million gain from remeasurement of our 50% interest in DCM upon closing of the DBH acquisition (see Note 3 to the consolidated financial statements).

### ***Income Tax Expense***

The \$8.5 million decrease in income tax expense is primarily attributed to deferred tax benefit recognized in connection with our DataBank subsidiary and our OED portfolio, partially offset by the following: (i) valuation allowance established against deferred tax asset in our wellness infrastructure business due to uncertainties in future realization of net operating losses; (ii) income tax expense on a gain from sale of our equity investment in RXR Realty in February 2020; (iii) deferred tax expense related to our wellness infrastructure business due to revaluation of deferred tax balances necessitated by a change in income tax rates in the United Kingdom; and (iv) deferred tax expense related to a gain recognized on remeasurement of our preexisting interest in DCM upon the acquisition of DBH in July 2019.

### Income (Loss) from Discontinued Operations

(In thousands)	Nine Months Ended September 30, 2020			Nine Months Ended September 30, 2019			Change	
	Hotel	Industrial	Total	Hotel	Industrial	Total	Hotel	Industrial
<b>Revenues</b>								
Property operating income	\$ 442,827	\$ 16,169	\$ 458,996	\$ 865,863	\$ 270,161	\$ 1,136,024	\$ (423,036)	\$ (253,992)
Fee income	—	—	—	—	8,849	8,849	—	(8,849)
Interest and other income	149	78	227	420	3,822	4,242	(271)	(3,744)
<b>Revenues from discontinued operations</b>	<b>442,976</b>	<b>16,247</b>	<b>459,223</b>	<b>866,283</b>	<b>282,832</b>	<b>1,149,115</b>	<b>(423,307)</b>	<b>(266,585)</b>
<b>Expenses</b>								
Property operating expense	375,984	4,577	380,561	575,619	74,058	649,677	(199,635)	(69,481)
Interest expense	122,834	5,654	128,488	169,905	55,482	225,387	(47,071)	(49,828)
Investment and servicing expense	12,514	20	12,534	12,347	592	12,939	167	(572)
Transaction costs	4,500	—	4,500	—	—	—	4,500	—
Depreciation and amortization	135,944	1,914	137,858	137,249	97,147	234,396	(1,305)	(95,233)
Impairment loss	1,095,878	—	1,095,878	39,347	—	39,347	1,056,531	—
Compensation expense—cash and equity-based <sup>(3)</sup>	2,998	82	3,080	3,707	10,253	13,960	(709)	(10,171)
Compensation expense—carried interest	—	(524)	(524)	—	18,136	18,136	—	(18,660)
Administrative expenses	1,294	892	2,186	1,513	3,976	5,489	(219)	(3,084)
<b>Expenses from discontinued operations</b>	<b>1,751,946</b>	<b>12,615</b>	<b>1,764,561</b>	<b>939,687</b>	<b>259,644</b>	<b>1,199,331</b>	<b>812,259</b>	<b>(247,029)</b>
<b>Other income (loss)</b>								
Gain (loss) on sale of real estate	(10)	(8,787)	(8,797)	913	28,070	28,983	(923)	(36,857)
Other gain (loss), net	9,727	—	9,727	(577)	(69)	(646)	10,304	69
Equity method earnings (losses), including carried interest	—	(164)	(164)	—	35,121	35,121	—	(35,285)
<b>Income (loss) from discontinued operations before income taxes</b>	<b>(1,299,253)</b>	<b>(5,319)</b>	<b>(1,304,572)</b>	<b>(73,068)</b>	<b>86,310</b>	<b>13,242</b>	<b>(1,226,185)</b>	<b>(91,629)</b>
Income tax benefit (expense)	(2,651)	(2)	(2,653)	(2,028)	(171)	(2,199)	(623)	169
<b>Income (loss) from discontinued operations</b>	<b>(1,301,904)</b>	<b>(5,321)</b>	<b>(1,307,225)</b>	<b>(75,096)</b>	<b>86,139</b>	<b>11,043</b>	<b>(1,226,808)</b>	<b>(91,460)</b>
Income (loss) from discontinued operations attributable to:								
Noncontrolling interests in investment entities	(167,333)	(4,547)	(171,880)	(10,455)	45,711	35,256	(156,878)	(50,258)
Noncontrolling interests in Operating Company	(112,451)	(77)	(112,528)	(4,872)	3,344	(1,528)	(107,579)	(3,421)
<b>Income (loss) from discontinued operations attributable to Colony Capital, Inc.</b>	<b>\$ (1,022,120)</b>	<b>\$ (697)</b>	<b>\$ (1,022,817)</b>	<b>\$ (59,769)</b>	<b>\$ 37,084</b>	<b>\$ (22,685)</b>	<b>(962,351)</b>	<b>\$ (37,781)</b>

#### Hotel

Discontinued operations of the hotel business represent our Hospitality segment and the THL Hotel Portfolio, which was previously reported in the Other segment.

Loss from discontinued operations increased \$1.23 billion, attributable to the following:

- \$1.1 billion of impairment in 2020. Impairment in the first six months of 2020 resulted from shortened holding period assumptions, attributable to both the Company's accelerated digital transformation, and the risk that the Company is unable to obtain accommodation from lenders on non-recourse mortgage debt that is in default. This had resulted in a shortfall in projected future cash flows, which was further exacerbated by a decline in property operating performance and market values as a result of the economic effects of COVID-19, such that the carrying value of the hotel assets would not be recoverable. Additional impairment was also recorded in the third quarter of 2020 based upon pending sales price net of selling costs.

In comparison, \$39.3 million of impairment was recorded in 2019 on hotel assets based upon shortened hold period assumptions, unfavorable operating performance, or based upon final net proceeds from sales.

- Operating losses in 2020 reflect the loss of net income from sale of hotel properties in 2019 and the economic effects of COVID-19. There was a significant decline in room demand with average occupancy at 52% in the first

nine months of 2020 compared to 75% in the same period last year. This was further compounded by lower ADR, resulting in a decline in RevPAR of 39% compared to the same period last year. Notwithstanding, room demand has recovered from the trough levels in April 2020.

- Fees incurred for advisory services in connection with debt refinancing and pending sale of the hotel portfolios.
- The higher income tax expense is attributed to valuation allowance established against deferred tax asset in the hospitality portfolio as a result of uncertainties in future realization of net operating losses, taking into consideration the impairment recognized on these assets.
- The increase in net loss was partially offset by:
  - Decrease in interest expense, driven by a decline in LIBOR on predominantly variable rate debt on our hotel portfolio, partially offset by additional hotel debt obtained in connection with debt refinancing in 2019 and higher deferred financing costs expensed as a result of the refinancing;
  - Decrease in depreciation and amortization expense due to a lower basis on our hotel properties after significant impairment charges in the first six months of 2020, partially offset by capital improvements and fixed asset additions in our hotel properties that were completed throughout 2019 and beginning of 2020; and
  - Write-off of contingent liability on the THL Hotel Portfolio as it is no longer probable that such payment would be made to a former preferred equity holder following the adverse effects of COVID-19 on the operations and performance of the THL Hotel Portfolio.

### Industrial

Results of discontinued operations in 2020 represent (i) the bulk industrial portfolio, and (ii) in the second quarter of 2020, final adjustments to proceeds from the December 2019 sale of the light industrial portfolio upon release of escrowed funds, which resulted in a net loss of \$7.4 million, including corresponding effect on carried interest and related compensation.

In 2019, results of discontinued operations also included the light industrial portfolio and associated management platform. Significant carried interest was recognized in the third quarter of 2019, included in equity method earnings, due to a substantial increase in net asset value of the industrial open-end fund in contemplation of the sale of the light industrial business, with a corresponding recognition of carried interest compensation.

### Assets Under Management and Fee Earning Equity Under Management

Below is a summary of our third party AUM and FEEUM for our digital and other investment management business.

Type	Products	Description	AUM <sup>(1)</sup> (In billions)		FEEUM <sup>(2)</sup> (In billions)	
			September 30, 2020	December 31, 2019 <sup>(3)</sup>	September 30, 2020	December 31, 2019 <sup>(3)</sup>
<b>Digital Investment Management segment</b>						
Institutional Funds	Digital Colony Partners	Earns base management fees and potential for carried interest	\$ 5.7	\$ 4.3	\$ 3.8	\$ 3.8
	Liquid securities strategy		0.1	—	0.2	—
Other Investment Vehicles	Digital real estate and infrastructure held by portfolio companies and co-invest vehicles	Earns base management fees and business service fees	16.4	9.2	4.5	3.0
<b>Subtotal—Digital IM</b>			<b>22.2</b>	<b>13.5</b>	<b>8.5</b>	<b>6.8</b>
<b>Other segment</b>						
Institutional Funds	Credit funds, opportunistic funds, value-add funds and other co-investment vehicles	Earns base and asset management fees from all managed funds; potential for carried interest from sponsored funds	8.6	8.5	5.7	5.6
Retail Companies	NorthStar Healthcare	Earns base management fees and potential for carried interest	3.4	3.4	1.2	1.2
Public Companies	Colony Credit Real Estate, Inc. <sup>(4)</sup>	NYSE-listed credit REIT	2.7	3.5	2.0	2.2
<b>Subtotal—Other segment</b>			<b>14.7</b>	<b>15.4</b>	<b>8.9</b>	<b>9.0</b>
<b>Total Company</b>			<b>\$ 36.9</b>	<b>\$ 28.9</b>	<b>\$ 17.4</b>	<b>\$ 15.8</b>

<sup>(1)</sup> Assets for which the Company and its affiliates provide investment management services, including assets for which the Company may or may not charge management fees and/or performance allocations. AUM is based on the cost basis of managed investments as reported by each underlying vehicle as of the end of the reporting period and includes uncalled capital commitments. The Company's calculations of AUM may differ from other asset managers, and as a result, may not be comparable to similar measures presented by other asset managers.

- (2) Equity for which the Company and its affiliates provide investment management services and derive management fees and/or incentives. FEEUM generally represents the basis used to derive fees, which may be based upon invested equity, stockholders' equity, or fair value pursuant to the terms of each underlying investment management agreement. The Company's calculation of FEEUM may differ from other asset managers, and as a result, may not be comparable to similar measures presented by other asset managers.
- (3) Effective June 30, 2020, we no longer include the Company's share of AUM and FEEUM managed by third party asset managers in which we have an equity interest. AUM and FEEUM for December 31, 2019 have been revised to conform to the current definition.
- (4) Represents third party ownership share of CLNC's pro rata share of total assets, excluding consolidated securitization trusts.

- Total third party FEEUM increased \$1.6 billion to \$17.4 billion at September 30, 2020.
  - There was a \$1.7 billion increase in our digital FEEUM, of which \$0.7 billion arose from DCP's acquisition of Zayo in February 2020, and \$0.9 billion represents a net increase in third party capital in Vantage SDC in July 2020. Zayo, a provider of bandwidth infrastructure services in the United States and Europe, was formerly a publicly-traded company that was taken private as part of the acquisition by DCP.
  - This increase was partially offset by a \$0.2 billion decrease in FEEUM from CLNC as a result of a decrease in CLNC's asset values.
- The raising of third party co-invest capital for the acquisition of zColo by our DataBank subsidiary, which is anticipated to close by the end of 2020, will grow our digital FEEUM by an additional \$0.5 billion.

## Segments

The following discussion summarizes key information on our reportable segments.

### Digital Investment Management ("Digital IM")

This business encompasses the investment and stewardship of third party capital in digital infrastructure and real estate. The Company's flagship opportunistic strategy is conducted through DCP and separately capitalized vehicles while other strategies, including digital credit and public equities, will be or are conducted through other investment vehicles. The Company earns management fees, generally based on the amount of assets or capital managed in investment vehicles, and have the potential to earn carried interest based on the performance of such investment vehicles subject to achievement of minimum return hurdles.

#### Strategic Partnership in Our Digital Investment Management Business

In July 2020, we formed a strategic partnership with Wafra in which Wafra made a minority investment representing an approximate 31.5% interest in substantially all of our digital investment management business or the Digital IM Business, as defined for the purpose of this transaction. Wafra paid consideration of \$254 million for its investment in the Digital IM Business and for warrants issued by the Company to Wafra (assuming the consideration excludes the warrants, this implies an approximately \$805 million valuation of the Digital IM Business). Wafra has agreed to assume certain of the Company's existing commitments made to DCP and to make commitments to the successor fund to DCP and to the Company's initial digital credit fund, in an aggregate amount of at least \$130 million. Wafra has also agreed to make commitments to the Company's future digital funds and investment vehicles on a pro rata basis with the Company based on Wafra's percentage interest in the Digital IM Business, subject to certain caps. Wafra's investment provides us with permanent capital to pursue strategic digital infrastructure investments and grow the Digital IM Business. Refer to Note 15 to the consolidated financial statements for further discussion of the Wafra transaction.

#### Fee Earning Equity Under Management

Our successful fundraising efforts in 2020 have increased our Digital IM FEEUM by \$1.7 billion to \$3.8 billion at September 30, 2020. Refer to discussion in "—AUM & FEEUM."

#### Operating Performance

Results of operations of our Digital IM segment are as follows:

(In thousands)	Three Months Ended September 30,			Change	Nine Months Ended September 30,			Change
	2020	2019			2020	2019		
Total revenues	\$ 20,137	\$ 14,517	\$ 5,620	\$ 60,045	\$ 14,517	\$ 45,528		
Net income	3,539	41,841	(38,302)	7,953	46,655	(38,702)		
Net income attributable to Colony Capital, Inc.	1,730	38,160	(36,430)	5,597	42,683	(37,086)		

- Prior to July 2019, our Digital IM segment generated only equity method earnings from our 50% interest in DCM, the investment manager of DCP. DCM was consolidated upon acquisition of DBH and our existing interest in DCM was remeasured at fair value, resulting in a gain of \$51.4 million (\$39.3 million net of tax).
- Refer to "*—Results of Operations*" for a discussion of fee income. While fee income from our Digital IM business is trending positively in 2020, operating margins have seen a decline as we ramp up resources to support future investment product offerings.

### Digital Operating

This business is composed of balance sheet equity interests in digital infrastructure and real estate operating companies, which generally earns rental income from providing use of space and/or capacity in or on digital assets through leases, services and other agreements. The Company currently owns interests in two companies, DataBank's edge colocation data centers and Vantage stabilized hyperscale data centers, which are also portfolio companies under Digital IM for the equity interests owned by third party capital.

#### Developments in 2020

- *Investment in Hyperscale Data Centers*—In July 2020 and following an additional investment in October 2020, the Company, alongside third party investors, including fee bearing third party capital that the Company raised, invested \$1.36 billion for approximately 90% equity interest in entities that hold Vantage's portfolio of 12 stabilized hyperscale data centers in North America and \$2.0 billion of secured indebtedness, or Vantage SDC. Our balance sheet investment is approximately \$200 million, representing approximately 13% equity interest. Vantage SDC is our second significant balance sheet investment in a digital operating business and achieves our transformation goals on two fronts, that is the rotation of our balance sheet to digital assets and growing our digital investment management business.
- *DataBank Strategic Investments*—In September 2020, our DataBank subsidiary entered into a definitive agreement to acquire zColo, Zayo's colocation business, for \$1.4 billion through a combination of debt and equity financing, including \$0.5 billion of third party co-invest capital raised by us. Our expected commitment of \$145 million from the Colony balance sheet will maintain our 20% equity interest in DataBank. The acquisition complements DataBank's edge strategy and significantly expands DataBank's footprint with the addition of zColo's 44 data centers in 23 markets across U.S. and Europe. Zayo will continue to be an anchor tenant within the zColo facilities and will become a significant customer of DataBank. With a long term agreement in place between Zayo and DataBank, the companies expect to collaborate closely in bringing colocation solutions to Zayo's fiber customers and private fiber network solutions to DataBank's colocation and cloud customers. The acquisition is anticipated to close by the end of 2020.

#### Portfolio Overview

The following table presents key portfolio metrics of our Digital Operating segment:

	September 30, 2020
Number of data centers	32
Sellable raised square feet or RSF (in thousands)	1,138
Leased RSF (in thousands)	946

#### Balance Sheet Information

The following table presents key balance sheet data of our Digital Operating segment:

<i>(In thousands)</i>	September 30, 2020	December 31, 2019
Real estate	\$ 3,557,061	\$ 846,393
Debt	2,595,799	539,155

- The increase at September 30, 2020 reflect the acquisition of Vantage SDC in July 2020, composed of \$2.7 billion of real estate and \$2.06 billion of debt.

#### Financing

At September 30, 2020, our data center portfolio is financed by \$2.55 billion of outstanding debt principal, of which \$1.7 billion is fixed rate debt and \$0.8 billion is variable rate debt, bearing a combined weighted average interest rate of 4.15% per annum at September 30, 2020.

In October 2020, Vantage SDC raised \$1.3 billion in aggregate across two tranches of securitized notes at a blended fixed rate of 1.8%, with a 6 year weighted average maturity. The proceeds were applied primarily to refinance outstanding debt, which will meaningfully reduce the cost of debt and extend debt maturities in Vantage SDC.

### Operating Performance

Results of operations of our Digital Operating segment are as follows.

(In thousands)	Three Months Ended September 30, 2020	Nine Months Ended September 30, 2020
Total revenues	\$ 98,549	\$ 185,737
Net loss	(38,479)	(77,916)
Net loss attributable to Colony Capital, Inc.	(4,797)	(12,384)

- Operating results includes the full year-to-date period for DataBank and 72 days of results for Vantage SDC.
- Net loss includes the effect of interest expense from debt financing, and depreciation and amortization expense. Operating results excluding these effects are presented below as earnings before interest, tax, depreciation and amortization for real estate ("EBITDAre").

### Earnings Before Interest, Tax, Depreciation and Amortization for Real Estate

EBITDAre generated by our Digital Operating segment is as follows. A reconciliation of the most directly comparable GAAP measure to EBITDAre is presented in "*Non-GAAP Supplemental Financial Measures*."

(In thousands)	Three Months Ended September 30, 2020	Nine Months Ended September 30, 2020
Total revenues	\$ 98,549	\$ 185,737
Property operating expenses	(37,544)	(72,505)
Transaction, investment and servicing costs	(2,242)	(3,015)
Compensation and administrative expense	(11,592)	(34,712)
EBITDAre—Digital Operating	<u>\$ 47,171</u>	<u>\$ 75,505</u>

### Digital Other

This segment is composed of equity interests in digital investment vehicles, the largest of which is the Company's investment and commitment to DCP. This segment also includes the Company's investment and commitment to the digital liquid strategies and seed investments for future digital investment vehicles.

### Balance Sheet Information

The following table presents key balance sheet data of our Digital Other segment:

(In thousands)	September 30, 2020	December 31, 2019
Real estate	\$ 2,586	\$ —
Equity investments	324,796	46,832

- Real estate balance represents perpetual easements acquired in the third quarter of 2020, recorded as land, that is being warehoused on our balance sheet temporarily, pending the closing of our second Digital Colony Partners fund.
- Equity investments represent primarily our equity method interest in DCP, and separately, investment in a third party managed mutual fund and equity interests in previous OED investment vehicles that have been repurposed to represent our digital liquid securities strategy effective March 31, 2020. The increase in equity investments reflect additional funding in DCP, and reclassification of existing investments into our digital liquid securities strategy, including third party capital raised in our consolidated digital liquid opportunities fund in the third quarter of 2020.
- As of September 30, 2020, we have funded \$168 million of our \$250 million commitment to DCP (including \$1.2 million of our GP interest that is reflected as an equity method investment in the Digital IM segment). In connection with our strategic partnership with Wafra, Wafra will assume at least \$60 million of our total commitment to DCP, of which \$40 million was funded by Wafra in October 2020.

## Operating Performance

Results of operations of our Digital Other segment are as follows:

(In thousands)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2020	2019	Change	2020	2019	Change
Equity method earnings (losses)	\$ 4,400	\$ (251)	\$ 4,651	\$ 12,647	\$ (92)	\$ 12,739
Other gain (loss), net	2,917	—	2,917	4,826	—	4,826
Net income (loss)	6,757	(251)	7,008	16,014	(92)	16,106
Net income (loss) attributable to Colony Capital, Inc.	5,616	(229)	5,845	14,097	(80)	14,177

- Operating results of our Digital Other segment in 2019 represent only our interest in DCP.
- There has been more notable contributions from DCP over time as the fund ramps up its investing activities, in particular contribution from DCP's Zayo co-investment acquired in February 2020. Operating results in 2020 also encompass our new digital liquid securities strategy which includes the mark-to-market of equity securities

## Wellness Infrastructure

This segment is composed of a diverse portfolio of senior housing, skilled nursing facilities, medical office buildings, and hospitals. The Company earns rental income from senior housing, skilled nursing facilities and hospital assets that are under net leases to single tenants/operators and from medical office buildings which are both single tenant and multi-tenant. In addition, certain of the Company's senior housing properties are managed by operators under a RIDEA (REIT Investment Diversification and Empowerment Act) structure, which allows the Company to gain financial exposure to underlying operations of the facility in a tax efficient manner versus receiving contractual rent under a net lease arrangement.

We own between 69.6% and 81.3% of the various portfolios within our Wellness Infrastructure segment.

### Portfolio Overview

Our wellness infrastructure portfolio is located across 32 states domestically and in the United Kingdom (representing 17% of our portfolio based upon NOI for the third quarter of 2020).

The following table presents key balance sheet data of our Wellness Infrastructure segment:

(In thousands)	September 30, 2020	December 31, 2019
Real estate		
Held for investment	\$ 3,484,033	\$ 4,433,825
Held for disposition	43,874	57,664
Debt	2,739,140	2,910,032

The following table presents selected operating metrics of our Wellness Infrastructure segment:

	Number of Properties	Capacity	Average Occupancy <sup>(1)</sup>	Average Remaining Lease Term (Years)
<b>September 30, 2020</b>				
Senior housing—operating <sup>(2)</sup>	53	4,771 units	75.2 %	N/A
Medical office buildings	106	3.8 million sq. ft.	83.0 %	4.5
Net lease—senior housing <sup>(2)</sup>	65	3,529 units	79.1 %	11.7
Net lease—skilled nursing facilities	88	10,458 beds	72.7 %	5.1
Net lease—hospitals	9	456 beds	59.5 %	9.6
Total	321			
<b>December 31, 2019</b>				
Senior housing—operating	83	6,388 units	86.5 %	N/A
Medical office buildings	106	3.8 million sq. ft.	82.2 %	4.8
Net lease—senior housing	71	4,039 units	80.7 %	11.5
Net lease—skilled nursing facilities	89	10,601 beds	82.7 %	5.8
Net lease—hospitals	9	456 beds	58.0 %	10.3
Total	358			

<sup>(1)</sup> Occupancy represents the property operator's patient occupancy for all types except medical office buildings. Average occupancy is based upon the number of units, beds or square footage by type of facility. Occupancy percentages are presented as follows: (i) as of the last day of the quarter for medical office buildings; (ii) average for the quarter for senior housing—operating; and (iii) average of the prior quarter for net lease properties as our operators report on a quarter lag.

<sup>(2)</sup> Six senior housing properties were transitioned from net leases into operating properties in April 2020.

#### *Conveyance to Lender*

In August 2020, we indirectly conveyed the equity of certain of our wellness infrastructure borrower subsidiaries, comprising 36 properties in its senior housing operating portfolio with a carrying value of \$156.3 million and \$157.5 million of outstanding principal on previously defaulted wellness infrastructure debt, to an affiliate of the lender, which released the Company from all rights and obligations with respect to those wellness infrastructure assets and corresponding debt.

#### *Dispositions*

We sold a portfolio of net lease skilled nursing facilities totaling 143 beds and a land parcel in the first quarter of 2020 in our effort to monetize non-core assets in our Wellness Infrastructure segment. We received gross proceeds of \$7.5 million, from which we paid off \$6.5 million of associated debt.

Real estate assets with aggregate carrying value of \$45.0 million are currently held for disposition, comprising a portfolio of net lease skilled nursing facilities totaling 766 beds and is encumbered with \$45.0 million of debt that is in default. The Company expects to apply proceeds from the sale to repay the debt.

#### *Financing*

Our wellness infrastructure portfolio is financed by \$2.77 billion of outstanding debt principal, of which \$0.4 billion is fixed rate debt and \$2.37 billion is variable rate debt, bearing a combined weighted average interest rate of 4.08% per annum at September 30, 2020.

#### *Operating Performance*

Results of operations of our Wellness Infrastructure segment are as follows:

<i>(In thousands)</i>	<i>Three Months Ended September 30,</i>			<i>Nine Months Ended September 30,</i>		
	<i>2020</i>	<i>2019</i>	<i>Change</i>	<i>2020</i>	<i>2019</i>	<i>Change</i>
Total revenues	\$ 124,193	\$ 136,091	\$ (11,898)	\$ 406,055	\$ 427,761	\$ (21,706)
Net loss	(6,969)	(114,154)	107,185	(755,254)	(205,080)	(550,174)
Net loss attributable to Colony Capital, Inc.	(11,349)	(84,222)	72,873	(497,371)	(152,375)	(344,996)

Operating results at the property level are discussed under NOI below. Results summarized above include the effects of interest expense from mortgage financing, impairment charges and depreciation and amortization expense on our wellness infrastructure portfolio, which are discussed in "*—Results of Operations.*"

There was a loss of earnings in 2020 from sales of net lease properties in 2019. The operating results of our wellness infrastructure portfolio was also affected by significant impairment charges of \$92.9 million in the three months ended September 30, 2019, and \$712.2 million and \$144.2 million in the nine months ended September 30, 2020 and 2019, respectively, resulting in significant net losses during these periods.

### Net Operating Income

NOI for our Wellness Infrastructure segment is derived as follows and reconciled to the most directly comparable GAAP measure in "—Non-GAAP Supplemental Financial Measures."

(In thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Total revenues	\$ 124,193	\$ 136,091	\$ 406,055	\$ 427,761
Straight-line rent and amortization of above- and below-market lease intangibles and ground lease asset	(5,079)	1,235	(17,116)	(8,809)
Interest income	(2)	—	(100)	—
Other income	—	—	—	(36)
Property operating expenses	(57,459)	(66,042)	(198,778)	(194,268)
NOI—Wellness Infrastructure	\$ 61,653	\$ 71,284	\$ 190,061	\$ 224,648

NOI by type of wellness infrastructure portfolio is as follows:

(\$ in thousands)	Three Months Ended September 30,		Change		Nine Months Ended September 30,		Change	
	2020	2019	\$	%	2020	2019	\$	%
	Senior housing—operating	\$ 12,011	\$ 15,612	\$ (3,601)	(23.1)%	\$ 37,851	\$ 49,415	\$ (11,564)
Medical office buildings	12,527	12,923	(396)	(3.1)%	38,886	38,828	58	0.1 %
Net lease—senior housing	13,223	14,103	(880)	(6.2)%	40,372	44,772	(4,400)	(9.8)%
Net lease—skilled nursing facilities	22,304	25,477	(3,173)	(12.5)%	67,399	78,116	(10,717)	(13.7)%
Net lease—hospitals	1,588	3,169	(1,581)	(49.9)%	5,553	13,517	(7,964)	(58.9)%
NOI—Wellness Infrastructure	\$ 61,653	\$ 71,284	(9,631)	(13.5)%	\$ 190,061	\$ 224,648	(34,587)	(15.4)%

NOI decreased \$9.6 million and \$34.6 million in the three and nine months ended September 30, 2020, respectively, of which \$8.5 million and \$24.5 million, respectively, were attributed to conveyance to a lender of 36 properties in a senior housing portfolio in August 2020, and sales of 25 net lease properties in 2019 and one in the first quarter of 2020. The remaining decrease in NOI is attributed primarily to our senior housing operating portfolio resulting from the effects of COVID-19 as resident fee income decreased due to a decline in occupancy while operating costs increased, partially offset by government stimulus funding, as discussed further below.

#### Effects of COVID-19 on our Wellness Infrastructure Segment

Our first priority has been, and continues to be, the health and safety of the residents and staff at our communities. We remain focused on supporting our operating partners during this challenging time. Concurrently, we are actively managing capital needs and liquidity to mitigate the financial impact of COVID-19 on our wellness infrastructure business.

At this time, we understand from our operators and managers that our communities as a whole continue to experience a moderate level of confirmed COVID-19 cases. The incidence of confirmed cases in our portfolio may continue and could accelerate depending on the duration, scope and depth of COVID-19.

The effect of COVID-19 varies by asset class in the Company's wellness infrastructure portfolio. Specifically, efforts to address COVID-19 have in some cases forced temporary closures of medical offices, restricted the admission of new residents to senior housing facilities, especially in communities that have experienced infections, and caused incurrence of unanticipated costs and other business disruptions. The Company will be directly impacted by these factors in its RIDEA assets, and indirectly impacted in its net leased assets as these factors influence tenants' ability to pay rent.

- In our medical office portfolio, beginning in April 2020, a number of tenants failed to make rent payments or make timely payments, and some sought more flexible payment terms or rent concessions as a result of the COVID-19 crisis. Local governments in certain jurisdictions have implemented or are considering implementing programs that permit or require forbearance of rent payments by tenants affected by COVID-19. The Company is currently engaged with affected tenants on a case-by-case basis to evaluate and respond to the current environment. The Company has agreed to provide the affected tenants with a deferral of rent, generally for two to three months, with deferred rent to be repaid in monthly installments over periods of three to 15 months. This resulted in an increase in lease income receivable totaling \$0.2 million as of September 30, 2020. All lease income receivable, including

straight-line rents, are subject to the Company's policy for evaluation of collectability based upon creditworthiness of the lessee.

- In our senior housing operating portfolio, statutory or self-imposed restrictions began to limit admission of new residents into our communities starting in March 2020 in an effort to contain COVID-19. Also, we continue to face challenges from existing communities that have experienced infections, heightened risk of resident and staff illness and resident move-outs, particularly in those communities that have experienced infections. There is typically a period of time where restrictions on admissions continue to be imposed in communities that have experienced infections until such time that infections are no longer detected. As a result, we anticipate a decline in occupancy to continue as the rate of resident move-outs continue to outpace new resident admissions.
- Operating costs in our senior housing operating portfolio have risen as our healthcare operators take action to protect their residents and staff, specifically higher labor costs, as well as higher usage and cost of personal protective equipment, and medical and sanitation supplies. We incurred \$1.9 million and \$9.6 million of such incremental costs in the three and nine months ended September 30, 2020, respectively, of which \$2.7 million and \$4.4 million, respectively, were abated through income received from government stimulus funding under the CARES Act Provider Relief Fund.

The challenges faced by our healthcare operators and our tenants as a result of COVID-19 will continue to put pressure on future revenues and operating margins in our Wellness Infrastructure segment.

As necessary, we will engage in discussions with our lenders on the deferral of payment obligations, and/or waiver of defaults for any potential failure in the future to satisfy certain financial or other covenants.

Given the ongoing nature of the pandemic, the extent of the financial effects and how prolonged the effects will be to our wellness infrastructure business is uncertain at this time, and largely dependent on the duration and severity of the COVID-19 crisis.

### Other

This segment is composed of our other equity and debt or OED investments and non-digital investment management or Other IM business.

OED encompasses a diversified group of non-digital real estate and real estate-related equity and debt investments, including investments for which the Company acts as a general partner and/or manager ("GP co-investments") and receives various forms of investment management economics on related third-party capital on such investments (including CLNC), other real estate equity and debt investments and other real estate related securities, among other holdings. Over time, the Company expects to monetize the bulk of its OED portfolio as it completes its digital evolution.

Other IM, which is separate from Digital IM, encompasses the Company's management of private real estate credit funds and related co-investment vehicles, CLNC, and NorthStar Healthcare, a public non-traded healthcare REIT. Many of the investments underlying these vehicles are co-owned by the Company's balance sheet and categorized under OED. The Company earns management fees, generally based on the amount of assets or capital managed, and contractual incentive fees or potential carried interest based on the performance of the investment vehicles managed subject to achievement of minimum return hurdles.

### Balance Sheet Information

Investments and corresponding debt financing in our Other segment are summarized below:

(In thousands)	September 30, 2020	December 31, 2019
<b>Real estate</b>		
Held for investment	\$ 816,794	\$ 937,978
Held for disposition	232,612	353,724
<b>Equity and debt investments</b>		
CLNC	365,872	725,443
Interests in our sponsored and co-sponsored funds	49,717	67,164
Other equity investments <sup>(1)</sup>	1,128,323	1,411,974
CRE debt securities	27,898	57,591
<b>Loans receivable <sup>(2)</sup></b>		
Held for investment	1,272,820	1,518,058
Held for disposition	42,985	—
<b>Debt <sup>(3)</sup></b>	979,153	1,218,417

<sup>(1)</sup> Significant investments include acquisition, development and construction loans (\$626.0 million) and preferred equity investments (\$126.7 million).

<sup>(2)</sup> Carried at fair value upon adoption of fair value option on January 1, 2020.

<sup>(3)</sup> Includes debt carrying value related to real estate held for disposition of \$130.8 million and \$200.6 million as of September 30, 2020 and December 31, 2019, respectively.

## Operating Performance

Our Other segment generated the following results of operations:

(In thousands)	Three Months Ended September 30, 2020			Three Months Ended September 30, 2019			Change	
	OED	Other IM	Total	OED	Other IM	Total	OED	Other IM
Property operating income	\$ 27,121	\$ —	\$ 27,121	\$ 33,841	\$ —	\$ 33,841	\$ (6,720)	\$ —
Interest income	12,556	10	12,566	38,734	94	38,828	(26,178)	(84)
Fee income	—	23,871	23,871	—	97,865	97,865	—	(73,994)
Other income	3,888	1,852	5,740	3,445	31,727	35,172	443	
Total revenues	43,565	25,733	69,298	76,020	129,686	205,706	(32,455)	(103,953)
Equity method earnings (losses)	(66,829)	(621)	(67,450)	43,817	1,889	45,706	(110,646)	(2,510)
Net income (loss)	(240,291)	7,177	(233,114)	9,270	(358,143)	(348,873)	(249,561)	365,320
Net income (loss) attributable to Colony Capital, Inc.	(105,254)	6,538	(98,716)	(3,831)	(325,993)	(329,824)	(101,423)	332,531

(In thousands)	Nine Months Ended September 30, 2020			Nine Months Ended September 30, 2019			Change	
	OED	Other IM	Total	OED	Other IM	Total	OED	Other IM
Property operating income	\$ 82,258	\$ —	\$ 82,258	\$ 119,408	\$ —	\$ 119,408	\$ (37,150)	\$ —
Interest income	61,934	38	61,972	115,379	1,200	116,579	(53,445)	(1,162)
Fee income	—	71,799	71,799	—	164,326	164,326	—	(92,527)
Other income	6,783	8,393	15,176	6,894	47,967	54,861	(111)	(39,574)
Total revenues	150,975	80,230	231,205	241,681	213,493	455,174	(90,706)	(133,263)
Equity method earnings (losses)	(437,963)	84,537	(353,426)	(168,376)	(10,834)	(179,210)	(269,587)	95,371
Net loss	(940,929)	(470,693)	(1,411,622)	(198,429)	(336,171)	(534,600)	(742,500)	(134,522)
Net loss attributable to Colony Capital, Inc.	(572,936)	(423,846)	(996,782)	(236,773)	(305,617)	(542,390)	(336,163)	(118,229)

### OED

- Earnings from our real estate investments and loans receivable in the OED portfolio has declined over time as we continue to monetize our investments, and the decrease also reflects the effects of COVID-19 in 2020. The large net losses, however, resulted primarily from significant write-down in asset values, namely (i) OTTI on our investment in CLNC in 2020 and 2019; (ii) unrealized losses on loans receivable and equity method investments carried at fair value in 2020; and (iii) real estate impairment in both years. Refer to further discussion in "—Results of Operations."
- The OED portfolio represents a meaningful source of liquidity from our ongoing efforts to monetize these investments. Most recently, in April 2020, we recapitalized a co-investment venture which holds common equity in the Albertsons supermarket chain, generating \$72.7 million of proceeds to us and realizing our share of gain of \$29.7 million.

### Other IM

- Similar to monetization of the OED portfolio, we sold our equity interest in RXR Realty in February 2020 for proceeds of \$179 million (net of tax), recording a gain of \$97 million (net of tax). This represents one of two equity investments in third party real estate asset managers held in the Other IM segment.
- Year-to-date, the above gain was offset by significant goodwill impairment and a reversal of carried interest allocation in the first six months of 2020, while fee income from the Other IM business continues to decline each quarter, in particular as the third quarter of 2019 had included large one time fees from NRE. Other income in the

Other IM segment represents primarily cost reimbursement income from affiliates which has a corresponding gross-up in expenses, with no effect to net loss. Refer to further discussion in "*Results of Operations*."

- The Other IM business is expected to run-off over time as limited life investment vehicles are in the liquidation phase and no new third party capital is raised in the non-digital business.

### Non-GAAP Supplemental Financial Measures

The Company reports funds from operations ("FFO") as an overall non-GAAP supplemental financial measure. The Company also reports EBITDAre for the Digital Operating segment, NOI for the Wellness Infrastructure segment and NOI Before FF&E Reserve for the Hospitality segment, which are supplemental non-GAAP financial measures widely used in the equity REIT industry. These non-GAAP measures should not be considered alternatives to GAAP net income as indications of operating performance, or to cash flows from operating activities as measures of liquidity, nor as indications of the availability of funds for our cash needs, including funds available to make distributions. Our calculation of FFO, EBITDAre and NOI may differ from methodologies utilized by other REITs for similar performance measurements, and, accordingly, may not be comparable to those of other REITs.

#### Funds from Operations

We calculate FFO in accordance with standards established by the National Association of Real Estate Investment Trusts ("NAREIT"), which defines FFO as net income or loss calculated in accordance with GAAP, excluding (i) extraordinary items, as defined by GAAP; (ii) gains and losses from sales of depreciable real estate; (iii) impairment write-downs associated with depreciable real estate; and (iv) gains and losses from a change in control in connection with interests in depreciable real estate or in-substance real estate; plus (v) real estate-related depreciation and amortization; and (vi) including similar adjustments for equity method investments. Included in FFO are gains and losses from sales of assets which are not depreciable real estate such as loans receivable, equity method investments, and equity and debt securities, as applicable.

We believe that FFO is a meaningful supplemental measure of the operating performance of our business because historical cost accounting for real estate assets in accordance with GAAP assumes that the value of real estate assets diminishes predictably over time, as reflected through depreciation. Because real estate values fluctuate with market conditions, management considers FFO an appropriate supplemental performance measure by excluding historical cost depreciation, gains related to sales of previously depreciated real estate, and impairment of previously depreciated real estate which is an early recognition of loss on sale.

The following table presents a reconciliation of net income attributable to common stockholders to FFO attributable to common interests in Operating Company and common stockholders. Amounts in the table include our share of activity in unconsolidated ventures.

(In thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
<b>Net loss attributable to common stockholders</b>	\$ (205,784)	\$ (554,953)	\$ (2,610,207)	\$ (1,125,956)
Adjustments for FFO attributable to common interests in Operating Company and common stockholders:				
Net loss attributable to noncontrolling common interests in Operating Company	(22,651)	(53,560)	(287,309)	(90,160)
Real estate depreciation and amortization	162,705	116,615	424,950	430,513
Impairment of real estate	142,767	177,900	1,925,297	291,122
Gain on sales of real estate	(12,332)	(12,928)	(15,346)	(75,250)
Less: Adjustments attributable to noncontrolling interests in investment entities <sup>(1)</sup>	(146,905)	(67,498)	(558,835)	(191,477)
FFO attributable to common interests in Operating Company and common stockholders	\$ (82,200)	\$ (394,424)	\$ (1,121,450)	\$ (761,208)

(1) The components of adjustments attributable to noncontrolling interests in investment entities for FFO are as follows:

(In thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
FFO adjustments attributable to noncontrolling interests in investment entities:				
Real estate depreciation and amortization	\$ 84,252	\$ 30,617	\$ 178,466	\$ 138,073
Impairment of real estate	70,734	45,192	390,708	96,538
Gain on sales of real estate	(8,081)	(8,311)	(10,339)	(43,134)
	<u>\$ 146,905</u>	<u>\$ 67,498</u>	<u>\$ 558,835</u>	<u>\$ 191,477</u>

### EBITDAre

We calculate EBITDAre for our Digital Operating segment in accordance with standards established by NAREIT, which defines EBITDAre as net income or loss calculated in accordance with GAAP, excluding (i) interest expense; (ii) income tax benefit (expense); (iii) depreciation and amortization; (iv) gains on disposition of depreciated real estate, including gains or losses on change of control; (v) impairment write-downs of depreciated real estate and of investments in unconsolidated affiliates caused by a decrease in value of depreciated real estate in the affiliate; and (vi) including similar adjustments for equity method investments to reflect the Company's share of EBITDAre of unconsolidated affiliates

EBITDAre represents a widely known supplemental measure of performance, EBITDA, but for real estate entities, which we believe is particularly helpful for generalist investors in REITs. EBITDAre depicts the operating performance of a real estate business independent of its capital structure, leverage and noncash items, which allows for comparability across real estate entities with different capital structure, tax rates and depreciation or amortization policies. Additionally, exclusion of gains on disposition and impairment of depreciated real estate, similar to FFO, also provides a reflection of ongoing operating performance and allows for period-over-period comparability.

As with other non-GAAP measures, the usefulness of EBITDAre may be limited. For example, EBITDAre focuses on profitability from operations, and does not take into account financing costs, and capital expenditures needed to maintain operating real estate.

### NOI

NOI for our Wellness Infrastructure segment represents total property and related income less property operating expenses, adjusted primarily for the effects of (i) straight-line rental income adjustments; and (ii) amortization of acquired above- and below-market lease adjustments to rental income, where applicable.

We believe that NOI is a useful measure of operating performance of our wellness infrastructure portfolio as it is more closely linked to the direct results of operations at the property level. NOI also reflects actual rents received during the period after adjusting for the effects of straight-line rents and amortization of above- and below-market leases; therefore, a comparison of NOI across periods better reflects the trend in occupancy rates and rental rates at our properties.

NOI excludes historical cost depreciation and amortization, which are based upon different useful life estimates depending on the age of the properties, as well as adjust for the effects of real estate impairment and gains or losses on sales of depreciated properties, which eliminate differences arising from investment and disposition decisions. This allows for comparability of operating performance of our properties period over period and also against the results of other equity REITs in the same sectors.

Additionally, by excluding corporate level expenses or benefits such as interest expense, any gain or loss on early extinguishment of debt and income taxes, which are incurred by the parent entity and are not directly linked to the operating performance of our properties, NOI provides a measure of operating performance independent of our capital structure and indebtedness.

However, the exclusion of these items as well as others, such as capital expenditures and leasing costs, which are necessary to maintain the operating performance of our properties, and transaction costs and administrative costs, may limit the usefulness of NOI.

## Reconciliation of Non-GAAP Financial Measures

The following tables present reconciliations of net loss of the Digital Operating segment to EBITDAre, and net loss of the Wellness Infrastructure segment to NOI.

(In thousands)	Digital Operating		Wellness Infrastructure			
	Three Months Ended September 30, 2020	Nine Months Ended September 30, 2020	Three Months Ended September 30,		Nine Months Ended September 30,	
			2020	2019	2020	2019
Net loss	\$ (38,479)	\$ (77,916)	\$ (6,969)	\$ (114,154)	\$ (755,254)	\$ (205,080)
Adjustments:						
Straight-line rent and amortization of above- and below-market lease intangibles and ground lease asset	—	—	(5,079)	1,235	(17,116)	(8,809)
Interest income	—	—	(2)	—	(100)	—
Other income	—	—	—	—	—	(36)
Interest expense	18,589	36,161	32,310	46,029	106,875	150,691
Transaction, investment and servicing costs	—	—	1,031	1,009	4,836	13,214
Depreciation and amortization	73,107	131,709	31,961	38,998	106,401	119,907
Impairment loss	—	—	2,451	92,885	712,238	144,209
Compensation and administrative expense	—	—	4,104	4,137	12,336	10,291
Gain on sale of real estate	—	—	(186)	(833)	(186)	(833)
Other (gain) loss, net	45	45	(3,836)	2,544	2,157	2,938
Income tax (benefit) expense	(6,091)	(14,494)	5,868	(566)	17,874	(1,844)
EBITDAre / NOI	\$ 47,171	\$ 75,505	\$ 61,653	\$ 71,284	\$ 190,061	\$ 224,648

## Liquidity and Capital Resources

We have substantially addressed our near-term corporate maturity obligations and have enhanced our long-term capital structure and liquidity profile through (i) the June 2020 amendment of our corporate credit facility which right-sizes availability and provides enhanced financial flexibility; and (ii) issuance of \$300 million of exchangeable notes by the OP and repurchase of \$371 million of convertible notes due in January 2021 which allowed us to reduce our near term maturity obligations while also preserving \$300 million of liquidity. Other than the remaining \$31.5 million outstanding principal on our 3.875% convertible senior notes which will be paid off at maturity in January 2021, we have no corporate debt maturities until 2023.

As of November 2, 2020, our liquidity position was approximately \$0.8 billion, composed of cash on hand and the full \$500 million available under our corporate credit facility.

None of our investment level financing are recourse to the Company, and instead are secured by underlying commercial real estate or mortgage loans receivable.

Additionally, we have begun executing a new cost reduction program that has to-date addressed annual run-rate cost savings of approximately \$46 million, mostly from headcount and compensation related cost reductions.

While the Company is in compliance with its corporate debt covenants and currently has sufficient liquidity to meet its operational needs, general concerns over credit and liquidity continue to permeate the financial markets in an economic downturn environment. The Company continues to evaluate opportunities to maintain and strengthen its liquidity position through the current economic recession.

### Liquidity Needs and Sources of Liquidity

Our current primary liquidity needs are to fund:

- our general partner commitments to our future investment vehicles and co-investment commitments to other investment vehicles;
- acquisitions of our target digital assets for our balance sheet and third party capital and related ongoing commitments;
- principal and interest payments on our debt;
- our operations, including compensation, administrative and overhead costs;

- capital expenditures for our non-digital and digital real estate investments;
- distributions to our common and preferred stockholders (to the extent distributions have not been temporarily suspended); and
- income tax liabilities of taxable REIT subsidiaries and of the Company subject to limitations as a REIT.

Our current primary sources of liquidity are:

- cash on hand;
- our corporate revolving credit facility;
- cash flow generated from our investments, both from operations and return of capital;
- fees received from our investment management business, including incentive or carried interest payments, if any;
- proceeds from full or partial realization of investments and/or businesses, particularly from investments in the Other segment;
- investment-level financing;
- proceeds from public or private equity and debt offerings; and
- third party co-investors in our consolidated investments and/or businesses.

Distribution requirements imposed on us to qualify as a REIT generally require that we distribute to our stockholders 90% of our taxable income, which constrains our ability to accumulate operating cash flows.

### **Liquidity Needs**

#### *Investment Commitments*

Our share of commitments in connection with our investment activities as of September 30, 2020 include the following:

- \$29 million of lending commitments to borrowers;
- \$19 million to joint venture investments, including ADC loan arrangements accounted for as equity method investments; and
- \$148 million of remaining capital commitments to Company sponsored and third party sponsored funds, of which \$82 million is for DCP. As of September 30, 2020, we have funded \$168 million of our \$250 million commitment to DCP. In connection with our strategic partnership with Wafra, Wafra will assume at least \$60 million of our total commitment to DCP, of which \$40 million was funded by Wafra in October 2020.

Generally, we expect to fund our investment commitments through cash on hand and/or proceeds from future asset monetization.

#### *Dividends*

U.S. federal income tax law generally requires that a REIT distribute annually at least 90% of its REIT taxable income, without regard to the deduction for dividends paid and excluding net capital gains, and that it pay tax at regular corporate rates to the extent that it annually distributes less than 100% of its net taxable income. We intend to pay regular quarterly dividends to our stockholders in an amount equal to our net taxable income, if and to the extent authorized by our board of directors. Before we pay any dividend, whether for U.S. federal income tax purposes or otherwise, we must first meet both our operating requirements and debt service, if any. If our cash available for distribution is less than our net taxable income, we may be required to sell assets or borrow funds to make cash distributions or we may make a portion of the required distribution in the form of a taxable stock distribution or distribution of debt securities.

*Common Stock*—Our board of directors declared a dividend of \$0.11 per share of common stock for the first quarter of 2020. The Company suspended dividends on its class A common stock beginning with the second quarter of 2020. Under the terms of the Company's amended credit facility, the Company is restricted from paying common dividends other than to maintain the Company's status as a REIT or to reduce income tax payments. The Company will continue to monitor its financial performance and liquidity position, and as economic conditions improve, the Company will reevaluate its dividend policy in consultation with its revolver lending group.

**Preferred Stock**—We are required to make quarterly cash distributions on our outstanding preferred stock, with a weighted average dividend rate of 7.16% per annum, as follows.

Description	Dividend Rate Per Annum	Shares Outstanding September 30, 2020 (In thousands)	Quarterly Cash Distributions	
			Total (In thousands)	Per Share
Series G	7.5%	3,450	\$ 1,617	\$ 0.4687500
Series H	7.125%	11,500	5,121	0.4453125
Series I	7.15%	13,800	6,167	0.4468750
Series J	7.125%	12,600	5,611	0.4453125
		41,350	\$ 18,516	

### Sources of Liquidity

#### Cash From Operations

Our investments generate cash, either from operations or as a return of our invested capital. We primarily generate revenue from net operating income of our real estate properties. We also generate interest income from commercial real estate related loans and securities as well as receive periodic distributions from our equity investments, including our GP co-investments. Such income is partially offset by interest expense associated with non-recourse borrowings on our investments.

Additionally, we generate fee revenue from our investment management business. Management fee income is generally a predictable and stable revenue stream, while carried interest and contractual incentive fees are by nature less predictable in amount and timing. Our ability to establish new investment vehicles and raise investor capital depends on general market conditions and availability of attractive investment opportunities as well as availability of debt capital.

Following the onset of COVID-19, our hotel properties incurred negative operating cash flows in April and May 2020, having recovered to slightly positive operating cash flows since June 2020. We have since taken various steps to minimize operating expenses, as appropriate, in order to minimize cash needs, as we continue to operate these hotels prior to finalizing the sale of these assets. Any cash flows generated from hotel assets that are in receivership, however, are controlled by the receivers and applied to service the underlying debt.

#### Asset Monetization

We periodically monetize our investments through asset sales that are opportunistic in nature or to recycle capital from non-core assets.

In 2020, we continue to accelerate the sale of non-core assets where reasonable values can be attained.

#### Non-Recourse Investment-Level Financing

We have various forms of investment-level financing which are non-recourse to the Company (Notes 10 and 8 to the consolidated financial statements).

In order to minimize cash needs, we did not make debt service payments on certain non-recourse investment level debt, which resulted in the default of a combined \$1.3 billion of debt financing our hotel assets as of the date of this filing. Of this amount, \$0.5 billion of debt is under negotiation with the lender to restructure, while the remaining \$0.8 billion of debt has been accelerated by the lender and underlying assets placed in receivership. The pending sale of our hotel assets with assumption of underlying debt by the acquirer will result in \$2.7 billion of investment-level debt removed from our balance sheet upon closing of the sale, which is expected in the first quarter of 2021.

#### Corporate Credit Facility

As described in Note 10 to the consolidated financial statements, the Credit Agreement was amended on June 29, 2020, which reduced aggregate revolving commitments from \$750 million to \$500 million and increased the interest rate on borrowings from LIBOR plus 2.25% to LIBOR plus 2.5% per annum. The amended terms provide for greater financial covenant flexibility and more borrowing base credit for digital investments. The credit facility is still scheduled to expire in January 2021, with two 6-month extension options. During the extension term(s), the interest rate would increase by 0.25%, and effective March 31, 2021, credit availability would be reduced to \$400 million.

The maximum amount available at any time is limited by a borrowing base of certain investment assets. As of the date of this filing, the full \$500 million is available to be drawn under the credit facility.

Through the date of this filing, we are in compliance with all financial covenants under the credit facility.

### Convertible and Exchangeable Senior Notes

In July 2020, the OP issued \$300 million of exchangeable senior notes with maturity in July 2025, bearing interest at 5.75% per annum. We repurchased \$371 million of the outstanding principal of the 3.875% convertible senior notes, funded with net proceeds from issuance of the 5.75% exchangeable senior notes in July 2020 and cash on hand through a tender offer of the 3.875% convertible senior notes completed in September 2020. This substantially addresses the January 2021 maturity of the 3.875% convertible senior notes, with the remaining \$31.5 million outstanding principal expected to be addressed through cash on hand and/or proceeds from future asset monetization.

As of September 30, 2020, we have total outstanding principal of \$545 million on our senior notes, with a weighted average of 3.9 years remaining to maturity, and bearing weighted average interest of 5.36% per annum.

### Junior Subordinated Debt

Our junior subordinated debt represents an obligation of a subsidiary of the OP that holds wellness infrastructure, hospitality and other non-core assets, as described in more detail in Note 10 to the consolidated financial statements. Colony Capital, Inc. and its operating company, Colony Capital Operating Company, LLC, are not guarantors on the junior subordinated debt. As of September 30, 2020, we have total outstanding principal of \$280 million on our junior subordinated debt, with a weighted average of 15.7 years remaining to maturity, and bearing weighted average interest rate of 3.10% per annum.

### Public Offerings

We may offer and sell various types of securities under our shelf registration statement. These securities may be issued from time to time at our discretion based on our needs and depending upon market conditions and available pricing. There are no planned public offerings of securities at this time.

### Cash Flows

The following table summarizes our cash flow activity for the periods presented.

(In thousands)	Nine Months Ended September 30,	
	2020	2019
Net cash provided by (used in):		
Operating activities	\$ 89,886	\$ 234,590
Investing activities	(981,923)	(937,667)
Financing activities	363,225	605,873

### Operating Activities

Cash inflows from operating activities are generated primarily through property operating income from our real estate investments, interest received from our loans and securities portfolio, distributions of earnings received from equity investments, and fee income from our investment management business. This is partially offset by payment of operating expenses supporting our various lines of business, including property management and operations, loan servicing and workout of loans in default, investment transaction costs, as well as compensation and general administrative costs.

Our operating activities generated net cash inflows of \$89.9 million compared to \$234.6 million in the nine months ended September 30, 2020 and 2019, respectively.

Specifically, the nine months ended September 30, 2019 had included the following activities:

- \$142.6 million of operating cash inflows from our industrial business; and
- receipt of \$64.6 million of incentive and termination fees from NRE upon termination of our management agreement concurrent with the sale of NRE;
- partially offset by payment of \$223.9 million for settlement of \$1.2 billion of the \$2.0 billion notional amount on the forward starting interest rate swap assumed through the Merger.

In contrast, operating cash flows in the nine months ended September 30, 2020 included the following:

- the DataBank business acquired in December 2019 using proceeds from sale of the industrial business that is a much smaller portfolio and Vantage SDC acquired only in July 2020, which in combination, contributed less operating cash flows in 2020 relative to the industrial business in 2019; and

- operating cash flows were negatively affected by the fallout from COVID-19, particularly in our hotel and wellness infrastructure businesses.

#### *Investing Activities*

Investing activities include primarily cash outlays for acquisition of real estate, disbursements on new and/or existing loans, and contributions to unconsolidated ventures, which are partially offset by repayments and sales of loans receivable, distributions of capital received from unconsolidated ventures, and proceeds from sale of real estate and equity investments.

Our investing activities generated net cash outflows of \$981.9 million and \$937.7 million in the nine months ended September 30, 2020 and 2019, respectively.

- *Real estate investments*—Our real estate investment activities in the nine months ended September 30, 2020 and 2019 generated net cash outflows of \$1.0 billion and \$1.1 billion, respectively, driven by the acquisitions of Vantage SDC in July 2020 and the light and bulk industrial portfolio in February 2019. The entire light industrial portfolio was sold in December 2019.
- *Equity investments*—The investing cash outflows in the nine months ended September 30, 2020 were partially offset by net cash inflows from our equity investments of \$89.8 million and \$107.0 million in the nine months ended September 30, 2020 and 2019, respectively. The net cash inflow in 2020 was driven by \$179.1 million of net proceeds from sale of our investment in RXR Realty and \$87.4 million from recapitalization of our joint venture investment in Albertsons, representing amounts recognized as a return of investment, both of which were partially offset by contributions to DCP of \$115.9 million and additional draws on ADC loans that are accounted for as equity method investments. In 2019, the sale of our interest in NRE generated proceeds of \$96.0 million.
- *Debt investments*—Our loan and securities portfolio contributed net cash outflows of \$44.9 million in the nine months ended September 30, 2020 but generated net cash inflows of \$227.2 million in the nine months ended September 30, 2019 as 2019 included proceeds from sale of loans and loan repayments outpaced disbursements.
- *Business acquisition*—2019 also included net cash outlay of \$181.2 million for acquisition of the DBH investment management business.

#### *Financing Activities*

We finance our investing activities largely through investment-level secured debt along with capital from third party or affiliated co-investors. We also draw upon our corporate credit facility to finance our investing and operating activities, as well as have the ability to raise capital in the public markets through issuances of preferred stock, common stock and debt such as our convertible notes. Accordingly, we incur cash outlays for payments on our investment-level and corporate debt, dividends to our preferred and common stockholders, as well as distributions to our noncontrolling interests.

Financing activities generated net cash inflows of \$363.2 million and \$605.9 million in the nine months ended September 30, 2020 and 2019, respectively.

- The financing cash inflows in the nine months ended September 30, 2020 were driven by \$1.3 billion of net contributions from noncontrolling interests, of which \$1.0 billion represents third party investors in Vantage SDC, primarily fee bearing capital that we raised, and \$253.6 million was an investment by Wafra in our digital investment management business.
- However, the cash inflows in 2020 were largely offset by: (i) cash outflow of \$402.9 million in January 2020 for settlement of the December 2019 redemption of our Series B and E preferred stock using proceeds from our industrial sale; (ii) repayments on our investment level debt exceeding borrowings for a net cash outflow of \$298.3 million; (iii) dividends paid on our preferred and common stock of \$167.3 million in 2020 which was relatively lower than 2019 as a result of the preferred stock redemption in December 2019 and suspension of common stock dividends beginning the second quarter of 2020; and (iv) partial repurchase of our 3.875% convertible senior notes for \$81.3 million through a tender offer in September 2020. An additional repurchase of our 3.875% convertible senior notes for \$289.7 million was made through a concurrent application of all of the net proceeds from our issuance of \$300.0 million of new 5.75% exchangeable senior notes in July 2020.
- For the nine months ended September 30, 2019, the financing cash inflows were driven by borrowings exceeding debt repayments by \$750.0 million, specifically \$952.0 million of borrowings in our industrial segment, primarily to fund the industrial portfolio acquisition in February 2019, the majority of which were repaid or assumed by the buyer upon sale of the assets in December 2019.

- Additionally, net contributions from noncontrolling interests also generated cash inflows of \$113.5 million in the nine months ended September 30, 2019.
- The cash inflows in 2019 were partially offset by dividends paid on our preferred and common stock totaling \$241.9 million.

### **Contractual Obligations, Commitments and Contingencies**

There were no material changes outside the ordinary course of business to the information regarding specified contractual obligations contained in our Form 10-K for the year ended December 31, 2019.

### **Guarantees and Off-Balance Sheet Arrangements**

In connection with financing arrangements for certain unconsolidated ventures, we provided customary non-recourse carve-out guarantees. In addition, we have entered into guarantee or contribution agreements with certain hotel franchisors or operating partners, pursuant to which we guaranteed or agreed to contribute to the franchisees' obligations, including payments of franchise fees and marketing fees, for the term of the agreements. We believe that the likelihood of making any payments under the guarantees is remote.

We have off-balance sheet arrangements with respect to our retained interests in certain N-Star CDOs. In each case, our exposure to loss is limited to the carrying value of our investment.

### **Risk Management**

Risk management is a significant component of our strategy to deliver consistent risk-adjusted returns to our stockholders. The risk committee of our board of directors, in consultation with our chief risk officer, internal auditor and management, periodically reviews our policies with respect to risk assessment and risk management, including key risks to which we are subject, including credit risk, liquidity risk, financing risk, foreign currency risk and market risk, and the steps that management has taken to monitor and control such risks. The audit committee of our board of directors maintains oversight of financial reporting risk matters.

### ***Underwriting and Investment Process***

In connection with executing any new investment in digital assets for our balance sheet or a managed investment vehicle, our underwriting team undertakes a comprehensive due diligence process to ensure that we understand all of the material risks involved with making such investment, in addition to related accounting, legal, financial and business issues. If the risks can be sufficiently mitigated in relation to the potential return, we will pursue the investment on behalf of our balance sheet and/or investment vehicles, subject to approval from the applicable investment committee, composed of senior executives of the Company.

Specifically, as part of our underwriting process, we evaluate and review the following data, including, but not limited to: financial data including historical and budgeted financial statements, tenant or customer quality, lease terms and structure, renewal probability, capital expenditure plans, sales pipeline, technical/energy requirements and supply, local and macroeconomic market conditions, ESG, leverage and comparable transactions, as applicable. For debt investments, we also analyze metrics such as loan-to-collateral value ratios, debt service coverage ratios, debt yields, sponsor credit ratings and performance history.

In addition to evaluating the merits of any particular proposed investment, we evaluate the diversification of our or a particular managed investment vehicle's portfolio of assets, as the case may be. Prior to making a final investment decision, we determine whether a target asset will cause the portfolio of assets to be too heavily concentrated with, or cause too much risk exposure to, any one digital real estate sector, geographic region, source of cash flow such as tenants or borrowers, or other geopolitical issues. If we determine that a proposed investment presents excessive concentration risk, we may decide not to pursue an otherwise attractive investment.

### ***Allocation Procedures***

We currently manage, and may in the future manage, REITs and other entities that have investment and/or rate of return objectives similar to our own or to other investment vehicles that we manage. In order to address the risk of potential conflicts of interest among us and our managed investment vehicles, we have implemented an investment allocation policy consistent with our duty as a registered investment adviser to treat our managed investment vehicles fairly and equitably over time. Pursuant to this policy, investment allocation decisions are based on a suitability assessment involving a review of numerous factors, including the particular source of capital's investment objectives, available cash, diversification/concentration, leverage policy, the size of the investment, tax, anticipated pipeline of suitable investments and fund life.

## **Portfolio Management**

The comprehensive portfolio management process generally includes day-to-day oversight by the Company's portfolio management team, regular management meetings and quarterly asset review process. These processes are designed to enable management to evaluate and proactively identify investment-specific issues and trends on a portfolio-wide basis for both assets on our balance sheet and assets of the companies within our investment management business. Nevertheless, we cannot be certain that such review will identify all issues within our portfolio due to, among other things, adverse economic conditions or events adversely affecting specific assets; therefore, potential future losses may also stem from investments that are not identified during these reviews.

We use many methods to actively manage our risk to preserve our income and capital, including, but not limited to, maintaining dialogue with tenants, operators, partners and/or borrowers and performing regular inspections of our collateral and owned properties. With respect to our wellness infrastructure properties, we consider the impact of regulatory changes on operator performance and property values. During a quarterly review, or more frequently as necessary, investments are monitored and identified for possible asset impairment or loan loss reserves, as applicable, based upon several factors, including missed or late contractual payments, significant declines in property operating performance and other data which may indicate a potential issue in our ability to recover our invested capital from an investment. In addition, we may utilize services of certain strategic partnerships and joint ventures with third parties with relevant expertise to assist our portfolio management.

In order to maintain our qualification as a REIT for U.S. federal income tax purposes and our exemption from registration under the 1940 Act, and maximize returns and manage portfolio risk, we may dispose of an asset earlier than anticipated or hold an asset longer than anticipated if we determine it to be appropriate depending upon prevailing market conditions or factors regarding a particular asset. We can provide no assurances, however, that we will be successful in identifying or managing all of the risks associated with acquiring, holding or disposing of a particular asset or that we will not realize losses on certain assets.

## **Interest Rate and Foreign Currency Hedging**

Subject to maintaining our qualification as a REIT for U.S. federal income tax purposes and our exemption from registration under the 1940 Act, we may mitigate the risk of interest rate volatility through the use of hedging instruments, such as interest rate swap agreements and interest rate cap agreements. The goal of our interest rate management strategy is to minimize or eliminate the effects of interest rate changes on the value of our assets, to improve risk-adjusted returns and, where possible, to lock in, on a long-term basis, a favorable spread between the yield on our assets and the cost of financing such assets. In addition, because we are exposed to foreign currency exchange rate fluctuations, we employ foreign currency risk management strategies, including the use of, among others, currency hedges, and matched currency financing. We can provide no assurances, however, that our efforts to manage interest rate and foreign currency exchange rate volatility will successfully mitigate the risks of such volatility on our portfolio.

## **Critical Accounting Policies and Estimates**

Our financial statements are prepared in accordance with GAAP, which requires the use of estimates and assumptions that involve the exercise of judgment and that affect the reported amounts of assets, liabilities, and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period.

Other than adoption of new accounting standards, in particular, *Topic 326 Financial Instruments—Credit Losses*, which are discussed in Note 2 to our consolidated financial statements in Item 1 of this Quarterly Report, there have been no changes to our critical accounting policies or those of our unconsolidated joint ventures since the filing of our Annual Report on Form 10-K for the year ended December 31, 2019.

The application of critical accounting policies that required significant management judgment, estimates and assumptions are discussed further in the following notes to the consolidated financial statements.

- Impairment of real estate—Note 4
- Other-than-temporary impairment on equity method investments—Note 6
- Fair value measurement of equity method investments under fair value option—Note 12
- Fair value measurement of loans receivable under fair value option—Note 12
- Credit loss on available for sale debt securities—Note 6
- Impairment of goodwill and intangible assets—Note 7

We believe that all of the underlying decisions and assessments applied were reasonable at the time made, based upon information available to us at that time. Due to the inherently judgmental nature of the various projections and assumptions used, the unpredictability of economic and market conditions, and the uncertainties over the duration and severity of the resulting economic effects of COVID-19, actual results may differ from estimates, and changes in estimates and assumptions could have a material effect on our financial statements in the future.

### **Recent Accounting Updates**

The impact of accounting standards adopted in 2020 and the potential impact of accounting standards to be adopted in the future are described in Note 2 to our consolidated financial statements in Item 1 of this Quarterly Report.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk.**

Market risk includes the exposure to loss resulting from changes in interest rates, credit curve spreads, foreign currency exchange rates, commodity prices, equity prices and credit risk in our underlying investments.

#### **Credit Risk**

We are subject to the credit risk of the tenant/operators of our properties. We seek to undertake a rigorous credit evaluation of each tenant and operator prior to acquiring properties. This analysis includes an extensive due diligence investigation of the tenant/operator's business as well as an assessment of the strategic importance of the underlying real estate to the tenant/operator's core business operations. Where appropriate, we may seek to augment the tenant/operator's commitment to the facility by structuring various credit enhancement mechanisms into their management assessments, where applicable, and underlying leases. These mechanisms could include security deposit requirements or guarantees from entities we deem creditworthy.

In addition, our investment in loans receivable is subject to a high degree of credit risk through exposure to loss from loan defaults. Default rates are subject to a wide variety of factors, including, but not limited to, borrower financial condition, property performance, property management, supply/demand factors, construction trends, consumer behavior, regional economics, interest rates, the strength of the U.S. economy and other factors beyond our control. All loans are subject to a certain probability of default. We manage credit risk through the underwriting process, acquiring our investments at the appropriate discount to face value, if any, and establishing loss assumptions. We also carefully monitor the performance of the loans, including those held through our joint venture investments, as well as external factors that may affect their value.

For more information, see Item 2, "*Management's Discussion and Analysis—Risk Management.*"

#### **Interest Rate and Credit Curve Spread Risk**

Interest rate risk relates to the risk that the future cash flow of a financial instrument will fluctuate because of changes in market interest rates. Interest rate risk is highly sensitive to many factors, including governmental, monetary and tax policies, domestic and international economic and political considerations and other factors beyond our control. Credit curve spread risk is highly sensitive to the dynamics of the markets for loans and securities we hold. Excessive supply of these assets combined with reduced demand will cause the market to require a higher yield. This demand for higher yield will cause the market to use a higher spread over the U.S. Treasury securities yield curve, or other benchmark interest rates, to value these assets.

As U.S. Treasury securities are priced to a higher yield and/or the spread to U.S. Treasuries used to price the assets increases, the price at which we could sell some of our fixed rate financial assets may decline. Conversely, as U.S. Treasury securities are priced to a lower yield and/or the spread to U.S. Treasuries used to price the assets decreases, the value of our fixed rate financial assets may increase. Fluctuations in LIBOR and/or any alternative reference rate may affect the amount of interest income we earn on our floating rate borrowings and interest expense we incur on borrowings indexed to such reference rate, including under credit facilities and investment-level financing.

We utilize a variety of financial instruments on some of our investments, including interest rate swaps, caps, floors and other interest rate exchange contracts, in order to limit the effects of fluctuations in interest rates on our operations. The use of these types of derivatives to hedge interest-earning assets and/or interest-bearing liabilities carries certain risks, including the risk that losses on a hedge position will reduce the funds available for distribution and that such losses may exceed the amount invested in such instruments. A hedge may not perform its intended purpose of offsetting losses of rising interest rates. Moreover, with respect to certain of the instruments used as hedges, we are exposed to the risk that the counterparties with which we trade may cease making markets and quoting prices in such instruments, which may render us unable to enter into an offsetting transaction with respect to an open position. If we anticipate that the income

from any such hedging transaction will not be qualifying income for REIT income purposes, we may conduct all or part of our hedging activities through a to-be-formed corporate subsidiary that is fully subject to federal corporate income taxation. Our profitability may be adversely affected during any period as a result of changing interest rates.

We have financing arrangements with various financial institutions bearing variable rate interest indexed primarily to 1 and 3-month LIBOR and 1 and 3-month Euribor. We limit our exposure to interest rate increases for our debt primarily through the use of interest rate caps. At September 30, 2020, we did not have any outstanding interest rate swap positions. The interest rate sensitivity table below illustrates the hypothetical impact of changes in the index rates in 1% increments on our interest expense in a one year period, assuming no changes in our debt principal as it stood at September 30, 2020, and taking into account the effects of interest rate caps and contractual floors on indices. The maximum decrease in the interest rates is assumed to be the actual applicable indices at September 30, 2020, all of which were under 1% at September 30, 2020.

(\$ in thousands)	+2.00%	+1.00%	Maximum Decrease in Applicable Index
Increase (decrease) in interest expense	\$ 158,671	\$ 80,356	\$ (9,515)
Amount attributable to noncontrolling interests in investment entities	49,002	24,865	(2,289)
Amount attributable to Operating Company	\$ 109,669	\$ 55,491	\$ (7,226)

### Foreign Currency Risk

We have foreign currency rate exposures related to our foreign currency-denominated investments held predominantly by our foreign subsidiaries and to a lesser extent, by U.S. subsidiaries. Changes in foreign currency rates can adversely affect the fair values and earnings of our non-U.S. holdings. We generally mitigate this foreign currency risk by utilizing currency instruments to hedge our net investments in our foreign subsidiaries. We had previously employed forwards and costless collars (buying a protective put while writing an out-of-the-money covered call with a strike price at which the premium received is equal to the premium of the protective put purchased) which involved no initial capital outlay as hedging instruments on our foreign subsidiary investments. During the quarter ended September 30, 2020, we settled all our outstanding foreign currency hedges and replaced them with put options purchased through upfront premiums.

At September 30, 2020, we had approximately €485.3 million and £262.7 million or a total of \$0.9 billion, in net investments in our European subsidiaries. A 1% change in these foreign currency rates would result in a \$8.7 million increase or decrease in translation gain or loss included in other comprehensive income in connection with investments in our European subsidiaries, and a \$0.3 million gain or loss in earnings in connection with a GBP denominated loan receivable held by a U.S. subsidiary.

A summary of the foreign exchange contracts in place at September 30, 2020, including notional amounts and key terms, is included in Note 11 to the consolidated financial statements. The maturity dates of these instruments approximate the projected dates of related cash flows for specific investments. Termination or maturity of currency hedging instruments may result in an obligation for payment to or from the counterparty to the hedging agreement. We are exposed to credit loss in the event of non-performance by counterparties for these contracts. To manage this risk, we select major international banks and financial institutions as counterparties and perform a quarterly review of the financial health and stability of our trading counterparties. Based on our review at September 30, 2020, we do not expect any counterparty to default on its obligations.

### Inflation

Many of our assets and liabilities are interest rate sensitive in nature. As a result, interest rates and other factors influence our performance more so than inflation, although inflation rates can often have a meaningful influence over the direction of interest rates. Furthermore, our financial statements are prepared in accordance with GAAP and our distributions as determined by our board of directors will be primarily based on our taxable income, and, in each case, our activities and balance sheet are measured with reference to historical cost and/or fair value without considering inflation.

#### **Item 4. Controls and Procedures.**

##### **Evaluation of Disclosure Controls and Procedures**

We maintain disclosure controls and procedures (as defined in Rule 13a-15(e) and 15d-15(e) of the Exchange Act) that are designed to ensure that information required to be disclosed in our reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time period specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow for timely decisions regarding disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Accordingly, even effective disclosure controls and procedures can only provide reasonable assurance of achieving their control objectives.

As required by Rule 13a-15(b) of the Exchange Act, we have evaluated, under the supervision and with the participation of management, including our Chief Executive Officer and Chief Financial Officer, the effectiveness of our disclosure controls and procedures. Based upon our evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective at September 30, 2020.

##### **Changes in Internal Control over Financial Reporting**

Except as set forth below, there have been no changes in our internal control over financial reporting (as defined in Rule 13a-15(f) and 15d-15(f) of the Exchange Act) during the quarter ended September 30, 2020 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

We acquired Vantage SDC in July 2020 and are in the process of evaluating its policies, processes, systems and operations. Similarly, our evaluation is ongoing for DataBank that was acquired in December 2019.

## PART II—OTHER INFORMATION

### Item 1. Legal Proceedings.

The Company may be involved in litigations and claims in the ordinary course of business. As of September 30, 2020, the Company was not involved in any material legal proceedings.

### Item 1A. Risk Factors.

For a discussion of our potential risks and uncertainties, please refer to the “Risk Factors” section in our Annual Report on Form 10-K for the year ended December 31, 2019, which is available on the SEC’s website at [www.sec.gov](http://www.sec.gov). The Company is providing the following additional risk factors to supplement the risk factors included in Item 1A. of the Annual Report:

**The current pandemic of the novel coronavirus (COVID-19) and the volatility it has created, has significantly disrupted our business and is expected to continue to significantly, and may materially adversely, impact and disrupt our business, income, cash flow, results of operations, financial condition, liquidity, prospects and ability to service our debt obligations, and our ability to pay dividends and other distributions to our stockholders. Future outbreaks of highly infectious or contagious diseases or other public health crises could have similar adverse effects on our business.**

In December 2019, a novel strain of coronavirus (COVID-19) was reported to have surfaced in Wuhan, China. COVID-19 has since spread globally, including to every state in the United States. On March 11, 2020, the World Health Organization declared COVID-19 a pandemic, and on March 13, 2020, the United States declared a national emergency with respect to COVID-19.

The COVID-19 pandemic has had, and another pandemic in the future could have, repercussions across regional and global economies and financial markets. The outbreak of COVID-19 has significantly adversely impacted global economic activity and has contributed to significant volatility and negative pressure in financial markets. The impact of the outbreak has been rapidly evolving and, as cases of COVID-19 have continued to be identified, many countries, including the United States, have reacted by instituting quarantines, restricting and banning travel or transportation, mandating business and school closures, limiting size of gatherings and canceling sporting, business and other events and conferences.

While our company continues to pivot to a digitally-focused strategy, a significant portion of our assets consist of, and our revenues are derived from, real estate investments, including wellness infrastructure and hospitality assets. The COVID-19 pandemic has impacted states and cities where we and our tenants operate our and their respective wellness infrastructure, hospitality and other businesses and where our properties are located. The preventative measures taken to alleviate the public health crisis, including significant restrictions on travel between the United States and specific countries, and “shelter-in-place” or “stay-at-home” orders issued by local, state and federal authorities, has significantly disrupted global travel and supply chains, and has adversely impacted global commercial activity across many industries, including in particular the travel, group meeting and conference, lodging and hospitality industries, and has disrupted, and is anticipated to further disrupt, operations and businesses in the wellness infrastructure industries, as discussed further below. Furthermore, although certain countries and U.S. states began to ease stay-at-home restrictions during the third quarter of 2020, resurgences in the numbers of cases of COVID-19 have subsequently led to the reinstatement, or potential for reinstatement, of such restrictions.

The occupancy rates of and revenues generated by our hospitality properties depends on the ability and willingness of guests to travel to our hotels. The spread of COVID-19 has not only decreased guests’ willingness to travel, but also prevented guests from traveling to visit or stay at our hotels as a result of federal travel, social distancing or mandated “shelter-in-place” or “stay-at-home” orders and even as such orders have begun to be lifted in the United States, demand for travel has and is expected to continue to be adversely impacted. Similarly, some tenants in our medical office buildings within our wellness infrastructure portfolio have and may continue to seek flexible payment terms or concessions from us for paying lease charges as a result of such restrictions. In addition, COVID-19 has impacted occupancy at our wellness infrastructure properties, as inquiries, tours and move-ins have all declined.

In addition, COVID-19 has had an adverse impact on the business and financial condition of publicly-traded mortgage REITs, including CLNC, the Company’s managed mortgage REIT and in which it owns an approximate 36% interest. The borrowers of CLNC’s real estate debt investments, including in the office, industrial, multifamily and hotel industries, have and will continue to be affected to the extent that COVID-19’s continued spread reduces occupancy, increases the cost of operation, results in limited hours or necessitates the closure of such properties. In addition,

governmental measures, such as quarantines, states of emergencies, restrictions on travel, stay-at-home orders, and other measures taken to curb the spread of the COVID-19 may negatively impact the ability of CLNC's borrowers or tenants to continue to obtain necessary goods and services or provide adequate staffing, which may also adversely affect CLNC's loan investments and operating results. Many mortgage REITs suspended dividends to stockholders beginning in the second quarter 2020. In April 2020, CLNC announced that to conserve available liquidity, it would suspend its monthly stock dividend beginning with the monthly period ending April 30, 2020. As a result, our CLNC investment will not generate any dividend income and it is uncertain as to when, if ever, CLNC will resume paying distributions to stockholders, including us. In addition, the Company's Core FFO is directly impacted by CLNC's performance as a result of the Company's ownership interest in CLNC and, to the extent CLNC continues to experience operational challenges as a result of COVID-19, our Core FFO will similarly be adversely impacted.

Further, CLNC's stock price fell significantly in March and April 2020 due to the significant volatility in equity markets resulting from COVID-19. Along with other publicly traded mortgage REITs, CLNC experienced a rebound in its stock price in May and June 2020, but its stock continues to experience volatility and trade below pre-COVID-19 levels. With increasing uncertainty over the extent and duration of the COVID-19 pandemic, and the timeline for a recovery in the U.S economy, in connection with the preparation of its second quarter 2020 financial statements, the Company determined that it was unlikely that the shortfall in market value relative to carrying value of its investment in CLNC would recover in the near term and as a result, the Company recognized an \$275 million other-than-temporary impairment on its CLNC investment in the second quarter 2020. The foregoing impairment was in addition to the \$228 million other-than-temporary impairment on its CLNC investment recognized in the second quarter 2019. At September 30, 2020, the carrying value of our CLNC investment was \$365.9 million, or \$7.63 per share. As of November 6, 2020, the trading price of CLNC's stock was \$5.58 per share. If the trading price of CLNC's class A common stock were to suffer further declines, to levels below our current carrying value for a prolonged period of time, as a result of COVID-19 or otherwise, an additional other-than-temporary impairment may be recognized in the future.

The difficult market and economic conditions created by COVID-19 are expected to adversely impact our ability to effectuate our business objectives and strategies. A key component of our business strategy is to monetize certain non-digital, non-core assets in our other equity & debt segment. Many experts predict that the outbreak will trigger, or may have already triggered, a prolonged period of global economic slowdown or a global recession. A sustained downturn in the U.S. economy could negatively impact our ability to consummate asset monetizations within the timeframe and at the values previously anticipated. In addition, the ability to raise capital for our current or anticipated digital-focused investment vehicles may be delayed or adversely impacted by the market and economic conditions which could prevent us from executing our digital pivot and growing our digital business.

The inability to consummate asset monetizations could adversely affect our liquidity and ability to meet our debt obligations or pay dividends to stockholders. For example, in May 2020, we announced the suspension of our common stock dividend for the second quarter of 2020 as the Company's board of directors and management believe it is prudent to conserve cash during the current period of uncertainty. In addition, in connection with the June 2020 amendment to the Company's corporate credit facility, we are prohibited from, among other things, paying dividends, other than (i) paying dividends to maintain the Company's REIT status, (ii) reducing the payment of income taxes and (iii) paying dividends on the Company's preferred stock. As a result, for the term of the corporate credit facility, the Company is prohibited from paying dividends on its common stock, subject to certain limited exceptions. Nonetheless, all permissible distributions are made at the discretion of the Company's board of directors in accordance with Maryland law and depend on our financial condition; debt and equity capital available to us; our expectations for future capital requirements and operating performance; restrictive covenants in our financial or other contractual arrangements, including those in our corporate credit facility; maintenance of our REIT qualification; restrictions under Maryland law; and other factors as our board of directors may deem relevant from time to time.

As a result of these and other factors, we expect our cash flows generated by our real estate investments, particularly in the hospitality and wellness infrastructure industries, to continue to be negatively impacted. Because a substantial portion of our income is derived from these businesses as well as our proceeds from asset monetizations, our business, income, cash flow, results of operations, financial condition, liquidity, prospects and ability to service our debt obligations and our ability to pay dividends and other distributions to our stockholders has been and will continue to be adversely affected if revenues at our hotel and wellness infrastructure properties continue to decline or we are unable to complete certain asset monetizations.

In addition, as COVID-19 has demonstrated the global economy's dependence on digital real estate and infrastructure, the Company has determined to accelerate its shift to a digitally-focused strategy. In doing so, the Company may dispose of its legacy assets and portfolios and continue to focus on the growth of the Company's investment management business focused on digital real estate and infrastructure. This transition may be inconsistent with the Company's status as a REIT. For example, in September 2020, the Company entered into a definitive agreement to sell

five of the six hotel portfolios in its Hospitality segment and its 55.6% interest in the THL Hotel Portfolio in the Other segment. While the Company will remain a REIT through 2020, in light of its strategy to accelerate the digital transformation, the Company will continue to evaluate whether to maintain REIT status beyond 2020. If the Company ceases to qualify as a REIT, it would become subject to U.S. federal income tax on its net taxable income and generally would no longer be required to distribute any of the Company's net taxable income to our stockholders, which may have adverse consequences on the Company's total return to our stockholders.

Furthermore, our corporate credit facility requires us to maintain various financial covenants, including minimum tangible net worth, liquidity levels and financial ratios. Our corporate credit facility also requires us to maintain the Company's REIT status. The June 2020 amendment to our corporate credit facility, among other things, modified certain financial covenants and reduced the aggregate amount of revolving commitments available under the corporate credit facility. Notwithstanding such amendment, based on the decline in performance in our hotel and wellness infrastructure portfolios we are currently experiencing as a result of the COVID-19 pandemic and given the limited visibility to the future recovery of demand in the hospitality industry, there is a range of possible outcomes which may result in a breach of certain financial covenants prior to the initial maturity of January 2021. In addition, if we determine to exercise our initial extension option on the corporate credit facility, the aggregate amount of revolving commitments available under the corporate credit facility will be reduced to \$400 million on March 31, 2021. To the extent that we are unable to effectuate asset monetizations in our Other segment as discussed above, we may be forced to allocate capital to repaying any outstanding balance on the corporate credit facility (either at the initial maturity, in connection with an extension on March 31, 2021, or the final maturity) that otherwise may have been used to invest in and grow the Company's digital real estate and infrastructure business. In addition, as discussed above, in connection with our accelerated digital transaction, we are continuing to evaluate whether to maintain REIT status beyond 2020. If we anticipate a potential breach, we expect to seek an amendment or waiver from our lenders. There is no assurance that our efforts to obtain such an amendment or waiver would be successful. Furthermore, any amendment or waiver may lead to increased costs, decreased borrowing capacity, increased interest rates, additional restrictive covenants and other similar lender protections. The occurrence of any of the foregoing could materially and adversely impact our liquidity and business operations.

Additionally, non-recourse mortgage debt in the Hospitality, Wellness Infrastructure and Other segments with aggregate outstanding principal of \$1.5 billion as of the date of this report was either in payment default or was not in compliance with certain debt and/or lease covenants, as discussed further below. Other than with respect to certain wellness infrastructure and hospitality portfolios described below, the Company continues to be in active negotiations with certain lenders to execute forbearances or debt modifications; however, there is no assurance that our efforts to obtain forbearances or debt modifications will be successful. For example, as of the date of this report and as further described below, we have consensually transferred certain wellness infrastructure assets to lenders in exchange for a release of \$158 million in borrowings secured by such assets and the Inland Hotel Portfolio is in receivership. In addition, we have entered into customary non-recourse carve-out guarantees, which provide for these otherwise non-recourse borrowings to become partially or fully recourse against certain of the Company's affiliates in connection with certain limited trigger or "bad boy" events. Although we believe that "bad boy" carve-out guaranties are not guaranties of payment in the event of foreclosure or other actions of the foreclosing lender that are beyond the borrower's control, some lenders in the real estate industry have recently sought to make claims for payment under such guaranties. In the event such a claim were made against us under a "bad boy" carve-out guaranty, following foreclosure on mortgages or related loans, and such claim were successful, our business and financial results could be materially adversely affected.

In addition, the COVID-19 pandemic, or a future pandemic, could have material and adverse effects on our business, income, cash flow, results of operations, financial condition, liquidity, prospects and ability to service our debt obligations and has, and may continue to have, a material and adverse effect on our ability to pay dividends and other distributions to our stockholders due to, among other factors:

- difficulty accessing debt and equity capital on attractive terms, or at all, and a severe disruption and instability in the global financial markets or deteriorations in credit and financing conditions may affect our access to capital necessary to fund business operations or address maturing liabilities on a timely basis and our tenants/borrowers' abilities to fund their business operations and meet their obligations to us;
- difficulty raising capital and attracting investors at our current and any future managed investment vehicles due to the volatility and instability in global financial markets may constrain the success of our managed investment vehicles and consequently our ability to sustain and grow our investment management business;
- the financial impact has and could continue to negatively impact our ability to pay dividends to our stockholders or could result in a determination to reduce the size of one or more dividends, such as is the case with (i) our decision to suspend the dividend on our common stock beginning the second quarter of 2020 and (ii) certain

restrictions on our ability to pay dividends on our common stock pursuant to the recent amendment to our corporate credit facility;

- the financial impact could negatively impact our future compliance with financial covenants of our corporate credit facility and other debt agreements and could result in a default and potentially an acceleration of indebtedness, which non-compliance could also negatively impact our ability to make additional borrowings under our revolving credit facility or otherwise pay dividends to our stockholders;
- the worsening of estimated future cash flows due to a change in our plans, policies, or views of market and economic conditions as it relates to one or more of our adversely impacted properties could result in fair value decreases and the recognition of substantial impairment charges imposed on our assets;
- the credit quality of our tenants/borrowers could be negatively impacted and we may significantly increase our allowance for doubtful accounts;
- a general decline in business activity and demand for real estate transactions could adversely affect our ability or desire to grow our digital business or dispose of non-core assets as part of our asset monetization and digital pivot strategy;
- potential impairments on our real estate assets or ceasing to own real estate assets as a result of foreclosure or otherwise may impact our ability to maintain our REIT qualification or our exemption from the 1940 Act;
- CLNC's trading price and the impact on the carrying value of the Company's investment in CLNC, including whether the Company will recognize further other-than-temporary impairments on such CLNC investment in addition to those recognized in the second quarter 2020;
- we have and may continue to implement reductions in our workforce, which could adversely impact our ability to conduct our operations effectively;
- unanticipated costs and operating expenses and decreased anticipated revenue related to compliance with regulations, such as inability to litigate non-paying tenants, regulations requiring forbearance of rent payments in certain jurisdictions, additional expenses related to staff working remotely, requirements to provide employees with additional mandatory paid time off and increased expenses related to sanitation measures performed at each of our properties, as well as additional expenses incurred to protect the welfare of our employees, such as expanded access to health services;
- our level of dependence on the Internet, stemming from employees working remotely, and increases in malware campaigns and phishing attacks preying on the uncertainties surrounding COVID-19, which may increase our vulnerability to cyber attacks and cause disruptions to our internal control procedures;
- increased risk of litigation, particularly with respect to our wellness infrastructure properties, related to the COVID-19 pandemic;
- we, and in particular the success of our pivot to a digital real estate and infrastructure focused strategy, depend, to a significant extent, upon the efforts of our senior management team, including DBH's key personnel. If one or more members of our senior management team or the DBH team become sick with COVID-19, the loss of services of such member could adversely affect our business; and
- the potential negative impact on the health of our personnel, particularly if a significant number of them are impacted, could result in a deterioration in our ability to ensure business continuity during a disruption.

Moreover, the impact of COVID-19 pandemic may also exacerbate many of the risks identified under the section entitled "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2019.

*Risks Related to Our Hospitality Business.* The effects of the COVID-19 pandemic on the hospitality industry are unprecedented with global demand for lodging drastically reduced and occupancy levels reaching historic lows during the second quarter 2020. Many hotels have had to temporarily suspend operations or operate at reduced levels. As of the date of this report, all of our hotel properties remain open but are operating at reduced levels; however, we may determine or be required to temporarily suspend the operations at hotels in the future as a result of the COVID-19 pandemic.

In addition, in order to reduce operating costs and improve efficiency, hotel operators, including our hotel operators, have furloughed a substantial number of personnel and may, in the future, furlough more of its personnel. Such steps and other hotel personnel work schedule changes that may be made in the future to reduce costs for us or our hotel operators or franchisors, may have other consequences such as negatively impacting the reputation and demand for our hotels or operational challenges if our operators are unable to re-hire furloughed personnel, all of which could have an adverse impact on our ability to improve performance and operations at our hotels when the COVID-19 pandemic subsides. In

addition, if we are unable to access capital to make physical improvements to our hotels, the quality of our hotels may suffer, which may negatively impact demand for our hotels. Our third-party hotel managers may also face demands or requests from labor unions for additional compensation or other terms as a result of COVID-19 that could increase costs, and while we do not directly employ or manage employees at our hotels, we could incur costs in connection with such labor disputes or disruptions as our COVID-19 mitigation plans are implemented. We cannot predict when business levels will return to normalized levels when the effects of the pandemic subside. There also can be no guarantee that the demand for lodging, and consumer confidence in travel generally, will recover as quickly as other industries. As a result, the revenues from our hospitality portfolio have declined significantly and we expect this trend to continue.

Furthermore, we have significant non-recourse borrowings outstanding on our hospitality properties (including the THL Hotel Portfolio). As of the date of this report, \$1.3 billion in aggregate principal amount of such borrowings (representing the majority of borrowings on our hospitality properties) is in default as a result of the failure to make interest payments in light of the impact COVID-19 has had on our hospitality properties. In addition, we have, and may in the future, receive notices of acceleration with respect to our defaulted borrowings. Further, we were not successful in our negotiations with the lender of the mortgage debt collateralized by a portfolio of 48 extended stay and select service hotel properties known as the Inland Hotel Portfolio and, during the third quarter 2020, a receiver was appointed at all of the assets in the Inland Hotel Portfolio. During the period while the receiver is in place, we will no longer be in control of the operations of the Inland Hotel Portfolio even while still owning the assets.

We are in active discussions with the lenders on certain of our non-recourse borrowings that are in default in our hospitality portfolio and for certain hospitality properties, we have entered into forbearance agreements permitting us not to make interest payments for a specified period of time. However, if we are unable to restructure these borrowings or receive forbearance or other accommodations from our lenders, we may be required to repay outstanding obligations, including penalties, prior to the stated maturity, be subject to cash flow sweeps or potentially have assets foreclosed upon. Further, for borrowings that have been restructured or modified in connection with COVID-19, or are no longer in default, there can be no assurance that the cash flow generated from our hospitality portfolios will be sufficient to service such borrowings. While our hospitality properties experienced a rebound in operating performance in the third quarter 2020, there can be no assurance that such performance will improve or even be sustained. Recently, there has been a resurgence in COVID-19 cases in the United States, which is anticipated to continue or worsen during the upcoming winter season. This resurgence has, and could continue to result in, the re-implementation or tightening of travel and stay-at-home restrictions. In addition, as previously disclosed, due to effects of seasonality, our hospitality properties typically generate lower revenues, operating income and cash flows in the first and fourth quarters of each year. Failure by our hospitality properties to generate sufficient cash flow to service our borrowings, without further forbearance or modifications from lenders, could result in the acceleration of borrowings, cash flow sweeps or the foreclosure of assets, all of which would adversely impact the Company's liquidity and may impact our ability to consummate the pending disposition of our hospitality business.

For the quarter ended June 30, 2020, we incurred \$728 million in impairments on hospitality properties (including the THL Hotel Portfolio) primarily related to assets which are anticipated to be divested or sold in the near term and have fair market values below their respective carrying values. In addition, in September 2020, we incurred an additional impairment of \$115.8 million attributable to the THL Hotel Portfolio based upon its pending sales price, net of selling costs. In October 2020, the Company made certain payments totaling \$13.9 million to lenders in order to cure certain defaults on the debt associated with a hotel portfolio. In connection with the pending disposition of our hospitality business, the seller has agreed, subject to the satisfaction of certain conditions, to provide the Company with a purchase price credit for a portion of such funded amount; however, there can be no assurance that the Company will close the pending transaction or receive the anticipated purchase price credit. Moreover, depending on, among other factors, the status of ongoing negotiations with lenders, our anticipated holding periods for such assets and cash flow projections, we may make additional payments to lenders or take additional impairments on hospitality properties.

In addition, we have agreed to guarantee or contribute to guaranteed payments of franchise fees and marketing fees to our hotel franchisors. In certain instances, such guarantee or contribution agreements may also include an obligation to pay liquidated damages to the hotel franchisor on an early termination of the applicable franchise agreement. In the event that a lender forecloses on our hospitality properties (including in the case of the Inland Hotel Portfolio which is currently in receivership), we may not be released from these payment guarantees or liquidated damages obligations and we may not have any control over whether a franchise agreement is terminated. In the case of the Inland Hotel Portfolio, we have received termination notices with respect to franchise agreements for hotels within the portfolio where the receiver has entered into a new franchise agreement with the applicable franchisor directly. We have not received any claims for liquidated damages from any such applicable franchisor of the terminated franchise agreement; however, there can be no assurances that liquidated damages will not be sought in the future.

*Risks Related to Our Wellness Infrastructure Business.* We anticipate that the impact of the COVID-19 pandemic will vary by asset class within our wellness infrastructure portfolio. Many of the tenants in our medical office buildings suspended non-essential activities, and accordingly sought rent relief. In our senior housing and skilled nursing facilities, occupancy, which is the primary driver of revenues, has declined and may continue to decline during the pandemic as limitations on admissions and fewer inquiries and tours have caused a significant reduction in move-ins, while COVID-19 at the same time increases the risk of resident illness and move-outs. In addition, operating costs at our senior housing and skilled nursing facilities have increased to secure adequate staffing and personal protective equipment. We do not know to what extent, if any, federal relief programs may alleviate these concerns. We will be directly impacted by these factors in our RIDEA assets, or indirectly impacted in our net leased assets as these factors influence our tenants' ability and willingness to pay rent. We may be forced to restructure tenants' long-term lease obligations or suffer adverse consequences from the bankruptcy, insolvency or financial deterioration of one or more of our tenants, operators, borrowers or managers. As a result, we expect a significant decline in revenues, net operating income and cash flow generated by operations from our wellness infrastructure portfolio.

We have significant non-recourse borrowings outstanding on our wellness infrastructure properties. As of the date of this report, we have conveyed to an affiliate of our lender a portfolio of 36 assets in a consensual transfer to obtain a release on \$158 million in aggregate principal amount in borrowings (as discussed above) and have another \$45.0 million in aggregate principal amount of such borrowings in default. As the impact of COVID-19 continues to influence performance at our wellness infrastructure properties, we may experience additional defaults and may be subject to cash flow sweeps. Any such defaults will negatively impact our liquidity and may increase our risk of loss associated with our wellness infrastructure properties. We have entered into forbearance agreements suspending debt service payments for a limited period of time for certain portfolios, subject to satisfaction of certain conditions, and are in active discussions with other lenders, where necessary, regarding deferral of payment obligations and forbearance/waiver of non-payments defaults for failure to satisfy certain financial or other covenants. However, if COVID-19 continues to impact performance and we are unable to obtain accommodations from our lenders, we may be required to repay outstanding obligations, including penalties, prior to the stated maturity, or potentially have assets foreclosed upon.

From time to time, we are involved in legal proceedings, lawsuits and other claims. We may also be named as defendants in lawsuits arising out of our alleged actions or the alleged actions of our tenants and operators for which such tenants and operators have agreed to indemnify, defend and hold us harmless. We may be subject to increased risk of litigation and liability claims as a result of the COVID-19 pandemic and our operating partners' response efforts. Some of these claims may result in large damage awards, which may not be sufficiently covered by insurance or indemnity obligations. Any such litigation may have a material adverse effect on our business, results of operations and financial condition.

Given the ongoing nature of the outbreak, at this time we cannot reasonably estimate the magnitude of the ultimate impact that COVID-19 will have on our business, financial performance and operating results. We believe COVID-19's adverse impact on our business, financial performance and operating results will be significantly driven by a number of factors that we are unable to predict or control, including, for example: the severity and duration of the pandemic; the pandemic's impact on the U.S. and global economies; the timing, scope and effectiveness of additional governmental responses to the pandemic; the timing and speed of economic recovery, including the availability of a treatment or vaccination for COVID-19; and the negative impact on our fund investors, vendors and other business partners that may indirectly adversely affect us.

**We may not realize the anticipated benefits of the Wafra strategic partnership.**

The strategic partnership with Wafra in our Digital IM Business is expected to result in certain benefits to us, including, among others, providing us with liquidity to pursue strategic digital investments and grow our digital assets under management as well as enhancing our ability to accelerate our digital transformation. There can be no assurance, however, regarding when or the extent to which we will be able to realize these and any other benefits we expect from the transaction, which may be difficult, unpredictable and subject to delays. For example, Wafra has agreed to pay contingent consideration of approximately \$29.9 million if the Digital IM Business meets certain performance criteria as of December 31, 2020; however, there can be no assurance that the Digital IM Business will satisfy such criteria in order for the additional consideration to be earned by the Company.

In addition, pursuant to the strategic partnership documentation, Wafra has certain redemption rights which, if exercised, would require the Company to repurchase Wafra's equity investment, carried interest participation rights and warrants. Wafra's redemption rights are triggered upon the occurrence of certain events including key person or cause events under the governing documentation of certain Digital Colony investment vehicles and, for a limited period, upon Marc Ganzi, the Company's CEO and President, and Ben Jenkins, the Chairman and Chief Investment Officer of the Company's digital segment, ceasing to fulfill certain time and attention commitments to the Digital IM Business. If such

redemption rights are exercised, Wafra will also have a redemption right with respect to any sponsor commitments previously made to the Company's funds and vehicles. No assurance can be given that such redemption events, if triggered, would arise at a time when the Company will have the cash on hand or other available liquidity (including availability under the Company's corporate credit facility) to satisfy the redemptions, which could result in the Company being forced to allocate capital away from other potential opportunities or uses that we would otherwise consider to be the most effective use of such capital.

Additionally, under certain circumstances following such time as our Digital IM Business comprises 90% or more of the Company's assets, we have agreed to use commercially reasonable efforts to cooperate with Wafra to facilitate the conversion of Wafra's equity investment into the Company's class A common stock. There can be no assurances that such conversion would occur or on what terms and conditions such conversion would occur, including whether such conversion, if it did occur in the future, would have any adverse impact on the Company, the Company's stock price, governance and other matters.

If any or all of the risks described above, including the risk that the redemption obligations are triggered, were to materialize, the Company's results of operations, financial position and/or liquidity could be materially and adversely affected.

**There can be no assurance that the pending disposition of our hospitality business will be completed on the terms contemplated or at all or that we will be able to realize the anticipated benefits of such sale transaction.**

In September 2020, we announced that we entered into a definitive agreement to sell our \$2.8 billion hospitality business, composed of 197 hotel properties in aggregate, for gross aggregate selling price of \$67.5 million, subject to certain adjustments as provided in the sale agreement, as amended. The sale agreement provides that the closing will occur no earlier than January 15, 2021, which may be extended or accelerated by mutual agreement of the parties, provided that, if certain third party approvals have not been obtained by February 15, 2021, each of the parties has the right to extend the closing date until March 15, 2021. There can be no assurance that this sale transaction will be completed on the terms contemplated, in accordance with the anticipated timing or at all. Consummation of the sale is subject to customary closing conditions, including but not limited to, the acquirer's assumption of the outstanding \$2.7 billion mortgage notes encumbering the hotel properties and third party approvals, including any applicable franchisor consent. There can be no assurance that these conditions to closing will be satisfied. Furthermore, even if we are able to consummate the sale of this business, there can be no assurance that we will realize the anticipated benefits to us of such transaction, including any amount of net proceeds from the transaction as a result of transaction costs or other transaction related expenses. Moreover, one of the Company's hospitality portfolios, which is in receivership, is not a part of the sale transaction. There can be no assurance as to when such hospitality portfolio will be foreclosed upon or sold by the receiver to a third party.

## **Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.**

In July 2020, the Company, along with Colony Capital Operating Company, LLC, the operating subsidiary through which the Company conducts all of its activities and holds substantially all of its assets and liabilities, issued \$300 million in aggregate principal amount of Colony Capital Operating Company, LLC's 5.75% exchangeable senior notes due 2025 (the "Notes") in a private placement to persons reasonably believed to be qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended.

Holders of the Notes have the right to exchange such Notes for shares of the Company's class A common stock, \$0.01 par value per share. The Notes will mature on July 15, 2025. The exchange rate of the notes issued is based upon an initial exchange price of approximately \$2.30 per share of class A common stock, and is subject to adjustment upon the occurrence of certain events.

## **Item 3. Defaults Upon Senior Securities.**

None.

## **Item 4. Mine Safety Disclosures.**

Not applicable.

## Item 5. Other Information.

### Management and Board Changes

On November 5, 2020, the Company's board of directors (the "Board") elected Gregory McCray to serve as an independent member of the Board, effective January 1, 2021. In addition, on November 3, 2020 and November 4, 2020, Douglas Crocker II and John Somers, respectively, each provided notice of resignation as a member of the Board, including all applicable committee memberships, effective December 31, 2020. Each of Mr. Crocker's and Mr. Somers' respective decision was not a result of any disagreement with the Company on any matter relating to its operations, policies or practices.

Concurrently with the foregoing Board appointment and resignations, the Board determined to decrease the size of the Board to eleven (11) directors, effective January 1, 2021.

Mr. McCray, age 57, is an experienced executive with 30 years of business, marketing, sales, engineering, operations, mergers and acquisitions, management and international experience in the communications technology industry. Since June 2018, Mr. McCray has served as the Chief Executive Officer of FDH Infrastructure Services ("FDH"), an engineering and science company that monitors, inspects, designs and performs structural analysis for infrastructure assets utilizing wireless monitoring devices and patented non-destructive testing techniques. During his career, Mr. McCray has served in a number of management and executive roles, including CEO of Access/Google Fiber in 2017; CEO of Aero Communications Inc., which provides installation, services and support to the communications industry, from 2013 to 2016; CEO of Antenova, a developer of antennas and radio frequency modules for mobile devices, from 2003 to 2012; Chairman and CEO of PipingHot Networks, which brought broadband fixed wireless access equipment to market, from 2001 to 2002; and Senior Vice President of customer operations at Lucent Technologies from 1996 to 2000, where he managed the Customer Technical Operations Group for Europe, the Middle East and Africa. Mr. McCray currently serves on the board of directors of FDH, FreeWave Technologies and ADTRAN, Inc. (NASDAQ: ADTN). Mr. McCray served as a director of Centurylink, Inc. (NYSE: CTL), the third largest network operator in America, from January 2005 to February 2017, where he served as chairman of the Cyber Security & Risk Committee from 2015 to 2017. Mr. McCray holds a Bachelor of Science degree in Computer Engineering from Iowa State University and a Master of Science degree in Industrial & Systems Engineering from Purdue University. He has also completed executive business programs at the University of Illinois, Harvard, and INSEAD.

In accordance with the Company's non-employee director compensation policy as described in the Company's definitive proxy statement on Schedule 14A filed on April 1, 2020 with the Securities and Exchange Commission, Mr. McCray's compensation for his services as a non-employee director will be consistent with that of the Company's other non-employee directors, subject to pro-rata to reflect the commencement date of his service on the Board. Mr. McCray is not a party to any transaction that would require disclosure under Item 404(a) of Regulation S-K.

In addition, on November 5, 2020, the Company entered into a Separation and Release Agreement (the "Separation Agreement") with Mark M. Hedstrom in connection with Mr. Hedstrom's resignation as our Chief Operating Officer and Executive Vice President, effective December 23, 2020 (the "Separation Date").

Mr. Hedstrom currently serves, and is expected to continue to serve, as the Chairman of CLNC's board of directors.

Pursuant to the Separation Agreement, and provided that Mr. Hedstrom executes a supplemental release of claims, attached as an annex to the Separation Agreement, within 21 days following the Separation Date and does not revoke such supplemental release within seven days of such execution, Mr. Hedstrom will receive the following benefits and payments, which are no greater than those provided for in his employment agreement (as described in the Company's definitive proxy statement on Schedule 14A filed with the Securities and Exchange Commission on April 1, 2020) consisting of (i) a lump sum cash payment equal to \$3,500,000, (ii) a prorated target bonus for the year of termination, (iii) continued medical, dental and vision benefits at active employee rates for 24 months following the Separation Date, and (iv) full vesting of all equity-based awards of the Company and CLNC, carried interests and other like compensation that he holds to the extent unvested on the Separation Date. In addition, under the Separation Agreement, Mr. Hedstrom will receive certain carried interest allocations in connection with certain of the Company's investments products.

In connection with his separation from the Company, Mr. Hedstrom also resigned from all other officer and director positions at the Company and its affiliates (other than in the case of Mr. Hedstrom's position as Chairman of CLNC's board of directors) effective as of the Separation Date.

In addition, on November 5, 2020, an affiliate of the Company entered into a consulting agreement (the "Consulting Agreement") with Mr. Hedstrom, pursuant to which Mr. Hedstrom will provide certain services to the Company for a one-year term, commencing on January 1, 2021. Mr. Hedstrom's services to the Company will include, among others, providing advice and assistance on certain operational matters of the Company and continuing to serve as Chairman of

CLNC's board of directors. Mr. Hedstrom has also agreed that he will resign from CLNC's board of directors within three business days following a request by the Company to do so. The Company will pay a flat fee of \$50,000 per month for Mr. Hedstrom's services under the Consulting Agreement.

### CEO Aircraft Reimbursement

On November 5, 2020, the Company's board of directors approved an amendment to the employment agreement, dated as of July 25, 2019, between the Company and Marc C. Ganzi, the Company's President and Chief Executive Officer, to provide for the reimbursement by the Company of certain defined fixed costs of any aircraft owned by Mr. Ganzi. The fixed cost reimbursements will be made based on an allocable portion of an aircraft's annual budgeted cash fixed operating costs, based on the number of hours the aircraft will be used for business purposes. At least once a year, the Company will reconcile the budgeted fixed operating costs with the actual fixed operating costs of the aircraft, and the Company or Mr. Ganzi, as applicable, will make a true-up payment for any difference. The fixed cost reimbursement will be in addition to the Company's reimbursement of certain variable operational costs of business travel on a chartered or private jet, as provided in Mr. Ganzi's employment agreement. See "Aircraft" in Note 20 in the Company's consolidated financial statements in this Quarterly Report for additional information regarding aircraft reimbursements.

### Item 6. Exhibits.

Exhibit Number	Description
3.1	<a href="#">Articles of Amendment and Restatement of Colony NorthStar, Inc. (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on January 10, 2017).</a>
3.2	<a href="#">Articles of Amendment of Colony Capital, Inc. (fka Colony NorthStar, Inc.), as amended (incorporated by reference to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q filed on August 9, 2018).</a>
3.3	<a href="#">Amended and Restated Bylaws of Colony Capital, Inc. (fka Colony NorthStar, Inc.) (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed on June 25, 2018).</a>
3.4	<a href="#">Articles Supplementary designating Colony NorthStar, Inc.'s 7.15% Series I Cumulative Redeemable Perpetual Preferred Stock, liquidation preference \$25.00 per share, par value \$0.01 per share (incorporated by reference to Exhibit 3.2 to the Company's Form 8-A filed on June 5, 2017).</a>
3.5	<a href="#">Articles Supplementary designating Colony NorthStar, Inc.'s 7.125% Series J Cumulative Redeemable Perpetual Preferred Stock, liquidation preference \$25.00 per share, par value \$0.01 per share (incorporated by reference to Exhibit 3.3 to Colony NorthStar, Inc.'s Registration Statement on Form 8-A filed on September 22, 2017).</a>
4.1	<a href="#">Form of Class A Common Stock Purchase Warrant of Colony Capital, Inc. (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on July 23, 2020).</a>
4.2	<a href="#">Indenture, dated as of July 21, 2020, among Colony Capital Operating Company, LLC, Colony Capital, Inc. and The Bank of New York Mellon, as trustee (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed on July 23, 2020).</a>
4.3	<a href="#">Form of 5.75% Exchangeable Senior Notes due 2025 (included in Exhibit 4.2).</a>
10.1	<a href="#">Investment Agreement, dated as of July 7, 2020, by and among Colony Valhalla Partners I-A Holdings, L.P., a Delaware limited partnership, Colony Valhalla Partners I-B Holdings, L.P., a Delaware limited partnership, Colony Valhalla Partners II Holdings, L.P., a Delaware limited partnership, CBRE Caledon Valhalla Aggregator Holdings LP, a Delaware limited partnership and Vantage Data Centers Holdings, LLC, a Delaware limited liability company (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on July 13, 2020).</a>
10.2	<a href="#">Investment Agreement, dated as of July 17, 2020, by and among W-Catalina (S) LLC, Colony Capital Operating Company, LLC, Colony Capital, Inc. (for the limited purposes set forth therein) and the Initial Wafra Representative (as defined therein) (incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2020) ***</a>
10.3	<a href="#">Carry Investment Agreement, dated as of July 17, 2020, by and among W-Catalina (C) LLC, Colony Capital Operating Company, LLC, Colony DCP (CI) Bermuda, LP, a Bermuda limited partnership, Colony DCP (CI) GP, LLC (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on July 23, 2020) ***</a>
10.4	<a href="#">Investor Rights Agreement, dated as of July 17, 2020, by and among Colony Capital, Inc., Colony Capital Operating Company, LLC, Colony Capital Digital Holdco, LLC, Colony DC Manager, LLC and W-Catalina (S) LLC (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed on July 23, 2020) ***</a>
10.5	<a href="#">Carried Interest Participation Agreement, dated as of July 17, 2020, by and among Colony DCP (CI) Bermuda, LP, Colony DCP (CI) GP, LLC, Colony Capital, Inc., Colony Capital Operating Company, LLC, W-Catalina (S) LLC and W-Catalina (C) LLC (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed on July 23, 2020) ***</a>
10.6	<a href="#">Amended and Restated Restrictive Covenant Agreement, dated as of July 17, 2020, by and between Colony Capital, Inc. and Marc Ganzi (incorporated by reference to Exhibit 10.5 to the Company's Current Report on Form 8-K filed on July 23, 2020).</a>

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<b>Exhibit Number</b>	<b>Description</b>
10.7	<a href="#">Acknowledgment Letter, dated as of July 17, 2020, by and among Marc Ganzl, W-Catalina (S) LLC, W-Catalina (C) LLC and Colony Capital, Inc. (incorporated by reference to Exhibit 10.6 to the Company's Current Report on Form 8-K filed on July 23, 2020).</a>
10.8	<a href="#">Registration Rights Agreement, dated as of July 21, 2020, by and among Colony Capital Operating Company, LLC, Colony Capital, Inc. and the initial purchasers party thereto (incorporated by reference to Exhibit 10.7 to the Company's Current Report on Form 8-K filed on July 23, 2020).</a>
10.9	<a href="#">Joinder and Amendment to Letter Agreement, dated as of July 22, 2020, by and among Digital Bridge Holdings, LLC, CC Valhalla Investor, LLC, Marc Ganzl, Benjamin Jenkins and the other parties named therein (incorporated by reference to Exhibit 10.11 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2020).</a>
10.10	<a href="#">Assignment and Contribution Agreement, dated as of July 22, 2020, by and among Marc Ganzl, Benjamin Jenkins, MCG Analog, LLC, the Ganzl Extended Family Trust, BJJ Analog, LLC, DB Aviator Manager Rollover Holdings, L.P., DCR YieldCo Holdings, LP and DCR and Aviator Holdings GP, LLC (incorporated by reference to Exhibit 10.12 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2020).</a>
10.11	<a href="#">Amended and Restated Partnership Agreement of DB Aviator Manager Rollover Holdings, L.P., dated as of July 22, 2020, by and among Colony Valhalla GP, LLC, Colony Capital Acquisitions, LLC, MCG Analog, LLC, Ganzl Extended Family Trust, BJJ Analog, LLC and Valhalla Management Holdings, LLC (incorporated by reference to Exhibit 10.13 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2020).</a>
10.12*	<a href="#">Agreement of Purchase and Sale (Sale of Membership Interests in the Owners of Hotel Portfolios Consisting of One Hundred Ninety-Seven (197) Hotel Properties), dated as of September 22, 2020, between the CLNY Seller Entities (as named therein) and Silverplate Capital Partners LLC ***</a>
10.13*	<a href="#">First Amendment to Agreement of Purchase and Sale (Sale of Membership Interests in the Owners of Hotel Portfolios Consisting of One Hundred Ninety-Seven (197) Hotel Properties), dated as of October 9, 2020, between the CLNY Seller Entities (as named therein) and Silverplate Capital Partners LLC</a>
31.1*	<a href="#">Certification of Marc C. Ganzl, Chief Executive Officer, pursuant to Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>
31.2*	<a href="#">Certification of Jacky Wu, Chief Financial Officer, pursuant to Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>
32.1*	<a href="#">Certification of Marc C. Ganzl, Chief Executive Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>
32.2*	<a href="#">Certification of Jacky Wu, Chief Financial Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>
101.INS**	XBRL Instance Document
101.SCH	Inline XBRL Taxonomy Extension Schema
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase
104**	Cover Page Interactive Data File

\* Filed herewith.

\*\* The document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.

\*\*\* Schedules and exhibits to such agreement have been omitted from this filing pursuant to Item 601(a)(5) of Regulation S-K. The Registrant will furnish copies of such schedules and exhibits to the SEC upon request.



**AGREEMENT OF PURCHASE AND SALE****(Sale of Membership Interests in the Owners of Hotel Portfolios Consisting of One Hundred Ninety-Seven (197) Hotel Properties)**

This **AGREEMENT OF PURCHASE AND SALE** (this “**Agreement**”) is dated as of September 22, 2020 (the “**Effective Date**”), between **CBM SELLER, INNKEEPERS SELLER, K-PARTNERS SELLER, MIAMI SELLER, NEP SELLER, and THL SELLER** (each, a “**Selling Entity**” and collectively, “**Seller**”), and **SILVERPLATE CAPITAL PARTNERS LLC**, a Delaware limited liability company (“**Buyer**”).

**RECITALS:**

A. Each Selling Entity owns one hundred percent (100%) of the direct equity interests of each Target Entity (as hereinafter defined), other than THL Target, in which case, THL Seller owns fifty-five and six hundred ninety-two thousandths percent (55.0692%) of the direct equity interests of THL Target.

B. Each Target Entity owns one hundred percent (100%) of the direct or indirect equity interests of each Hotel Owner (as hereinafter defined) and each Operating Tenant (as hereinafter defined) for the applicable Hotel Portfolio (as hereinafter defined).

C. Each Hotel Owner is the fee owner of the applicable Property (as hereinafter defined).

D. Buyer desires to purchase and assume from Seller and Seller desires to sell and assign all of Seller’s right, title and interest in and to all of the equity interests in each Target Entity as set forth on Schedule 2 attached hereto next to the name of such Selling Entity (the “**Membership Interests**”) to Buyer, free and clear of all Liens (other than restrictions on transfer under applicable securities laws and the Loan Documents (as hereinafter defined) evidencing and securing the applicable Existing Loan (as hereinafter defined)), all as more particularly set forth in this Agreement. As the context may indicate, references in this Agreement to “**Seller**” may refer only to the appropriate Selling Entity selling its applicable Membership Interests in an individual Target Entity and, indirectly, in an Individual Hotel (as hereinafter defined).

**AGREEMENT:**

In consideration of the payments and mutual covenants and undertakings set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer (each, a “**Party**” and collectively, the “**Parties**”) agree as follows:

**SUMMARY OF TERMS:**

Certain key terms of this Agreement are summarized below but remain subject to the applicable detailed provisions set forth elsewhere in this Agreement.

Property: See Section 1.1 hereof.

Purchase Price: Sixty-Seven Million Five Hundred Thousand and No/100 Dollars (\$67,500,000.00), subject to adjustment as agreed to by the Parties or as otherwise provided under this Agreement, or, with respect to any Hotel Portfolio Membership Interest, the Allocated Portfolio Interest Purchase Price.

Deposit: Five Million and No/100 Dollars (\$5,000,000.00).

Transaction Fee: Five Hundred and No/100 Dollars (\$500.00).

Closing Date: The later of (a) January 15, 2021 and (b) the date upon which the closing conditions set forth in Sections 5.2 and 5.3 hereof are satisfied for all Hotel Portfolios, as such date may be accelerated or extended from time to time pursuant to the express terms of this Agreement (but in no event shall the Closing Date occur later than the Consent Approval Outside Date (as hereinafter defined)). In the event the Closing Date shall fall on a day which is not a Business Day, the Closing Date shall be the immediately succeeding Business Day.

Seller's Broker: Moelis & Company

Escrow Agent: First American Title Insurance Company.

Notices Addresses for the Parties:

If to Buyer: c/o Highgate Capital Investments, L.P.  
545 East John Carpenter Freeway, Suite 1400  
Irving, Texas 75062  
Attention: Mahmood Khimji  
Email: [mjkhimji@highgate.com](mailto:mjkhimji@highgate.com)

and to: c/o Highgate Capital Investments, L.P.  
870 Seventh Avenue, 2<sup>nd</sup> Floor  
New York, New York 10019  
Attention: Zachary Berger and Matthew Gunlock  
Email: [zberger@highgatecapinv.com](mailto:zberger@highgatecapinv.com) and [mgunlock@highgate.com](mailto:mgunlock@highgate.com)

with a copy to: Latham & Watkins LLP  
330 N. Wabash Avenue, Suite 2800  
Chicago, Illinois 60611  
Attention: Gary E. Axelrod, Esq.  
Email: [gary.axelrod@lw.com](mailto:gary.axelrod@lw.com)

If to Seller: c/o Colony Capital, Inc.

515 S. Flower Street, 44<sup>th</sup> Floor  
Los Angeles, California 90071  
Attention: Director, Legal Department  
Email: [legal@clny.com](mailto:legal@clny.com)

with a copy to: Willkie Farr & Gallagher LLP  
787 Seventh Avenue  
New York, New York 10019  
Attention: Thomas J. Henry, Esq.  
Email: [thentry@willkie.com](mailto:thentry@willkie.com)

If to Escrow Agent: First American Title Insurance Company  
666 Third Avenue  
New York, New York 10017  
Attention: Andrew D. Jaeger, Esq.  
Email: [ajaeger@firstam.com](mailto:ajaeger@firstam.com)

with a copy to: First American Title Insurance Company  
666 Third Avenue  
New York, New York 10017  
Attention: Phil Salomon  
Email: [psalomon@firstam.com](mailto:psalomon@firstam.com)

Notice Provisions: See Section 7.1 hereof.

Exhibits: Exhibit A: Legal Descriptions  
Exhibit B: Organizational Charts  
Exhibit C: Form of Assignment and Assumption Agreement  
Exhibit D: Escrow Instructions

Schedules: Schedule 1: Hotels and Hotel Owners  
Schedule 2: Membership Interests  
Schedule 3: Capital Improvement Work  
Schedule 3.1(c): Summary of Pending Loan Modifications  
Schedule 3.4: Liquor Licenses  
Schedule 4.1(d): No Defaults or Conflicts  
Schedule 4.1(f): Material Contracts  
Schedule 4.1(h): Adverse Actions or Proceedings  
Schedule 4.1(i): Hotel Leases  
Schedule 4.1(j): Ground Leases  
Schedule 4.1(m): Motor Vehicles  
Schedule 4.1(o)(i): CBAs  
Schedule 4.1(p): Defaults under Existing Loans  
Schedule 4.1(q): Hotel Management Agreements  
Schedule 4.1(r): Franchise Agreements  
Schedule 4.1(t): Environmental Reports

Schedule 4.1(u): Insurance Policies  
Schedule 4.1(v): Affiliate Contracts  
Schedule 4.1(z): Cash Position; Leakage  
Schedule 5-A: CBM Mortgage Borrowers  
Schedule 5-B: Innkeepers Mortgage Borrowers  
Schedule 5-C: K-Partners Mortgage Borrowers  
Schedule 5-D: NEP Mortgage Borrowers  
Schedule 5-E: THL Mortgage Borrowers

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## **DEFINITIONS:**

In addition to any other terms defined elsewhere in this Agreement, the following terms shall have the respective meanings indicated in this Article with respect thereto:

**“Acquired Accounts”** means any bank accounts of any Target Entity or Target Subsidiary, including any accounts (whether held by a Target Entity, a Target Subsidiary or a Hotel Manager on behalf of any Target Entity or Target Subsidiary) that hold any cash and cash equivalents or lender reserves, including those bank accounts described in the spreadsheet attached hereto as Schedule 4.1(z) (but expressly excluding the Excluded Accounts and Amount).

**“Affiliate”** means, with respect to a Person, any other Person that directly, or indirectly through one or more intermediaries, controls or is controlled by such Person or is under common control with such Person. For the purposes of this definition, **“control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Person in question, whether by the ownership of voting securities, contract or otherwise.

**“Allocated Individual Hotel Interest Purchase Price”** means the portion of the Allocated Portfolio Interest Purchase Price allocated to the equity interests of each Hotel Owner determined in accordance with Section 1.4 hereof.

**“Allocated Individual Hotel Valuation”** is the allocation of Real Property, tangible Personal Property and intangible Personal Property constituting the Allocated Portfolio Interest Purchase Price of each Individual Hotel determined in accordance with Section 1.4 hereof.

**“Allocated Portfolio Interest Deposit”** means a portion of the Deposit that the Parties mutually agree shall be allocated to a particular Hotel Portfolio Membership Interest at or prior to the Closing if and solely to the extent the Parties mutually agree that the Closing will involve the sale of less than all of the Hotel Portfolio Membership Interests.

**“Allocated Portfolio Interest Purchase Price”** means the portion of the Purchase Price (and any other amounts properly taken into account for applicable Tax purposes) allocated to each Hotel Portfolio Membership Interest determined in accordance with Section 1.4 hereof.

**“Applicable Law”** means all domestic, federal, state, provincial, municipal or local statutes, laws, common law, rules, regulations, ordinances, codes or other legal requirements of any Governmental Authority, and any judgment, injunction, order, directive, decree or other judicial or regulatory requirement of any court, arbitrator or Governmental Authority of competent jurisdiction affecting or relating to the Person or property in question, including, but not limited to, the Worker Adjustment and Retraining Notification Act of 1988 (as amended) or any similar state or local law or regulation.

**“Appurtenant Interests”** means, for each Individual Hotel, all easements, licenses, rights of way, privileges, appurtenances and other rights appurtenant thereto.

“**Bookings**” means the bookings, contracts or reservations for the use or occupancy of guest rooms and/or the meeting, banquet or other facilities of the Individual Hotels for the Closing Date and the period from and after the Closing Date.

“**Business Day**” means any day other than a Saturday, a Sunday, or a federal holiday recognized by the Federal Reserve Bank of New York.

“**Buyer Indemnity**” means an indemnity from Buyer’s Credit Enhancers in form and substance reasonably acceptable to Seller, agreeing to indemnify, defend and hold the Seller Guarantor Parties subject to any of the Loan Documents, any Ground Lease, any Franchise Agreement or any Hotel Management Agreements, as applicable, or any related Seller Guarantees, free and harmless from any and all obligations and liabilities thereunder first arising from and after the Closing Date, in each case, only to the extent (i) any such Loan Document, Ground Lease, Franchise Agreement or Hotel Management Agreement is assumed by Buyer or its Affiliate and/or (ii) the applicable Seller Guarantor Party is not released from such Seller Guarantee.

“**Buyer Knowledge Individuals**” means Zachary Berger and Mahmood Khimji.

“**Buyer Party**” means Buyer, its Affiliates, and any of their respective officers, employees, partners, members, agents, attorneys, consultants, contractors, advisors and other representatives, and their respective heirs, successors, personal representatives and assigns, each being a “**Buyer Party**” and collectively being the “**Buyer Parties**.”

“**Buyer’s Credit Enhancers**” means one or more creditworthy entities that are Affiliates of Buyer and acceptable to any Existing Lender as a replacement guarantor or indemnitor in connection with a Loan Release and Modification or any other entity proposed by Buyer and reasonably acceptable to Seller, which creditworthy entities shall remain creditworthy for so long as and to the extent required by the Loan Documents.

“**CBM Hotel Owner**” means, individually or collectively as the context may require, the owner of any Individual Hotel in the CBM Hotel Portfolio and identified on Schedule 1 attached hereto.

“**CBM Hotel Portfolio**” means the portfolio of Individual Hotels set forth on Schedule 1 attached hereto identified as “CBM Hotel Portfolio Individual Hotels.”

“**CBM Lender**” means, individually or collectively as the context may require, (i) CBM Mortgage Lender, (ii) CBM Mezz A Lender, and (iii) CBM Mezz B Lender.

“**CBM Loan**” means, individually or collectively as the context may require, (i) the CBM Mortgage Loan, (ii) the CBM Mezz A Loan, and (iii) the CBM Mezz B Loan.

“**CBM Mezz A Lender**” means IGIS Global Specialized Private Placement Real Estate Investment Trust No. 206 (as successor-in-interest to Barclays Bank PLC and Morgan Stanley Mortgage Capital Holdings LLC).

**“CBM Mezz B Lender”** means, individually or collectively as the context may require, (i) Kiwoom Milestones US Professional Private Real Estate Trust 16-A, (ii) Kiwoom Milestones US Professional Private Real Estate Trust 16-B, (iii) Mirae Asset Securities & Investments (USA), LLC, and (iv) Mirae Asset Securities & Investments (USA), LLC (as successors-in-interest to Barclays Bank PLC and Morgan Stanley Mortgage Capital Holdings LLC).

**“CBM Mezz A Loan”** means that certain mezzanine loan made by CBM Mezz A Lender to CMP I Owner MB1-T, LLC, a Delaware limited liability company, on July 9, 2018, in the aggregate principal amount of Eighty Million and No/100 Dollars (\$80,000,000.00).

**“CBM Mezz B Loan”** means that certain mezzanine loan made by CBM Mezz B Lender to CMP I Owner MB2-T, LLC, a Delaware limited liability company, on July 9, 2018, in the aggregate principal amount of Fifty-Five Million and No/100 Dollars (\$55,000,000.00).

**“CBM Mortgage Borrowers”** means those entities set forth on Schedule 5-A attached hereto.

**“CBM Mortgage Lender”** means Wells Fargo Bank, National Association, as Trustee for the benefit of the Holders of BBCMS Trust 2018-CBM Commercial Mortgage Pass-Through Certificates, Series 2018-CBM (as successor-in-interest to Barclays Bank PLC and Morgan Stanley Bank, N.A.).

**“CBM Mortgage Loan”** means that certain mortgage loan made by CBM Mortgage Lender to CBM Mortgage Borrowers on July 9, 2018, in the original principal amount of Four Hundred Fifteen Million and No/100 Dollars (\$415,000,000.00).

**“CBM Operating Tenant”** means CMP I OPS-T, LLC, a Delaware limited liability company.

**“CBM Seller”** means, individually or collectively as the context may require, (i) CMP I Owner-T, LLC, a Delaware limited liability company, and (ii) CMP I CAM2-T, LLC, a Delaware limited liability company.

**“CBM Target”** means, individually or collectively as the context may require, (i) CMP I Owner MB2-T, LLC, a Delaware limited liability company, and (ii) CMP I OPS MB3, LLC, a Delaware limited liability company.

**“Claim Notice”** means a written notice delivered by one Party to the other Party setting forth a reasonably detailed description of the specific Claims being asserted, including, without limitation, detailed statements of (a) the estimated amount of loss or damage being asserted (but only to the extent such amount is then-estimable) and (b) the rationale for or explanation of why the Claims are alleged to be the responsibility of the Party against whom the Claims are being asserted.

**“Claims”** means any suits, actions, proceedings, investigations, demands, claims, liabilities, fines, penalties, liens, judgments, losses, injuries, damages, expenses or costs,

including, without limitation, attorneys' and experts' fees and costs and investigation, remediation costs, losses due to impairment or diminished value, or any other damages, losses or costs of any type or kind.

**"Closing"** means the consummation of the purchase and sale transaction contemplated by this Agreement.

**"Closing Date"** means the date that is set forth or described as such in the Summary of Terms, as such date may later be changed as expressly provided in this Agreement.

**"Closing Documents"** means the documents, instruments (including, without limitation, any assignment and assumption agreements), and other agreements executed and delivered by a Party at or in connection with the Closing.

**"Code"** means the Internal Revenue Code of 1986, as amended, or any corresponding provision(s) of any succeeding law.

**"Consent Approval Date"** means February 15, 2021.

**"Consent Approval Outside Date"** means March 15, 2021.

**"Confidentiality Agreement"** means that certain Confidentiality Agreement, dated as of August 10, 2020, by and between NRF Holdco, LLC and Highgate Holdings, Inc., as the same may be amended, extended, renewed, or otherwise modified from time to time.

**"Consumables"** means all maintenance and housekeeping supplies and inventory, including, without limitation, soap, toiletries, cleaning materials and matches, stationery, pencils and other supplies of all kinds, whether used, unused, or held in reserve storage for future use in connection with the maintenance and operation of any Individual Hotel which are owned by any Hotel Owner and on hand as of the Closing Date, excluding, however, (i) Food and Beverage, (ii) Operating Equipment, (iii) items which are in use in the Individual Hotel rooms, (iv) Unopened Consumables, and (v) all items of property owned by any Affiliate of Seller that is not part of the Target Group, any Hotel Manager, any Franchisor, guests, employees or other Persons furnishing goods or services to any Individual Hotel.

**"Contract"** means any contract, subcontract, agreement, obligation, commitment, arrangement, understanding, instrument, lease, sublease, license, use or occupancy agreement, letter of intent, letter of understanding, promise, sales or purchase order or other undertaking, whether written or oral.

**"COVID-19 Measures"** means any mandatory quarantine, "shelter in place", "stay at home", workforce reduction, social distancing, shutdown, closure, sequester or any other Applicable Law imposed by any Governmental Authority in connection with or in response to COVID-19.

**"Datasite"** means that certain electronic datasite entitled "Project Colonel" hosted by Intralinks.

“**Deposit**” means the amount as specified in the Summary of Terms, together with any interest earned or accrued thereon, but only to the extent such amount has been deposited by Buyer with Escrow Agent.

“**Due Diligence Materials**” means the documents and other materials and information regarding the Membership Interests or the Property provided by or on behalf of Seller or any Seller Party to Buyer or any Buyer Party to assist with Buyer’s evaluation and acquisition of the Membership Interests, and, indirectly, of the Property.

“**Emergency**” means any situation where the applicable Person, in its reasonable, good faith judgment, concludes that a particular action (including, without limitation, the expenditure of funds) is immediately necessary (i) to avoid imminent material damage to all or any material portion of any Individual Hotel, or (ii) to protect any individual from harm.

“**Employees**” means, at the time in question, all individuals who are employed full-time or part-time (including individuals employed by any Hotel Manager) at, or in connection with providing support or services to, any Individual Hotel.

“**equity interests**” means, with respect to any Person, any (i) shares of capital stock, equity interests, voting securities or other ownership interests in such Person, (ii) options, warrants, calls, subscriptions, agreements, obligations, “phantom” rights, interest appreciation rights, performance units, profits interests or other rights, convertible or exchangeable securities, agreement, Contracts or commitments of any character obligating such Person to issue, transfer, deliver or sell any membership interest or other equity or voting interest in such Person or securities convertible into or exchangeable for such shares or equity or voting interests relating to or based on the value of the equity securities of such Person, (iii) obligations of such Person to repurchase, redeem or otherwise acquire any of the foregoing, or (iv) voting trusts, equityholder agreements, registration rights agreements, voting agreements or similar agreements to which such Person is a party or, to the knowledge of such Person, among securityholders of such Person, with respect to the voting of, or other matters related to, any of the foregoing.

“**Escrow Agent**” means the escrow agent set forth in the Summary of Terms.

“**Escrow Instructions**” means the escrow instructions attached hereto as Exhibit D.

“**Excluded Accounts and Amount**” means all bank accounts of any Person other than (i) any Target Entity or Target Subsidiary (but expressly excluding an amount equal to Eight Hundred Ninety-Seven Thousand Eight Hundred Twenty-Eight and 77/100 Dollars (\$897,828.77) on deposit in Bank Account #211765006 (Bank b1670001) in the name of ColFin THL Mezz Holdco LLC, with a bank closing balance of Eight Hundred Ninety-Seven Thousand Eight Hundred Twenty-Eight and 77/100 Dollars (\$897,828.77), as of September 21, 2020), which amount (or remaining portion thereof) is, and shall remain, the property of Seller as of the Closing and any use or distribution of such amount that is freely usable or distributable without the consent of any Person shall in no event constitute Leakage hereunder; provided, however, Seller shall not replenish any such amounts that are so used or distributed), or (ii) any Hotel Manager on behalf of any Target Entity or Target Subsidiary.

**“Excluded Permits”** means any Permits held by any Franchisor, any Hotel Manager or any Affiliate of any Franchisor or Hotel Manager used in or relating to the ownership, occupancy or operation of any part of any Individual Hotel.

**“Existing Lenders”** means, individually or collectively as the context may require, (i) CBM Lender, (ii) Innkeepers Lender, (iii) K-Partners Lender, (iv) Miami Lender, (v) NEP Lender, and (vi) THL Lender.

**“Existing Loan Release Documents”** means those documents to be executed and delivered by the applicable Existing Lender in connection with any Existing Loan Release.

**“Existing Loans”** means, individually or collectively as the context may require, (i) the Innkeepers Loan, (ii) the CBM Innkeepers Loan, (iii) the K-Partners Loan, (iv) the Miami Loan, (v) the NEP Loan, and (vi) the THL Loan.

**“FF&E”** means, for each Individual Hotel, all personal property, fixtures, furniture, furnishings, fittings, equipment, computer hardware, telecommunications and information technology systems, machinery, apparatus, art work, appliances and all other articles of tangible personal property owned by any Hotel Owner and located on the Real Property as of the Closing Date and used or usable solely in connection with any part of any Individual Hotel, if any, including, without limitation, all food and beverage service equipment, cleaning service equipment and laundry and dry cleaning equipment, excluding, however, (i) Consumables, (ii) Food and Beverage, (iii) Operating Equipment, (iv) equipment and property leased pursuant to Hotel Contracts, and (v) all items of property owned by any Affiliate of Seller that is not part of the Target Group, any Hotel Manager, any Franchisor, guests, employees or other Persons furnishing goods or services to any Individual Hotel.

**“Financial Statements”** means the (i) audited combined and consolidated financial statements of CMP I Owner-T, LLC and Subsidiaries and CMP I OPS-T, LLC as of and for the year ended December 31, 2019, (ii) audited combined financial statements of INK Acquisition, LLC & Affiliates as of and for the year ended December 31, 2019, (iii) audited combined financial statements of Castleblack Owner Holdings, LLC & Affiliates as of and for the year ended December 31, 2019, (iv) audited combined financial statements of MC Holdings-T, LLC and Subsidiaries as of and for the year ended December 31, 2019, (v) unaudited consolidated and combined Financial Statements of NEP Owner-T, LLC and Subsidiaries and NEP OPS-T, LLC as of and for the year ended December 31, 2019, and (vi) audited combined consolidated financial statements of CNI THL SMB, LLC and CNI THL OPS, LLC as of and for the year ended December 31, 2019.

**“Food and Beverage”** means all food and beverage that is on hand as of the Closing Date, whether used, unused, held in reserve storage for future use, in connection with any Individual Hotel, whether issued to the food and beverage department or held in reserve storage, or is located in the minibars in the Individual Hotel rooms, and subject to such depletion and including such resupplies, in each case, as shall occur after the Effective Date in the ordinary course of business and in accordance with Section 3.1 hereof (and including any of the foregoing

that have been ordered for future use at any Individual Hotel but have not been delivered to such Individual Hotel as of the Closing Date).

“**Franchise Agreements**” means those certain franchise agreements, together with all amendments thereto (but not guarantees thereof), set forth on Schedule 4.1(r) attached hereto.

“**Franchise Approval Documents**” means those documents required by any Franchisor to approve the transfer of the applicable Membership Interests contemplated herein, including the entry into any new franchise agreements, as applicable.

“**Franchisor**” means, individually or collectively as the context may require, (i) Choice Hotels International, Inc., (ii) Country Inn & Suites by Radisson, Inc., (iii) Holiday Hospitality Franchising, LLC, (iv) Hyatt House Franchising, L.L.C., (v) The Sheraton LLC, (vi) Westin Hotel Management, L.P., (vii) Hilton Franchisor, and (viii) Marriott Franchisor, in each case, together with their respective successors and assigns.

“**Fundamental Representations**” means the representations and warranties set forth in Section 4.1(a) hereof (*Formation; Binding Agreement*) and Section 4.1(c) hereof (*Ownership of Membership Interests; Subsidiaries*).

“**GAAP**” means generally accepted accounting principles as in effect in the United States.

“**Governmental Authority**” means any federal, state, municipal, provincial or local government or other political subdivision thereof, including, without limitation, any agency, authority, department, board, commission, instrumentality, judicial body or entity exercising executive, legislative, judicial, taxing, regulatory or administrative governmental powers or functions.

“**Ground Lease Approval Documents**” means those documents required by any ground lessor of a Ground Lease to approve the transfer of the applicable Membership Interests contemplated herein.

“**Ground Leases**” means those certain ground leases, together with all amendments thereto (but not guarantees thereof), described on Schedule 4.1(j) attached hereto, pursuant to which the applicable Hotel Owner holds a ground leasehold interest in the applicable Property.

“**Hazardous Materials**” means any substance, gas, material, chemical, biological/microbial matter, or waste: (a) whose presence or nature, either by itself or in combination with other materials is potentially injurious to human health or safety, the indoor or outdoor environment or natural resources, or (b) is designated, classified or regulated as “toxic,” “hazardous,” “waste”, a “pollutant” or a “contaminant” (or words of similar import) pursuant to any Applicable Law, including, without limitation, any petroleum product or by-product, solvent, flammable or explosive material, radioactive material, asbestos-containing material, lead-containing material, urea-formaldehyde-containing material, hazardous building material,

polychlorinated biphenyls or “PCBs,” pesticides, radon, mold, fungus, or other toxic biological agent or growth.

“**Hilton Franchisor**” means, individually or collectively as the context may require, (i) Hilton Garden Inns Franchise LLC and (ii) Hilton Franchise Holding LLC.

“**Hotel Books and Records**” means all books, records, ledgers, files, information and data which are in the possession of Seller, any Hotel Owner, any Operating Tenant or their respective agents or employees relating to the ownership and operation of any Individual Hotel, except such books, records, ledgers, files, information and data which are proprietary to Franchisor and which Seller and/or any Hotel Owner and/or Operating Tenant is expressly prohibited to transfer.

“**Hotel Contracts**” means all service, maintenance, purchase order, reservation and telephone equipment and system contracts, and other contracts and/or leases where Seller, any Hotel Owner or its agent is lessee or purchaser, as the case may be, with respect to the ownership, maintenance, operation, provisioning or equipping of any Individual Hotel, any contracts entered into between the Effective Date and the Closing Date in accordance with Section 3.1 hereof, warranties and guaranties relating to any of such contracts, excluding, however, (i) Bookings, (ii) the Ground Leases, (iii) insurance policies, (iv) the Hotel Management Agreements, (v) the Franchise Agreements, and (vi) the Terminated Management Agreements.

“**Hotel Leases**” means those certain Leases described on Schedule 4.1(i) attached hereto.

“**Hotel Management Agreements**” means those certain management agreements, together with all amendments, side letters, waiver letters and modifications thereto, set forth on Schedule 4.1(q) attached hereto.

“**Hotel Manager**” means, individually or collectively as the context may require, (i) Island Manager, (ii) Marriott Manager, and (iii) THL Manager.

“**Hotel Owner**” means, individually or collectively as the context may require, (i) CBM Hotel Owner, (ii) Innkeepers Hotel Owner, (iii) K-Partners Hotel Owner, (iv) Miami Hotel Owner, (v) NEP Hotel Owner, and (vi) THL Hotel Owner.

“**Hotel Portfolio**” means, individually or collectively as the context may require, (i) the Innkeepers Hotel Portfolio, (ii) the NEP Hotel Portfolio, (iii) the CBM Hotel Portfolio, (iv) the Miami Hotel Portfolio, (v) the K-Partners Hotel Portfolio, and (vi) the THL Hotel Portfolio.

“**Hotel Portfolio Membership Interests**” means, individually or collectively as the context may require, the Membership Interests with respect to a particular Hotel Portfolio.

“**Improvements**” means, for each Individual Hotel, all improvements and fixtures (other than fixtures owned or removable by any third party) located on the Real Property for such Individual Hotel.

**“Indebtedness”** means, with respect to a Person, (a) any indebtedness for borrowed money of such Person, (b) any liability or obligation of such Person evidenced by any note, bond, debenture, mortgage, indenture or other similar instrument or debt security, (c) any obligation under capitalized leases with respect to which such Person is liable, (d) any reimbursement obligations of such Person under letters of credit, bankers’ acceptances or similar arrangements, (e) any obligation of such Person for the payment of deferred purchase price, “earnout,” “milestone,” or similar consideration in respect of property or services, (f) any liability or obligation of such Person arising from cash/book overdrafts, (g) any liability or obligation of such Person under conditional sale or other title retention agreements, (h) any liability or obligation of such Person arising out of interest rate and currency swap arrangements and any other arrangements designed to provide protection against fluctuations in interest or currency rates, (i) all unpaid amounts due and payable pursuant to such Person’s accounts payable, (j) any liability or obligation of such Person for accrued but unpaid interest and unpaid prepayment penalties, expenses, breakage fees, costs, make-whole payments or premiums with respect to any of the foregoing, (k) any liability or obligation of such Person for any breach of any obligations or liabilities of the type set forth in clauses (a) through (j), and (l) any liability or obligation of such Person for guarantees (or other assurance against liabilities or Liens against the assets of such Person) of another Person with respect to any liability or obligation of a type described in clauses (a) through (k).

**“Individual Hotel”** means each hotel identified on Schedule 1 attached hereto, and shall be deemed to include the Real Property.

**“Innkeepers Hotel Owner”** means, individually or collectively as the context may require, the owner of any Individual Hotel in the Innkeepers Hotel Portfolio and identified on Schedule 1 attached hereto.

**“Innkeepers Hotel Portfolio”** means the portfolio of Individual Hotels set forth on Schedule 1 attached hereto identified as “Innkeepers Hotel Portfolio Individual Hotels.”

**“Innkeepers Lender”** means, individually or collectively as the context may require, (i) Innkeepers Mortgage Lender, (ii) Innkeepers Mezz A Lender, and (iii) Innkeepers Mezz B Lender.

**“Innkeepers Loan”** means, individually or collectively as the context may require, (i) the Innkeepers Mortgage Loan, (ii) the Innkeepers Mezz A Loan, and (iii) the Innkeepers Mezz B Loan.

**“Innkeepers Mezz A Lender”** means Kiwoom Milestone US Professional Private Real Estate Investment Trust 19, a trust formed under the laws of the Republic of Korea.

**“Innkeepers Mezz B Lender”** means Kiwoom Milestone US Professional Private Real Estate Investment Trust 20, a trust formed under the laws of the Republic of Korea.

**“Innkeepers Mezz A Loan”** means that certain mezzanine loan made by Innkeepers Mezz A Lender to Grand Prix Mezz Borrower Fixed A LLC and New Ink Mezz Borrower A

LLC, each a Delaware limited liability company, on November 7, 2019, in the aggregate principal amount of Forty-Five Million and No/100 Dollars (\$45,000,000.00).

**“Innkeepers Mezz B Loan”** means that certain mezzanine loan made by Innkeepers Mezz B Lender to Grand Prix Mezz Borrower Fixed B LLC and New Ink Mezz Borrower B LLC, each a Delaware limited liability company, on November 7, 2019, in the aggregate principal amount of Fifty-Five Million and No/100 Dollars (\$55,000,000.00).

**“Innkeepers Mortgage Borrowers”** means those entities identified on Schedule 5-B attached hereto.

**“Innkeepers Mortgage Lender”** means Wells Fargo Bank, National Association, as Trustee for the Benefit of the Registered Holders of CLNY Trust 2019-IKPR, Commercial Mortgage Pass-Through Certificates, Series 2019-IKPR (as successor-in-interest to Morgan Stanley Bank, N.A., JP Morgan Chase Bank, National Association, and Bank of America, N.A.).

**“Innkeepers Mortgage Loan”** means that certain mortgage loan made by Innkeepers Mortgage Lender to Innkeepers Mortgage Borrowers on November 7, 2019, in the original principal amount of Seven Hundred Fifty-Five Million and No/100 Dollars (\$755,000,000.00).

**“Innkeepers Operating Tenant”** means, individually or collectively as the context may require, (i) Grand Prix Fixed Lessee LLC, a Delaware limited liability company, and (ii) INK Lessee, LLC, a Delaware limited liability company.

**“Innkeepers Seller”** means, individually or collectively as the context may require, (i) Grand Prix Mezz Borrower Fixed LLC, a Delaware limited liability company, (ii) INK Acquisition LLC, a Delaware limited liability company, and (iii) INK Acquisition III LLC, a Delaware limited liability company.

**“Innkeepers Target”** means, individually or collectively as the context may require, (i) Grand Prix Mezz Borrower Fixed B LLC, a Delaware limited liability company, (ii) New INK Mezz Borrower B LLC, a Delaware limited liability company, (iii) Grand Prix Fixed Lessee Holding C LLC, a Delaware limited liability company, and (iv) INK Lessee Holding C LLC, a Delaware limited liability company.

**“Inventory”** means inventory owned by any Hotel Owner and held at each Individual Hotel (whether used, unused, held in reserve storage for future use, or ordered for future use) for sale to Individual Hotel guests or others in the ordinary course of business, including all opened and unopened retail inventory in any Individual Hotel gift shop or any other area at any Individual Hotel conducting retail sales, excluding, however, Food and Beverage.

**“Island Manager”** means, individually and collectively as the context may require, (i) Island Hospitality Management, LLC, (ii) Island Hospitality Management IV Inc., and (iii) Island Hospitality Management VI, LLC.

**“K-Partners Holdings A Loan”** that certain subordinate loan made by K-Partners Subordinate Lender to K-Partners Seller on December 29, 2017, in the original principal amount of up to Four Million Nine Hundred Fifty-Four Thousand One Hundred Seventy-Nine and 90/100 Dollars (\$4,954,179.90).

**“K-Partners Holdings B Loan”** that certain subordinate loan made by K-Partners Subordinate Lender to K-Partners Seller on December 29, 2017, in the original principal amount of up to Four Million Eighty-Three Thousand Three Hundred Fifty-Four and 46/100 Dollars (\$4,083,354.46).

**“K-Partners Hotel Owner”** means, individually or collectively as the context may require, the owner of any Individual Hotel in the K-Partners Hotel Portfolio and identified on Schedule 1 attached hereto.

**“K-Partners Hotel Portfolio”** means the portfolio of Individual Hotels set forth on Schedule 1 attached hereto identified as “K-Partners Hotel Portfolio Individual Hotels.”

**“K-Partners Lender”** means, individually or collectively as the context may require, (i) K-Partners Mortgage Lender and (ii) K-Partners Subordinate Lender.

**“K-Partners Loan”** means, individually or collectively as the context may require, (i) the K-Partners Mortgage Loan, (ii) the K-Partners Mezz A Loan, (iii) the K-Partners Mezz B Loan, (iv) the K-Partners Holdings A Loan, and (v) the K-Partners Holdings B Loan.

**“K-Partners Mezz A Loan”** means that certain mezzanine loan made by K-Partners Subordinate Lender to Castleblack Mezz Borrower A LLC, a Delaware limited liability company, on August 1, 2014, in the original principal amount of Thirty Million and No/100 Dollars (\$30,000,000.00).

**“K-Partners Mezz B Loan”** means that certain mezzanine loan made by K-Partners Subordinate Lender to Castleblack Mezz Borrower B LLC, a Delaware limited liability company, on August 1, 2014, in the original principal amount of Twenty Million and No/100 Dollars (\$20,000,000.00).

**“K-Partners Mortgage Lender”** means Wilmington Trust, National Association, as Trustee for the Registered Holders of COMM 2014-FL5 Mortgage Trust Commercial Mortgage Pass-Through Certificates, Series 2014-FL5 (as successor-in-interest to German American Capital Corporation).

**“K-Partners Mortgage Borrowers”** means those entities set forth on Schedule 5-C attached hereto.

**“K-Partners Mortgage Loan”** means that certain mortgage loan made by K-Partners Mortgage Lender to K-Partners Mortgage Borrowers on August 1, 2014, in the original principal amount of One Hundred Ninety Million and No/100 Dollars (\$190,000,000.00).

**“K-Partners Operating Tenant”** means, individually or collectively as the context may require, (i) Castleblack Cotulla Operator, LLC, a Delaware limited liability company, (ii) Castleblack Houma Operator, LLC, a Delaware limited liability company, (iii) Castleblack San Antonio Operator, LLC, a Delaware limited liability company, (iv) Castleblack San Angelo Operator, LLC, a Delaware limited liability company, (v) Castleblack San Angelo Operator II, LLC, a Delaware limited liability company, (vi) Castleblack Lancaster Operator II, LLC, a Delaware limited liability company, (vii) Castleblack Laredo Operator, LLC, a Delaware limited liability company, (viii) Castleblack Pismo Beach Operator, LLC, a Delaware limited liability company, (ix) Castleblack Lancaster Operator, LLC, a Delaware limited liability company, (x) Castleblack Twentynine Palms Operator, LLC, a Delaware limited liability company, (xi) Castleblack El Paso Operator, LLC, a Delaware limited liability company, (xii) Castleblack El Paso Operator II, LLC, a Delaware limited liability company, (xiii) Castleblack Lubbock Operator, LLC, a Delaware limited liability company, (xiv) Castleblack Palmdale Operator, LLC, a Delaware limited liability company, (xv) Castleblack Ardmore Operator, LLC, a Delaware limited liability company, (xvi) Castleblack San Antonio Operator II, LLC, a Delaware limited liability company, (xvii) Castleblack Lafayette Operator, LLC, a Delaware limited liability company, (xviii) Castleblack Mansfield Operator II, LLC, a Delaware limited liability company, (xix) Castleblack Denton Operator, LLC, a Delaware limited liability company, and (xx) Castleblack Mansfield Operator, LLC, a Delaware limited liability company.

**“K-Partners Seller”** means, individually or collectively as the context may require, (i) Castleblack Owner Holdings, LLC, a Delaware limited liability company, and (ii) Castleblack Operator Holdings, LLC, a Delaware limited liability company.

**“K-Partners Subordinate Lender”** means KH Mezz TL LLC, a Delaware limited liability company.

**“K-Partners Target”** means, individually or collectively as the context may require, (i) Castleblack Mezz Borrower B, LLC and (ii) Castleblack Operator Holdings B, LLC, each a Delaware limited liability company.

**“Leakage”** means, each of the following, together with any Taxes payable by the Target Group in connection therewith: (i) any declaration, authorization, setting aside or payment by any Target Entity or Target Subsidiary of any dividend or distribution payable in cash, assets or other securities to or for the account of any Affiliate or direct or indirect equityholder of any member of the Target Group; (ii) the payment of any cash or other consideration by any Target Entity or Target Subsidiary to or for the account of any Affiliate or direct or indirect equityholder of any member of the Target Group (including, but not limited to, bonuses, commissions, loan repayments or management payments) or agreement to pay any of the foregoing; (iii) the sale, transfer or disposal of any asset of any Target Entity or Target Subsidiary to any Affiliate or direct or indirect equityholder of any member of the Target Group; (iv) the entry into any guarantee, indemnity or other obligation by any Target Entity or Target Subsidiary relating to any liability of any Affiliate or direct or indirect equityholder of any member of the Target Group; (v) the waiver, release, cancellation, conveyance, or assignment of any rights or claims of any Target Entity or Target Subsidiary outstanding against any Affiliate or direct or indirect

equityholder of any member of the Target Group; (vi) the settlement or compromise by any Target Entity or Target Subsidiary of any Claims pending against any Affiliate or direct or indirect equityholder of any member of the Target Group; (vii) any repurchase, redemption or other acquisition of securities or other property of any Target Entity or Target Subsidiary from any Affiliate or direct or indirect equityholder of any member of the Target Group; (viii) any other payment to any Affiliate or direct or indirect equityholder of any member of the Target Group by any Target Entity or Target Subsidiary, unless and to the extent such Target Entity or Target Subsidiary has received arms' length consideration therefor and with respect to which Buyer has provided its prior written consent (not to be unreasonably withheld, conditioned or delayed), (ix) the borrowing of any monies or the incurring, guaranteeing or assuming of any Indebtedness or other liability by any Target Entity or Target Subsidiary of any Affiliate or direct or indirect equityholder of any member of the Target Group, other than in connection with any Existing Loans; (x) any Transaction Expenses incurred by the Target Group, (xi) any penalties, interest, additions to tax or similar amounts imposed as a result of a failure by any Target Entity or Target Subsidiary to file any Tax Return or pay any Taxes timely, and (xii) the entry into any agreement between any Target Entity or Target Subsidiary, on the one hand, and any Affiliate or direct or indirect equityholder of any member of the Target Group, on the other hand, to do any of the foregoing matters set forth in clauses (i) through (xi) above. For the avoidance of doubt, the term "**Leakage**" shall exclude any payments using cash or other amounts (i) in the Excluded Accounts and Amount, (ii) in the Acquired Accounts and made to third parties (or reimbursed to any Affiliate of Seller who made any such payment to a third party on behalf of the Target Entity or Target Subsidiary making such reimbursement, but only so long as such payment by such Affiliate is or was made in the ordinary course of business consistent with past practice) in the ordinary course of business relating to the Individual Hotels or the operation thereof (including, but not limited to, payments for franchise fees or taxes, occupancy taxes, attorneys' fees, and audit fees) so long as the same are not prohibited by the terms of any Loan Documents, (iii) in the Acquired Accounts for amounts (including attorneys' fees) relating to, or payable in connection with, any modification of any Existing loan (including any Pending Loan Modification) (but excluding any payments in connection with any Pending Loan Modification that are required to be made using cash from other sources or from funds in the Excluded Accounts and Amount pursuant to the terms of this Agreement), and (iv) to the extent permitted under the applicable Loan Documents, in the Acquired Accounts for quarterly payments of reimbursable amounts to its joint venture partner in the Innkeepers Hotel Portfolio or an Affiliate thereof ("**Asset Manager**") relating to the Innkeepers Hotel Portfolio, the K-Partners Hotel Portfolio and/or the NEP Hotel Portfolio during the period between the Effective Date and the Closing Date in the ordinary course of business consistent with past practice in an amount not to exceed Six Hundred Thousand and No/100 Dollars (\$600,000.00) per quarter (prorated for any partial quarters).

"**Lease**" shall mean any lease, sublease, license or other occupancy agreement, including all amendments and guarantees, granting to any other Person a possessory interest in any portion of the Real Property, excluding, however, any Lease for or relating to parking lots, ATMs, FF&E, antennas, satellite or similar communications transmission or related equipment and any other Leases granting a non-possessory interest to any other Person.

“**Lien**” shall mean any lease, title retention agreement, conditional sale agreement, equitable interest, license pertaining to real property, lien (statutory or other), option, pledge, security interest, mortgage, encumbrance, right of way, easement, encroachment, servitude, right of first option, right of first refusal or similar restriction, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership or any other claim or charge, similar in purpose or effect to any of the foregoing.

“**Marriott Franchisor**” means, individually or collectively as the context may require, (i) MIF, L.L.C. and (ii) Marriott International, Inc.

“**Marriott Management Agreement**” means those Hotel Management Agreements pursuant to which Marriott Manager is a counterparty as set forth on Schedule 4.1(q) attached hereto.

“**Marriott Manager**” means, individually or collectively as the context may require, (i) Courtyard Management Corporation, with respect to the CBM Hotel Portfolio, and (ii) Marriott Hotel Services, Inc., with respect to the Miami Hotel Portfolio.

“**Marriott Manager Approval Documents**” means those documents required by any Marriott Manager to approve the transfer of the applicable Membership Interests contemplated herein.

“**Material Adverse Effect**” means an event, circumstance, state of facts, change or occurrence which, individually or together with any other event, change or occurrence has or is reasonably likely to (i) have a material adverse effect on the business, operations, assets, liabilities, condition (financial or otherwise) or results of operation of the Hotel Portfolios, the Membership Interests or the Property, taken as a whole or (ii) prevent or have a material adverse effect on Seller’s ability to consummate the transactions contemplated by this Agreement; provided, however, that the following, either alone or in combination, shall be excluded from any determination as to whether a Material Adverse Effect has occurred: (a) any events, changes or occurrences attributable to general economic or political conditions or the securities and/or financial markets in general, (b) any events, changes or occurrences that are generally applicable to Persons engaged in the industry or any geographic market in which the Individual Hotels operate, (c) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof, (d) any changes in Applicable Law or accounting rules (including GAAP) or changes in the interpretation or enforcement of any of the foregoing following the Effective Date; (e) any natural or man-made disasters, and (f) any action taken by Seller or any Hotel Owner that is expressly required by this Agreement or otherwise taken at the prior written request of Buyer or the failure to take any action by Seller if that action is expressly prohibited by this Agreement; provided that, with respect to clauses (a) – (e), such event, change, circumstance, state of facts or occurrence shall not be excluded from the determination of whether there has been or is reasonably likely to be a “Material Adverse Effect” if the Hotel Portfolios or the Property, taken as a whole, are disproportionately affected thereby as compared to other participants in the industry.

“**Maximum Amount**” means an amount equal to seven and one-half percent (7.5%) of the Purchase Price (prior to any adjustment pursuant to this Agreement).

“**Miami Hotel Owner**” means MC Owner (FL)-T, LLC, a Delaware limited liability company.

“**Miami Hotel Portfolio**” means the portfolio of Individual Hotels set forth on Schedule 1 attached hereto identified as “Miami Hotel Portfolio Individual Hotels.”

“**Miami Lender**” means, individually or collectively as the context may require, (i) Miami Mortgage Lender and (ii) Miami Mezz Lender.

“**Miami Loan**” means, individually or collectively as the context may require, (i) the Miami Mortgage Loan and (ii) the Miami Mezz Loan.

“**Miami Mezz Lender**” means, individually or collectively as the context may require, (i) Axonic Special Opportunities SBL Master Fund, LP, a Delaware limited partnership, (ii) Acre II Holdings LLC, a Delaware limited liability company (as assignee of Shelter Growth Opportunities Master Fund LP, a Cayman Islands exempted limited partnership), and (iii) Shelter Growth Master Term Fund B LP, a Cayman Islands exempted limited partnership.

“**Miami Mezz Loan**” means that certain mezzanine loan made by Miami Mezz Lender to Miami Target on February 4, 2019, in the principal amount of Nineteen Million Eight Hundred Thousand and No/100 Dollars (\$19,800,000.00).

“**Miami Mortgage Lender**” means Deutsche Bank AG, New York Branch.

“**Miami Mortgage Loan**” means that certain mortgage loan made by Miami Mortgage Lender to Miami Hotel Owner and Miami Operating Tenant, on February 4, 2019, in the maximum principal amount of One Hundred Seven Million and No/100 Dollars (\$107,000,000.00).

“**Miami Operating Tenant**” means MC OPS-T, LLC, a Delaware limited liability company.

“**Miami Seller**” means, individually or collectively as the context may require, (i) MC Owner MB1-T, LLC, a Delaware limited liability company, and (ii) MC OPS MB1-T, LLC, a Delaware limited liability company.

“**Miami Target**” means, individually or collectively as the context may require, (i) MC Owner MB2-T, LLC, a Delaware limited liability company, and (ii) MC OPS MB2-T, LLC, a Delaware limited liability company.

“**Miscellaneous Hotel Assets**” means all transferable contract rights, concessions, surveys, copyrights, assignable guarantees, warranties, plans and specifications for the Improvements, operating manuals for the Personal Property, utility and development rights and privileges and claims and items of intangible Personal Property relating to the ownership, use,

occupancy or operation of any Individual Hotel and owned by, and in possession of, any Hotel Owner (but expressly excluding any of the foregoing owned by any Affiliate of Seller that is not part of the Target Group, any Hotel Manager, any Franchisor, guests, employees or other third parties furnishing goods or services to any Individual Hotel) (including, for example, telephone numbers to the extent of Seller's interest therein, listings and directories), and including cash or other funds held in the Acquired Accounts; excluding, however, (i) Hotel Contracts; (ii) Bookings; (iii) the Ground Leases; (iv) the Franchise Agreements; (v) the Hotel Management Agreements; (vi) Permits and Excluded Permits; (vii) Trademarks; (viii) the Hotel Books and Records; (ix) prepaid insurance; (x) Inventory; (xi) management policies and procedures, opening manuals and other items of intellectual property owned any Hotel Manager, any Franchisor or any Affiliate of any Seller that is not part of the Target Group or any Affiliate of any Hotel Manager or Franchisor; (xii) Excluded Accounts and Amount and the cash or the funds held in, or represented by, such Excluded Accounts and Amount; and (xiii) the contract rights, leases, concessions, trademarks, logos, copyrights, and assignable warranties.

**"NEP Hotel Owner"** means, individually or collectively as the context may require, the owner of any Individual Hotel in the NEP Hotel Portfolio and identified on Schedule 1 attached hereto.

**"NEP Hotel Portfolio"** means the portfolio of Individual Hotels set forth on Schedule 1 attached hereto identified as "NEP Hotel Portfolio Individual Hotels."

**"NEP Lender"** means Teachers Insurance and Annuity Association of America, a New York corporation, for the benefit of the separate Real Estate Account.

**"NEP Loan"** means, individually or collectively as the context may require, (i) the NEP Mortgage Loan and (ii) the NEP Mezz Loan.

**"NEP Mezz Loan"** means that certain mezzanine loan made by NEP Lender to NEP Target on November 8, 2019, in the maximum principal amount of Thirty-Eight Million Five Hundred Twenty-Eight Thousand Seven Hundred Fifty and No/100 Dollars (\$38,528,750.00).

**"NEP Mortgage Borrowers"** means those entities set forth on Schedule 5-D attached hereto.

**"NEP Mortgage Loan"** means that certain mortgage loan made by NEP Lender to NEP Mortgage Borrowers on November 8, 2019, in the maximum principal amount of One Hundred Five Million Five Hundred Eighty Six Thousand Two Hundred Fifty and No/100 Dollars (\$115,586,250.00).

**"NEP Operating Tenant"** means NEP OPS-T, LLC, a Delaware limited liability company.

**"NEP Seller"** means, individually or collectively as the context may require, (i) NEP Owner MB2-T, LLC, a Delaware limited liability company, and (ii) NEP OPS MB2-T, LLC, a Delaware limited liability company.

“**NEP Target**” means, individually or collectively as the context may require, (i) NEP Owner MB1-T, LLC, a Delaware limited liability company, and (ii) NEP OPS MB1-T, LLC, a Delaware limited liability company.

“**Obligations Surviving Termination**” means those provisions of this Agreement which, by their express terms, survive a termination of this Agreement prior to the Closing.

“**Operating Equipment**” means all china, glassware, linens, silverware, uniforms and other similar equipment and items that are necessary or useful in connection with the ownership or operation of any Individual Hotel, whether in use or held in reserve storage for future use in connection with the ownership or operation of any Individual Hotel, which are on hand as of the Closing Date, and subject to such depletion and including such resupplies, in each case, as shall occur after the Effective Date in the ordinary course of business and in accordance with Section 3.1 hereof (and including any of the foregoing that have been ordered for future use at any Individual Hotel but have not been delivered to such Individual Hotel as of the Closing Date).

“**Operating Leases**” means the operating leases between the applicable Hotel Owner and the applicable Operating Tenant or Operating Tenants with respect to the Individual Hotels, together with all amendments thereto.

“**Operating Tenant**” means, individually or collectively as the context may require, (i) CBM Operating Tenant, (ii) Innkeepers Operating Tenant, (iii) K-Partners Operating Tenant, (iv) Miami Operating Tenant, (v) NEP Operating Tenant, and (vi) THL Operating Tenant.

“**Permits**” means all licenses, including liquor licenses, certificates, entitlements, authorizations, approvals, authorizations and permits held by Seller, any Hotel Owner, any Operating Tenant, or any Affiliate of Seller, any Hotel Owner, or Operating Tenant (but expressly excluding any Hotel Manager) and used in or relating to the ownership, occupancy or operation of any part of any Individual Hotel.

“**Permitted Liens**” shall mean (a) statutory Liens arising by operation of law with respect to a liability that is not yet due and payable, (b) mechanics’, carriers’, workers’, repairers’ and similar Liens (i) as to which payment is not yet due and payable and for which adequate reserves have been established in accordance with GAAP or (ii) in an amount not to exceed the Title Cap (as hereinafter defined) which shall be removed, bonded over, escrowed for or subject to an indemnity with Title Company at or prior to the Closing in accordance with Section 2.2(b) hereof, (c) zoning, entitlement and other land use and environmental regulations promulgated by any Governmental Authority, (d) Liens securing any Existing Loan, (e) non-monetary Liens that either (i) do not materially detract from the value or use of the property encumbered thereby or (ii) are shown on any title report, existing owner’s policy of title insurance, or pro forma policy of title insurance in respect of any Property provided to Buyer prior to the Effective Date, and (f) Liens created by Buyer, or its successors and assigns.

“**Person**” or “**Persons**” means any individual, corporation, limited liability company, limited partnership, general partnership, association, joint stock company, joint venture, estate,

trust (including any beneficiary thereof), unincorporated organization, government or any political subdivision thereof, governmental unit or authority or any other entity.

**“Personal Property”** means all of the Property other than the Real Property, the Appurtenant Interests, and the Permits.

**“Purchase Price”** means the purchase price for the Membership Interests specified in the Summary of Terms.

**“Real Property”** means, for each Individual Hotel, the parcel(s) of land described on Exhibit A to be attached hereto for such Individual Hotel, together with all of its Improvements.

**“Seller Excluded Guarantees”** means the guarantees of Seller’s Affiliate to THL Lender for “Prior Owned Property Liabilities” and the “Sheraton Clayton Indemnity” as each term is defined in the loan agreement for the THL Loan.

**“Seller Guarantees”** means the guarantees, clawback arrangements, letters of credit, indemnity or contribution agreements, support agreements, comfort letters, insurance surety bonds or other contingent obligations, if any, with respect to any Existing Loan, any Ground Lease, any Franchise Agreement or any Hotel Management Agreement and for the benefit of the counterparty thereto.

**“Seller Guarantor Parties”** means Seller, any Affiliates of Seller or any other Person that serves as an indemnitor or guarantor under any Seller Guarantee.

**“Seller Knowledge Individuals”** means Keon Marvasti and David Schwarz.

**“Seller Party”** means Seller, each Target Entity, each Target Subsidiary, each Hotel Owner, each Hotel Manager, their respective Affiliates, Seller’s property and asset managers, any lender to Seller, the partners, trustees, shareholders, members, managers, controlling persons, directors, officers, attorneys, employees and agents of each of them, and their respective heirs, successors, personal representatives and assigns, each being a **“Seller Party”** and collectively being the **“Seller Parties.”**

**“Target Entity”** means, individually or collectively as the context may require, (i) CBM Target, (ii) Innkeepers Target, (iii) K-Partners Target, (iv) Miami Target, (v) NEP Target, and (vi) THL Target.

**“Target Group”** means the Target Entities and Target Subsidiaries.

**“Target Subsidiaries”** means, with respect to a Person, a corporation or other entity of which more than fifty percent (50%) of the voting power of the equity securities of equity interests is owned, directly or indirectly, by such Person.

**“Tax Return”** means any return, declaration, report, election, claim for refund or information return or statement filed or required to be filed with a Governmental Authority with

respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“**Taxes**” means (i) any and all taxes of any kind, including U.S. federal, state, local, or foreign net income, gross income, gross receipts, profit, severance, property, escheat or unclaimed property, production, sales, use, license, excise, stamp, franchise, employment, payroll, withholding, value-added, goods and services, social security (or similar, including FICA), alternative or add-on minimum or any other tax, custom, duty, levy, tariff, governmental fee or other like assessment or charge in the nature of tax, together with any interest, fine, penalty, addition to tax or additional amount, imposed by any Governmental Authority, whether disputed or not, and (ii) any liability for amounts described in the foregoing clause (i) imposed under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign Applicable Law), as a transferee, as a successor or by Contract.

“**THL Hotel Owner**” means, individually or collectively as the context may require, the owner of any Individual Hotel in the THL Hotel Portfolio and identified on Schedule 1 attached hereto.

“**THL Hotel Portfolio**” means the portfolio of Individual Hotels set forth on Schedule 1 attached hereto identified as “THL Portfolio Individual Hotels.”

“**THL Lender**” means, individually or collectively as the context may require, (i) THL Mortgage Lender and (ii) THL Mezz Lender.

“**THL Loan**” means, individually or collectively as the context may require, (i) the THL Mortgage Loan and (ii) the THL Mezz Loan.

“**THL Manager**” means Pillar Hotels and Resorts, LLC, a Delaware limited liability company.

“**THL Mezz Lender**” means Thunderbird Mezzanine Investment Holding, LLC, a Delaware limited liability company (as successor to JPMorgan Chase Bank, National Association and Deutsche Bank AG, New York Branch).

“**THL Mezz Loan**” means that certain mezzanine loan made by THL Mezz Lender to CMI THL SMB, LLC and CNI THL OPS SMB, LLC, each a Delaware limited liability company, on November 6, 2017, in the principal amount of Eighty Million and No/100 Dollars (\$80,000,000.00).

“**THL Mortgage Borrowers**” means those entities set forth on Schedule 5-E attached hereto.

“**THL Mortgage Lender**” means Wells Fargo Bank, National Association, as Trustee, for the benefit of holders of Tharaldson Hotel Portfolio Trust 2018-THPT Commercial Mortgage Pass-Through Certificates, Series 2018-THPT and the RR Interest Owner (as successor to JPMorgan Chase Bank National Association and Deutsche Bank AG, New York Branch)

“**THL Mortgage Loan**” means that certain mortgage loan made by THL Mortgage Lender to THL Mortgage Borrowers on November 6, 2017, in the maximum principal amount of Nine Hundred Sixty Million and No/100 Dollars (\$960,000,000.00).

“**THL Operating Tenant**” means CNI THL OPS, LLC, a Delaware limited liability company.

“**THL Seller**” means (i) CNI THL Propco Holdings, LLC, a Delaware limited liability company, and (ii) CNI THL Opco Holdings, LLC, a Delaware limited liability company.

“**THL Target**” means (i) ColFin THL Mezz Holdco, LLC, a Delaware limited liability company, and (ii) ColFin THL Opco JV, LLC, a Delaware limited liability company.

“**THL TRS**” means CNI THL CAM2, LLC, a Delaware limited liability company.

“**Threshold Amount**” means One Hundred Thousand and No/100 Dollars (\$100,000.00).

“**Title Company**” means, individually or collectively, First American Title Insurance Company, Fidelity National Title Insurance Company, Commonwealth Land Title Insurance Company, Stewart Title Guaranty Company, Old Republic Title and any other title insurance company which is required to issue an owner’s or lender’s policy of title insurance or an update to such policy of title insurance.

“**Trademarks**” means, for each Individual Hotel, to the extent owned by Seller, each Hotel Owner, each Operating Tenant and/or agents and transferable by Seller, any Hotel Owner, any Operating Tenant or their respective Affiliates and/or agents without consent, trademarks or trade names, service marks, trade dress, slogans, internet domain names, logos and designs relating to the Individual Hotels, banquet rooms and meeting rooms in and/or about any Individual Hotel, together with the goodwill appurtenant to each of such trademarks or trade names, logos and/or designs. The Trademarks shall specifically exclude Permits and any Trademarks owned by any Hotel Manager, any Franchisor or any Affiliate of Seller that is not part of the Target Group, any Hotel Manager or Franchisor, and any other items of intangible property that are excluded under the Franchise Agreements.

“**Transaction Expenses**” means the sum of all broker, investment banker, legal, accounting, tax, financial advisory and other professional fees, costs and expenses (including any related sales Tax) of such Person incurred in connection with the transactions contemplated by this Agreement, whether accrued for or not, and unpaid as of the Closing.

“**Transaction Fee**” means the amount of money specified as such in the Summary of Terms.

“**Unacceptable Modifications**” means any request or requirement made by an Existing Lender in connection with any Existing Lender’s Consent or any Loan Release and Modification Document which (i) requires a pay down of an Existing Loan, (ii) requires the implementation of additional reserves or an increase in the amount of reserves required, (iii) creates additional

recourse obligations or increases existing recourse obligations, (iv) imposes any additional restrictions on transfers of non-controlling interests, (v) increases the interest rate or imposes any other economic terms not currently required by the Existing Loans, or (vi) otherwise materially and adversely changes any other material terms of the Existing Loans.

“**Unopened Consumables**” means all (i) Food and Beverage, (ii) engineering, maintenance and housekeeping supplies, including soap and cleaning materials, fuel and materials, stationery and printing items and supplies, and (iii) china, glass, silver and linens to the extent such items are contained in unopened boxes, bottles, jars or containers of any type which are on hand as of the Closing Date.

“**Violation**” means any violation of Applicable Law now or hereafter issued or noted.

## ARTICLE 1

### PURCHASE AND SALE OF THE MEMBERSHIP INTERESTS

**Section 1.1. Purchase and Sale.** Subject to the provisions, terms, covenants and conditions set forth in this Agreement, Seller agrees to sell, transfer, assign and convey to Buyer, free and clear of all Liens (other than restrictions on transfer under applicable securities laws and the Loan Documents evidencing and securing the applicable Existing Loan), and Buyer agrees to purchase, accept and assume from Seller, all of Seller’s right, title and interest, if any, in the Membership Interests, free and clear of all Liens (other than restrictions on transfer under applicable securities laws and the Loan Documents evidencing and securing the applicable Existing Loan). Seller and Buyer acknowledge and agree that, upon the sale and assignment of the Membership Interests, each Hotel Owner shall retain all of its right, title and interest in and to the following (herein collectively called the “**Property**”):

- (i) the Individual Hotels;
- (ii) the Improvements;
- (iii) the Appurtenant Interests;
- (iv) the FF&E;
- (v) the Consumables;
- (vi) the Unopened Consumables;
- (vii) the Food and Beverage;
- (viii) the Operating Equipment;
- (ix) the Trademarks;
- (x) the Permits (other than Excluded Permits);

- (xi) the Hotel Books and Records;
- (xii) all Bookings, Hotel Contracts, and the Ground Leases; and
- (xiii) the Miscellaneous Hotel Assets.

**Section 1.2. Purchase Price; Deposit.**

(a) Buyer will pay the Purchase Price as described in this Section 1.2. All payments by Buyer will be made in immediately available funds delivered into escrow with Escrow Agent. Buyer shall deliver to Escrow Agent the Deposit within one (1) Business Day after the Effective Date. Buyer will deliver the balance of the Purchase Price on the Closing Date in accordance with Section 1.2(c). Escrow Agent will place the Deposit in a federally insured account on behalf of Seller and Buyer and will otherwise hold the Deposit pursuant to the Escrow Instructions.

(b) Upon Buyer's deposit of the Deposit, the Deposit shall become non-refundable; provided, however, that the Deposit shall be refundable to Buyer if this Agreement is terminated in a circumstance in which a return of the Deposit to Buyer is expressly provided for in this Agreement.

(c) At the Closing, Buyer shall deliver to Escrow Agent in immediately available funds an amount equal to (i) the Purchase Price, as adjusted in accordance with this Agreement, *minus* (ii) the Deposit, *plus* (iii) any other amounts required to be paid by Buyer pursuant to this Agreement at the Closing. The amount calculated by the immediately preceding sentence will be paid to Seller by Buyer and Escrow Agent at the Closing.

(d) The Deposit will be applied as follows: (i) if this Agreement is terminated and it is expressly provided for in this Agreement that Buyer is entitled to the Deposit, the Deposit (less the Transaction Fee, as provided in Section 1.2(e) below) (or the applicable Allocated Portfolio Interest Deposit(s), if the termination involves less than all of the Hotel Portfolio Membership Interests as mutually agreed to by the Parties) will be returned to Buyer; (ii) if the Deposit is to be received by Seller as provided in this Agreement, the Deposit will be paid to Seller; and (iii) if the Closing occurs, the Deposit (or the Allocated Portfolio Interest Deposits, if the Closing will involve the sale of less than all of the Hotel Portfolio Membership Interests as permitted hereunder) will be credited to Buyer, applied against the Purchase Price, and paid to Seller at the Closing.

(e) As part of Buyer's delivery of the Deposit to Escrow Agent, a portion shall be allocated to the Transaction Fee. The Transaction Fee is the independent consideration for the execution of this Agreement by Seller. Upon any termination of this Agreement prior to the Closing, the Transaction Fee will be deducted from the Deposit and paid by Escrow Agent to Seller. The Transaction Fee is earned by Seller as of the Effective Date. The Transaction Fee is non-refundable in all events, and any reference in this Agreement to a return of the Deposit to Buyer will mean such amount "less the Transaction Fee;" provided, however, that if the Closing

occurs, the Transaction Fee will be included in the Deposit amount credited to Buyer and applied to the Purchase Price as provided in Section 1.2(d), above.

### **Section 1.3. Assumption of Existing Loans.**

(a) Subject to this Section 1.3, from and after the Effective Date, Seller shall act in good faith and use commercially reasonable efforts to obtain, by no later than the Consent Approval Date, the consent of each Existing Lender (or its loan servicer, as applicable) to (i) the assignment and assumption of the Membership Interests as set forth in this Agreement to Buyer (or its assignee or designee), (ii) a full and unconditional release of all Seller Guarantor Parties of all obligations and liabilities under the documents evidencing and securing each Existing Loan and all other documents delivered by Seller or its Affiliates in connection with each Existing Loan, including all indemnities, guaranties and other undertakings (collectively, the “**Loan Documents**”) and any Seller Guarantees related to such Existing Loan, to the extent accruing from and after the Closing (each, an “**Existing Loan Release**”), (the consents described in clauses (i) and (ii) hereof, collectively, the “**Existing Lender’s Consent**”), and (iii) certain modifications to the Loan Documents, which shall be evidenced by certain loan release and modification documents to be negotiated between Seller, Buyer and each Existing Lender (clauses (i) – (iii) hereof, collectively, the “**Loan Release and Modification Documents**”), provided that such Loan Release and Modification Documents shall be deemed acceptable so long as each Loan Release and Modification (a) contains (w) such changes to the Loan Documents as are necessary to reflect the organizational requirements of Buyer, Buyer’s Credit Enhancers and permitted transfer provisions that are necessitated by Buyer’s and Buyer’s Credit Enhancer’s organizational structures and to eliminate references or requirements that reflect the organizational requirements of Seller, (y) approval of Buyer’s Affiliate as the replacement hotel manager, and (z) such non-material changes as are otherwise required by Existing Lender which shall in all instances exclude Unacceptable Modifications, (b) state the then outstanding principal balance of the Existing Loan, (c) provide for the Existing Loan Release, or if any Existing Lender will not provide the Existing Loan Release, then inclusion of such post-Closing claims by any Existing Lender in the Buyer Indemnity, (d) does not require Buyer to assume any Seller Excluded Guaranties, or if any Existing Lender will not exclude such Seller Excluded Guaranties, one or more creditworthy entities proposed by Seller and reasonably acceptable to Buyer will deliver an indemnity in form and substance reasonably acceptable to Buyer agreeing to indemnify, defend and hold Buyer and Buyer’s Credit Enhancers free and harmless from any and all obligations and liabilities with respect to any post-Closing claims by any Existing Lender relating to the Seller Excluded Guaranties, and (e) no Unacceptable Modifications (collectively, the items described in clauses (i), (ii), and (iii) hereof, collectively, the “**Loan Release and Modification**”). In connection with each Loan Release and Modification Application (as hereinafter defined), Buyer shall provide all information required under the Loan Documents with respect to a Loan Release and Modification and provide all information or documentation reasonably requested by any Existing Lender.

(b) As soon as reasonably practicable after the Effective Date, Seller and Buyer shall coordinate to promptly submit all information then available as required under the Loan Documents in connection with the contemplated Loan Release and Modification to each Existing

Lender of the Existing Loans (or, as applicable, its servicer) (each, a “**Loan Release and Modification Application**”). Costs, expenses and fees payable in connection with obtaining the Loan Release and Modifications shall be as agreed by the Parties.

(c) Seller and Buyer each shall use good faith efforts to promptly comply with any and all Loan Release and Modification requirements set forth in the Loan Documents and reasonable requests made by each Existing Lender for information, statements, materials, legal opinions, information necessary to obtain rating agency confirmation, title endorsements, and other items reasonably requested by any Existing Lender in connection with such Existing Lender’s consideration of the request for each Loan Release and Modification. After submission of the Loan Release and Modification Application by Buyer and Seller, Buyer and Seller shall work together in good faith to pursue and procure each Loan Release and Modification, and each of Buyer and Seller shall keep the other Party copied on all correspondence and reasonably informed of its efforts to obtain each Loan Release and Modification. Each of Buyer and Seller shall pay their own legal fees in connection with obtaining the Loan Release and Modifications.

(d) The Parties shall request that each Loan Release and Modification include the commitment of the Existing Lender to provide an Existing Loan Release as contemplated by this Section 1.3. Seller’s obligation to complete the sale of the Membership Interests to Buyer is expressly conditioned upon each Seller and the other Seller Guarantor Parties receiving at or prior to the Closing either (i) an Existing Loan Release in form and substance reasonably acceptable to Seller for the period from and after the Closing or (ii) in the event any Existing Lender refuses to provide an Existing Loan Release, a Buyer Indemnity for any claims made against Seller Guarantor Parties for obligations and liabilities under the Loan Documents and Seller Guarantees with respect thereto to the extent accruing from and after the Closing (provided, however, this clause (ii) shall not be applicable to the Innkeepers Hotel Portfolio and Innkeepers Seller’s obligation to complete the sale of the Membership Interests of the Innkeepers Hotel Portfolio to Buyer is expressly conditioned upon Innkeepers Seller and the other applicable Seller Guarantor Parties for the Innkeepers Hotel Portfolio receiving at or prior to the Closing an Existing Loan Release, unless otherwise agreed to in writing by such applicable Seller Guarantor Parties in their respective sole and absolute discretion). Buyer agrees that one or more of Buyer’s Credit Enhancers shall execute and deliver all required substitute indemnities and guaranties with respect to the period from and after the Closing Date if and to the extent the same are required by such Existing Lender so long as such requirement does not include any Unacceptable Modifications, unless otherwise agreed to by Buyer in its sole and absolute discretion. Buyer agrees to propose a replacement hotel manager and substitute indemnitors and guarantors to each Existing Lender that satisfy the relevant conditions and tests for the same in the Loan Documents. Buyer acknowledges that the Seller Parties shall not have any liability in the event that an Existing Lender does not provide a Loan Release and Modification. The provisions of this Section 1.3(d) shall survive the Closing.

(e) If any Loan Release and Modification has not been obtained on or before the Consent Approval Date with respect to any Existing Loan despite Seller and Buyer’s good faith and commercially reasonable efforts, then each of Buyer and Seller shall have the right to extend the Closing Date in accordance with Section 5.1 hereof in order to continue to seek any such

Loan Release and Modification. Notwithstanding the foregoing, in the event any Loan Release and Modification has not been obtained for a particular Hotel Portfolio by the Consent Approval Outside Date, either Party may terminate this Agreement, whereupon this Agreement, and the obligations of the Parties hereunder shall terminate without further action of any Party (and no Party shall have any further obligation in connection herewith except for Obligations Surviving Termination). If any Loan Release and Modification is conditioned on an Unacceptable Modification, then Buyer shall have the option to terminate this Agreement, unless Seller agrees to pay any amounts required to comply with the Unacceptable Modification if such Unacceptable Modification can be addressed through the payment of money. Any such payment by Seller shall be from funds outside of the Acquired Accounts.

(f) For the avoidance of doubt, the Parties may mutually agree to terminate this Agreement solely with respect to the Membership Interests for any Hotel Portfolio(s) for which such Loan Release and Modification has not been obtained, whereupon (i) this Agreement, and the obligations of the Parties hereunder shall terminate solely with respect to such Hotel Portfolio Membership Interest(s) for which such Loan Release and Modification has not been obtained without further action of any Party (and no Party shall have any further obligation in connection herewith except for Obligations Surviving Termination), and (ii) this Agreement shall remain in full force and effect with respect to the Hotel Portfolio Membership Interest(s) for which an Loan Release and Modification has been obtained, and the terms and provisions of Section 1.6 hereof shall apply.

**Section 1.4. Allocated Purchase Price Amounts and Allocated Individual Hotel Valuation.** Seller and Buyer shall use commercially reasonable efforts to agree, as soon as reasonably practicable after the Effective Date (but in no event later than fifteen (15) days prior to the Closing Date), upon (i) the Allocated Portfolio Interest Purchase Price, (ii) the Allocated Individual Hotel Interest Purchase Price, (iii) the Allocated Individual Hotel Valuation with respect to each Individual Hotel Membership Interest, and (iv) the allocation of any portion of the Purchase Price to Personal Property. If Seller and Buyer reach agreement on the Allocated Individual Interest Hotel Valuation, then Buyer and Seller shall file federal, state and local Tax Returns in a manner consistent with the Allocated Individual Hotel Valuation and shall otherwise be bound by such Allocated Individual Hotel Valuation (including the preparation of all books, records and tax filings) unless otherwise required by Applicable Law. If Seller and Buyer cannot reach agreement on the Allocated Individual Hotel Valuation, then each Party shall file federal, state and local Tax Returns based on each Party's own determination of the Allocated Individual Hotel Valuation, each bearing its own consequences of any discrepancies and there shall be no further obligation of either party under this Section 1.4, provided that, Buyer's proposed allocation shall control for purposes of paying any Transfer Taxes in connection with the Closing and for purposes of determining the insured amount for any Title Policy. This Section 1.4 shall survive the Closing.

**Section 1.5. Escrow Instructions.** This Agreement, including the Escrow Instructions, will constitute the instructions for Escrow Agent's handling of the purchase and sale transaction contemplated herein. Seller and Buyer will execute such supplemental escrow instructions as may reasonably be required by Escrow Agent to enable Escrow Agent to comply

with the terms of this Agreement. If any conflict exists between this Agreement and the provisions of any supplemental escrow instructions, the terms of this Agreement will control unless a contrary intent is expressly indicated in the supplemental instructions and such supplemental instructions are signed by both Buyer and Seller.

**Section 1.6. All or Nothing Purchase and Sale.**

(a) Buyer and Seller acknowledge and agree that the direct and indirect equity interests for the Target Entities and the Target Subsidiaries and Hotel Owner and Operating Tenant of each Individual Hotel and the Hotel Owners and Operating Tenants of each Hotel Portfolio shall be sold together as a package (subject to the terms of the last sentence of Section 5.1 hereof). Except as may be mutually agreed to by the Parties, any rights of Seller or Buyer contained herein to terminate this Agreement shall require termination of the entire Agreement and shall not be construed as giving any Party the right to exclude, or terminate only as to, one (1) or more of the direct and indirect equity interests of the Target Entities and the Target Subsidiaries and the Hotel Owner and Operating Tenant of any Individual Hotel or the Hotel Owners and Operating Tenants of any Hotel Portfolio.

(b) To the extent this Agreement is terminated with respect to less than all of the Hotel Portfolio Membership Interests as mutually agreed to by the Parties, this Agreement shall be deemed amended as follows with respect to such Hotel Portfolio Membership Interest(s) (each, a “**Terminated Portfolio Membership Interest**” and collectively, the “**Terminated Portfolio Membership Interests**”), but shall otherwise remain in full force and effect:

i. The definition of Property, Individual Hotels, Hotel Owners, Hotel Portfolios, and Hotel Portfolio Membership Interests shall not include such Terminated Portfolio Membership Interests, or the applicable Individual Hotels, Hotel Owners or Hotel Portfolios of such Terminated Portfolio Membership Interests, or the Property used in or relating to the ownership, occupancy or operation of any part of such Individual Hotel, except to the extent that any Obligations Surviving Termination would be applicable to such Terminated Portfolio Membership Interests (or to the extent necessary to implement this Section 1.6);

ii. The Purchase Price shall be reduced by the Allocated Portfolio Interest Purchase Price of such Terminated Portfolio Membership Interest and the Deposit shall be reduced by the Allocated Portfolio Interest Deposit of such Terminated Portfolio Membership Interest; and

iii. Neither Seller nor Buyer shall have any obligations with respect to such Terminated Portfolio Membership Interests except for Obligations Surviving Termination, nor shall any covenant, representation or warranty be deemed made with respect to such Terminated Portfolio Membership Interests.

**Section 1.7. Withholding.** Provided that the certificates described in Section 5.4(ii), (iii) and (xvi) hereof are delivered and Buyer has obtained the Tax Clearance Certificate described in Section 8.5 hereof and Seller has delivered the Tax Good Standing Certificate

described in Section 8.7 hereof, Buyer hereby confirms that it does not currently intend to deduct or withhold Taxes from any amounts otherwise payable under this Agreement. In the event of any changes in applicable Tax Law or the facts or circumstances of Seller, following the Effective Date, after good faith consultation with Seller, Buyer shall be entitled to deduct and withhold any applicable Taxes on payments to be made by it pursuant to this Agreement in accordance with such changes. Buyer shall notify Seller reasonably in advance of any payment giving rise to such deduction or withholding and shall use commercially reasonable efforts to cooperate with Seller to obtain any available reduction of, or relief from, any such deduction or withholding. Any amounts that are so withheld and timely paid over to the appropriate Governmental Authority shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

## ARTICLE 2

### BUYER'S INVESTIGATIONS; AS-IS, WHERE-IS SALE.

#### Section 2.1. Buyer's Investigations.

(a) Buyer shall have the right to conduct such commercially reasonable, non-invasive investigations, studies or tests of the Property as Buyer deems necessary or desirable in connection with Buyer's acquisition of the Membership Interests and, indirectly, of the Property. Notwithstanding the foregoing rights in this Section 2.1 to inspect the Property and otherwise conduct diligence relating to the Membership Interests and the Property, Buyer acknowledges that there is no "due diligence period" or "due diligence termination right" in this Agreement and Buyer does not have the right to terminate this Agreement based on the results of such inspections or for any other reason except pursuant to an express termination right set forth in this Agreement.

(b) Buyer acknowledges that prior to the Effective Date, subject to the Confidentiality Agreement, Seller has delivered to Buyer, or made available to Buyer by posting on a the Datasite to which Buyer has been given access, certain Due Diligence Materials, in each case, to the extent in Seller's or the applicable Hotel Owner's possession. Seller will have no obligation to deliver or disclose to Buyer any of Seller's or Hotel Owner's attorney-client privileged materials, appraisals, internal memoranda, or internal evaluations of the Property, or any materials that are confidential and proprietary with respect to the operation, financial condition or finances of Seller's Affiliates that are not part of the Target Group. Except as may be otherwise expressly set forth in this Agreement and the Closing Documents, Seller makes no representations or warranties of any kind regarding the accuracy, thoroughness or completeness of or conclusions drawn in the information contained in any Due Diligence Materials. Seller shall promptly deliver any additional information or documentation regarding the Membership Interests or the Property reasonably requested by Buyer to the extent in the possession or control of Seller, Seller's Affiliate or the applicable Hotel Manager. Buyer shall acknowledge, in writing, upon Seller's request, the receipt of any Due Diligence Materials delivered to Buyer.

(c) If this Agreement is terminated for any reason or no reason, Buyer will promptly return to Seller any Due Diligence Materials delivered to Buyer in physical form in connection

with the Membership Interests or the Property. This Section 2.1(c) shall survive the termination of this Agreement.

**Section 2.2. Title Matters; Violations.**

(a) Title Policies. To the extent Buyer elects to obtain owner's or lender's title insurance policies (each, a "**Title Policy**" and collectively, the "**Title Policies**") in respect of any Individual Hotel in connection with the Closing of the purchase and sale transaction contemplated hereunder, Seller shall (or shall cause each Hotel Owner to) (i) use commercially reasonable efforts to comply with the customary requirements of Title Company in connection with the issuance of such Title Policies, and (ii) cause delivery of a customary non-imputation affidavit and customary title affidavits, as applicable, in each case executed by Seller or an Affiliate of Seller that is not part of the Target Group reasonably acceptable to Title Company.

(b) Liens. Seller shall remove (i) any monetary Lien that is not permitted under any of the Loan Documents and which is not being contested in accordance with the Loan Documents, (ii) any Lien securing a judgment against any Target Entity or Target Subsidiary encumbering the Property which is not currently being contested or appealed (in each case, prior to the expiration of any appeal periods), and (iii) any monetary Lien (other than any Lien securing a judgment which is not currently being contested or appealed (in each case, prior to the expiration of any appeal periods)) encumbering any Individual Hotel other than (A) Permitted Liens (but not any Permitted Lien described in clause (b)(ii) of the definition thereof) or (B) any Lien created by Buyer or any lessee under any Hotel Lease, in each case, (x) to the extent any such monetary Lien may be removed by payment of a fixed, liquidated sum of money, provided that (I) Seller shall not be obligated to (or to cause the applicable Hotel Owner to) spend more than Three Million and No/100 Dollars (\$3,000,000.00) in the aggregate with respect to the preceding clauses (i) and (iii) (the "**Title Cap**"), and (II) Seller shall have the right to first utilize funds in the Acquired Accounts, subject to and in accordance with the terms of any applicable Loan Documents, to remove any Lien described in the preceding clauses (i) and (iii), and (y) if any such Lien securing a judgment which is not currently being contested or appealed (in each case, prior to the expiration of any appeal periods) or monetary Lien is bonded over by Seller or any other Person at or prior to the Closing or if Seller or the applicable Hotel Owner escrows sufficient funds with Title Company or provides an indemnity acceptable to Title Company such that such Lien securing a judgment which is not currently being contested or appealed (in each case, prior to the expiration of any appeal periods) or monetary Lien is omitted from the applicable Title Policy (or is otherwise insured over by Title Company in a manner reasonably acceptable to Buyer and without additional cost to Buyer), then Seller shall be deemed to have removed such monetary Lien. For the avoidance of doubt, (I) except as otherwise set forth in this Section 2.2(b), Seller has no obligation to (or to cause the applicable Hotel Owner to) bring any action or proceeding or otherwise incur any expense to cure, remove or otherwise address any matter contained in the Title Policies, and (II) Buyer obtaining such Title Policies shall not be a condition precedent to Buyer's obligation to close hereunder. If there are monetary Liens in excess of the Title Cap which Seller elects not to remove, Buyer shall have the right to terminate this Agreement, whereupon this Agreement, and the obligations of the Parties hereunder shall

terminate without further action of any Party (and no Party shall have any further obligation in connection herewith except for Obligations Surviving Termination).

(c) **Violations.** Buyer agrees to purchase the Membership Interests and, indirectly, the Property subject to any and all Violations, or any condition or state of repair or disrepair or other matter or thing, whether or not noted, which, if noted, would result in a Violation being placed on such Property. Seller shall have no duty to (or to cause the applicable Hotel Owner to) remove or comply with or repair any condition, matter or thing whether or not noted, which, if noted, would result in a Violation being placed on such Property. Seller shall have no duty to (or to cause the applicable Hotel Owner to) remove or comply with or repair any of the aforementioned Violations, or other conditions and Buyer shall accept each Property at the Closing subject to such Violations, the existence of any conditions at such Property which would give rise to such Violations, if any, and any governmental claims arising from the existence of such Violations, in each case without any abatement of or credit against the Purchase Price. For the avoidance of doubt, the failure to (or to cause the applicable Hotel Owner to) cure any open Violations or to remove, comply with or repair any condition, matter or thing whether or not noted, which, if noted, would result in a Violation being placed on any Property shall not be a condition precedent to Buyer's obligation to close hereunder and Buyer shall have no right to terminate this Agreement with respect to any the Membership Interests of any Hotel Portfolio or any Individual Hotel in connection with any such failure. This Section 2.2(c) shall not in any way limit Seller's obligations under Section 3.1(a) hereof.

### **Section 2.3. Entry, Insurance and Indemnity.**

(a) Buyer must give Seller not less than twenty-four (24) hours' prior notice of any desired entry by any Buyer Parties onto any Individual Hotel and must coordinate such entry and any related testing or inspections with the applicable Selling Entity so as to minimize, to the greatest extent possible, any interference with the business of such Individual Hotel. All such entries shall be conducted between 9:00 a.m. and 5:00 p.m. (local time) on a Business Day, unless otherwise agreed to by Buyer and Seller. Notwithstanding the foregoing, Buyer may not enter the premises of, or contact or speak to, on-site manager (but expressly excluding any Marriott Manager in connection with Buyer's obligations under Section 3.5 hereof), any Franchisor (but expressly excluding any Franchisor in connection with Buyer's obligations under Section 3.5 hereof), employee, guest or occupant of the Property without Seller's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Buyer's entry rights are subject to all applicable provisions of the Franchise Agreement for that Individual Hotel, the Hotel Management Agreement for that Individual Hotel and any applicable Hotel Leases for that Individual Hotel. All inspections must be performed in such a manner so as to not damage the Property and Buyer must otherwise conduct each entry upon any Individual Hotel in a commercially reasonable manner. Seller shall have the right to have an employee, agent or representative present during any entry by any Buyer Parties onto any Individual Hotel.

(b) Buyer may not conduct any physically invasive testing, coring, drilling, or boring at any Individual Hotel, or any environmental testing of any Individual Hotel other than a standard ASTM "Phase I" environmental study, without in each instance obtaining the prior

written approval of Seller, which approval may be withheld in Seller's sole and absolute discretion and, if granted, will be conditioned upon such precautions as Seller deems advisable to protect itself and the Individual Hotel. If such invasive work is approved, then prior to any Buyer Party entering the Individual Hotel for any such invasive work, Buyer will submit to Seller for review and approval a written work plan describing to Seller's satisfaction the proposed work and the parties which will perform such work (a "**Work Plan**"). Buyer will not commence such proposed invasive work prior to Seller's written approval of any Work Plan. The parties agree that the performance of a Phase 1 Environmental Site Assessment pursuant to ASTM protocol, that does not entail any penetration of the surface of the Property or collection of any soil or water samples, does not constitute invasive work requiring a Work Plan.

(c) Buyer will, at its sole cost and expense, comply in all material respects with all Applicable Law with respect to its inspections conducted pursuant to this Section 2.3. Promptly following completion of any such inspections, Buyer will, at its sole cost and expense, remove from the Property any and all waste or debris generated from its activities and restore the Property to substantially the same condition as existed immediately prior to the Buyer Parties' entry to the Property. Buyer will use due care in connection with all inspections. All of Buyer's agents, contractors, subcontractors or employees conducting inspections on behalf or at the request of Buyer will do so only in compliance with all terms of this Agreement.

(d) Buyer will maintain, at its sole cost and expense, and will require that any Buyer Party entering upon the Property also maintains, commercial general liability insurance with a financially responsible insurance company insuring the Buyer Parties against any liability arising out of their activities in, upon, about or with respect to the Property, with limits of at least One Million and No/100 Dollars (\$1,000,000.00) per occurrence and One Million and No/100 Dollars (\$1,000,000.00) in the aggregate (which limits may include applicable excess or umbrella coverage). Buyer's policy must (i) name Seller and the other Seller Parties as additional insureds with respect to all Claims arising out of the activities of the Buyer Parties in, upon, about or with respect to the Property, (ii) contain a cross-liability provision, and (iii) be primary and noncontributing with any other insurance available to Seller and the other Seller Parties. Buyer must provide Seller with evidence that Buyer has such insurance coverages in force prior to any entry by a Buyer Party upon any Individual Hotel.

(e) Buyer (i) will pay all costs incurred in connection with Buyer's due diligence activities regarding the Membership Interests and Property, (ii) will promptly, at Buyer's sole cost and expense, repair and restore any damage caused to the Property or any other property owned by a Person other than Buyer by such activities, and (iii) will not permit any mechanics or other liens to be filed against the Property as a result of such activities. If any such lien is filed against the Property, Buyer will cause the same to be discharged of record, either by payment of the claim or by bonding, within twenty (20) days after receipt of written demand from Seller. **BUYER WILL INDEMNIFY, DEFEND AND HOLD THE SELLER PARTIES HARMLESS FROM AND AGAINST ANY CLAIMS ARISING OUT OF ANY ACTIVITIES OF THE BUYER PARTIES IN, UPON, ABOUT OR WITH RESPECT TO THE MEMBERSHIP INTERESTS OR THE PROPERTY PRIOR TO THE CLOSING; provided, however,** such indemnity, defense and obligation to hold the Seller Parties harmless

shall not extend to protect Sellers Parties from Claims resulting from (A) the negligence or willful misconduct of any Seller or any Seller Party, and (B) any pre-existing condition merely discovered by Buyer (e.g., latent environmental contamination) except to the extent Buyer's actions exacerbate such pre-existing condition or disturb any such latent environmental contamination. Buyer's indemnity and insurance obligations under this Article 2 are not limited by any other limitation on damages or remedies under this Agreement, including, without limitation, the liquidated damages provisions contained in Article 6 hereof, other than the limitation that in no event will either Party be liable to the other Party for any consequential, special or punitive damages suffered by such Party. The terms of this Section 2.3(e) will survive the Closing or any earlier termination of this Agreement.

**Section 2.4. AS-IS, WHERE-IS SALE.** BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE CLOSING DOCUMENTS, (A) SELLER IS SELLING AND BUYER IS PURCHASING THE MEMBERSHIP INTERESTS "AS IS, WHERE IS AND WITH ALL FAULTS" AND (B) BUYER IS NOT RELYING ON ANY REPRESENTATIONS, WARRANTIES, COVENANTS OR AGREEMENTS OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, FROM SELLER, ANY HOTEL OWNER OR ANY OTHER SELLER PARTY AS TO ANY MATTER CONCERNING OR RELATING TO THE MEMBERSHIP INTERESTS OR THE PROPERTY, OR SET FORTH, CONTAINED OR ADDRESSED IN THE DUE DILIGENCE MATERIALS (INCLUDING, WITHOUT LIMITATION, THE COMPLETENESS THEREOF), INCLUDING, WITHOUT LIMITATION: (I) THE QUALITY, NATURE, HABITABILITY, MERCHANTABILITY, FITNESS, USE, OPERATION, VALUE, MARKETABILITY, ADEQUACY OR PHYSICAL CONDITION OF THE MEMBERSHIP INTERESTS OR THE PROPERTY, OR ANY ASPECT OR PORTION THEREOF (INCLUDING, WITHOUT LIMITATION, STRUCTURAL ELEMENTS, FOUNDATION, ROOF, APPURTENANCES, ACCESS, LANDSCAPING, PARKING FACILITIES, ELECTRICAL, MECHANICAL, HVAC, COMMUNICATION, PLUMBING, SEWAGE, AND UTILITY SYSTEMS, FACILITIES AND APPLIANCES, SOILS, GEOLOGY AND GROUNDWATER); (II) THE DIMENSIONS OR LOT SIZE OF ANY REAL PROPERTY OR THE SQUARE FOOTAGE OF THE IMPROVEMENTS THEREON OR OF ANY OCCUPANT'S SPACE THEREIN OR COMMON AREAS THEREOF; (III) THE DEVELOPMENT OR INCOME POTENTIAL, OR RIGHTS OF OR RELATING TO, THE MEMBERSHIP INTERESTS OR THE PROPERTY, OR THE SUITABILITY, VALUE, ADEQUACY, OR FITNESS OF THE MEMBERSHIP INTERESTS OR THE PROPERTY FOR ANY PARTICULAR PURPOSE; (IV) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY; (V) THE COMPLIANCE OF THE MEMBERSHIP INTERESTS OR THE PROPERTY OR ITS OPERATION WITH ANY APPLICABLE LAW OF ANY GOVERNMENTAL AUTHORITY OR OF ANY OTHER PERSON OR ENTITY (INCLUDING, WITHOUT LIMITATION, THE AMERICANS WITH DISABILITIES ACT); (VI) THE ABILITY OF BUYER TO OBTAIN ANY NECESSARY GOVERNMENTAL APPROVALS, LICENSES OR PERMITS FOR THE CURRENT USE OR BUYER'S

INTENDED USE, DEVELOPMENT OR REDEVELOPMENT OF THE PROPERTY; (VII) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS OR OTHER HAZARDOUS CONDITIONS ON, IN, UNDER, ABOVE OR ABOUT THE PROPERTY OR ANY ADJOINING OR NEIGHBORING PROPERTIES; (VIII) THE QUALITY OF ANY LABOR OR MATERIALS USED IN ANY IMPROVEMENTS; (IX) THE CONDITION OF TITLE TO THE PROPERTY; (X) ANY GROUND LEASES OR ANY HOTEL CONTRACTS OR OTHER AGREEMENTS AFFECTING THE MEMBERSHIP INTERESTS OR THE PROPERTY OR THE INTENTIONS OF ANY PERSON WITH RESPECT TO THE NEGOTIATION AND/OR EXECUTION OF ANY LEASES, CONTRACTS OR AGREEMENTS WITH RESPECT TO THE MEMBERSHIP INTERESTS OR THE PROPERTY OR ANY PORTION THEREOF; OR (XI) THE ECONOMICS OF, OR THE INCOME AND EXPENSES, REVENUE OR EXPENSE PROJECTIONS OR OTHER FINANCIAL MATTERS RELATING TO, THE OWNERSHIP OR OPERATION OF THE MEMBERSHIP INTERESTS OR THE PROPERTY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE CLOSING DOCUMENTS, BUYER IS NOT RELYING ON ANY REPRESENTATIONS, WARRANTIES, COVENANTS OR AGREEMENTS OF SELLER, ANY OTHER SELLER PARTY, OR ANY AGENT OR BROKER OF SELLER, WHETHER IMPLIED, PRESUMED OR EXPRESSLY PROVIDED AT LAW OR OTHERWISE, OR ARISING BY VIRTUE OF ANY STATUTE, COMMON LAW OR OTHER RIGHT OR REMEDY IN FAVOR OF BUYER. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT SELLER IS UNDER NO DUTY TO MAKE ANY INQUIRY REGARDING ANY MATTER THAT MAY OR MAY NOT BE KNOWN TO SELLER, ANY OTHER SELLER PARTY, OR ANY OTHER AGENT OR BROKER OF SELLER. THE PROVISIONS OF THIS SECTION 2.4 WILL SURVIVE THE CLOSING OR ANY EARLIER TERMINATION OF THIS AGREEMENT.

Buyer further recognizes that the Individual Hotels are not new and that there exists the possibility that the Individual Hotels are not in compliance with the requirements which would be imposed on a newly constructed hotel by presently effective Applicable Law. The Real Property may contain substances or materials no longer permitted to be used in newly constructed buildings including, without limitation, asbestos or other insulation materials, lead or other paints, wiring, electrical or plumbing materials and may not contain other materials or equipment required to be installed in a newly constructed building. Buyer has and will have had the opportunity to conduct such investigations and inspections of the Membership Interests and the Individual Hotels as Buyer deemed reasonably necessary with respect to all such matters. Buyer agrees to accept and assume the risk of non-compliance of the Membership Interests, any Individual Hotel and/or the Property with all Applicable Law, except as otherwise expressly set forth in this Agreement, the Closing Documents and the covenants of Seller under this Agreement and the Closing Documents. Buyer waives any right to excuse or delay performance of its obligations under this Agreement or to assert any claim against a Seller Party (before or after the Closing) arising out of any failure of any Membership Interests, any Individual Hotel or the Property to comply with Applicable Law, except in contravention of the express representations and warranties made by Seller in this Agreement or the covenants of Seller under this Agreement and the Closing Documents.

IF BUYER PURCHASES THE MEMBERSHIP INTERESTS AND, INDIRECTLY, THE PROPERTY, ANY REPORTS, REPAIRS OR WORK REQUIRED OF OR BY BUYER ARE THE SOLE RESPONSIBILITY OF BUYER, AND BUYER AGREES THAT THERE IS NO OBLIGATION ON THE PART OF ANY SELLER PARTY EITHER BEFORE OR AFTER THE CLOSING TO MAKE ANY CHANGES, ALTERATIONS OR REPAIRS TO THE PROPERTY OR TO CURE ANY VIOLATIONS OF LAW OR TO COMPLY WITH THE REQUIREMENTS OF ANY INSURER OR GOVERNMENTAL AUTHORITY. BUYER IS SOLELY RESPONSIBLE FOR OBTAINING THE ISSUANCE OR RE-ISSUANCE OF ANY CERTIFICATE OF OCCUPANCY OR ANY OTHER APPROVAL OR PERMIT NECESSARY FOR TRANSFER OR OCCUPANCY OF THE MEMBERSHIP INTERESTS OR THE PROPERTY OR ANY PORTION THEREOF AND FOR ANY IMPROVEMENTS, REPAIRS OR ALTERATIONS NECESSARY TO OBTAIN THE SAME, ALL AT BUYER'S SOLE COST AND EXPENSE.

**Section 2.5. Release.** Without limiting the provisions of Section 2.4 above, but subject to the express rights and remedies reserved to Buyer in this Agreement and the Closing Documents, Buyer, for itself and the other Buyer Parties, waives all rights to recover from, and forever releases, discharges and covenants not to sue, Seller and the other Seller Parties with respect to any and all Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, that may exist or arise on account of or in any way be connected with the Membership Interests or the Property (including, without limitation, the physical, operational, environmental, and structural condition of the Property) or any Applicable Law, including, without limitation, any Claims or other matters relating to the use, presence, discharge or release of Hazardous Materials on, under, in, above or about the Property. Buyer assumes the risk that Buyer's investigations of the Membership Interests and the Property may not reveal all aspects and conditions of the Membership Interests or the Property; provided, however, this release shall not apply to Claims arising out of any Seller Party's fraud, intentional misrepresentation or breach of its obligations under this Agreement or the Closing Documents (but such breach of its obligations under this Agreement or the Closing Documents shall be subject in all instances to the limitations in Article 6 hereof) nor prohibit Buyer from raising as a defense in any proceeding involving, or in otherwise responding to, any third party claim that such circumstance resulting in the claim existed prior to Buyer's ownership of the Property. Buyer acknowledges and agrees that: (a) Buyer is an experienced and knowledgeable purchaser of real property; (b) Buyer expressly accepts and fully understands the limitations of liability contained in this Agreement; and (c) the limitations contained in this Agreement are reasonable. Buyer acknowledges and agrees that Seller has agreed to enter into this Agreement in consideration for and in reliance upon the limitations of liability contained in this Agreement, that the Purchase Price is based in part on such limitations of liability, and that Seller would not have agreed to execute this Agreement or sell the Property to Buyer on terms that did not include such limitations of liability.

THE WAIVERS AND RELEASES CONTAINED IN SECTION 2.4 ABOVE AND THIS SECTION 2.5 EXTEND TO ALL CLAIMS OF ANY NATURE AND KIND WHATSOEVER, KNOWN OR UNKNOWN, SUSPECTED OR NOT SUSPECTED, AND, TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, BUYER WAIVES ANY PROVISIONS

OF APPLICABLE LAW WHICH OTHERWISE MAY LIMIT OR PROHIBIT SUCH WAIVERS AND RELEASES, IN EACH CASE, EXCEPT FOR SUCH CLAIMS AS EXIST UNDER THIS AGREEMENT AND THE CLOSING DOCUMENTS. THE PROVISIONS OF THIS SECTION 2.5 WILL SURVIVE THE CLOSING OR ANY EARLIER TERMINATION OF THIS AGREEMENT.

Notwithstanding anything herein to the contrary, nothing in this Article 2 shall restrict, restrain or prohibit any claim of Buyer or any Buyer Party based on fraud.

## ARTICLE 3

### COVENANTS

#### **Section 3.1. Operation of the Property and Target Group.**

a. Between the Effective Date and the earlier of the Closing Date or the termination of this Agreement, Seller will (and will cause each Target Entity, Target Subsidiary, Hotel Owner and Operating Tenant to) use commercially reasonable efforts to (i) conduct their respective businesses in the ordinary course of business consistent with past practice; (ii) preserve substantially intact their respective businesses and key commercial relationships with whom they currently do business; and (iii) maintain or cause to be maintained each Individual Hotel in substantially the same condition as existed on the Effective Date, subject to reasonable wear and tear and any damage or destruction by Casualty (as hereinafter defined), Condemnation (as hereinafter defined), or other causes or events beyond the reasonable control of Seller and/or any Hotel Owner, in each case, taking into account the current COVID-19 pandemic and any corresponding COVID-19 Measures in effect at such time.

b. Without limiting the generality of Section 3.1(a) above, between the Effective Date and the earlier of the Closing Date or the termination of this Agreement, Seller shall (and shall cause each Target Entity, Target Subsidiary, Hotel Owner and Operating Tenant to) (i) not intentionally default on any Loan Documents (other than the defaults under the Existing Loans set forth on Schedule 4.1(p) attached hereto), Franchise Agreements or Hotel Management Agreements or commit any default thereunder that results in a termination thereof without Buyer's prior approval, which approval by Buyer shall not be unreasonably withheld, conditioned or delayed, (ii) use commercially reasonable efforts to perform or cause to be performed maintenance and repairs for the Individual Hotels in the ordinary course of business, (iii) maintain or cause to be maintained all existing insurance policies as set forth on Schedule 4.1(u) attached hereto, (iv) not make any alterations or improvements at any Individual Hotel, or demolish any of the Property unless any Hotel Manager shall have the right to so make any such alterations or improvements, or demolish any of the Property, under the applicable Hotel Management Agreement without Seller or any Hotel Owner's or Operating Tenant's approval, other than in the ordinary course of business, as set forth on Schedule 3 attached hereto (or alterations, improvements or demolitions, the total budget of which is less than Two Million and No/100 Dollars (\$2,000,000.00)), or in connection with, or as a result of, any Casualty or Emergency, (v) not sell, transfer or otherwise disposing of any of the Property, other than in the ordinary course of business or as otherwise provided in Section 3.1(d) below, (vi) not remove

any Property from any Individual Hotel unless any Hotel Manager shall have the right to so make any remove any Property under the applicable Hotel Management Agreement without Seller or any Hotel Owner's or Operating Tenant's approval, other than in the ordinary course of business, (vii) not take, or cause or permit to be taken, any action which could impair the applicable Hotel Owner's title to any of the Property or voluntarily create any Lien, (viii) provide notice of any material litigation, arbitration, investigation, labor dispute filed or known to Seller or any Target Entity or Target Subsidiary, (ix) provide a copy of any written notice of any default under any Existing Loan, Franchise Agreement, Hotel Management Agreement or Material Contract, (x) not amend, change, modify or supplement any of its organizational documents, (xi) not issue, sell, transfer, assign, dispose of, redeem, acquire or repurchase any equity interests of any Target Entity or any Target Subsidiary (including the Membership Interests), other than any of the foregoing with respect to the THL TRS, as may be requested by Buyer prior to the Closing, so long as (i) Seller shall only be required to use commercially reasonable efforts to effectuate the same if so requested by Buyer, and (ii) the same does not violate the Loan Documents for the THL Loan unless the applicable Existing Lender otherwise consents to the same in the applicable Loan Release and Modification, (xii) not pay, authorize or declare any dividend or distribution on any equity interests of any Target Entity or Target Subsidiary (including the Membership Interests), (xiii) not incur, assume or suffer to exist any new Indebtedness unless any Hotel Manager shall have the right to so incur, assume or suffer to exist any Indebtedness under the applicable Hotel Management Agreement without Seller or any Hotel Owner's or Operating Tenant's approval, other than trade payables incurred by any Hotel Owner or Operating Tenant in the ordinary course of business that is not prohibited under the Loan Documents (subject to Section 3.9 below) and the Existing Loans, (xiv) except as required by Applicable Law or consistent with past practice, not (A) make, change or revoke any material Tax election, (B) change any annual Tax accounting periods, (C) adopt or change any material method of Tax accounting, (D) settle or compromise any material Tax liability, (E) consent to any extension or waiver of the limitations period applicable to any material Tax claim or assessment, (F) amend any material Tax Return, (G) surrender any right to claim a material refund of Taxes, (H) fail to pay any material amount of Tax as such Tax becomes due and payable, (I) initiate any proceeding under any voluntary Tax disclosure or similar program, or (J) enter into any Tax allocation agreement, Tax sharing agreement or Tax indemnification agreement with respect to any Taxes (other than any agreement no significant purpose of which relates to Taxes), in each case, with respect to any Target Entity or Target Subsidiary, (xv) not commence any new line of business, (xvi) not dissolve, liquidate or wind-up any of the Target Entities or Target Subsidiaries, and (xvii) not agree, authorize or commit to do any of the foregoing.

c. Notwithstanding the provisions in this Section 3.1, between the Effective Date and the earlier of the Closing Date or the termination of this Agreement, (i) Seller shall be permitted to (or to cause the applicable Target Entity, Target Subsidiary, Hotel Owner and Operating Tenant to), without Buyer's approval, continue performing capital improvements in the ordinary course of business or as a result of, any Casualty or Emergency and the capital improvements set forth on Schedule 3 attached hereto (and such capital improvements, the total budget of which is less than Two Million and No/100 Dollars (\$2,000,000.00)), (ii) each Party will reasonably consult with the other Party in the event such Party desires to pursue any exercise

of a purchase option of the fee interest of Individual Hotels known as Courtyard Morgan Hill, CA and Residence Inn Morgan Hill, CA in the THL Hotel Portfolio pursuant to the express terms of the applicable Ground Leases, and any such exercise by any Party shall be subject to the prior written approval of the other Party, which approval shall not be unreasonably withheld, conditioned or delayed (it being agreed that Buyer will not initiate communication with any applicable ground lessor without Seller's prior consent and each of Buyer and Seller shall keep the other Party copied on all correspondence and reasonably informed of the status of any such exercise if such exercise is consented to by the Parties in accordance with the terms of this clause (ii)), and (iii) Seller will reasonably consult with Buyer in connection with any modification to any Existing Loans that is still pending as of the Effective Date ("**Pending Loan Modification**"), and the consummation of any Pending Loan Modification shall be subject to the approval of Buyer, which approval shall not be unreasonably withheld, conditioned or delayed; provided that if such Pending Loan Modification is different in any material respect than the summary and/or proposed documentation attached hereto as Schedule 3.1(c), then it shall not be unreasonable for Buyer to withhold its consent (it being agreed that Buyer's disapproval of any Pending Loan Modification does not in and of itself give rise to an Unacceptable Modification). If any Loan Documents shall require a pay down of any portion of the Existing Loans prior to the Closing or the funding of a reserve other than from cash flow from the Individual Hotels, no Party shall be obligated to contribute such funds except that Seller or its Affiliate shall be obligated to contribute no less than the sum of Eight Million Nine Hundred Thousand and No/100 Dollars (\$8,900,000.00) from funds in the Excluded Accounts and Amount with respect to the CBM Hotel Portfolio and the Innkeepers Hotel Portfolio as described on Schedule 3.1(c) attached hereto whether or not the applicable Pending Loan Modification is consummated prior to the Closing, and if any such amount is not contributed by Seller prior to the Closing, Seller shall have the right, in its sole discretion, to (x) give to Buyer a credit against the Purchase Price in the amount not so contributed or (y) fund the amount not so contributed to a non-restricted account that satisfies one of the following as selected by Buyer: (1) an account in the name of Buyer, (2) an Acquired Account designated by Buyer or (3) a new account set up by Seller in the name of a Target Entity or Target Subsidiary as designated by Buyer.

d. Between the Effective Date and the earlier of the Closing Date or the termination of this Agreement, Seller will obtain Buyer's approval prior to (i) selling (or causing any Hotel Owner to sell) any Individual Hotel in any Hotel Portfolio other than the K-Partners Hotel Portfolio, which approval shall not be unreasonably withheld, conditioned or delayed, (ii) entering into, or materially amending or modifying (or causing any Hotel Owner or Operating Tenant to enter into, or materially amend or modify), any Hotel Contract for which Seller or any Hotel Owner or Operating Tenant has approval rights under the applicable Hotel Management Agreement or any Permit (other than the Excluded Permits), which approval by Buyer shall not be unreasonably withheld, conditioned or delayed, (iii) entering into, or amending or modifying (or causing any Hotel Owner or Operating Tenant to enter into, or amend or modify) any Ground Lease, any Franchise Agreement (other than any extension of the Franchise Agreement for the Homewood Suites Arlington, TX in the THL Hotel Portfolio on the same terms), any Marriott Management Agreement or any Material Contract unless any Hotel Manager shall have the right to so enter into, amend or modify any Material Contract without Seller or any Hotel Owner's or Operating Tenant's approval, which approval shall not be unreasonably withheld, conditioned or

delayed; provided, however, that the consent of Buyer shall not be required to (or to cause the applicable Hotel Owner or Operating Tenant to) (t) pay certain retention or incentives fees to Employees using funds in the Acquired Accounts in an amount not to exceed Three Million and No/100 Dollars (\$3,000,000.00) (and any payments made in excess of such amount shall constitute Leakage for all purposes hereof) so long as any such amount paid and any documentation provided to the applicable Employee in connection therewith is commensurate with the seniority level of such Employee and Seller notifies and reasonably consults with Buyer prior to paying any such retention or incentive fees, (u) sell any Individual Hotel in the K-Partners Hotel Portfolio so long as Seller notifies and consults with Buyer prior to offering any such Individual Hotel in the K-Partners Hotel Portfolio for sale to any third party buyer, (v) modify or amend any Operating Leases (including any modification or amendment to extend the term and re-set the rent thereunder or grant certain forbearance to any Operating Tenant) in compliance with the Loan Documents, (w) enter into a Hotel Contract for repair or security in the event of a Casualty or an Emergency, (x) enter into any new purchase orders for FF&E, Food and Beverage, Consumables and/or Operating Equipment in the ordinary course of business consistent with past practice and in compliance with any applicable Hotel Management Agreements and Franchise Agreements, (y) enter into (or cause its Affiliate to enter into) applications to obtain or renew Permits used in the ordinary course of business consistent with past practice or required for the continued operation of the business of the Individual Hotel or the transfer contemplated by this Agreement, or (z) take any action whether or not prohibited pursuant this Section 3.1 (including, but not limited to, making any alterations or improvements at any Individual Hotel) that is otherwise required to comply with any Existing Loan, Franchise Agreement or Hotel Management Agreement, Applicable Law, or any COVID-19 Measures, provided that Seller shall keep Buyer reasonably informed of such actions and shall give Buyer prior written notice if such compliance requires the expenditure of more than Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00).

e. Buyer shall be deemed to have granted its consent to any requests for approval in this Section 3.1 if Buyer does not respond to the applicable consent request within five (5) Business Days of the delivery of such consent request.

f. Notwithstanding the provisions in this Section 3.1, Seller shall have the right to (or cause any Hotel Owner or Operating Tenant to), without giving notice to or receiving the consent of Buyer, and shall, make (and accept cancellations of) Bookings in the ordinary course of business consistent with past practice and otherwise market and promote the business of each Individual Hotel in generally the same manner as it did prior to the execution of this Agreement, and all advance Bookings shall be booked at rates, prices and charges charged by Seller (or any Hotel Owner) for such purposes in the ordinary course of business consistent with Seller's (or the applicable Hotel Owner's) past practices and in compliance with any applicable Hotel Management Agreements and Franchise Agreements.

g. Seller will execute (or cause any Hotel Owner or their respective Affiliate to execute) and Buyer, where necessary, will join in the execution of, all applications and instruments requested by Buyer which are required in connection with the transfer of all Permits (other than Excluded Permits) in order to transfer the benefits of such Permits to Buyer on the

Closing Date. Buyer shall be responsible for, all application and transfer fees in connection with such applications and instruments. Seller, subject to the next succeeding sentence, shall preserve (or cause any Hotel Owner or their respective Affiliates to preserve) in force all existing Permits and cause all those expiring during the period between the Effective Date and the Closing Date to be renewed prior to the Closing Date only to the extent the same are necessary for the operation of the applicable Individual Hotel. If any such Permit (other than Excluded Permits) shall be suspended or revoked, Seller shall promptly so notify Buyer and shall cause the reinstatement of such Permit without any additional limitation or condition.

**Section 3.2. Casualty and Condemnation.** If at any time prior to the Closing, (i) any Improvements or the Real Property of any Individual Hotel is damaged or destroyed by a fire or other casualty event (a “**Casualty**”) or (ii) any condemnation proceedings are instituted, or notice of any condemnation or intent to condemn is given, with respect to all or any portion of the Real Property of any Individual Hotel (a “**Condemnation**”), Seller shall promptly give Buyer written notice thereof. To the extent that, prior to the Closing, Seller, any Hotel Owner or any of their respective Affiliates receives insurance proceeds from any casualty insurance policies and/or condemnation proceeds in respect of such Casualty or Condemnation (“**Proceeds**”), Seller shall, at Seller’s election, either: (i) use (or cause the applicable Hotel Owner or their applicable Affiliates to use) commercially reasonable efforts to use such Proceeds to repair such damage or destruction, or replace such taken property, as applicable (“**Restoration of the Property**”), or (ii) give Buyer a credit at the Closing against the Purchase Price in an amount equal to the Proceeds, if any, received by Seller, any Hotel Owner or such Affiliate as a result of such Casualty or Condemnation, together with a credit for any deductible under such insurance, plus a credit for any portion of a Casualty that is not covered by insurance if and solely to the extent that the failure of such portion to not be covered by insurance is the direct result of any Seller Party’s failure to comply with the insurance provisions of the Loan Documents with respect to the affected Individual Hotel(s), less any amounts spent for Restoration of the Property or in connection with the collection of such Proceeds. If, as of the Closing, none of Seller, any Hotel Owner or their respective Affiliates has received any such insurance or condemnation proceeds, then, at the Closing, Seller will (or cause the applicable Hotel Owner or its applicable Affiliate to) assign to Buyer all rights of Seller (or the applicable Hotel Owner or their respective Affiliates), if any, to the insurance or condemnation proceeds and to all other rights or claims arising out of or in connection with such Casualty or Condemnation, and shall credit Buyer for any deductible under such instance. For the avoidance of doubt, Buyer shall have no right to terminate this Agreement with respect to the Membership Interests of any Hotel Portfolio or any Individual Hotel in the event of any Casualty or Condemnation.

**Section 3.3. Employees.** Seller shall reasonably cooperate with Buyer and its hotel manager in connection with Buyer’s hotel manager’s hiring of any Employees. The Parties shall use commercially reasonable efforts to cause, or cause the applicable Hotel Manager to cause, the transition of any Employees in accordance with Applicable Law (including Employees subject to collective bargaining agreements).

**Section 3.4. Liquor Licenses.** Buyer acknowledges that there may be various liquor licenses associated with the operation of the Individual Hotels and that such liquor licenses (the

“**Liquor Licenses**”) are held by the Persons identified on Schedule 3.4 attached hereto. Seller shall deliver to Buyer an updated Schedule 3.4 no later than seven (7) Business Days after the Effective Date. Buyer shall work with the applicable Hotel Manager and Hotel Owner and Operating Tenant to ensure that any and all Liquor Licenses that may be required to ensure the continued service of alcoholic beverages such Individual Hotels from and after the Closing are obtained prior to the Closing in accordance with Applicable Law and that the Persons identified on Schedule 3.4 attached hereto (as may be updated in accordance with the terms of this Section 3.4) are removed or released from all such Liquor Licenses as of the Closing. Seller shall (or shall cause the applicable Hotel Owner to), at no additional cost, expense or liability to Seller or any Hotel Owner, cooperate and instruct the applicable Hotel Manager to reasonably cooperate with Buyer in its efforts with respect to the Liquor Licenses; provided, however, that (i) the issuance and/or transfer of the Liquor Licenses shall not be a condition to Buyer’s obligations to close the purchase and sale transaction contemplated herein and (ii) Buyer shall not have the right to extend the Closing or terminate or cancel this Agreement based on the absence or lack of any Liquor Licenses. If Buyer is unable to obtain any Liquor License for any Individual Hotel that is in the name of any Hotel Manager or its Affiliates (other than any Marriott Manager) prior to the Closing, Seller shall use commercially reasonable efforts to cause such Hotel Managers to comply with the transition obligations contained in the applicable Hotel Management Agreement, if any, solely to the extent of such obligations, and Buyer shall comply in all respects with any such provisions in the applicable Hotel Management Agreement relating thereto. This Section 3.4 shall survive the Closing.

### **Section 3.5. Franchise and Hotel Management Agreements.**

(a) Following the Effective Date, Seller shall notify each Franchisor of the transfer of the applicable Membership Interests contemplated herein and shall provide Buyer with the contact information for each Franchisor so that Seller and Buyer can timely and diligently pursue, with respect to each Individual Hotel subject to a Franchise Agreement, (i) any consent required from the applicable Franchisor to the transfer of the applicable Membership Interests contemplated herein and the execution and delivery of a new franchise agreement if required by any Franchisor, and (ii) a full and unconditional release of all Seller Guarantor Parties of all obligations and liabilities under such Franchise Agreement and any Seller Guarantees related to such Franchise Agreement, to the extent accruing from and after the Closing (a “**Franchisor Release**”, and, together with the consent and release described in the foregoing clause (i), a “**Franchisor’s Consent**”), which Franchisor Release shall be in the standard form provided by the applicable Franchisor, if any. In the event any Franchisor refuses to provide a Franchisor Release, Buyer’s Credit Enhancers shall deliver to Seller a Buyer Indemnity with respect to obligations and liabilities arising under such Franchise Agreement and any Seller Guarantees related to such Franchise Agreement as a result of actions or occurrences from and after the Closing. The entering into by Buyer of a replacement franchise agreement (with the existing Franchise Agreement being terminated at no cost to Seller, any Hotel Owner or their respective Affiliates other than payment of accrued and unpaid fees owing as of the Closing Date under such Franchise Agreement) and delivery of a Franchisor Release or Buyer Indemnity shall be treated for purposes of this Section 3.5 as a Franchisor’s Consent. Seller and its Affiliates shall reasonably cooperate with Buyer in connection with obtaining the Franchisor’s Consents. Buyer

agrees to assume the obligation for any unamortized key money, provided, that if any Franchisor requires such unamortized key money to be repaid in connection with such Franchisor's Consent, Seller shall be solely responsible for payment of such unamortized key money. Buyer and Seller shall work together in good faith to pursue and procure each Franchisor's Consent, and each of Buyer and Seller shall keep the other Party copied on all correspondence and reasonably informed of its efforts to obtain each Franchisor's Consent.

(b) Following the Effective Date, Seller shall notify each Marriott Manager of the transfer of the applicable Membership Interests contemplated herein and shall provide Buyer with the contact information for the applicable Marriott Manager with respect to each Marriott Management Agreement so that Seller and Buyer can timely and diligently pursue, with respect to each Individual Hotel subject to a Marriott Management Agreement, (i) any consent required from the applicable Marriott Manager to the transfer of the applicable Membership Interests contemplated herein, and (ii) a full and unconditional release of all Seller Guarantor Parties of all obligations and liabilities under such Marriott Management Agreement and any Seller Guarantees related to the Marriott Management Agreement, to the extent accruing from and after the Closing (a "**Marriott Manager Release**", and, together with the consent and release described in the foregoing clause (i), a "**Marriott Manager's Consent**"), which Marriott Manager Release shall be in a form and substance customarily provided by such Marriott Manager. In the event Marriott Manager refuses to provide a Marriott Manager Release, Buyer's Credit Enhancers shall deliver to Seller a Buyer Indemnity with respect to obligations and liabilities arising under such Marriott Management Agreement and any Seller Guarantees related to such Marriott Management Agreement as a result of actions or occurrences from and after the Closing. The entering into by Buyer of a replacement management agreement (with the existing Marriott Management Agreement being terminated at no cost to Seller, any Hotel Owner or their respective Affiliates other than payment of accrued but unpaid fees owing as of the Closing Date under such Marriott Management Agreement) and delivery of a Marriott Manager Release or Buyer Indemnity shall be treated for purposes of this Section 3.5 as a Marriott Manager's Consent. Buyer and Seller shall work together in good faith to pursue and procure each Marriott Manager's Consent, and each of Buyer and Seller shall keep the other Party copied on all correspondence and reasonably informed of its efforts to obtain each Marriott Manager's Consent.

(c) In the event one or more Franchisor's Consents or Marriott Manager's Consents has not been obtained by the Consent Approval Date despite Seller's and Buyer's good faith and commercially reasonable efforts, then each of Buyer and Seller shall have the right to extend the Closing Date in accordance with Section 5.1 hereof in order to continue to seek any such Franchisor's Consents or Marriott Manager's Consents. Notwithstanding the foregoing, in the event one or more Franchisor's Consents or Marriott Manager's Consents has not been obtained by the Consent Approval Outside Date, either Party may terminate this Agreement, whereupon this Agreement, and the obligations of the Parties hereunder shall terminate without further action of any party (and no Party shall have any further obligation in connection herewith except for Obligations Surviving Termination). For the avoidance of doubt, the Parties may mutually agree to terminate this Agreement solely with respect to the Membership Interests of any Hotel Portfolio(s) for which such Franchisor's Consents or Marriott Manager's Consents have not been

obtained, whereupon (i) this Agreement, and the obligations of the Parties hereunder shall terminate solely with respect to the Membership Interests of such Hotel Portfolio(s) for which such Franchisor's Consents or Marriott Manager's Consents have not been obtained without further action of any Party (and no Party shall have any further obligation in connection herewith except for Obligations Surviving Termination), and (ii) this Agreement shall remain in full force and effect with respect to the Membership Interests of any Hotel Portfolio(s) for which Franchisor's Consents and Marriott Manager's Consents have been obtained, and the terms and provisions of Section 1.6 hereof shall apply. Buyer shall keep Seller reasonably apprised of the status of Buyer's efforts to pursue any Franchisor's Consents and Marriott Manager's Consents, and Buyer shall promptly deliver to Seller a summary of all proposed requests made to the applicable Franchisor(s) and Marriott Manager in Buyer's change of ownership applications. Buyer agrees that one or more of Buyer's Credit Enhancers shall execute and deliver all required substitute indemnities and guaranties if and to the extent the same are required by such Franchisor or Marriott Manager. Buyer acknowledges that the Seller Parties shall not have any liability in the event that a Franchisor or Marriott Manager does not provide a Franchisor's Consent or Marriott Manager's Consent. The provisions of this Section 3.5(c) shall survive the Closing.

(d) Seller shall cause the termination of the Hotel Management Agreements with Island Manager and THL Manager in accordance with the terms of the applicable Hotel Management Agreement (each, a "**Terminated Management Agreement**").

(e) Costs, expenses and fees payable in connection with obtaining the Franchisor's Consents and the Marriott Manager's Consents and terminating any Hotel Management Agreements with Island Manager and THL Manager, shall be as agreed by the Parties. Each of Buyer and Seller shall pay their own legal fees in connection with obtaining the Franchisor's Consents and the Marriott Manager's Consents and terminating any Hotel Management Agreements with Island Manager and THL Manager.

### **Section 3.6. Ground Lease Estoppels and Consent.**

(a) Seller shall use (or shall cause the applicable Hotel Owner to use) commercially reasonable efforts to obtain and deliver to Buyer prior to the Closing (a) an executed estoppel certificate from each lessor under a Ground Lease (each, a "**Ground Lease Estoppel**"), and (b) consent to the sale of the applicable Membership Interests as contemplated hereunder with respect to those Ground Leases as may be agreed to by the Parties (each, a "**Ground Lessor's Consent**"), it being understood that (i) no Party shall be required to expend any monies (other than costs associated with preparation and delivery) to obtain any such Ground Lease Estoppel, (ii) Seller has no obligation to obtain any Ground Lease Estoppel, and (iii) Buyer has no obligation to agree to any changes to a Ground Lease as a condition to any Ground Lessor Consent. Buyer shall reasonably cooperate with Seller and the applicable Hotel Owner and the lessor of any Ground Lease in connection with the consent process described herein. Receipt of the Ground Lessor's Consents, if any, shall be a Buyer condition to Closing. In the event one or more Ground Lessor's Consents has not been obtained by the Consent Approval Date, then each of Buyer and Seller shall have the right to extend the Closing Date in accordance with Section

5.1 hereof in order to continue to seek any such Ground Lessor's Consents. Notwithstanding the foregoing, in the event one or more Ground Lessor's Consents is conditioned on modifications to the Ground Lease which are not acceptable to Buyer or has not been obtained by the Consent Approval Outside Date, either Party may terminate this Agreement, whereupon this Agreement, and the obligations of the Parties hereunder shall terminate without further action of any party (and no Party shall have any further obligation in connection herewith except for Obligations Surviving Termination). For the avoidance of doubt, the Parties may mutually agree to terminate this Agreement solely with respect to the Membership Interests of any Hotel Portfolio(s) for which such Ground Lessor's Consent have not been obtained, whereupon (i) this Agreement, and the obligations of the Parties hereunder shall terminate solely with respect to the Membership Interests of such Hotel Portfolio(s) for which such Ground Lessor's Consents have not been obtained without further action of any Party (and no Party shall have any further obligation in connection herewith except for Obligations Surviving Termination), and (ii) this Agreement shall remain in full force and effect with respect to the Membership Interests of any Hotel Portfolio(s) for which Ground Lessor's Consent has been obtained or were not needed, and the terms and provisions of Section 1.6 hereof shall apply. For the avoidance of doubt, receipt of any Ground Lease Estoppels shall not be a condition precedent to Buyer's obligation to close hereunder and Buyer shall have no right to terminate this Agreement with respect to the Membership Interests of any Hotel Portfolio or any Individual Hotel for any failure to obtain any Ground Lease Estoppel.

(b) Buyer and Seller shall work together in good faith to pursue and procure each Ground Lessor's Consent, and each of Buyer and Seller shall keep the other Party copied on all correspondence and reasonably informed of its efforts to obtain each Ground Lessor's Consent. Costs, expenses and fees payable in connection with obtaining the Ground Lessor's Consents shall be as agreed by the Parties. Each of Buyer and Seller shall pay their own legal fees in connection with obtaining the Ground Lessor's Consents.

**Section 3.7. Consents and Estoppels Generally.** The Parties shall reasonably cooperate in order to reduce the number of consents required and the costs and fees (including, but not limited to, any Transfer Taxes) payable in connection with the consummation of the purchase and sale transaction contemplated hereunder provided any restructuring (including any restructuring to an asset deal) shall require the consent of both Parties. Seller shall reasonably cooperate with Buyer in connection with requesting any additional estoppels or consents required by any Existing Lender or Title Company, provided that obtaining such estoppels or consents shall not alone be a closing condition. If the K-Partner Subordinate Lender does not agree to a replacement borrower for the K-Partners Holdings A Loan and K-Partners Holdings B Loan, Seller shall use commercially reasonable efforts to cause its joint venture partner in the K-Partners Hotel Portfolio to participate in the sale of K-Partners Seller to Buyer in the place of K-Partners Target.

**Section 3.8. No Leakage.** Following the Effective Date, Seller shall not permit any Target Entity or Target Subsidiary to incur, assume, suffer to exist or otherwise become liable for any Leakage. Seller shall promptly notify Buyer of any such Leakage. Any amount of Leakage that does so exist at the Closing in violation of this Agreement shall result in a dollar-for-dollar

reduction to the Purchase Price at the Closing, provided, that if Buyer only becomes aware of such Leakage during the six (6)-month period following the Closing, Seller and its Affiliates shall pay to Buyer an amount an amount equal to such Leakage promptly following written request therefor by Buyer. This Section 3.8 shall survive the Closing.

**Section 3.9. Accounts Payable.** Seller shall, and shall cause the Target Entities and Target Subsidiaries to, continue to pay all accounts payable and similar obligations of the Target Group as they become due in the ordinary course of business or otherwise consistent with the manner in which such accounts payable and similar obligations were paid immediately prior to the Effective Date but taking into account any industry standard accruals taken due to COVID-19.

**Section 3.10. Exclusivity.** From the Effective Date until the Closing or earlier termination of this Agreement, Seller shall cause the officers, employees, agents, representatives or any other Person acting at the direction of Seller not to, directly or indirectly, solicit, pursue, negotiate, accept or enter into any Contract regarding any offers for (i) the Property, the Membership Interest or any portion thereof or interest therein, or (ii) any direct or indirect interest in Seller, any Target Entity or any Target Subsidiary, except as otherwise provided in Section 3.1(d) above.

**Section 3.11. Real Property Legal Descriptions.** Exhibit A to this Agreement shall be delivered to Buyer no later than five (5) days after the Effective Date.

**Section 3.12. Termination of Affiliate Arrangements.** At the Closing, Seller shall terminate, at Seller's sole cost and expense (without using any funds in the Acquired Accounts), each Marketing Agreement (as defined on Schedule 4.1(v) attached hereto) and all asset management fee arrangements with Asset Manager or any Affiliate of Seller, unless, in each case, Buyer notifies Seller in writing of its election to have Seller not terminate any of the foregoing no less than thirty (30) days' prior to the Closing Date.

## ARTICLE 4

### REPRESENTATIONS AND WARRANTIES

**Secton 4.1. Representations and Warranties of Seller.** Each Seller makes the following representations and warranties to Buyer as of the Effective Date, as to itself, its applicable Target Entity, its applicable Hotel Owners and its applicable Hotel Portfolio, each of which shall be deemed remade as of the Closing Date:

(a) Formation; Binding Agreement. Each Selling Entity and each of its applicable Target Entities, Target Subsidiaries and applicable Hotel Owners, is duly organized, validly existing and in good standing under the laws of its state of formation; and the execution, delivery and performance of this Agreement and all Closing Documents to be executed and delivered by Seller or any Seller Party pursuant to this Agreement are within the organizational power of Seller or such Seller Party, as applicable, and have been or will prior to the Closing be duly authorized by all necessary action. This Agreement has been duly executed by each Seller and

each Closing Document will be validly executed by each Seller Party party thereto, and this Agreement and each Closing Document constitutes a binding agreement of Seller and such Seller Parties, enforceable in accordance with their respective terms, in each case, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Applicable Laws now or hereafter in effect affecting creditors' rights generally and subject, as to enforceability, to general principles of equity.

(b) Intentionally Omitted.

(c) Ownership of Membership Interests; Subsidiaries. The organizational charts attached hereto as Exhibit B sets forth the true and correct ownership of each Selling Entity and the Target Entities and Target Subsidiaries, including the applicable Hotel Owners. There are no owners of any equity interest in any Target Entity or Target Subsidiary, except as set forth on Exhibit B attached hereto. Each Selling Entity owns good and valid record and beneficial title to all of the Membership Interests free and clear of any Liens (other than restrictions on transfer under applicable securities laws and the Loan Documents evidencing and securing the applicable Existing Loan) and all of the Membership Interests are duly authorized, validly issued, fully paid and non-assessable. At the Closing, Buyer will acquire good and valid record and beneficial title to the Membership Interests free and clear of all Liens (other than restrictions on transfer under applicable securities laws and the Loan Documents evidencing and securing the applicable Existing Loan). The Membership Interests are the only outstanding equity interests of the applicable Target Entities and, indirectly, of the Target Subsidiaries, including the applicable Hotel Owners, other than as set forth on the organizational charts attached hereto, and each applicable Target Entity, Target Subsidiary and applicable Hotel Owner does not own, other than as set forth on the organizational charts attached hereto, (i) any equity interest or security in any corporation, partnership, limited liability company, joint venture, trust or other legal entity or (ii) with respect to such Hotel Owner, any property other than the applicable Property. A true and correct copy of the operating agreement (together with all amendments, modifications and supplements thereto) of each Target Entity, Target Subsidiary, and Hotel Owner has been, or will be, delivered to Buyer prior to the Closing. Other than the Existing Loans, there are no commitments, options, warrants, calls, rights, subscriptions, preemptive rights, rights of first refusal or agreements of any kind relating to the issuance, sale, registration or voting of or outstanding securities or Indebtedness convertible into or exchangeable for, any equity interests of the Target Entities or Target Subsidiaries, including with respect to the Membership Interests. There are no phantom awards, profit participation rights or share appreciation rights relating to any equity interests of the Target Entities or Target Subsidiaries. All of the outstanding equity interests of each Target Subsidiary is duly authorized, validly issued, fully paid and non-assessable and are owned by a Target Entity or another Target Subsidiary, free and clear of all Liens (other than restrictions on transfer under applicable securities laws and the Loan Documents evidencing and securing the applicable Existing Loan).

(d) No Defaults or Conflicts. The execution and delivery of this Agreement and the Closing Documents to which any Seller Party is party and the consummation of the transactions contemplated hereby and thereby by the Target Group and performance by the Target Group of its obligations hereunder and thereunder (i) will not result in any violation or breach of or

conflict with or contravene the organizational documents of any Target Entity or Target Subsidiary; (ii) except as set forth on Schedule 4.1(d) attached hereto, and subject to obtaining any required third-party consent or other approvals identified thereon, will not conflict with, or result in a violation or breach of, or require notice under, any of the terms or provisions of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, amendment, cancellation or acceleration) under any Material Contract; (iii) assuming compliance with the matters set forth on Schedule 4.1(d) attached hereto, will not violate in any respect any existing Applicable Law; and (iv) except with respect to Permitted Liens, will not result in the creation of any Lien upon any of the properties or assets of any Target Entity or Target Subsidiary; provided, however, that no representation or warranty is made in the foregoing clauses (ii), (iii) or (iv) with respect to any matters that, individually or in the aggregate, has not been and would not reasonably be expected to be material to the Target Group, taken as a whole.

(e) Financial Statements.

(i) Seller has made available to Buyer copies of the Financial Statements.

(ii) The Financial Statements have been prepared in accordance with GAAP and present fairly, in all material respects, the consolidated financial position of the Target Group as of the date of each balance sheet included in the Financial Statements and the consolidated results of their operations, consolidated changes in equity and consolidated cash flows for each of the periods then ended (except, in the case of the audited Financial Statements, as may be expressly indicated in the notes thereto and, in the case of the unaudited Financial Statements, subject to changes resulting from normal and recurring year-end adjustments none of which, individually or in the aggregate, are material in amount or nature). The Financial Statements have been prepared from, and accurately reflect, the books and records of the Target Group.

(f) Material Contracts. Schedule 4.1(f) attached hereto sets forth, as of the Effective Date, the following Contracts to which any of the Target Entities or Target Subsidiaries is a party or bound or by which any of their assets or properties is subject or bound:

(i) any Contract with one of more Target Entities or Target Subsidiaries, on the one hand, and Seller or an Affiliate of Seller (other than the Target Entities or Target Subsidiaries), on the other hand;

(ii) non-competition agreements or any other Contracts which limit or purport to limit in any material respect the manner in which, or the localities in which, the business of any Target Entity or Target Subsidiary may be conducted or that grant exclusivity rights, in each case, that will bind any of the Target Entities or Target Subsidiaries or by which any of their assets or properties will be subject or bound following the Closing, other than customary non-competes relating to brand ownership;

(iii) joint venture, partnership or other Contract involving a sharing of profits, losses, costs, or liabilities, in each case, that will bind any of the Target Entities or Target

Subsidiaries or by which any of their assets or properties will be subject or bound following the Closing;

(iv) any Contract relating to any material Indebtedness;

(v) any material Contract settling, waiving or otherwise compromising any pending or threatened Claim and under which any Target Entity or Target Subsidiary has any continuing obligations, other than ordinary course complaints and settlements (which are not material in amount or nature) arising out of or in connection with the Americans with Disabilities Act and ordinary course commitments to make restorations and release payments in connection therewith (“**ADA Issues**”);

(vi) the Hotel Management Agreements;

(vii) the Franchise Agreements;

(viii) the Hotel Leases;

(ix) the Ground Leases;

(x) any other Contract that involves an individual capital expenditure of more than Five Million and No/100 Dollars (\$5,000,000.00); or

(xi) an agreement to enter into any of the foregoing Contracts.

Collectively, the Contracts listed, or required to be listed, on Schedule 4.1(f) attached hereto are referred to herein as the “**Material Contracts**.” Each Material Contract is valid, binding on and enforceable against the applicable Target Entity or Target Subsidiary, as the case may be, and, to Seller’s knowledge, each other party to such Material Contract, in each case, in accordance with its terms, in each case, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Applicable Laws now or hereafter in effect affecting creditors’ rights generally and subject, as to enforceability, to general principles of equity, and is in full force and effect. Correct and complete copies of all Material Contracts, including all amendments, modifications and supplements thereof, have been, or will be, made available to Buyer prior to the Closing. The term “**Material Contract**” shall not include any Contract that otherwise is listed, or required to be listed, on Schedule 4.1(f) attached hereto, if the same is terminable upon no less than thirty (30) days’ notice without payment of a fee or penalty in excess of One Hundred Thousand and No/100 Dollars (\$100,000.00).

(g) Bankruptcy Actions. None of Seller, any of its applicable Target Entities or Target Subsidiaries, or any of its applicable Hotel Owners have filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Seller’s or any of such Target Entity’s or Target Subsidiaries or Hotel Owner’s creditors or suffered the appointment of a receiver to take possession of the Property or entered into an arrangement with creditors or filed a petition for an arrangement with creditors or otherwise admitted in writing its inability to pay its debt as they become due.

(h) Adverse Actions or Proceedings. None of Seller, any of the Target Entities, Target Subsidiaries or Hotel Owners has received written notice of any material action or proceeding or litigation currently pending or, to Seller's knowledge, there has been no material action or proceeding or litigation threatened in writing against Seller or any of its applicable Target Entities or Target Subsidiaries or any of its applicable Hotel Owners, which Seller reasonably expects would (x) affect the validity or enforceability of this Agreement or any of the Closing Documents to be executed and delivered by Seller or any Seller Party pursuant to this Agreement or (y) otherwise reasonably be expected to result in material liability to the Target Group, except for (i) ADA Issues, (ii) the matters set forth on Schedule 4.1(h) attached hereto, and (iii) any action, proceeding or litigation covered by insurance. None of the Target Entities or Target Subsidiaries, nor their respective businesses, are subject to any outstanding material order or judgment.

(i) Hotel Leases. To Seller's knowledge, there are no Leases to which any Target Entities, Target Subsidiaries, Hotel Owners or Operating Tenants is a party which will bind or encumber any Individual Hotel in its applicable Hotel Portfolio following the Closing, except the Ground Leases, the Hotel Leases, the Hotel Management Agreements, Bookings, and the Operating Leases. Seller has, or will, deliver to Buyer prior to the Closing to Buyer a true and complete copy of all Hotel Leases. Except as set forth in Schedule 4.1(i) attached hereto, (A) Seller has neither given nor received any written notice of any material breach or default under any Hotel Leases, (B) no event has occurred or circumstance exists which, with notice or the passage of time, would result in a material breach or default by Seller or, to Seller's knowledge, the other party thereunder, (C) Seller does not currently owe any brokerage commissions or finder's fees with respect to any Hotel Leases; and (D) to Seller's knowledge, there is no dispute with any lessees under any Hotel Leases regarding such Hotel Leases, and such Hotel Leases are in full force and effect.

(j) Ground Leases. Seller has provided, or will provide, to Buyer true and complete copies of the Ground Leases (except as otherwise expressly noted on Schedule 4.1(j) attached hereto) prior to the Closing. Each Ground Lease is in full force and effect. All rents and other amounts which are due and payable under the Ground Leases have been paid. None of Seller, any of its applicable Target Entities or Target Subsidiaries or any of its applicable Hotel Owners (i) has given or received any written notice of a material default under any Ground Lease which default remains uncured and, to Seller's knowledge, there is no existing condition that, with notice or passage of time or both, would constitute a material default by any party under any Ground Lease, and (ii) has not received any written notice from any Existing Lender or other Person who holds any senior lien or encumbrance against the underlying Real Property regarding any breach or default by the applicable ground lessor of its obligations under any mortgage, deed of trust or other agreement to which such ground lessor is a party. There are currently no disputes with any ground lessors regarding the Ground Leases.

(k) Condemnation. To Seller's knowledge, there is no Condemnation currently pending, and none of Seller, any of its applicable Target Entities, Target Subsidiaries or any of its applicable Hotel Owners has received written notice of any threatened Condemnation of all or

any portion of the applicable Property, except where any such Condemnation would not, individually or in the aggregate, reasonably expected to have a Material Adverse Effect.

(l) Options. Except as may be set forth in the Franchise Agreements with any Marriott Franchisor and the Loan Documents for the THL Loan, none of Seller, any of its applicable Target Entities, Target Subsidiaries or any of its applicable Hotel Owners has granted any purchase option or right of first refusal to any party to acquire any Hotel Owner's ownership interest in the applicable Property.

(m) Title to Personal Property. To Seller's knowledge, each applicable Hotel Owner or applicable Operating Tenant has good and valid title to all applicable tangible Personal Property, which shall be free and clear of all Liens as of the Closing, except for any Permitted Liens, Hotel Contracts, and the rights, if any, of any Franchisor under any applicable Franchise Agreement and any Hotel Manager under the applicable Hotel Management Agreement, except where the failure to have good and valid title or the existence of any Liens would not, individually or in the aggregate, reasonably expected to have a Material Adverse Effect. Neither any Hotel Owner, any Operating Tenant nor any Hotel Manager owns or leases any motor vehicles except as set forth on Schedule 4.1(m) to be attached hereto (the "**Motor Vehicles Schedule**"), which Motor Vehicles Schedule shall be delivered to Buyer no later than five (5) days after the Effective Date.

(n) Licenses and Permits. Each applicable Hotel Owner or Operating Tenant has all Permits necessary to operate the applicable Individual Hotel, except where the failure to have such Permits would not, individually or in the aggregate, reasonably expected to have a Material Adverse Effect. None of Seller, any of its applicable Target Entities or Target Subsidiaries or any of its applicable Hotel Owners or Operating Tenants have received any written notice from any Governmental Authority or other Person of (i) any violation, suspension, revocation or non-renewal of any Permits that has not been cured or dismissed, or (ii) any failure by an applicable Hotel Owner or Operating Tenant to obtain Permits required for the use, occupancy or operation of the Individual Hotel that has not been cured or dismissed. Schedule 3.4 attached hereto (as may be updated in accordance with the terms of Section 3.4 above) sets forth the holder of all the liquor licenses for the Individual Hotels.

(o) Employees.

(i) Schedule 4.1(o)(i) attached hereto sets forth all collective bargaining agreements with any labor union with respect to the Employees of the Individual Hotels ("**CBAs**"). Seller has provided to Buyer with a correct and complete copy of the CBAs. None of Seller, any of its applicable Target Entities or Target Subsidiaries or any of its applicable Hotel Owners has given nor received any written notice of any material breach or default under the CBAs which has not been cured, and to Seller's knowledge, no event has occurred or circumstance exists which, with notice or the passage of time, would result in a material breach or default by any party to the applicable CBA. Within the three (3)-year period prior to the Effective Date, no union organizing activity, strikes, work stoppage, work slow-down or other organized labor activity has occurred at any Individual Hotel.

(ii) Neither Seller nor any of its applicable Target Entities, Target Subsidiaries or applicable Hotel Owners or Operating Tenants employ any Employees in connection with the operation of the Individual Hotels.

(p) Existing Loans. Except as set forth on Schedule 4.1(p) attached hereto, each Existing Loan is in full force and effect and none of Seller, any of its applicable Target Entities, the Target Subsidiaries or any of its applicable Hotel Owners has given or received any written notice of any breach or default under any Loan Document that has not been cured and no event has occurred or circumstance exists which, with notice or the passage of time, would result in a breach or default by Seller or, to Seller's knowledge, the other party thereunder. Seller has provided, or will provide, true and complete copies of all material Loan Documents in the Loan Documents folder of the Datasite. There are no other material agreements with any Existing Lenders relating to the Existing Loans which have not been disclosed in the Loan Documents folder of the Datasite.

(q) Hotel Management Agreements. Schedule 4.1(q) attached hereto sets forth a correct and complete list of all Hotel Management Agreements. Seller has provided, or will provide, true and complete copies of the Marriott Management Agreements (except as otherwise expressly noted on Schedule 4.1(q) attached hereto) to Buyer in the Management Agreement Folder in the Datasite prior to the Closing. Except as set forth on Schedule 4.1(q) attached hereto, the applicable Hotel Management Agreements are in full force and effect and none of Seller, any of its applicable Target Entities, Target Subsidiaries or any of its applicable Hotel Owners or Operating Tenants have given or received any written notice of any breach or default under any such Hotel Management Agreement that has not been cured and no event has occurred or circumstance exists which, with notice or the passage of time, would result in a breach or default by Seller or, to Seller's knowledge, the other party thereunder, except to the extent such breach or default would not, individually or in the aggregate, reasonably expected to have a Material Adverse Effect.

(r) Franchise Agreements. Schedule 4.1(r) attached hereto sets forth a correct and complete list of all franchise agreements affecting the applicable Property or the operation of any part thereof. Seller has provided, or will provide, true and complete copies of the Franchise Agreements (except as otherwise expressly noted on Schedule 4.1(r) attached hereto) to Buyer in the Franchise Agreement Folder in the Datasite prior to the Closing. Seller has provided, or will provide, true and complete copies of all property improvement plans in the Franchise Documents folder of the Datasite applicable to the Individual Hotels prior to the Closing. Except as set forth on Schedule 4.1(r) attached hereto, the applicable Franchise Agreements are in full force and effect and none of Seller, any of its applicable Target Entities, Target Subsidiaries or any of its applicable Hotel Owners or Operating Tenants has given or received any written notice of any breach or default under any such Franchise Agreement that has not been cured and no event has occurred or circumstance exists which, with notice or the passage of time, would result in a breach or default by Seller or, to Seller's knowledge, the other party thereunder, except to the extent such breach or default would not, individually or in the aggregate, reasonably expected to have a Material Adverse Effect.

(s) Title; All Property Included. Each Hotel Owner has good and marketable fee simple title to the applicable Real Property, subject only to Permitted Liens. The Property includes all property, assets, rights and interests used in the operation of the Individual Hotels, and necessary for the continued operation of the Individual Hotels.

(t) Environmental Reports. Schedule 4.1(t) to be attached hereto (the “**Environmental Reports Schedule**”) sets forth a correct and complete list of all environmental assessments, reports and studies relating to the Property in the possession or control of Seller, any Affiliate of Seller or any Hotel Manager (the “**Environmental Reports**”), and Seller has delivered to Buyer true and complete copies of the Environmental Reports. The Environmental Reports Schedule shall delivered to Buyer no later than five (5) days after the Effective Date.

(u) Insurance. Schedule 4.1(u) attached hereto sets forth a correct and complete list of each insurance policy maintained by Hotel Owners or Operating Tenants (but expressly excluding any insurance policies maintained by any Hotel Manager) with respect to the Individual Hotels. None of Seller, any of its applicable Target Entities, Target Subsidiaries or any of its applicable Hotel Owners or Operating Tenants have received any written notice of a breach or default under any such insurance policy which has not been cured or dismissed, or the cancellation of such insurance policy.

(v) Transactions with Affiliates. Other than the Contracts listed on Schedule 4.1(v) attached hereto, there are no other Contracts between one or more Target Entities or Target Subsidiaries, on the one hand, and any Seller or Affiliate of Seller (other than the Target Group), on the other hand.

(w) Absence of Certain Changes. Since June 30, 2020 and taking into account the current COVID-19 pandemic and any corresponding COVID-19 Measures in effect, (a) the business of the Target Group has been conducted in the ordinary course of business consistent with past practice, and (b) there has been no change, event or development that would reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(x) No Undisclosed Liabilities. The Target Group does not have any material liabilities or obligations other than such liabilities and obligations (i) set forth on or reserved against in the Financial Statements, (ii) arising in the ordinary course of business since June 30, 2020, (iii) that are executory obligations arising in the ordinary course of business under any Contract (and not as a result of any breach thereof), and (iv) contained in any Loan Documents or any Pending Loan Modification.

(y) Compliance with Applicable Law. Each of the Target Entities and Target Subsidiaries is, and for the past three (3) years has been, in compliance in all material respects with all Applicable Law and since June 30, 2020 has received no written notice of any material failure or alleged material failure by any Target Entity or Target Subsidiary to comply with any Applicable Law, except for the ADA Issues and except for any failure of compliance that would not reasonably be expected, individually or in the aggregate, to result in material liability to the Target Group or otherwise materially interfere with the conduct of the Target Group’s business.

(z) Cash Position; No Leakage. Attached hereto as Schedule 4.1(z) is a spreadsheet setting forth, with respect to each Hotel Portfolio, a true and correct description of (i) the amount of cash and cash equivalents held by the Target Entities applicable to such Hotel Portfolio and (ii) the amount lender-held reserves related to each such Hotel Portfolio, in each case, in the Acquired Accounts as of the dates set forth therein. Since the earliest date set forth in Schedule 4.1(z) attached hereto applicable to each such Hotel Portfolio, Target Entity and/or Target Subsidiary, none of the Target Entities or Target Subsidiaries have incurred, assumed, suffered to exist or otherwise become liable for any Leakage.

(aa) No Transaction Bonuses. No member of the Target Group has incurred any fees, costs, expenses or payments related to any transaction bonus, discretionary bonus, change-of-control payment, retention or other compensatory payments or similar arrangement made to any Person (other than Seller's Broker and certain retention or incentives fees to Employees) as a result of the execution of this Agreement or in connection with the transactions contemplated hereby (whether payable prior to, upon or after the Closing).

(ab) Taxes.

(i) All income and other material Tax Returns required to be filed by the Target Group have been timely filed (taking into account validly obtained extensions) and all such Tax Returns are true, correct and complete in all material respects. No claim has ever been received by Seller or any member of the Target Group from a Governmental Authority in a jurisdiction where a Tax Return is not filed by, or on behalf of, any member of the Target Group that such member of the Target Group is or may be subject to taxation in such jurisdiction with respect to Tax that is the subject of such Tax Return, other than such claims that have been fully resolved with no outstanding liability of any member of the Target Group for Taxes. All income and other material Taxes (whether or not shown on any Tax Return) that are due and payable by any member of the Target Group have been timely paid. The unpaid Taxes of the Target Group did not, as of December 31, 2019, materially exceed the accruals for current Tax liability (excluding any accrual or reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Financial Statements. Since December 31, 2019, no member of the Target Group has incurred any material Tax liability outside of the ordinary course of business.

(ii) All material Taxes that any member of the Target Group has been required by Applicable Law to withhold or to collect have been duly withheld and collected and have been timely paid to the appropriate Governmental Authority as required by Applicable Law.

(iii) There is no audit, examination or other proceeding in progress or pending or, to the knowledge of Seller or any member of the Target Group, threatened in writing with respect to Taxes for which any member of the Target Group may have any liability. No deficiency with respect to Taxes has been claimed, proposed, asserted or assessed by any Governmental Authority against Seller or any member of the Target Group with respect to material Taxes for which any member of the Target Group may be liable

(except for deficiencies or adjustments that have been settled, withdrawn or fully satisfied by payment, in each case, with no liability for any member of the Target Group), and no written notice thereof has been received. There are no requests for rulings or similar determinations in respect of any material Tax in respect of any member of the Target Group pending between Seller or any member of the Target Group and any Governmental Authority.

(iv) There are no material Liens for Taxes upon any assets of any member of the Target Group, other than statutory Liens for current Taxes not yet due and payable.

(v) No member of the Target Group has any material liability for Taxes of another Person under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign Applicable Law), as a successor or transferee. No member of the Target Group is party to any Tax sharing, Tax indemnification, Tax allocation or similar agreement (other than any agreement entered into in the ordinary course of business and no significant purpose of which relates to Taxes) pursuant to which it will have any obligation to make any payments after the Closing to any Person.

(vi) Neither Seller nor any member of the Target Group has waived any statute of limitations in respect of material Taxes for which a member of the Target Group may be liable, agreed to any extension of time for filing any Tax Return that has not been filed (other than automatic extensions not requiring the consent of any Governmental Authority), or agreed to any extension of time for the assessment or collection of any Tax for which a member of the Target Group may be liable, which waiver or extension remains in effect, and no request to so waive or extend is outstanding.

(vii) No member of the Target Group will be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any Tax period beginning after the Closing Date as a result of (i) any change in method of accounting made prior to the Closing Date, (ii) use of an improper method of accounting for a Tax period ending on or prior to the Closing Date, (iii) any closing agreement described in Section 7121 of the Code (or any similar provision of state, local or foreign Applicable Law) entered into prior to the Closing, (iv) any installment sale or open transaction disposition made prior to the Closing, in each case, other than in the ordinary course of business, (v) any deferred revenue accrued, or other prepaid or advanced amount received, in each case, prior to the Closing, in each case, other than in the ordinary course of business, or (vi) any election under Section 108(i) of the Code (or any similar provision of state, local or foreign Applicable Law).

(viii) No member of the Target Group has participated in any “listed transaction” within the meaning of Treasury Regulations Section 1.6011-4(b)(2).

(ix) Each member of the Target Group is, and has been at all times since its formation, properly classified as an entity disregarded as separate from its owner within the meaning of Treasury Regulations Section 301.7701-3(b). No election has been made

to classify any member of the Target Group as an association taxable as a corporation for U.S. federal income tax purposes.

No representation or warranty contained in this Agreement that relates to Taxes, other than Section 4.1(bb)(vii) above and Section 4.1(bb)(ix) above, shall be deemed to apply directly or indirectly with respect to any taxable period (or portion thereof) after the Closing Date and no representation or warranty contained in this Agreement that relates to Taxes, shall be deemed to apply regarding the existence, amount, expiration date or limitations on or availability of any tax attributes of any member of the Target Group.

For purposes of this Agreement and any Closing Documents, whenever the phrases “to the best of Seller’s knowledge”, or the “knowledge” of Seller or words of similar import are used, they shall be deemed to mean, and shall be limited to, and based solely upon, the knowledge, assuming reasonable independent inquiry or investigation having been made, of the Seller Knowledge Individuals. The Seller Knowledge Individuals will have no personal liability under this Agreement or otherwise with respect to the Membership Interests or the Property. Seller does not represent or warrant that any particular Hotel Contract will be in force or effect as of the Closing Date or that any party to a Hotel Contract (other than Seller or the applicable Hotel Owner) will not be in default under its Hotel Contract as of the Closing Date, unless such party’s default arises from a breach by Seller of its obligations under this Agreement.

**Secton 4.2. Representations and Warranties of Buyer.** Buyer makes the following representations and warranties to Seller as of the Effective Date, each of which shall be deemed remade as of the Closing Date:

(a) Formation; Binding Agreement. Buyer is duly organized, validly existing and in good standing under the laws of its state of formation and is or will prior to the Closing be duly qualified to transact business in each State in which the Property is located; and the execution, delivery and performance of this Agreement and all Closing Documents to be executed and delivered by Buyer pursuant to this Agreement are within the organizational power of Buyer and have been or will prior to the Closing be duly authorized.

(b) Bankruptcy Actions. Buyer has not filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Buyer’s creditors or suffered the appointment of a receiver to take possession of any of Buyer’s property. As of the Closing Date, Buyer will have sufficient funds to pay the Purchase Price and to consummate the transactions contemplated by this Agreement.

(c) Adverse Actions and Proceedings. Buyer has received no written notice of any action or proceeding or litigation pending or threatened against Buyer which Buyer reasonably expects would affect the validity or enforceability of this Agreement or any of the Closing Documents to be executed and delivered by Buyer pursuant to this Agreement.

(d) Legal Counsel. Buyer (i) is an experienced investor, (ii) is represented by competent counsel, and (iii) understands and accepts the terms and provisions of this Agreement,

including, without limitation, all releases, waivers, limitations, and assumptions of risk and liability set forth in this Agreement.

**Section 4.3. OFAC.** Buyer and Seller each represent and warrant to the other, and to Escrow Agent, that (a) such Party is not knowingly acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, “Specially Designated National and Blocked Person,” or other banned or blocked person, entity, or nation pursuant to any law that is enforced or administered by the Office of Foreign Assets Control, or engaging in, instigating or facilitating this transaction for or on behalf of any such person, group, entity or nation; (b) such Party is not engaging in this transaction, directly or indirectly, in violation of any Applicable Law relating to drug trafficking, money laundering or predicate crimes to money laundering; and (c) none of the funds of such Party to be utilized in this transaction have been or will be derived from any unlawful activity with the result that such Party or the Membership Interests or the Property is subject to seizure, forfeiture or other such remedy or that this Agreement or the transactions hereunder are or will be in violation of law. The provisions of this Section 4.3 will survive the Closing or any earlier termination of this Agreement.

**Section 4.4. Inaccuracy Discovered Prior to the Closing.** Neither Party may rely on any representation or warranty made by one Party (the “**Maker**”) to the other Party (the “**Recipient**”) in this Agreement or in any Closing Document to the extent that any Seller Knowledge Individual or any Buyer Knowledge Individual has, receives or obtains actual knowledge prior to the Closing that such representation or warranty was, is or has become inaccurate or incorrect in any material respect (the “**Inaccuracy**”). If the Recipient determines prior to or at the Closing that an Inaccuracy exists, then the Recipient will promptly give written notice to the Maker of the Inaccuracy (such notice, an “**Inaccuracy Notice**”). The Maker will have the right, but not the obligation, to cure the Inaccuracy within fifteen (15) days of the Maker’s receipt of an Inaccuracy Notice (and if reasonably required, the Closing will be extended to allow for such cure). If Seller is the Recipient, then regardless of whether such cure is attempted or effected by Buyer and except as otherwise expressly set forth in Section 6.2 hereof, Seller may terminate this Agreement by giving Buyer written notice of Seller’s termination of this Agreement within fifteen (15) days following the end of Buyer’s fifteen (15)-day cure period (but in any event, prior to the Closing). If Seller elects to terminate this Agreement pursuant to the foregoing, (a) unless such termination arose for an Inaccuracy that was not an intentional Inaccuracy the Deposit will be delivered to Seller, (b) neither Party will have any further rights or obligations under this Agreement except for Obligations Surviving Termination. If Seller does not elect to so terminate this Agreement, Seller shall be conclusively deemed to have elected to waive the Inaccuracy and all effects or consequences thereof, and Buyer will have no liability whatsoever with respect to the Inaccuracy. If Buyer is the Recipient, subject to the satisfaction of the conditions to the Closing set forth in Section 5.3 hereof (including Section 5.3(b) hereof), Buyer shall be obligated to proceed to the Closing but thereafter may assert a claim for breach of representation under Section 6.3(b) hereof without waiving its rights hereunder so long as Buyer has notified Seller in writing of the Inaccuracy prior to the Closing and Seller has not cured the Inaccuracy prior to the commencement by Buyer of any such claim, subject to the aggregate Threshold Amount and the aggregate Maximum

Amount set forth in Section 6.3(b) hereof. In furtherance of the foregoing, each Party agrees that the Maker will have no liability with respect to any representation or warranty to the extent that, prior to the Closing, the Recipient has, receives or obtains actual knowledge of an Inaccuracy (from whatever source, including, without limitation, from disclosure by or on behalf of the Maker) and the Recipient nevertheless proceeds to close the purchase or sale of the Membership Interests under this Agreement without terminating this Agreement (in the case of Seller) or providing written notice of such Inaccuracy (in the case of Buyer) as provided under this Section 4.4.

**Section 4.5. Survival of Representations and Warranties.** Subject in all respects to Section 4.4 above and except in the case of fraud, a Party may rely on any representation or warranty made by the other Party in this Agreement or any Closing Document only until (x) the date that is two (2) years following the date of Closing with respect to the Fundamental Representations or the representations and warranties set forth in Section 4.1(bb), and with respect to representations and warranties made by Buyer in this Agreement or any Closing Document or (y) until the date that is six (6) months following the date of the Closing with respect to all other representations and warranties made by Seller or Buyer in this Agreement or any Closing Document (each such date described in clause (x) and clause (y), each, an “**Expiration Date**”). Any Claims for, relating to or arising from an Inaccuracy are limited in all respects to any actual damages the Recipient sustained from the Recipient’s reasonable reliance upon the representation or warranty. In no event will either Party be liable to the other Party for any consequential, special or punitive damages suffered by a Party as a result of any Inaccuracy, except, in the case of consequential damages, to the extent they were reasonably foreseeable if and solely to the extent the applicable jurisdiction characterizes foreseeable consequential damages as “actual” damages. If an Inaccuracy is discovered after the Closing and the Recipient desires to pursue any remedy against the Maker with respect to such Inaccuracy, then the Recipient must give the Maker a Claim Notice detailing the Inaccuracy upon or prior to the applicable Expiration Date. Any Claims that a Recipient might otherwise have or have had against a Maker with respect to any Inaccuracy, whether such Inaccuracy or such Claims are known or unknown, will not be valid or effective if a Claim Notice detailing the Inaccuracy has not been given to the Maker on or prior to the applicable Expiration Date. For the avoidance of doubt, on the applicable Expiration Date, each Party shall be deemed to be fully discharged and released (without the need for separate releases or other documentation) from any liability or obligation to the other Party (and to all its Affiliates) with respect to any Inaccuracy, known or unknown, not detailed in a Claim Notice delivered to the other Party on or prior to the applicable Expiration Date. Further, any Claims that either Party may have at any time against the other Party for any matter with respect to which a Claim Notice has been given to the other Party on or prior to the applicable Expiration Date may be the subject of subsequent litigation brought by the claiming Party, but only if such litigation is commenced against and duly served upon the other Party on or prior to the date that is ninety (90) days following the applicable Expiration Date (the “**Claim Bar Date**”). For the avoidance of doubt, on the Claim Bar Date, each Party shall be deemed to be fully discharged and released (without the need for separate releases or other documentation) from any liability or obligation to the other Party with respect to any Claim, known or unknown, except for any Claim for which both (a) a Claim Notice was timely delivered as provided above, and (b) litigation upon the Claim has been commenced by the

claiming Party and duly served upon the other Party prior to or upon the Claim Bar Date, except as otherwise agreed by the Parties in writing or in the case of fraud. This Section 4.5 (and Section 4.4 above) collectively provide the sole remedies of each Party with respect to any Inaccuracy and each Party expressly waives any other rights or remedies such Party might otherwise have at law or in equity with respect to any Inaccuracy in any representation or warranty of the other Party.

## ARTICLE 5

### CLOSING, CLOSING CONDITIONS and DELIVERIES

**Section 5.1. Closing.** The Closing and the delivery of all items to be delivered by the Parties at the Closing will be performed through an escrow closing conducted by Escrow Agent on the Closing Date. Except as may otherwise be expressly provided in this Agreement, the Closing Date may not be accelerated or extended without the prior written approval of both Seller and Buyer; provided, however, if any Loan Release and Modification, Franchisor's Consent, Marriott Manager's Consent or Ground Lessor's Consent is not obtained by the Consent Approval Date, and provided such Party is continuing to act in good faith to effectuate a Closing, each of Buyer and Seller shall have a one-time right to elect to extend the Closing Date with respect to the Membership Interests for the applicable Hotel Portfolios for which the same has not been obtained to the Consent Approval Outside Date in order to continue to seek the same, so long as such Party delivers written notice to the other Parties of its election to extend at least one (1) Business Day prior to the Consent Approval Date. Notwithstanding anything to the contrary set forth in this Agreement, Seller and Buyer may mutually agree to accelerate the Closing Date for the Membership Interests in the Hotel Owners of one or more Hotel Portfolios (but less than all of the Hotel Portfolios) upon the closing conditions set forth in Sections 5.2 and 5.3 below being satisfied for such Membership Interests to a mutually agreeable date notwithstanding that the closing conditions set forth in Sections 5.2 and 5.3 below are not satisfied for the Membership Interests in the Hotel Owners of all of the Hotel Portfolios at such time.

**Section 5.2. Seller Closing Conditions.** The obligation of Seller to effect the Closing as contemplated by this Agreement and to deliver the documents and instruments required under Section 5.4(a) hereof is subject to the fulfillment, as of the Closing, of the following conditions, any one or more of which may be waived in writing by Seller in its sole and absolute discretion:

(a) **Purchase Price.** Buyer shall have delivered to Escrow Agent (i) the Purchase Price, as adjusted in accordance with this Agreement, and (ii) irrevocable directions to deliver the same to Seller on the Closing Date.

(b) **No Injunction or Action.** No order, statute, rule, regulation, executive order, stay, decree, judgment or injunction shall have been enacted, entered, promulgated or enforced by any court or other Governmental Authority which prohibits or prevents the consummation of the transactions contemplated by this Agreement which has not been vacated, dismissed or withdrawn prior to the Closing Date. Seller shall use its commercially reasonable efforts to have any of the foregoing vacated, dismissed or withdrawn by the Closing Date.

(c) Representations and Warranties of Buyer. The representations and warranties made by Buyer in Article 4 above shall be true and correct in all material respects when made and on and as of the Closing Date (except for any such representations or warranties that, by their terms, speak only as of a specific date or dates, in which case such representations and warranties shall be true and correct in all material respects, on and as of such specified date or dates), and Seller shall have received a certificate to that effect dated as of the Closing Date and signed by an officer of Buyer.

(d) Payment and Performance of the Obligations of Buyer. Buyer shall have paid and performed in all material respects all obligations required under this Agreement to be paid or performed by Buyer on or before the Closing Date, and Seller shall have received a certificate to that effect dated as of the Closing Date and signed by an officer of Buyer.

(e) Closing Deliveries. Buyer shall have completed all of the deliveries required of Buyer in Section 5.4(b) hereof and all such deliverables shall be substantially in the form required hereby, or if no form is required hereby, then in form and substance reasonably satisfactory to Seller and its counsel.

(f) Loan Release and Modification and Release of Seller Parties. Subject only to the occurrence of the Closing, the Loan Release and Modification has been consummated with respect to each Existing Loan in accordance with the terms and conditions set forth in Section 1.3 hereof, including, without limitation, the delivery of the Loan Release and Modification Documents, Existing Lender's Consents, and either the Existing Loan Release Documents or a Buyer Indemnity with respect to each Existing Loan (subject to the terms of Section 1.3(d) above with respect to the Innkeepers Hotel Portfolio).

(g) Franchise Agreements. Receipt of, with respect to each Individual Hotel subject to a Franchise Agreement, (i) the Franchise Approval Documents, (ii) Franchisor's Consent, and (iii) either the Franchisor Release or a Buyer Indemnity with respect to each Franchisor Agreement.

(h) Marriott Management Agreements. Receipt of, with respect to each Marriott Management Agreement, (i) the Marriott Manager Approval Documents, (ii) Marriott Manager's Consent, and (iii) to the extent applicable, either the Marriott Manager Release or a Buyer Indemnity with respect to each Marriott Management Agreement.

(i) Ground Leases. Receipt of, with respect to each Ground Lease as agreed to by the Parties, (i) Ground Lease Approval Documents and (ii) Ground Lessor's Consent.

If each of the conditions to Buyer's obligation to consummate the Closing as set forth in Section 5.3 below have been fulfilled and the Closing contemplated by this Agreement shall not occur as a result of Buyer's breach of this Agreement such that the conditions described in Section 5.2(a), Section 5.2(c) (with respect to any intentional breach of any representation or warranty made by Buyer in Article 4 above), Section 5.2(d) or Section 5.2(e) above as of the Closing Date (as may be extended as expressly provided in this Agreement) would not be satisfied at the Closing, then Buyer shall be deemed to be in default under this Agreement, and

Seller shall have the right to demand that the Deposit be delivered to Seller, in accordance with the provisions of Section 6.2 hereof. If the conditions described in Section 5.2(b), Section 5.2(c) (with respect to any non-fulfillment other than any intentional breach of any representation or warranty made by Buyer in Article 4 above), Section 5.2(f), Section 5.2(g), Section 5.2(h), or Section 5.2(i) above (subject to Buyer's compliance with Section 1.3, Section 3.5, and Section 3.6 above) are not fulfilled as of the Closing Date (as may be extended as expressly provided in this Agreement), then Seller shall have the right to terminate this Agreement, whereupon this Agreement, and the obligations of the Parties hereunder shall terminate without further action of any party (and no Party shall have any further obligation in connection herewith except for Obligations Surviving Termination), and the Deposit shall be released to Buyer by Escrow Agent. Notwithstanding the foregoing, if any of the conditions are not satisfied because of a default by Buyer of its obligations under this Agreement or due to any action by, or at the direction of, Buyer with the intent or purpose of frustrating any closing condition, then Seller shall have the right to exercise the remedies set forth in Section 6.2 hereof.

**Section 5.3. Buyer Closing Conditions.** The obligation of Buyer to effect the Closing as contemplated by this Agreement and to deliver the documents and instruments required under Section 5.4(b) hereof is subject to the fulfillment, as of the Closing, of the following conditions, any one or more of which may be waived in writing by Buyer in its sole and absolute discretion:

a. No Injunction or Action. No order, statute, rule, regulation, executive order, stay, decree, judgment or injunction shall have been enacted, entered, promulgated or enforced by any court or other Governmental Authority which prohibits or prevents the consummation of the transactions contemplated by this Agreement which has not been vacated, dismissed or withdrawn prior to the Closing Date. Buyer shall use its commercially reasonable efforts to have any of the foregoing vacated, dismissed or withdrawn by the Closing Date.

b. Representations and Warranties of Seller. (i) All representations and warranties made by Seller in Article 4 above (other than with respect to Fundamental Representations and the representations and warranties set forth in Section 4.1(w)(b) above, and without giving effect to any limitation or qualification as to materiality or Material Adverse Effect or similar concept) shall be true and correct when made and on and as of the Closing Date (except for any such representations or warranties that, by their terms, speak only as of a specific date or dates, in which case such representations and warranties shall be true and correct, on and as of such specified date or dates), except, in each case, where the failure of such representations and warranties to be so true and correct on and as of the Closing Date has not had, and would not reasonably be expected to have, a Material Adverse Effect, and (ii) all Fundamental Representations and the representations and warranties set forth in Section 4.1(w)(b) above shall be true and correct in all respects when made and on and as of the Closing Date (except for any such representations or warranties that, by their terms, speak only as of a specific date or dates, in which case such representations and warranties shall be true and correct, on and as of such specified date or dates), and Buyer shall have received a certificate to that effect dated as of the Closing Date and signed by an officer of Seller.

c. Performance of the Obligations of Seller. Seller shall have performed in all material respects all obligations required under this Agreement to be performed by it on or before the Closing Date, and Buyer shall have received a certificate to that effect dated as of the Closing Date and signed by an officer of Seller.

d. Closing Deliveries. Seller shall have completed all of the deliveries required of Seller in Section 5.4(a) hereof and all such deliverables shall be substantially in the form required hereby, or if no form is required hereby, then in form and substance reasonably satisfactory to Buyer and its counsel.

e. Loan Release and Modification. Subject only to the occurrence of the Closing, the Loan Release and Modification has been consummated with respect to each Existing Loan in accordance with the terms and conditions set forth in Section 1.3 hereof, including, without limitation, the delivery of the Loan Release and Modification Documents and Existing Lender's Consents.

f. Franchise Agreements. Receipt of, with respect to each Individual Hotel subject to a Franchise Agreement, (i) the Franchise Approval Documents and (ii) Franchisor's Consent.

g. Hotel Management Agreements. Receipt of (i) with respect to each Marriott Management Agreement, (x) the Marriott Manager Approval Documents, (y) Marriott Manager's Consent, and (ii) with respect to all other Individual Hotels subject to a Hotel Management Agreement, evidence of termination of the Terminated Management Agreements.

h. Ground Leases. Receipt of, with respect to each Ground Lease agreed to by the Parties, (i) Ground Lease Approval Documents and (ii) Ground Lessor's Consent.

If each of the conditions to Seller's obligation to consummate the Closing as set forth in Section 5.2 above have been fulfilled and the Closing contemplated by this Agreement shall not occur as a result of Seller's breach of this Agreement such that the conditions described in Section 5.3(b) (with respect to any intentional breach of any representation or warranty made by Seller in Article 4 above), Section 5.3(c), or Section 5.3(d) above as of the Closing Date (as may be extended as expressly provided in this Agreement) would not be satisfied at the Closing, then Seller shall be deemed to be in default under this Agreement, and Buyer shall have the right to pursue any of the remedies to which it may be entitled pursuant to Section 6.1 hereof. If the conditions described in Section 5.3(a) or Section 5.3(b) (with respect to any non-fulfillment other than any intentional breach of any representation or warranty made by Seller in Article 4 above), Section 5.3(e), Section 5.3(f), Section 5.3(g), or Section 5.3(h) above are not fulfilled as of the Closing Date (as may be extended as expressly provided in this Agreement), then Buyer shall have the right to terminate this Agreement, whereupon this Agreement, and the obligations of the Parties hereunder shall terminate without further action of any Party (and no Party shall have any further obligation in connection herewith except for Obligations Surviving Termination), and the Deposit shall be released to Buyer by Escrow Agent. Notwithstanding the foregoing, if any of the conditions are not satisfied because of a default by Seller of its obligations under this Agreement or due to any action by, or at the direction of, Seller with the intent or purpose of frustrating any

closing condition, then Buyer shall have the right to exercise the remedies set forth in Section 6.1 hereof.

Unless specifically set forth herein to the contrary, Seller shall not be responsible for obtaining (or causing any Hotel Owner to obtain) the consent of any party to the assignment of any Existing Loan, Ground Lease, Franchise Agreement, Hotel Management Agreement, Hotel Contract, environmental report, engineering report, guaranty, warranty, or to the assignment of any other document or agreement to Buyer and, in clarification thereof, if any such consent is required by any party to such document or agreement and it is not obtained by the Closing Date, Seller shall not be responsible for assigning (or causing any Hotel Owner to assign) such document or agreement to Buyer and the failure to so assign such document or agreement shall not be considered a default hereunder or a failure to satisfy any condition hereof.

**Section 5.4. Closing Documents.**

(a) Seller's Closing Deliveries. On or before the Closing Date (except as otherwise set forth below), Seller will deposit, or cause to be deposited, the following into escrow with Escrow Agent (except as otherwise set forth below) with respect to each Membership Interest, Individual Hotel or Hotel Portfolio (as applicable), with all documents having been duly executed and, if to be recorded, acknowledged, by such party:

(i) an assignment and assumption of membership interests in the form attached hereto as Exhibit C, without recourse, representation or warranty except as set forth herein or therein, with respect to the applicable Membership Interests for each Hotel Portfolio to be conveyed to Buyer (each, an “**Assignment and Assumption Agreement**”);

(ii) an affidavit from each Selling Entity (or if it is a disregarded entity for U.S. federal income tax purposes, the Person treated as owning all of such Selling Entity's assets for U.S. federal income tax purposes) pursuant to Section 1445(b) (2) of the Code certifying that such Selling Entity (or such Person, as applicable) is not a “foreign person” within the meaning of Section 1445(f)(3) of the Code, in each case, dated as of the Closing Date and in form and substance reasonably satisfactory to Buyer;

(iii) an IRS Form W-9 (or such other documentation permitted under the Code, Treasury Regulations or IRS guidance in effect as of the Closing Date) duly completed and executed by THL Seller to establish an exemption from withholding under Section 1446(f) of the Code;

(iv) a counterpart to the Loan Release and Modification Documents for any Existing Loan for which a Loan Release and Modification is being consummated;

(v) a counterpart to the Franchise Approval Documents;

(vi) a counterpart to the Marriott Manager Approval Documents;

(vii) a counterpart to a termination of each Terminated Management Agreement;

(viii) a counterpart to the Ground Lease Approval Documents;

(ix) a counterpart to a guaranty executed by from one or more creditworthy entities proposed by Seller and reasonably acceptable to Buyer, guaranteeing Seller's obligations under Section 3.8 hereof and Section 4.1(z) hereof in form and substance reasonably acceptable to Buyer;

(x) the originals, or, if unavailable (and to the extent not previously provided to Buyer), copies of all Permits (other than Excluded Permits) in the possession of Seller or any Hotel Owner, if any, including, without limitation, the current certificates of occupancy for the Improvements; provided, however, that the existence of such Permits at the Individual Hotels on the Closing Date shall constitute delivery to Buyer;

(xi) to the extent not previously provided to Buyer, copies of the Material Contracts, the Hotel Contracts, the Hotel Books and Records, the Franchise Agreements, and other Miscellaneous Hotel Assets (to the extent not specifically referred to above and to the extent the same are of a nature that are capable of being physically delivered at the Closing) which are in Seller's or the applicable Hotel Owner's possession; provided, however, that the existence of such Material Contracts, Hotel Contracts, Hotel Books and Records, and other Miscellaneous Hotel Assets at the Individual Hotels on the Closing Date shall constitute delivery to Buyer;

(xii) notice to the counter-parties to the Hotel Contracts and in accordance with the Hotel Contracts, advising of the Closing and directing all future communications be sent to Buyer;

(xiii) all keys, lock or safe combinations or codes relating to the operation of the Individual Hotels and forming part of the Personal Property; provided, however, that the existence of such items at the Individual Hotels on the Closing Date shall constitute delivery to Buyer;

(xiv) a non-imputation affidavit, in a form reasonably acceptable to Seller and Title Company;

(xv) an "owner's affidavit" or comparable assurance to Title Company regarding work performed and other customary matters, in a form reasonably acceptable to Seller and Title Company;

(xvi) such transfer tax forms or withholding certificates as required by state and local authorities;

(xvii) such disclosures, notices and reports (including tax reporting and withholding certificates) as are required of Seller by applicable state and local law in connection with the conveyance of the Membership Interests; and

(xviii) such other documents as may be specifically required under this Agreement or by Title Company, and such other customary documents as are reasonably necessary and appropriate to effect the Closing and are reasonably acceptable to Seller.

(b) Buyer's Closing Deliveries. On or before the Closing Date, Buyer will deposit, or cause to be deposited, at its sole cost and expense, the following into escrow with Escrow Agent (except as otherwise set forth below) with respect to each Individual Hotel or Hotel Portfolio (as applicable), with all documents having been duly executed and, if to be recorded, acknowledged, by Buyer:

(i) the Purchase Price to Escrow Agent, as adjusted in accordance with this Agreement;

(ii) counterparts to the Assignment and Assumption Agreements;

(iii) a counterpart to the Loan Release and Modification Documents for any Existing Loan for which a Loan Release and Modification is being consummated and, to the extent required pursuant to Section 1.3(d) hereof, each Buyer Indemnity;

(iv) a counterpart to the Franchise Approval Documents and, to the extent required pursuant to Section 3.5 hereof, each Buyer Indemnity;

(v) a counterpart to the Marriott Manager Approval Documents and, to the extent required pursuant to Section 3.5 hereof, each Buyer Indemnity;

(vi) a counterpart to the Ground Lease Approval Documents;

(vii) such resale certificates or other exemption certificates available under Applicable Law to evidence that no sales tax shall be due in connection with the transfer of the Personal Property which constitutes inventory that is intended to be resold;

(viii) such transfer tax forms or withholding certificates as required by state and local authorities;

(ix) such disclosures, notices and reports (including tax reporting and withholding certificates) as are required of Buyer by applicable state and local law in connection with the conveyance of the Membership Interests;

(x) such evidence as Seller or Title Company may reasonably request confirming Buyer's authority to execute and deliver the documents required of Buyer and to consummate the transactions contemplated by this Agreement; and

(xi) such other documents as may be specifically required under this Agreement or by Title Company, and such other customary documents as are reasonably necessary and appropriate to effect the Closing and are reasonably acceptable to Buyer.

(c) The Parties agree that the form documents attached as Exhibits to this Agreement are acceptable to accomplish the conveyances contemplated by this Agreement.

**Section 5.5. Closing Costs.** At the Closing, Seller will pay (i) fifty percent (50%) of all real property transfer taxes, deed stamps, conveyance taxes, documentary stamp taxes and other taxes or charges payable as a result of the conveyance of the Membership Interests (“**Transfer Taxes**”); (ii) fifty percent (50%) of the fees and costs due Escrow Agent for its services; and (iii) all other costs this Agreement expressly requires Seller to pay. At the Closing, Buyer will pay (i) any costs for any Title Policies, including title endorsements or other coverage requested by Buyer; (ii) the cost of any new or updated surveys obtained by Buyer; (iii) fifty percent (50%) of the fees and costs due Escrow Agent for its services; (iv) the cost of recording any Closing Documents and all other recording charges; (v) fifty percent (50%) of all Transfer Taxes; and (vi) all other costs this Agreement expressly requires Buyer to pay. Except as otherwise expressly provided for in this Agreement, Seller and Buyer will each be solely responsible for and bear all of their own respective costs and expenses, including, without limitation, all expenses of legal counsel, accountants, and other advisors and consultants incurred at any time in connection with pursuing or consummating the transactions contemplated by this Agreement (it being understood and agreed that any such amounts for which any Target Entity or Target Subsidiary is liable under this Agreement shall be for the account of Seller, and Seller shall promptly reimburse Buyer for any such amounts required to be paid by any Target Entity or Target Subsidiary following the Closing). Any other closing costs and charges not specifically designated as the responsibility of either Party in this Agreement will be paid by the Parties with respect to each Membership Interest or the applicable Individual Hotel according to the usual and customary allocation/apportionment of such costs in the jurisdiction in which such applicable Individual Hotel is located, unless otherwise agreed to by the Parties in writing. The provisions of this Section 5.5 will survive the Closing or any earlier termination of this Agreement.

**Section 5.6. Brokers.** The Parties acknowledge the involvement in this transaction of the “Seller’s Broker” named as such in the Summary of Terms (“**Seller’s Broker**”), whose commission if the Closing occurs will be the responsibility of Seller pursuant to a separate agreement between Seller’s Broker and Seller. Except for Seller’s Broker, Buyer and Seller each state and confirm to the other that no broker, finder or comparable Person was utilized in arranging or bringing about this transaction and that there are no claims or rights for brokerage fees, commissions, finders’ fees, or comparable fees or compensation due to any other Person in connection with the transactions contemplated by this Agreement. If any other Person asserts a claim for a commission, fee or other compensation based upon any contact, dealings or communication with Buyer or Seller, then the Party through whom such Person makes its claim will indemnify, defend and hold harmless the other Party from such claim and any and all costs, damages, liabilities or expenses (including, without limitation, reasonable attorneys’ fees and disbursements) incurred by the other Party in connection with such claim. This Section 5.6 is intended only to set forth the agreements of the Parties and in no event shall Seller’s Broker be

deemed to be a third-party beneficiary of, or have any rights or obligations under, this Agreement. The provisions of this Section 5.6 will survive the Closing or any earlier termination of this Agreement.

**Section 5.7. Tax Matters.**

(a) Transfer Taxes Tax Returns. Buyer shall prepare and timely file all Tax Returns and other documentation relating to Transfer Taxes as may be required under Applicable Law. Seller shall reasonably cooperate with Buyer in connection with such preparation and filing by Buyer (including by joining in the execution of any such Tax Return to the extent required under Applicable Law).

(b) Tax Returns. So long as Seller or its Affiliates would reasonably be expected to have any Tax liability for or with respect to any tax period (or portion thereof) ending on or before the Closing Date or an obligations to indemnify Buyer with respect to material Taxes under this Agreement, Buyer shall not, and shall not permit any of its Affiliates (including, after the Closing for the avoidance of doubt, the members of Target Group) to, in each case to the extent relating in whole or in part to any member of the Target Group, (a) amend, refile or otherwise modify any material Tax Return for any tax period (or portion thereof) ending on or before the Closing Date, (b) extend or waive, or cause to be extended or waived, any statute of limitations or other tax period for the assessment of any material Tax or material deficiency for Taxes related for any tax period (or portion thereof) ending on or before the Closing Date, (c) make or change any material Tax election or accounting method or practice with respect to, or that has retroactive effect to, for any tax period (or portion thereof) ending on or before the Closing Date, (d) enter into any voluntary disclosure agreement or similar process with respect to Taxes for any tax period (or portion thereof) ending on or before the Closing Date, in each case, without the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) Tax Proceedings. If, after the Closing Date, Buyer or Seller or any of their Affiliates, including any member of the Target Group receives notice of a claim, action, suit, arbitration, inquiry, audit, examination, proceeding or investigation by or before any Governmental Authority relating to the Taxes or Tax Returns of or with respect to any member of Target Group for any tax period (or portion thereof) ending on or before the Closing Date or if Seller may be liable under this Agreement or would reasonably be expected to be liable otherwise for any resulting Taxes (each, a “**Tax Contest**”), then within ten (10) days after receipt of such notice, the Party in initial receipt of such notice shall notify the other party in writing thereof. With respect to any Tax Contest for which Seller may be liable under this Agreement or would reasonably be expected to be liable otherwise for any resulting Taxes, so long as Buyer will be indemnified by Seller for the full amount of any and all Claims arising from such Tax Contest Seller may elect to control the conduct and resolution of any such Tax Contest by delivering to Buyer written notice of Seller’s election to control within ten (10) days after receipt of such Tax Contest; provided, that Seller (i) shall conduct the Tax Contest in good faith; (ii) shall keep Buyer reasonably informed regarding the status of such Tax Contest; (iii) shall allow Buyer to participate in such Tax Contest at Buyer’s own expense and (iv) shall not settle any

such Tax Contest (or portion thereof) without the prior written consent of Buyer, which consent shall not to be unreasonably withheld, conditioned or delayed. Should Seller not elect to control such Tax Contest or does not have a right to control such Tax Contest but may be liable under this Agreement or would reasonably be expected to be liable otherwise for any resulting Taxes, Buyer shall control such Tax Contest; provided that Buyer (i) shall conduct the Tax Contest in good faith; (ii) shall keep Seller reasonably informed regarding the status of such Tax Contest; (iii) shall allow Seller to participate in such Tax Contest at Seller's own expense and (iv) shall not (and shall not allow any member of the Target Group to) settle any such Tax Contest (or portion thereof) without the prior written consent of Seller, which consent shall not to be unreasonably withheld, conditioned or delayed.

**Section 5.8. Tax Appeal Proceedings.** Seller (or the applicable Hotel Owner or Operating Tenant) may (or cause any Hotel Owner or Operating Tenant to) commence without Buyer's approval or consultation any new real property tax appeals or protests or settle or compromise any ongoing tax appeals or protests, with respect to real property taxes due and payable for the tax year prior to the year in which the Closing Date occurs and/or the tax year in which the Closing Date occurs. The net proceeds from any proceedings for real property taxes due and payable in the tax year in which the Closing Date occurs shall be deposited into the Acquired Accounts, subject to the terms of the Loan Documents. This Section 5.8 shall survive the Closing or earlier termination of this Agreement.

**Section 5.9. Transition Services.** From and after the Closing Date until April 30, 2021 (or such other date as may be agreed to by the Parties) (such period, the "**TSA Term**"), Seller or its Affiliate will provide to Buyer transition services related to the preparation of the 2020 and 2021 audits for the Target Group, on customary terms to be agreed prior to the Closing Date, which terms shall (i) include that such services may be freely terminable by Buyer on thirty (30) days' prior written notice to Seller and (ii) be consistent with the proposal provided by Seller to Buyer prior to the Effective Date and otherwise mutually acceptable to the Parties. This Section 5.9 shall survive the Closing.

## ARTICLE 6

### DEFAULT; REMEDIES

**Section 6.1. Default by Seller.** If Seller fails to perform any material obligation of Seller under this Agreement prior to or at the Closing and does not cure such failure within fifteen (15) days after receipt of written notice from Buyer asserting such failure (such failure, if not cured within such period, being a "**Seller Default**"), then Buyer will be entitled to elect no later than sixty (60) days after the occurrence of such Seller Default, as Buyer's sole and exclusive remedy against Seller, either to (a) terminate this Agreement and receive (i) a return of the Deposit, (ii) reimbursement by Seller of an amount equal to Buyer's Transaction Expenses (which amount shall be as set forth in a written notice provided by Buyer to Seller), and (iii) payment of a fee in the amount of Ten Million and No/100 Dollars (\$10,000,000.00) (the "**Termination Fee**"), and, except for Obligations Surviving Termination, neither of the Parties will have any further liability or obligation under this Agreement, or (b) seek specific performance against Seller to compel Seller to perform any such material obligations, including

Seller's obligation to convey the Membership Interests to Buyer as required under this Agreement; provided, however, that as a condition precedent to Buyer's pursuit of any action for specific performance, Buyer (i) must not then be in material breach of any of Buyer's obligations under this Agreement and (ii) must maintain the full Deposit in escrow until and during the pendency of such action. Buyer shall be deemed to have elected to terminate this Agreement (as provided in clause (a) above) if Buyer does not file and serve Seller with a lawsuit asserting such cause of action within the foregoing sixty (60)-day period. The Parties have agreed that Buyer's actual damages in the event of a Seller Default would be extremely difficult or impracticable to determine. The Parties have therefore agreed that, considering all the facts and circumstances existing as of the Effective Date, if Buyer exercises its right under clause (a) above, the amount of the Termination Fee, together with the amount of Buyer's Transaction Expenses and the Deposit, is a reasonable estimate of the damages that Buyer would incur in the event of a Seller Default. Each Party specifically confirms the accuracy of the statements made above and the fact that each Party was represented by counsel who explained, at the time this Agreement was made, the consequences of this liquidated damages provision. The obligations of Seller under clause (a) above in this Section 6.1 shall survive the termination of this Agreement pursuant to clause (a) above.

**Section 6.2. Default by Buyer.** If Buyer fails to perform any material obligation of Buyer under this Agreement prior to or at the Closing and, with respect to any default other than a default of the obligation to effectuate the Closing (for which there shall be no cure period), does not cure such failure (a) within three (3) Business Days after receipt of written notice from Seller asserting such failure, if Buyer fails to timely pay or deposit any amount of money required to be paid or deposited by Buyer under this Agreement, or (b) within fifteen (15) days after receipt of written notice from Seller asserting such failure (such failure, if not cured within such period, being a "**Buyer Default**"), then Seller will be entitled, as Seller's sole and exclusive remedy against Buyer, to terminate this Agreement and receive the Deposit. The Parties have agreed that Seller's actual damages in the event of a Buyer Default would be extremely difficult or impracticable to determine. The Parties have therefore agreed that, considering all the facts and circumstances existing as of the Effective Date, the amount of the Deposit is a reasonable estimate of the damages that Seller would incur in the event of a Buyer Default. Each Party specifically confirms the accuracy of the statements made above and the fact that each Party was represented by counsel who explained, at the time this Agreement was made, the consequences of this liquidated damages provision. Nothing contained in this Section 6.2 shall limit or prevent Seller from enforcing Buyer's obligations and liabilities hereunder which are expressly stated to survive the termination of this Agreement.

**Section 6.3. Limitations on Liability.**

(a) Unless otherwise expressly stated in this Agreement, the provisions of Sections 6.1 and 6.2 above provide each Party's sole remedies for any failure by the other Party to perform its respective obligations under this Agreement prior to or at the Closing, but will not limit any rights or remedies that either Party may have for a breach or default by the other Party after the Closing with respect to those provisions of this Agreement, or those provisions of the Closing Documents, which are expressly stated to survive the Closing. However, in no event will

either Party be liable to the other Party for any consequential, special or punitive damages suffered by a Party as a result of any failure, breach or default, either before or after the Closing, by the other Party under this Agreement or any of the Closing Documents, and each Party expressly waives any right to recover any consequential, special or punitive damages caused to such Party by the other Party, except, in the case of consequential damages, to the extent they were reasonably foreseeable if and solely to the extent the applicable jurisdiction characterizes foreseeable consequential damages as “actual” damages.

(b) Notwithstanding anything to the contrary set forth in this Agreement or any of the Closing Documents, (i) except in the case of fraud, Seller and the Seller Parties will have no liability whatsoever with respect to any Claims suffered or incurred by, asserted or assessed against, or imposed upon Buyer or any Buyer Party under or with respect to this Agreement, the Membership Interests, the Property, or any Closing Document, except to the extent (and only to the extent) that the aggregate amount of such Claims exceeds the Threshold Amount; and (ii) except in the case of fraud or for any breach of, or inaccuracy in, any Seller Fundamental Representation or Section 4.1(z) above, in no event will the total aggregate liability of Seller and any Seller Parties for any or all Claims with respect to the Membership Interests of any Hotel Owner and the transactions contemplated by this Agreement and the Closing Documents exceed the Maximum Amount. For the avoidance of doubt, any “material”, “in all material respects”, “Material Adverse Effect” or similar qualifier will be disregarded for purposes of determining whether there is a breach, Inaccuracy or failure of any representation and warranty contained in Section 4.1 or Section 4.2 to be true and correct and the losses resulting from or arising out of or relating to such breach or Inaccuracy, including for purposes of Section 4.4 above.

(c) As security for any Claims made by Buyer against Seller following the Closing in accordance with this Agreement, on the Closing Date, Seller shall, at Seller’s election, (x) deposit or cause to be deposited a portion of the Purchase Price in an amount equal to the Maximum Amount (the “**Escrow Holdback Funds**”), (y) deliver to Escrow Agent a letter of credit in form and substance reasonably acceptable to Buyer from a financial institution reasonably acceptable to Buyer (a “**Letter of Credit**”), or (z) cause one more guaranties in form and substance reasonably acceptable to Buyer from one or more creditworthy entities proposed by Seller and reasonably acceptable to Buyer to be executed and delivered to Buyer (each, a “**Post-Closing Guaranty**”), which Post-Closing Guaranties shall only survive for six (6) months following the Closing (or longer if a Claim is pending). If Seller elects either clause (x) or clause (y) above, then the Escrow Holdback Funds or Letter of Credit, as the case may be, shall be held by Escrow Agent until the six (6)-month anniversary of the Closing Date and the portion of Escrow Holdback Funds or Letter of Credit that remains held by Escrow Agent (less any amount that is the subject of an unresolved Claim between Buyer and Seller) shall be disbursed by Escrow Agent to Seller. To the extent any such post-Closing claim is paid from the Escrow Holdback Funds or the Letter of Credit during the six (6)-month period after the Closing Date, Seller will not be obligated to replenish such amount or deliver or deposit any replacement Letter of Credit. To the extent any such post-Closing claim is paid from a source other than the Escrow Holdback Funds or the Letter of Credit during the six (6)-month period after the Closing Date, the amount of the required Escrow Holdback Funds or the Letter of Credit, as the case may be, will be reduced proportionately. For the avoidance of doubt, the parties acknowledge and agree

that the Escrow Holdback Funds and the Letter of Credit shall only be held by Escrow Agent until the six (6)-month anniversary of the Closing Date (or longer if a Claim is pending), notwithstanding that the Expiration Date with respect to certain covenants, indemnities, warranties and representations of Seller that expressly survive the Closing is two (2) years after the Closing.

**Section 6.4. Survival.** The terms, provisions and limitations of this Article 6 will survive the Closing or any earlier termination of this Agreement.

## ARTICLE 7

### MISCELLANEOUS

**Section 7.1. Notices.** Any notices required or permitted to be given under this Agreement must be given in writing and delivered to the recipient's notice address as provided in this Agreement either (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by a commercial overnight courier that guarantees next Business Day delivery and provides a delivery confirmation to the sender, or (d) by email; provided that, any emailed notice purporting to either terminate this Agreement or provide notice of an asserted failure, breach or default by the other Party must be followed by a hard copy thereof given within one (1) Business Day thereafter which is delivered in accordance with one of the preceding subsections (a) – (c), unless receipt of such hard copy is expressly waived by a reply email from the recipient Party in response to such notice email. The notice addresses for the Parties are as set forth in the Summary of Terms. Either Party may specify a different or additional domestic (United States) notice address for itself as such Party may from time to time desire by giving notice thereof in writing as provided above to the other Party. If sent by email, a notice shall be deemed given upon the date when such email is transmitted by the sending Party to the receiving Party's notice address, and shall be deemed received on that same date unless such notice is transmitted by the sender after 5:00 p.m. in the local time of the physical address of the receiving Party, in which case receipt by the receiving Party shall be deemed to be upon the next Business Day. If personally delivered, a notice shall be deemed given and received upon the date of such delivery. If sent by overnight courier service, a notice shall be deemed given upon the date of deposit with such courier and deemed received upon the date of delivery or refusal of delivery at the notice address. If sent by certified mail, a notice shall be deemed given and received on the third (3<sup>rd</sup>) Business Day after deposit into the US Mail. Notices from or signed by the legal counsel for a Party will be equally effective as a notice from such Party itself.

**Section 7.2. Entire Agreement.** This Agreement, together with the Exhibits and Schedules hereto, the Closing Documents, and any other letter agreement the Parties are entering into on or around the Effective Date, contains all agreements, representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the Parties with respect to the purchase and sale of the Membership Interests. All Exhibits and Schedules to this Agreement are fully incorporated as a part of this Agreement. Any prior correspondence, memoranda, letters of intent, or other agreements between the Parties, including, without limitation, any oral or written statements made by the Seller Parties or the Buyer Parties, are not binding on or enforceable against either Party, and are entirely superseded and replaced by this

Agreement; provided, however, that the Confidentiality Agreement will remain in full force and effect and will not be superseded by this Agreement.

**Section 7.3. Time.** Time is of the essence in the performance of each of the Parties' respective obligations under this Agreement; provided, however, that if a deadline or date for performance, or for the giving or receipt of a notice, falls on a day which is not a Business Day, such deadline or date shall be deemed extended to the next Business Day.

**Section 7.4. Attorneys' Fees.** In addition to the remedies provided in Article 6 above, if there is any litigation, action or other proceeding between the Parties, including, without limitation, any bankruptcy or appeal ("**Action**"), to enforce any provisions or rights arising under or in connection with this Agreement or the Closing Documents, the Party which is determined to have prevailed in such Action shall be entitled to an award against the non-prevailing Party for all costs and expenses, including, but not limited to, reasonable attorneys' fees, reasonably incurred by the prevailing Party in connection with such Action. The provisions of this Section 7.4 will survive the Closing or any earlier termination of this Agreement.

**Section 7.5. Merger of Obligations.** Obligations which are expressly provided in this Agreement to survive or be performed after the Closing will not merge with the transfer of the Membership Interests but will remain in effect until fulfilled; all other obligations of the Parties will merge with and be extinguished upon the transfer of the Membership Interests to Buyer at the Closing.

**Section 7.6. Assignment.** The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns; provided that no Party may assign, delegate or otherwise transfer this Agreement or any of its rights or obligations under this Agreement, in whole or in part, without the prior written consent of each other Party hereto. Any attempted assignment, delegation or transfer in violation of this Section 7.6 shall be null and void. Notwithstanding the foregoing, Buyer shall have the right, by written notice given to Seller not less than thirty (30) days after the Effective Date, to (i) designate one or more Affiliates or other Persons with whom Buyer or any Affiliate of Buyer will enter into a joint venture (or any Affiliates of such joint venture) as its nominee to receive some or all of the Membership Interests, and/or assign (ii) all of its right, title and interest in this Agreement, in whole or in part, to any Affiliate or to any Person with whom Buyer or any Affiliate of Buyer will enter into a joint venture to purchase the Individual Hotels so long as such Affiliate or such joint venture has assumed in writing all obligations of Buyer under this Agreement; provided, however, that (a) such Affiliate (or any Affiliates of such joint venture) remains an Affiliate of Buyer or such Person remains a joint venture partner of Buyer or its Affiliate as of the Closing, and (b) Buyer shall remain jointly and severally liable under this Agreement unless and until the Closing occurs and in no event shall Buyer be released prior to the Closing from any of its obligations under this Agreement by reason of any such assignments.

**Section 7.7. Governing Law; Jurisdiction and Venue.** THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCEPT AS TO REAL PROPERTY MATTERS DIRECTLY RELATED TO A SINGLE INDIVIDUAL HOTEL, WHICH MATTERS SHALL BE

GOVERNED BY THE LAWS OF THE STATE IN WHICH THE RESPECTIVE REAL PROPERTY OF SUCH INDIVIDUAL HOTEL IS LOCATED (the “**Property State**”). For the purposes of any suit, action or proceeding involving this Agreement, each Party expressly submits to the jurisdiction of all federal and state courts sitting in the State of New York and consents that any order, process, notice of motion or other application to or by any such court or a judge thereof may be served within or without such court’s jurisdiction by registered mail or by personal service, provided that, a reasonable time for appearance is allowed, and each Party agrees that such courts will have jurisdiction over any such suit, action or proceeding commenced by any Party. Each Party irrevocably waives any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement brought in any federal or state court sitting in the State of New York and further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. The foregoing provisions are not intended to establish the State of New York as the exclusive forum for any suit, action or proceeding involving this Agreement, but merely to establish the consent and agreement of each Party to such non-exclusive jurisdiction and venue in the event of any contest or dispute over such matters.

**Section 7.8. Waiver of Trial by Jury.** TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EACH PARTY WAIVES, IRREVOCABLY AND UNCONDITIONALLY, TRIAL BY JURY IN ANY ACTION BROUGHT ON, UNDER OR BY VIRTUE OF OR RELATING IN ANY WAY TO THIS AGREEMENT, ANY OF THE CLOSING DOCUMENTS, THE MEMBERSHIP INTERESTS, THE PROPERTY, OR ANY CLAIMS OR ACTIONS PERTAINING TO ANY OF THE FOREGOING.

**Section 7.9. Interpretation of Agreement.** Except as otherwise specifically indicated, all references in this Agreement to Article and Section numbers refer to Article and Sections of this Agreement, and all references to Exhibits refer to the Exhibits attached hereto. Unless otherwise expressly stated, the words “herein”, “hereof”, “hereby”, “hereunder”, “hereinafter”, and words of similar import refer to this Agreement as a whole and not to any particular Article or Section hereof. Any of the terms defined herein may, unless the content otherwise requires, be used in the singular or the plural depending on the reference. All words or terms used in this Agreement, regardless of the number or gender in which they are used, shall include any other number or gender, as the context may require. References to contracts, agreements and other contractual instruments shall be deemed to include all subsequent amendments, supplements and other modifications thereto, but only to the extent such amendments, supplements and other modifications are not prohibited by the terms of this Agreement. The terms “including” means “including, without limitation”, except where the context otherwise requires. References to specific statutes include (i) any and all amendments and modifications thereto in effect at the time in question, (ii) successor statutes of similar purpose and import and (iii) all rules, regulations and orders promulgated thereunder. The term “commercially reasonable efforts” means the efforts undertaken by a party without such party expending more than a *de minimis* amount of money or incurring more than *de minimis* obligations. All monetary amounts expressed in “dollars” or designated by a “\$”, “USD” or “US\$” symbol or abbreviation refer to a monetary amount payable within the United States in the current lawful, dollar-denominated

official currency of the United States of America. The captions and paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of any part of this Agreement. The terms and provisions of this Agreement represent the result of negotiations by the Parties, and each Party has been represented by counsel of, and to the extent of, such Party's own choosing, and neither Party has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties each waive the application of any rule of law which might otherwise be applicable that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party that prepared (or whose attorney prepared) the executed Agreement or any earlier draft of this Agreement or the provision in question.

**Section 7.10. Amendments; No Waiver.** No modification, waiver, amendment or discharge of or under this Agreement will be valid unless contained in a writing signed by the Party against whom enforcement is sought. No waiver by Seller or Buyer of a breach of any of the terms, covenants or conditions of this Agreement will be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition contained in this Agreement.

**Section 7.11. No Recording.** Neither this Agreement nor any memorandum or short form thereof may be recorded by Buyer or any Buyer Party. Any such recording of this Agreement or a memorandum or short form hereof by Buyer or any Buyer Party will constitute an immediate Buyer Default under this Agreement (except if done so in connection with Buyer's pursuit of specific performance in accordance with Section 6.1 above), and in addition to Seller's other remedies therefor, Seller may conclusively establish the complete release and removal of such recorded document simply by recording a copy of this provision of this Agreement.

**Section 7.12. No Third Party Beneficiary.** Except as may be expressly stated herein, the provisions of this Agreement do not and are not intended to benefit any third parties.

**Section 7.13. Severability.** If, in any action to enforce this Agreement, any one or more of the covenants, agreements, conditions, provisions, or terms of this Agreement is, in any respect or to any extent (in whole or in part), held to be invalid, illegal or unenforceable for any reason, all remaining portions thereof which are not so held, and all other covenants, agreements, conditions, provisions, and terms of this Agreement, will not be affected by such holding, but will remain valid and in force to the fullest extent permitted by law.

**Section 7.14. Drafts Not an Offer.** The submission of a draft of this Agreement by one Party to another is not intended by either Party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Membership Interests. The Parties will not be legally bound in any manner with respect to a purchase and sale of the Membership Interests unless and until each of Seller and Buyer have duly executed this Agreement and the Parties have delivered that fully executed Agreement to Escrow Agent.

**Section 7.15. Consent Standards.** Unless expressly provided otherwise in this Agreement, any consent, determination, election or approval required to be obtained, or permitted to be given, by or on behalf of either Party under this Agreement will be given, withheld or made (as the case may be) by such Party in the exercise of such Party's commercially reasonable discretion and within a commercially reasonable period of time.

**Section 7.16. Counterparts; Signatures.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together will constitute one and the same Agreement. Signatures to this Agreement transmitted by facsimile, sent by email (including ".pdf"), or delivered by other electronic means will be valid and effective to bind the Party so signing. Each Party agrees to promptly deliver a "hard copy" of this Agreement bearing such Party's original manual ink signature to the other Party upon request, but a failure to do so will not affect the enforceability of this Agreement.

**Section 7.17. Publicity.** Neither Party will issue, or cause or permit its Affiliates to issue, any press release or public statement with respect to the transactions contemplated by this Agreement which expressly names the other Party or any of its Affiliates (a "**Press Release**") without the prior written consent of the other Party, which consent will not be unreasonably withheld, conditioned or delayed. If either Party desires to issue a Press Release pursuant to the immediately preceding sentence, then prior to any issuance such Party will give a copy of the proposed Press Release to the other Party for its review, comment and approval. If no objection or comments are received from the other Party within three (3) Business Days after the other Party receives such proposed Press Release for review, consent to the Press Release shall be deemed given by the reviewing Party. The term "**Press Release**" shall expressly exclude any press release or public statement required by Applicable Law, the rules of any stock exchange on which the securities of a Party (or its direct or indirect partners, members or shareholders) are listed, or any other regulation applicable to a Party. For the avoidance of doubt, Seller shall be permitted, without the prior consent of Buyer, but subject to prior notice to, and reasonable consultation with, Buyer, to file this Agreement (or a description thereof) with and in accordance with the rules of any stock exchange on which the securities of Seller (or its direct or indirect partners, members or shareholders) are listed. The provisions of this Section 7.17 shall survive the Closing or any earlier termination of this Agreement.

**Section 7.18. Further Instruments and Acts.** The Parties shall execute and deliver, or cause to be executed and delivered, such additional instruments, assignments, assurances, certificates and documents, and shall do such further acts, as may be reasonably necessary to carry out the provisions of this Agreement, but only so long as any such additional instruments, assignments, assurances, certificates and documents and further acts have no more than a *de minimis* effect on either Party's rights or obligations hereunder. This Section 7.18 shall survive the Closing.

**Section 7.19. Access.** Buyer agrees to preserve all Hotel Books and Records and not to destroy or dispose of the same for at least five (5) years after the Closing Date, and then only after sixty (60) days prior written notice to Seller. Seller shall have reasonable access during normal business hours and with reasonable prior written notice to Buyer to the Hotel Books and

Records during the five (5)-year period and until the end of such sixty (60)-day period, to the extent reasonably necessary for its tax and accounting purposes; provided that Seller shall not have access to any Hotel Books and Records to the extent the disclosure of such Hotel Books and Records would reasonably be expected to violate any Applicable Law or result in the waiver of any legal privilege, attorney-client privilege or work-product privilege. Buyer agrees to provide access to Seller and its representatives to such books, records, correspondence and files at all reasonable times during such five (5)-year period and until the end of such sixty (60)-day period for their review and/or photocopying. This Section 7.19 shall survive the Closing or termination of this Agreement.

## ARTICLE 8

### STATE SPECIFIC PROVISIONS

#### **Section 8.1. Florida.**

(a) Radon Gas Disclosure. Radon is a naturally occurring radioactive gas which, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon which exceed federal and state guidelines have been found in buildings in the states in which the Individual Hotels are located. Additional information regarding radon and radon testing may be obtained from the county public health unit.

(b) Mold Disclosure. Mold and/or other microscopic organisms can be found almost anywhere. They occur naturally in the environment and can grow on virtually any organic substance as long as moisture and oxygen are present. Mold and/or other microscopic organisms may cause property damage and/or health problems. Buyer acknowledges and agrees that Seller shall not be responsible for any Claims arising out of or relating to mold and/or other microscopic organisms at the Property including but not limited to property damages, personal injury, adverse health effects, loss of income, emotional distress, death, loss of use or loss of value and Buyer hereby releases Seller from the same. Buyer hereby acknowledges that it has read and understood this disclosure and release and agrees to the provisions contained herein. The provisions of this Section 8.1(b) shall survive the Closing or earlier termination of this Agreement.

**Section 8.2. Georgia.** Pursuant to Section 1.2 hereof, it is hereby agreed that Seller's damages in the event of a default by Buyer hereunder are uncertain and difficult to ascertain, and that the Deposit constitutes a reasonable liquidation of such damages, and is intended not as a penalty, but as full liquidated damages pursuant to O.C.G.A. § 13-6-7.

**Section 8.3. Louisiana.** To the extent related to an Individual Hotel located in the State of Louisiana, the following words as used in this Agreement will be understood and interpreted as set forth in this Section 8.3:

(a) All references to "real property" and "real estate" will include "immovable property" as that term is used in the Louisiana Civil Code.

- (b) All references to “personal property” will include “movable property” as that term is used in the Louisiana Civil Code.
- (c) All references to “tangible property” will include “corporeal property” as that term is used in the Louisiana Civil Code.
- (d) All references to “intangible property” will include “incorporeal property” as that term is used in the Louisiana Civil Code.
- (e) All references to “buildings” will include “other constructions” as that term is used in the Louisiana Civil Code.
- (f) All references to “liens” will include “privileges,” as that term is used in the Louisiana Civil Code.
- (g) All references to a “receiver” will include a “keeper” under La. R. S. 9:5136, *et seq.*
- (h) All references to “condemnation” will include “expropriation” as that term is used in Louisiana law.
- (i) All references to “easements” will include “servitudes” as used in the Louisiana Civil Code.
- (j) All references to “county” as a political subdivision in Louisiana will mean “parish”.
- (k) The term “fee owner” will mean “owner with full ownership interest” as that term is used in Louisiana law.

**Section 8.4. New Hampshire.** By its execution hereof, Buyer acknowledges receipt of the following notification:

(a) Radon, the product of decay of radioactive materials in rock, may be found in some areas of New Hampshire. Radon gas may pass into a structure through the ground or through water from a deep well. Testing of the air by a professional certified in radon testing and testing of the water by an accredited laboratory can establish radon’s presence and equipment is available to remove it from the air or water.

(b) Arsenic is a common groundwater contaminant in New Hampshire that occurs at unhealthy levels in well water in many areas of the state. Tests are available to determine whether arsenic is present at unsafe levels, and equipment is available to remove it from water. Buyer is encouraged to consult the New Hampshire department of environmental services private well testing recommendations ([www.des.nh.gov](http://www.des.nh.gov)) to ensure a safe water supply if the subject Property is served by a private well.

(c) Before 1978, paint containing lead may have been used in structures. Exposure to lead from the presence of flaking, chalking, chipping lead paint or lead paint dust from friction surfaces, or from the disturbance of intact surfaces containing lead paint through unsafe renovation, repair or painting practices, or from soils in close proximity to the building, can present a serious health hazard, especially to young children and pregnant women. Lead may also be present in drinking water as a result of lead in service lines, plumbing and fixtures. Tests are available to determine whether lead is present in paint or drinking water.

(d) Nothing in this Section 8.4 shall be construed to have any impact on the legal validity of title to the Property indirectly transferred pursuant to this Agreement, or to create or place any liability with Seller or Seller's agent for failure to provide the notification described in this Section 8.4.

**Section 8.5. New Jersey.** Seller shall cooperate in providing the information needed so that Buyer can file and serve the notice required by N.J.S.A. 54:50-38 et seq., and any other applicable state statute, concerning this impending sale of commercial real property, including notice to the Bulk Sales Unit of the State of New Jersey, Division of Taxation (the "**Division**"), and Seller agrees to fully comply with N.J.S.A. 54:50-38 et seq. and applicable statutes. Such cooperation shall include promptly supplying to Buyer the information requested of Seller on the State form known as the "Notification of Sale, Transfer, or Assignment in Bulk," and any other and additional information that may be reasonably requested by the Division, such as, for example, the information requested in any Asset Transfer Tax Declaration form. Buyer and Seller acknowledge that it is within the authority of the Division to direct that funds from the Acquired Accounts applicable to any of the Individual Hotels located in the state of New Jersey (or from the Purchase Price if there are insufficient funds in such applicable Acquired Accounts) be placed into escrow at Closing. Buyer and Seller agree to abide by all notifications of the Division. Buyer and Seller agree that in the event that such an escrow is required by the State of New Jersey, Escrow Agent shall act as escrow holder in connection with any required escrow. The escrow monies will be held in escrow in a non-interest bearing account until the Division makes a final determination as to the amount of any State taxes owed by Seller, and the escrow monies will be released in accordance with, and only upon receipt of, a Tax Clearance Letter from the Division. Escrow Agent shall be authorized to pay to the State of New Jersey such amounts as may be ultimately determined by the Division to be due and owing. In no event shall Buyer be required to complete the Closing until such time as the Division has issued a Tax Clearance Letter. If the amount of the escrow directed to be held by the Division shall exceed the amount of the sale proceeds otherwise to be paid to Seller at Closing, then Buyer shall fund the balance of the escrow amount from funds in the Acquired Accounts applicable to any of the Individual Hotels located in the State of New Jersey (or from the Purchase Price if there are insufficient funds in such applicable Acquired Accounts).

**Section 8.6. Washington.** This Section 8.6 is specific to the State of Washington and is, therefore, limited accordingly:

(a) The documents to be delivered by Seller as described in Section 5.4(a) above include a Real Estate Excise Tax Affidavit Controlling Interest Transfer Return as required in

Chapter 82.45 of the Revised Code of Washington and Chapter 458-61A of the Washington Administrative Code (the “REETA”) for each Real Property owned by a Hotel Owner that is located in Washington State.

(b) The documents to be delivered by Buyer as described in Section 5.4(b) above include a REETA for each Real Property owned by a Hotel Owner that is located in Washington State.

**Section 8.7. Massachusetts.**

(a) In the event of any inconsistencies between the terms and conditions of this Section 8.7 and the other terms and conditions of this Agreement, the terms and conditions of this Section 8.7 shall control and be binding.

(b) Section 5.4(a)(xvi) above shall be deemed to include, with respect to any business operating at any Individual Hotel located in the Commonwealth of Massachusetts, to include (i) a Certificate of Good Standing from the Massachusetts Department of Revenue (the “**Tax Good Standing Certificate**”) and (ii) a Certificate of Compliance from the Massachusetts Department of Unemployment Assistance (the “**DUA Compliance Certificate**”), in form and substance reasonably acceptable to Buyer. If any governmental authority notifies Seller prior to the Closing that any sales taxes are due and payable from Seller in connection with obtaining the Tax Good Standing Certificate or any payments or contributions are due from Seller in connection with obtaining the DUA Compliance Certificate, Seller shall pay such amounts directly to the applicable governmental authority at or before the Closing using funds in the Acquired Accounts applicable to any of the Individual Hotels located in the State of Massachusetts (or from the Purchase Price if there are insufficient funds in such applicable Acquired Account) and provide evidence of such payment to Buyer.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, Buyer and Seller have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date written above.

**BUYER:**

**SILVERPLATE CAPITAL PARTNERS LLC,**  
a Delaware limited liability company

By:  /s/ Teri Behrens \_\_\_\_\_

Name: Teri Behrens

Title: Authorized Signatory

*[Signatures continue on following page]*

[Signature Page to Agreement of Purchase and Sale]

**SELLER:**

**CBM SELLER:**

**CMP I OWNER-T, LLC,**  
a Delaware limited liability company

By: CMP I Holdings-T, LLC,  
a Delaware limited liability company,  
its sole member

By: /s/ Ronald M. Sanders  
Name: Ronald M. Sanders  
Title: Vice President

**CMP I CAM2-T, LLC,**  
a Delaware limited liability company

By: CMP I Holdings-T, LLC,  
a Delaware limited liability company,  
its sole member

By: /s/ Ronald M. Sanders  
Name: Ronald M. Sanders  
Title: Vice President

*[Signatures continue on following page]*

[Signature Page to Agreement of Purchase and Sale]

**INNKEEPERS SELLER:**

**GRAND PRIX MEZZ BORROWER FIXED LLC,**  
a Delaware limited liability company

By: INK Acquisition LLC,  
a Delaware limited liability company,  
its sole member

By: Platform Member-T, LLC,  
a Delaware limited liability company,  
its member

By: /s/ Ronald M. Sanders  
Name: Ronald M. Sanders  
Title: Vice President

**INK ACQUISITION LLC,**  
a Delaware limited liability company

By: Platform Member-T, LLC,  
a Delaware limited liability company,  
its member

By: /s/ Ronald M. Sanders  
Name: Ronald M. Sanders  
Title: Vice President

**INK ACQUISITION III LLC,**  
a Delaware limited liability company

By: Platform Member Holdings-T CAM2, LLC,  
a Delaware limited liability company,  
its member

By: /s/ Ronald M. Sanders  
Name: Ronald M. Sanders  
Title: Vice President

*[Signatures continue on following page]*

**K-PARTNERS SELLER:**

**CASTLEBLACK OWNER HOLDINGS, LLC,**  
a Delaware limited liability company

By: Castleblack Holdings-T, LLC,  
a Delaware limited liability company,  
its managing member

By: /s/ Ronald M. Sanders  
Name: Ronald M. Sanders  
Title: Vice President

**CASTLEBLACK OPERATOR HOLDINGS, LLC,**  
a Delaware limited liability company

By: Castleblack-T CAM2, LLC,  
a Delaware limited liability company,  
its managing member

By: /s/ Ronald M. Sanders  
Name: Ronald M. Sanders  
Title: Vice President

*[Signatures continue on following page]*

[Signature Page to Agreement of Purchase and Sale]

**MIAMI SELLER:**

**MC OWNER MB1-T, LLC,**  
a Delaware limited liability company

By: MC Holdings-T, LLC,  
a Delaware limited liability company,  
its sole member

By: /s/ Ronald M. Sanders  
Name: Ronald M. Sanders  
Title: Vice President

**MC OPS MB1-T, LLC,**  
a Delaware limited liability company

By: MC CAM2-T, LLC,  
a Delaware limited liability company,  
its sole member

By: /s/ Ronald M. Sanders  
Name: Ronald M. Sanders  
Title: Vice President

*[Signatures continue on following page]*

**NEP SELLER:**

**NEP OWNER MB2-T, LLC,**  
a Delaware limited liability company

By: NEP Owner-T, LLC,  
a Delaware limited liability company,  
its sole member

By: /s/ Ronald M. Sanders  
Name: Ronald M. Sanders  
Title: Vice President

**NEP OPS MB2-T, LLC,**  
a Delaware limited liability company

By: NEP CAM2-T, LLC,  
a Delaware limited liability company,  
its sole member

By: /s/ Ronald M. Sanders  
Name: Ronald M. Sanders  
Title: Vice President

*[Signatures continue on following page]*

**THL SELLER:**

**CNI THL PROPCO HOLDINGS, LLC,**  
a Delaware limited liability company

By: CFI RE Holdco, LLC,  
a Delaware limited liability company,  
its sole member

By: /s/ Ronald M. Sanders  
Name: Ronald M. Sanders  
Title: Vice President

**CNI THL OPCO HOLDINGS, LLC,**  
a Delaware limited liability company

By: CC RE Holdco Corporation LLC,  
a Delaware limited liability company,  
its sole member

By: /s/ Ronald M. Sanders  
Name: Ronald M. Sanders  
Title: Vice President

*[Signatures continue on following page]*

**ESCROW AGENT'S ACCEPTANCE**

The foregoing fully executed Agreement is accepted by the undersigned as the "Escrow Agent" under this Agreement this 22<sup>nd</sup> day of September, 2020. Escrow Agent accepts the engagement to handle the escrow established by this Agreement in accordance with the terms set forth in this Agreement.

**FIRST AMERICAN TITLE INSURANCE COMPANY**

By: /s/ Andrew D. Jaeger

Name: Andrew D. Jaeger

Title: Vice President

*[End of signatures]*

**[Signature Page to Agreement of Purchase and Sale]**

**FIRST AMENDMENT TO AGREEMENT OF PURCHASE AND SALE**  
**(Sale of Membership Interests in the Owners of Hotel Portfolios Consisting of One Hundred Ninety-Seven (197) Hotel Properties)**

This **FIRST AMENDMENT TO AGREEMENT OF PURCHASE AND SALE** (this “**Amendment**”), is made and effective as of October 9, 2020 (the “**Effective Date**”), between **CBM SELLER, INNKEEPERS SELLER, K-PARTNERS SELLER, MIAMI SELLER, NEP SELLER, and THL SELLER** (each, a “**Selling Entity**” and collectively, “**Seller**”), and **SILVERPLATE CAPITAL PARTNERS LLC**, a Delaware limited liability company (“**Buyer**”, Buyer and Seller are sometimes referred to in this Amendment, each, individually, as a “**Party**” and, collectively, as the “**Parties**”).

**RECITALS:**

**A.** Seller and Buyer entered into that certain Agreement of Purchase and Sale, dated as of September 22, 2020 (the “**Original PSA**”), pursuant to which, among other things, Seller agreed to sell to Buyer, and Buyer agreed to purchase from Seller, the Membership Interests listed on Schedule 1 attached thereto (the “**Property**”), as more particularly described in the Original PSA.

**B.** The Parties now wish to amend the Original PSA as more particularly set forth herein.

**C.** The Original PSA, as modified by this Amendment, shall be referred to herein collectively as the “**Purchase Agreement**”.

**NOW, THEREFORE**, in consideration of the foregoing recitals (which are incorporated into the operative provisions of this Amendment by this reference), the mutual promises, obligations and agreements contained herein, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, do hereby agree as follows:

**1. Amendments.**

(a) The last sentence of Section 3.1(c) of the Original PSA is hereby deleted and replaced in its entirety with the following: “If any Loan Documents shall require a pay down of any portion of the Existing Loans prior to the Closing or the funding of a reserve other than from cash flow from the Individual Hotels, no Party shall be obligated to contribute such funds except that Seller or its Affiliate shall be obligated to contribute no less than the sum of One Million Seven Hundred Thousand and No/100 Dollars (\$1,700,000.00) from funds in the Excluded Accounts and Amount with respect to the CBM Hotel Portfolio as described on Schedule 3.1(c) attached hereto whether or not the Pending Loan Modification for the CBM Loan is consummated prior to the Closing, and if any such amount is not contributed by Seller prior to the Closing, Seller shall have the right, in its sole discretion, to (x) give to Buyer a credit against the Purchase Price in the amount not so contributed or (y) fund the amount not so contributed to a non-restricted account that satisfies one of the following as selected by Buyer: (1) an account in the name of Buyer, (2) an Acquired Account designated by Buyer or (3) a new account set up by Seller in the name of a Target Entity or Target Subsidiary as designated by Buyer. Notwithstanding the immediately preceding sentence and anything herein to the contrary, on October 7, 2020, Seller or its Affiliate made a payment equal to no less than the sum of

Thirteen Million Nine Hundred Thousand and No/100 Dollars (\$13,900,000.00) with respect to the Innkeepers Hotel Portfolio (the “**INK Current Payment**”), as follows: (i) an amount equal to Nine Million Five Hundred Thousand (\$9,500,000.00) was funded using cash from sources other than the Acquired Accounts (including from funds in the Excluded Accounts and Amount), and (ii) an amount equal to Four Million Four Hundred Thousand and No/100 Dollars (\$4,400,000.00) was funded using funds in the Acquired Accounts, in each case, subject to the terms hereof. With respect to the INK Current Payment, (x) the portion funded using funds in the Acquired Accounts pursuant to clause (ii) above shall in no event constitute Leakage and (y) Seller shall receive a credit at the Closing in the amount of One Million One Hundred Fifty Thousand and No/100 Dollars (\$1,150,000.00). Seller and its Affiliates shall use the INK Current Payment solely for the payment of deferred interest, operating shortfalls, interest shortfalls, working capital replenishment, and loan fees and expenses for the Innkeepers Hotel Portfolio (the “**Permitted Uses**”). In addition, Seller or its Affiliate shall have the right, but not the obligation, to contribute up to an additional Nine Million Three Hundred Thousand and No/100 Dollars (\$9,300,000.00), at any time and from time to time prior to the Closing Date, to be funded using cash from sources other than the Acquired Accounts (including from funds in the Excluded Accounts and Amount) (each, an “**INK Future Contribution**”), subject to the terms hereof. With respect to INK Future Contributions, (x) Seller shall receive an additional credit at the Closing equal to fifty percent (50%) of the aggregate amount of INK Future Contributions, (y) Seller and its Affiliates shall use the INK Future Contributions solely for the Permitted Uses, and (z) the amount on deposit in the Acquired Accounts for the Innkeepers Hotel Portfolio shall be at least equal to Four Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00) (the “**Minimum INK Working Capital Amount**”) at the Closing. If Seller or its Affiliate expend any portion of the INK Current Payment or any INK Future Contribution in any manner other than for the Permitted Uses, then the portion of the INK Current Payment or such INK Future Contribution so expended shall be deemed “Leakage” for all purposes hereof. In addition, if the amount on deposit in the Acquired Accounts for the Innkeepers Hotel Portfolio at the Closing shall be less than the Minimum INK Working Capital Amount, then the amount of such shortfall shall be deemed “Leakage” for all purposes hereof. For the avoidance of doubt, notwithstanding anything to the contrary set forth on Schedule 3.1(c) attached hereto, it shall not constitute a material difference that is subject to Buyer’s approval under this Section 3.1(c) if any Pending Loan Modification for the Innkeepers Loan does not include a requirement of Seller or its Affiliate to contribute Seven Million Two Hundred Thousand and No/100 Dollars (\$7,200,000.00) with respect to the Innkeepers Hotel Portfolio.”

(b) The last sentence of the definition of “Leakage” in the Original PSA is hereby deleted and replaced in its entirety with the following: “For the avoidance of doubt, the term “**Leakage**” shall exclude any payments using cash or other amounts (i) in the Excluded Accounts and Amount, (ii) in the Acquired Accounts and made to third parties (or reimbursed to any Affiliate of Seller who made any such payment to a third party on behalf of the Target Entity or Target Subsidiary making such reimbursement, but only so long as such payment by such Affiliate is or was made in the ordinary course of business consistent with past practice) in the ordinary course of business relating to the Individual Hotels or the operation thereof (including, but not limited to, payments for franchise fees or taxes, occupancy taxes, attorneys’ fees, and audit fees) so long as the same are not prohibited by the terms of any Loan Documents, (iii) in

the Acquired Accounts for (x) amounts (including attorneys' fees) relating to, or payable in connection with, any modification of any Existing Loan (including any Pending Loan Modification) (but excluding any payments in connection with any Pending Loan Modification that are required to be made using cash from other sources or from funds in the Excluded Accounts and Amount pursuant to the terms of this Agreement), and (y) amounts described in clause (ii) of the definition of "INK Current Payment" relating to the Innkeepers Hotel Portfolio, and (iv) to the extent permitted under the applicable Loan Documents, in the Acquired Accounts for quarterly payments of reimbursable amounts to its joint venture partner in the Innkeepers Hotel Portfolio or an Affiliate thereof ("**Asset Manager**") relating to the Innkeepers Hotel Portfolio, the K-Partners Hotel Portfolio and/or the NEP Hotel Portfolio during the period between the Effective Date and the Closing Date in the ordinary course of business consistent with past practice in an amount not to exceed Six Hundred Thousand and No/100 Dollars (\$600,000.00) per quarter (prorated for any partial quarters).

## 2. **Miscellaneous.**

(a) Capitalized terms used and not otherwise defined in this Amendment shall have the respective meanings given to such terms in the Original PSA. Section references in this Amendment shall refer to such sections in the Original PSA unless specifically noted as referring to another agreement.

(b) This Amendment may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts when executed and delivered shall be construed together and constitute the same instrument. Counterparts may be delivered electronically. The exchange of copies of this Amendment, any amendments hereto, any signature pages required hereunder or any other documents required or contemplated hereunder by facsimile or Portable Document Format ("**PDF**") transmission shall constitute effective execution and delivery of same as to the Parties thereto and may be used in lieu of the original documents for all purposes. Signatures transmitted by facsimile or PDF shall be deemed to be original signatures for all purposes.

(c) THIS AMENDMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCEPT AS TO REAL PROPERTY MATTERS DIRECTLY RELATED TO A SINGLE INDIVIDUAL HOTEL, WHICH MATTERS SHALL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH THE RESPECTIVE REAL PROPERTY OF SUCH HOTEL IS LOCATED, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AMENDMENT TO THE LAW OF ANOTHER JURISDICTION.

(d) Each Party hereby represents that its undersigned representatives are duly authorized to execute this Amendment.

(e) No person who is not a signatory to this Amendment shall be permitted to rely upon or otherwise enforce any provision contained in this Amendment on the grounds that such person is a third party beneficiary of this Amendment.

(f) Except as expressly amended by this Amendment, the Original PSA remains unmodified and in full force and effect.

(g) References herein and in the Original PSA and any instrument or document delivered pursuant to the Original PSA to “the Agreement” or “this Agreement” shall mean the Original PSA, as modified by this Amendment, which shall constitute the entire agreement among the Parties pertaining to the subject matter hereof and shall supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. Except as modified by this Amendment, the Original PSA is hereby ratified and confirmed in all respects. Nothing herein shall be held to alter, vary or otherwise affect the terms, conditions and provisions of the Original PSA, other than as contemplated herein.

(h) All Section, clause or paragraph references shall, unless the context expressly requires otherwise, be to sections, clauses or paragraphs of this Amendment. The terms “hereto,” “herein,” “hereof,” “hereunder” and words of similar import refer to this Amendment generally, unless otherwise specifically provided. The term “including” shall mean “including, without limitation,” except where the context otherwise requires.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, Buyer and Seller have caused this Amendment to be executed and delivered by their duly authorized representatives as of the Effective Date written above.

**SELLER:**

**CBM SELLER:**

**CMP I OWNER-T, LLC,**  
a Delaware limited liability company

By: CMP I Holdings-T, LLC,  
a Delaware limited liability company,  
its sole member

By: /s/ Donna Hansen  
Name: Donna Hansen  
Title: Vice President

**CMP I CAM2-T, LLC,**  
a Delaware limited liability company

By: CMP I Holdings-T, LLC,  
a Delaware limited liability company,  
its sole member

By: /s/ Donna Hansen  
Name: Donna Hansen  
Title: Vice President

*[Signatures continue on following page]*

**INNKEEPERS SELLER:**

**GRAND PRIX MEZZ BORROWER FIXED LLC,**  
a Delaware limited liability company

By: INK Acquisition LLC,  
a Delaware limited liability company,  
its sole member

By: Platform Member-T, LLC,  
a Delaware limited liability company,  
its member

By: /s/ Donna Hansen  
Name: Donna Hansen  
Title: Vice President

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a Delaware limited liability company

By: Platform Member-T, LLC,  
a Delaware limited liability company,  
its member

By: /s/ Donna Hansen  
Name: Donna Hansen  
Title: Vice President

**INK ACQUISITION III LLC,**  
a Delaware limited liability company

By: Platform Member Holdings-T CAM2, LLC,  
a Delaware limited liability company,  
its member

By: /s/ Donna Hansen  
Name: Donna Hansen  
Title: Vice President

*[Signatures continue on following page]*

**K-PARTNERS SELLER:**

**CASTLEBLACK OWNER HOLDINGS, LLC,**  
a Delaware limited liability company

its managing member

By: Castleblack Holdings-T, LLC,  
a Delaware limited liability company,

By: /s/ Donna Hansen  
Name: Donna Hansen  
Title: Vice President

**CASTLEBLACK OPERATOR HOLDINGS, LLC,**  
a Delaware limited liability company

its managing member

By: Castleblack-T CAM2, LLC,  
a Delaware limited liability company,

By: /s/ Donna Hansen  
Name: Donna Hansen  
Title: Vice President

*[Signatures continue on following page]*

**MIAMI SELLER:**

**MC OWNER MB1-T, LLC,**  
a Delaware limited liability company

its sole member

By: MC Holdings-T, LLC,  
a Delaware limited liability company,

By: /s/ Donna Hansen  
Name: Donna Hansen  
Title: Vice President

**MC OPS MB1-T, LLC,**  
a Delaware limited liability company

its sole member

By: MC CAM2-T, LLC,  
a Delaware limited liability company,

By: /s/ Donna Hansen  
Name: Donna Hansen  
Title: Vice President

*[Signatures continue on following page]*

**NEP SELLER:**

**NEP OWNER MB2-T, LLC,**  
a Delaware limited liability company

its sole member

By: NEP Owner-T, LLC,  
a Delaware limited liability company,

By: /s/ Donna Hansen  
Name: Donna Hansen  
Title: Vice President

**NEP OPS MB2-T, LLC,**  
a Delaware limited liability company

its sole member

By: NEP CAM2-T, LLC,  
a Delaware limited liability company,

By: /s/ Donna Hansen  
Name: Donna Hansen  
Title: Vice President

*[Signatures continue on following page]*

**THL SELLER:**

**CNI THL PROPCO HOLDINGS, LLC,**  
a Delaware limited liability company

By: CFI RE Holdco, LLC,  
a Delaware limited liability company,

its sole member

By: /s/ Donna Hansen  
Name: Donna Hansen  
Title: Vice President

**CNI THL OPCO HOLDINGS, LLC,**  
a Delaware limited liability company

By: CC RE Holdco Corporation LLC,  
a Delaware limited liability company,

its sole member

By: /s/ Donna Hansen  
Name: Donna Hansen  
Title: Vice President

*[Signatures continue on following page]*

**BUYER:**

**SILVERPLATE CAPITAL PARTNERS LLC,**  
a Delaware limited liability company

By: /s/ Paul R. Womble  
Name: Paul R. Womble  
Title: Authorized Signatory

*[End of signatures]*

[Signature Page to First Amendment to Agreement of Purchase and Sale]

**Certification of Chief Executive Officer  
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Marc C. Ganzi, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Colony Capital, 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: November 9, 2020

/s/ Marc C. Ganzi  
\_\_\_\_\_  
Marc C. Ganzi  
Chief Executive Officer and President

**Certification of Chief Financial Officer  
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Jacky Wu, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Colony Capital, 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: November 9, 2020

/s/ Jacky Wu  
\_\_\_\_\_  
Jacky Wu  
Chief Financial Officer

**Certification of Chief Executive Officer  
Pursuant to 18 U.S.C. Section 1350,  
As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report of Colony Capital, Inc. (the "Company") on Form 10-Q for the three months ended September 30, 2020 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Marc C. Ganzi, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

(i) the Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 9, 2020

/s/ Marc C. Ganzi

\_\_\_\_\_  
Marc C. Ganzi  
Chief Executive Officer and President

The foregoing certification is being furnished solely pursuant to 18 U.S.C §1350 and shall not be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended or incorporated by reference in any registration statement of the Company filed under the Securities Act of 1933, as amended.

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

**Certification of Chief Financial Officer  
Pursuant to 18 U.S.C. Section 1350,  
As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report of Colony Capital, Inc. (the "Company") on Form 10-Q for the three months ended September 30, 2020 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Jacky Wu, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

(i) the Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 9, 2020

/s/ Jacky Wu

\_\_\_\_\_  
Jacky Wu  
Chief Financial Officer

The foregoing certification is being furnished solely pursuant to 18 U.S.C §1350 and shall not be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended or incorporated by reference in any registration statement of the Company filed under the Securities Act of 1933, as amended.

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.