IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: RAIT FUNDING, LLC, a Delaware limited liability company, *et al.*[1] Debtors.	Chapter 11 Case No. 19-11915 (BLS) (Jointly Administered) **Hearing Date: December 5, 2019 at 10:00 a.m.** **Objection Deadline: December 2, 2019 at noon.**

MOTION OF THE AD HOC COMMITTEE OF PREFERRED EQUITY SECURITY HOLDERS OF RAIT FINANCIAL TRUST FOR ENTRY OF AN ORDER DIRECTING THE UNITED STATES TRUSTEE TO APPOINT AN OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS

The Ad Hoc Committee of Holders of Preferred Equity (the "**Ad Hoc Committee**") Issued by RAIT Financial Trust ("**RAIT Parent**"), by its attorneys, hereby moves the Court (the "**Motion**"), pursuant to section 1102(a)(2) of title 11 of the United States Code (the "**Bankruptcy Code**"), for an entry of an order, substantially in the form annexed hereto as **Exhibit A**, directing the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**") to appoint an official committee of equity security holders ("**Equity Committee**"). In support of this Motion, the Ad Hoc Committee respectfully states as follows:

PRELIMINARY STATEMENT

1. The Ad Hoc Committee has sought to preserve the rights of the disenfranchised equity holders. In order to effectuate adequate representation, this Court should direct the U.S. Trustee to appoint an Equity Committee. There is no reason for this Court to allow the Debtors to

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number (if applicable), are as follows: RAIT Funding, LLC, a Delaware limited liability company (9983); RAIT Financial Trust, a Maryland real estate investment trust (9819); RAIT General, Inc., a Maryland corporation (9987); RAIT Limited, Inc., a Maryland corporation (9773); Taberna Realty Finance Trust, a Maryland real estate investment trust (3577); RAIT JV TRS, LLC, a Delaware limited liability company (3190); and RAIT JV TRS Sub, LLC, a Delaware limited liability company (4870).

proceed on their plan of reorganization (the "**Plan**"), filed less than seven weeks after the Petition Date, without there being an alternative, competing plan providing different and better treatment for creditors and equity holders to consider. Doing so would in essence compel estate stakeholders to either accept an unsatisfactory outcome or have no recovery at all, clearly an unfair result. Equity holders have not been able to adequately represent themselves and have a seat at the table in negotiating the Plan. Instead, the Ad Hoc Committee has proposed an alternative structure for paying claims in full and providing equity holders with far better treatment than that proposed by the Debtors and CF RFP Holdings LLC, an entity owned by funds managed by affiliates of Fortress Investment Group LLC ("**Fortress**"), to be consummated under a plan of reorganization (the "**AHC Plan**"). Appointment of an Equity Committee would allow the Ad Hoc Committee, and all equity holders, to adequately assert and preserve their rights in these cases.

2. The Ad Hoc Committee and its representatives have had dozens of meetings and calls over the past month, primarily with private investment funds and multiple, multi-billion dollar institutions, about financing the AHC Plan. As set forth in the *Objection Of Ad Hoc Committee Of Holders Of Preferred Equity Issued By Rait Financial Trust To Debtors' Motion For Approval Of The Sale Of Substantially All Of Its Assets* (the "**Sale Objection**") [Docket No. 203], the Ad Hoc Committee, in coordination with Never Summer Holdings LLC, negotiated a Commitment Letter with Magnetar Capital LLC and its affiliate Magnetar Financial LLC ("**MFL**") on behalf of one or more funds or accounts managed by MFL (collectively, "**Magnetar**") and Moab Partners, L.P. ("**Moab**," collectively, with Magnetar, the "**New Investors**") to provide $50 million in AHC Plan funding (Magnetar and MOAB manage $13 billion and $750 million, respectively). The AHC Plan will provide payment to all creditors in

accordance with their contractual rights and facilitate the Debtors' emergence from Chapter 11 with at least $65 million in shareholders' equity. A Term Sheet reflecting the treatment of classes of claims and interests under the AHC Plan and other significant AHC Plan terms was filed with the Sale Objection.[2]

3. More importantly for this Motion, importantly for this Motion, equity appears clearly to be "in the money" from the Debtors' own Chapter 11 and recent SEC filings. The Ad Hoc Committee submits, and will demonstrate at the hearing on the Sale Objection, that the Debtors' enterprise value is between $190 million and $240 million. The headline number under the Equity and Asset Purchase Agreement with Fortress which will provide the source of funding for the Debtors' Plan, purports to be $174.4 million, but that includes a significant amount of the Debtors' own cash. The actual cash consideration being provided by Fortress is only about $129 million (the "**Sale**").

4. As of the Petition Date, the Debtors' principal assets consisted of $300 million of commercial real estate loans (none of which was in default) held by two non-Debtor affiliates, RAIT FL7 ("**FL7**") and RAIT FL8 ("**FL8**"). This valuable portfolio of approximately 20 commercial real estate loans is held by the Debtors in the form of commercial mortgage backed securities ("**CMBS**"), *i.e.,* pools of commercial mortgages which pay interest and principal to investors in accordance with an agreed waterfall. Each of the loans is currently deemed "performing" by the collateral manager, which is RAIT Parent itself. Since the bankruptcy filing on August 30, 2019, $67 million of these loans has been repaid, leaving a balance of $233 million. These loans are short-term and first lien, with approximately 99% of maturities before March 2021. While some loans provide for borrower extensions, they also have often

[2] The Commitment Letter and Term Sheet are annexed hereto as **Exhibit B**.

been repaid prior to their stated maturity dates. The Ad Hoc Committee notes, and asks that the Court take judicial notice, that the commercial mortgage market is healthy, interest rates are low, and borrowers are experiencing strong competition among lenders for their business.

5. The organic, scheduled liquidation of this collateral will enable the CMBS entities to pay off all of their debt, including approximately $65 million of FL7 debt and $45 million FL8 debt held by RAIT itself, or $110 million, by February 2021. From the perspective of potential funders of additional capital for RAIT Parent, the pay-down of collateral in FL7 and FL8 - and thereby the senior notes issued by those entities - improves the value of RAIT Parent's interests in those CMBS entities, as it accelerates the period within which RAIT Parent would expect to receive a pay-down of its holdings.

6. Other significant assets at RAIT Parent include its 10 real estate properties, carried at $113.6 million as of June 30, 2019, but which carry significant indebtedness, some of which is owned by RAIT Parent via its CDO I securitization. RAIT Parent owned $38.9 million of CDO I's securities as of June 30, 2019, of which $24.0 million were pledged to the Taberna Note. RAIT Parent also directly owns mortgages previously held by RAIT CDO II, which paid off its non-RAIT securities holders in the fourth quarter of 2018, allowing RAIT Parent to bring the CDO's assets directly onto its own balance sheet.

7. If the Sale to Fortress were to be approved on its current terms, Fortress would receive an immediate windfall in the form of the Debtors' balance sheet cash, exceeding $40 million, and the short-term pay-down of approximately $110 million from the 20 or so commercial mortgages held in FL7 and FL8. Thus, Fortress will receive the full benefit of the Debtors' remaining assets after FL7 and FL8 are liquidated. Stated another way, Fortress is investing $129 million and if the Sale and Plan go forward, the Debtor will return almost $150

million to Fortress within 16 months from the Debtors' own cash and self-liquidating FL7 and FL8 securities. This windfall, of course, comes at the expense of the preferred shareholders who, without appointment of a committee, will be inadequately represented in the case and will be forced either to accept such an unsatisfactory plan or to reject it and have no ready alternative to which to turn, and perhaps face the prospect of a conversion to liquidation. With such a valuable and liquid asset pool, it cannot be gainsaid that a plan of reorganization such as that being assembled by the Ad Hoc Committee that allows such value to be fully realized over the next 16 months is a mechanism to maximize value far superior to the Sale to Fortress.

8. There is no reason for this Court to approve the Debtors' Plan that wipes out preferred shareholders when preferred shareholders are in fact "in the money," and the AHC Plan will permit the preferred shareholders to realize the value to which they are entitled. Appointing an Equity Committee will allow for adequate representation of equity shareholders going forward.

9. In addition, in its 10-Q for the period ended June 30, 2019, filed on November 7, 2019,[3] RAIT Parent represents that shareholders' equity was $64,454,000. Importantly, shareholders' equity at fair value even exceeds that figure. After adjusting the Debtors' investment in mortgage loans to reflect fair value ($333,668,000 in mortgage loans at fair value versus $361,134,000 carrying value [**Exhibit** C, page 26]), shareholders' equity would be reduced by $27,466,000 to $36,988,000. However, the consolidated balance sheet in the 10-Q includes shareholders' deficits for RAIT Securitizations and RAIT VIE Properties in the amounts of $21,918,000 and $6,836,000, respectively [**Exhibit C**, page 31], which are non-recourse and for which RAIT Parent therefore has no liability. Once those non-Debtor shareholders' deficits

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[3] *See* **Exhibit C**.

in the aggregate amount of $28,754,000 are eliminated, the fair value of shareholders' equity is $65,742,000.

10. Thus, one can only conclude, and RAIT Parent now must concede, that there is a substantial likelihood that equity holders will receive a meaningful distribution if allowed to file the AHC Plan. At least there would be a meaningful distribution to equity if the Debtors were not pursuing a misguided sale process designed to wipe out that substantial quantum of shareholders' equity for no legitimate reason. Nor does there appear to be any evidence of a substantial decrease in value since June 30, 2019. In fact, the Debtors' assets appear to be performing well and providing significant liquidity to the estates.

11. Based on the foregoing, the Court should direct the appointment of the Equity Committee.

BACKGROUND

12. On August 30, 2019 (the "**Petition Date**"), the Debtors each commenced a voluntary case under chapter 11 of the Bankruptcy Code. On September 4, 2019, the Court entered an Order Directing Joint Administration of the Debtors under case number 19-11915(BLS) [Docket No. 25].

13. The Debtors are continuing operations and management as debtors in possessions pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

14. On September 9, 2019 the Debtors filed their Motion for Entry of an Order (I) Establishing the Bidding Procedures, Including Approval of A Break-Up Fee and Expense Reimbursement, (II) Approving Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Interests and Encumbrances, and (III) Granting Related Relief (the "**Sale Motion**") [Docket No. 53].

15. On September 17, 2019, the U.S. Trustee filed a Notice of Appointment of the Unsecured Creditors' Committee [Docket No. 65].

16. On October 14, 2019, the Debtors filed the Plan and the Disclosure Statement for the Plan [Docket No. 139 and 140, respectively].

17. On November 18, 2019, counsel for the Ad Hoc Committee filed their Notice of Appearance, Rule 2019 Statement and Objection to the Sale Motion. [Docket No. 200, 201 and 203, respectively].

PRIOR REQUEST ADDRESSED TO THE U.S. TRUSTEE

18. Prior to making this Motion, the Ad Hoc Committee has made two separate requests of the U.S. Trustee to appoint an Equity Committee.

19. On September 6, 2019, former counsel to a prior ad hoc committee containing some of the members of the current Ad Hoc Committee, made a written request to the U.S. Trustee for the appointment of an Equity Committee pursuant to section 1102(a)(1) of the Bankruptcy Code, which Debtors' counsel opposed. At that time, the U.S. Trustee declined to appoint an Equity Committee.[4]

20. More recently, on November 12, 2019, current counsel to the Ad Hoc Committee, now in possession of the 10-Q, renewed the Ad Hoc Committee's request to the U.S. Trustee to appoint an Equity Committee. Both Debtors' counsel and counsel to the Official Committee of Unsecured Creditors opposed the request.[5] As the Court can see from the annexed correspondence, the Ad Hoc Committee pointed out that RAIT Parent admitted in its 10-Q that

[4] Copies of the correspondence from the Ad Hoc Committee's former counsel and Debtors' counsel are annexed hereto as composite **Exhibit D**.
[5] Copies of the correspondence are annexed hereto as composite **Exhibit E**.

there was approximately $65 million of shareholders' equity at fair value. When the Debtors opposed the request to appoint an official equity committee, they took the position that shareholders' equity was stated at book value and thus the Debtors were insolvent. By its letter dated November 15, 2019, the Ad Hoc Committee pointed out the fallacy of that position by citing additional disclosures in the 10-Q disclosing that the assets were indeed stated at fair value. The Debtors never replied to that letter, presumably because they now recognize the preposterous nature of their position, and now must concede that indeed there is substantial equity as they themselves publicly disclosed in their SEC filing. As of today, the U.S. Trustee has not advised whether it will appoint an Equity Committee.

JURISDICTION, VENUE AND STATUTORY PREDICATE

21. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The Ad Hoc Committee consents to entry of a final order by the Bankruptcy Court determining this Motion.

22. The statutory predicate for the relief sought herein is section 1102(a)(2) of the Bankruptcy Code.

BASIS FOR THE RELIEF REQUESTED

23. "On request of a party in interest, the court may order the appointment of additional committees of … equity security holders if necessary to assure adequate representation of . . . equity security holders." 11 U.S.C. § 1102(a)(2). In these cases, an Equity Committee is necessary to assure adequate representation of the non-insider equity holders.

24. To direct the appointment of an equity committee, courts generally require a substantial likelihood of a meaningful distribution to equity holders. *See In re Spansion, Inc.*,

421 B.R. 151, 156 (Bankr. D. Del. 2009). It must also be shown that the existing constituencies in these cases cannot adequately represent the non-insider equity holders. *Id*. at 156. Here, such a showing is easily accomplished.

25. Courts also may consider these factors:

a. Whether the shares are widely held and publicly traded;

b. The size and complexity of the Chapter 11 case;

c. The delay and additional costs that would result if the court grants the motion;

d. The likelihood of whether the debtors are insolvent;

e. The timing of the motion relative to the status of the Chapter 11 case; and

f. Other factors relevant to the adequate representation issue.

In re Kalvar Microfilm, Inc., 195 B.R. 599, 600 (Bankr. D. Del. 1996). "No one factor is dispositive [on the issue on appointment of an equity committee] and the amount of weight that courts place on each factor may depend on the circumstances of the particular Chapter 11 case." *Id*. at 600-01.

26. Once lack of adequate representation is established "the burden shifts to the opponent of the [Equity Committee] motion to show that the cost of the additional committee sought significantly outweighs the concern for adequate representation and cannot be alleviated in other ways." *In re Becker Industries Corp.*, 55 B.R. 945, (Bankr. S.D.N.Y. 1985).

27. Further, in considering an application to direct the appointment of an Equity Committee, "every case must be judged on its own facts." *Edison Bros. Stores*, 1996 WL 534853, at *3 (quoting *In re Wang Labs., Inc.*, 149 B.R. 1, 2 (Bankr. D. Mass. 1992)).

28. Despite the U.S. Trustee's declining to appoint an Equity Committee, this Court is entitled to consider the Ad Hoc Committee's request *de novo*. *In re Enron Corp.*, 279 B.R. 671,

684 (Bankr. S.D.N.Y. 2002) (collecting cases); *In re Texaco, Inc*., 79 B.R. 560, 566 (Bankr. S.D.N.Y. 1987); *In re Nat'l R.V. Holdings, Inc.*, 390 B.R. 690, 695 (Bankr. C.D. Cal. 2008). As stated by the *Enron* court:

> The initial determination whether to appoint an additional committee is often a determination made by the U.S. Trustee. The criteria to be used by the U.S. Trustee is [sic] not set forth in 11 U.S.C. § 1102(a)(1). Here, the U.S. Trustee may appoint additional committees *if the U.S. Trustee deems it appropriate.* Formal findings and adjudicatory procedures are not required of the U.S. Trustee. The court, however, is instructed by 11 U.S.C. § 1102(a)(2) that it is to appoint an addition committee to *assure adequate representation.*

Enron, 279 B.R. at 684 (emphasis in original; internal quotations and case citation omitted).

29. Applying the factors set forth in *Kalvar*, the only conclusion is that an Equity Committee must be appointed:

a. <u>Whether the shares are widely held and publicly traded</u>. The Ad Hoc Committee holds no less than 45% of the outstanding preferred stock. The stock in RAIT Financial Trust is widely held and publicly traded.

b. <u>The size and complexity of the Chapter 11 cases</u>. While these cases may seem large in dollar amount, the complexity of these cases lies in the proper wind down of Debtors' assets and operations in the best interest of all parties. Given the sheer number of assets in play, it is imperative that the wind-down process be managed to maximize value to all constituents, and that no assets are sold for an insufficient amount. The Debtors' proposed sale to Fortress fails to maximize value, as evidenced by Debtors' failure to achieve a sale price that will compensate equity shareholders for any of the $65 million in equity at fair value stated in the 10-Q.

c. <u>The delay and additional costs that would result if the court grants the Motion</u>. The Ad Hoc Committee has made substantial efforts to move quickly and effectively as to not delay the proceedings. Any delay caused by appointing the Equity Committee would only be the result of the Equity Committee negotiating with the Debtors and Creditor Committee on terms of a plan that adequately recognizes and delivers value to equity holders. Since there is value to be gained by equity, the Court should not bless the rushed process put in place by the Debtors, and instead should allow an Official Equity Committee, with full fiduciary responsibility, a seat at the table to negotiate a better plan.

d. The likelihood of whether the Debtors are insolvent. The Debtors cannot seriously aver insolvency. The 10-Q and the MOR demonstrate the exact opposite. It is important to note that denial of the appointment of an Equity Committee based upon solvency issues requires proof that the Debtors are not only insolvent but, rather, "hopelessly insolvent". *In re Emons Indus., Inc.*, 50 B.R. 692, 694 (Bankr. S.D. N.Y. 1985). Debtors fail to prove this.

e. The timing of the Motion relative to the status of the Chapter 11 cases. The Motion before the Court comes less than three months into the case and prior to the December 5 hearing to consider approval of the sale to Fortress, at which time the Sale Objection will also be before the Court. There is no DIP funder in place pushing the Debtors to exit Chapter 11 at rocket speed. The rushed sale process and confirmation process is all a product of the Debtors' making. Why the Debtors are rushing the process is not known; to uncover Debtors' motives, an Equity Committee must be appointed to look into why.

f. Other factors relevant to the adequate representation issue. Given the nature of the proposed AHC Plan and the Ad Hoc Committees' inability to successfully negotiate with the Debtors prior to the filing of the Sale Objection, the only conclusion is that the interests of the equity holders have not been adequately represented despite their retaining competent counsel. Equity holders are being treated as third-class citizens in the Debtors' Plan and in the bankruptcy cases as a whole. This cannot be allowed to stand, especially when there are tens of millions of dollars in equity value in existence.

30. The Court in *Spansion* reached the true heart of the issues which are present here. The court applied two significant factors in determining whether to appoint an equity committee: 1) whether there is a substantial likelihood of a meaningful distribution to equity holders; and 2) whether the existing constituencies in these cases cannot adequately represent the non-insider equity holders. *See Spansion* 421 B.R. at 156. As the Ad Hoc Committee detailed in its Sale Objection, the current Plan before the Court results in no distribution to any equity holders. During the pendency of this case, the Ad Hoc Committee members have already obtained a substantial Commitment Letter in support of the AHC Plan which will realize millions of dollars in recovery for preferred equity holders. Further, as outlined in the Preliminary Statement *supra,*

the Ad Hoc Committee has thus far been unable to protect its rights and engage in meaningful negotiations with the Debtors on the Plan.

31. As the determination of whether to appoint an Equity Committee rests squarely in the Court's discretion, the Ad Hoc Committee respectfully submits that the only way to garner adequate representation of the equity security holders is through appointment of an Equity Committee.

NOTICE

29. Notice of this Motion will be given to counsel for (i) the Debtors, (ii) the U.S. Trustee, and (iii) through the Court's CM/ECF system, all other parties having filed a request for notice. It is respectfully submitted that, in light of the nature of the relief requested, no other or further notice need be given.

30. No prior motion for the relief requested herein has been filed in this or any other court.

WHEREFORE, the Ad Hoc Committee respectfully requests that the Court grant this Motion, direct the U.S. Trustee to appoint an Official Committee of Equity Security Holders forthwith, and grant such other and further relief as is just or appropriate.

DATED: November 21, 2019

Respectfully submitted,

/s/Joseph H. Huston, Jr.

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*Pending admission *Pro Hac Vice*

Counsel to the Ad Hoc Committee of Holders of Preferred Equity Issued by RAIT Financial Trust

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: RAIT FUNDING, LLC, a Delaware limited liability company, *et al.*[1] Debtors.	Chapter 11 Case No. 19-11915 (BLS) (Jointly Administered) **Related to Docket No. _______** **Hearing Date: December 5, 2019 at 10:00 a.m.** **Objection Deadline: December 2, 2019 at noon.**

PROPOSED ORDER GRANTING THE MOTION OF THE MOTION OF THE AD HOC COMMITTEE OF PREFERRED EQUITY SECURITY HOLDERS OF RAIT INANCIAL TRUST FOR ENTRY OF AN ORDER DIRECTING THE UNITED STATES TRUSTEE TO APPOINT AN OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS

Upon the motion, dated November 21, 2019 (the "**Motion**")[2] filed by the Ad Hoc Committee of Holders of Preferred Equity (the "**Ad Hoc Committee**") issued by RAIT Financial Trust, seeking entry of an order directing the United States Trustee to appoint an official committee of equity security holders pursuant to section 1102(a)(2) of title 11 of the United States Code (the "**Bankruptcy Code**")

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. The United States Trustee is directed to appoint an official committee of equity security holders in the above referenced matter by the ___ day of ________________, 2019.

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[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number (if applicable), are as follows: RAIT Funding, LLC, a Delaware limited liability company (9983); RAIT Financial Trust, a Maryland real estate investment trust (9819); RAIT General, Inc., a Maryland corporation (9987); RAIT Limited, Inc., a Maryland corporation (9773); Taberna Realty Finance Trust, a Maryland real estate investment trust (3577); RAIT JV TRS, LLC, a Delaware limited liability company (3190); and RAIT JV TRS Sub, LLC, a Delaware limited liability company (4870).

[2] Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Motion.

3. This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation and implementation of this Order.

Dated: December __ 2019

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HONORABLE BRENDAN LINEHAN SHANNON
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

MAGNETAR CAPITAL

MOAB PARTNERS

Ken Grossman
c/o Nicholas F. Kajon
Stevens & Lee
485 Madison Avenue, 20th Floor
New York, NY 10022

November 18, 2019

Magnetar Capital LLC and its affiliate Magnetar Financial LLC ("MFL") on behalf of one or more funds or accounts managed by MFL (collectively, "**Magnetar**") and Moab Capital Partners, LLC and its affiliate Moab Private Investments, L.P. (collectively, "Moab Partners") on behalf of one or more funds or accounts managed by Moab Partners, (Magnetar and Moab collectively to be referred to as "New Investors") are pleased to present this indicative term sheet to the Ad-Hoc Committee of Preferred Holders for the purpose of financing a recapitalization or Chapter 11 plan of RAIT Funding LLC, et al. ("RAIT" or "the Company").

The New Investors wish to explore a transaction to support the Ad Hoc Committee of Preferred Holders of RAIT with an investment to recapitalize and strengthen the ongoing balance sheet of RAIT and manage the business with the goal of creating value for more stakeholders. We believe the strong assets of the business, historical positive book value and near term liquidity improvements due to impending loan repayments create an opportunity to reposition/recapitalize the Company for the benefit of stakeholders which are ignored in the current Plan of Reorganization ("POR"). We would like to work with the Preferred Shareholders to help realize that value.

Magnetar Capital was founded in 2005 and is a leading alternative investment manager with expertise in real estate, structured products, energy, and fixed income using both quantitative and fundamental strategies. The Firm invests across public and private markets, geographies, and company capital structures, leveraging deep fundamental analysis and quantitative rigor. Magnetar manages approximately $12 billion dollars in assets for its investors and has a strong track record of value creation since inception.

Moab Partners, founded in 2006, manages approximately $750 million in an event-driven strategy focused on stressed credit and value equity. The Firm invests across all sectors in private and public companies. Moab Partners has extensive experience in the bankruptcy process. Moab Partners' founder, Michael Rothenberg has sat on numerous official creditor and steering committees through bankruptcy proceedings in Delaware.

The New Investors would propose to commit $50 million, subject to business, legal and tax due diligence, as well as definitive documentation, which when combined with RAIT's cash balances and current 2019 bondholders who are willing to extend their maturities, will allow for the outstanding indebtedness of RAIT to be refinanced, and strengthen RAIT's liquidity for all of its creditors and stakeholders. The Preferred Holders, who are entitled to no recovery under the current POR, will be entitled to the vast majority of residual value in the reorganized company. We have reviewed the public company filings, securitization monitoring reports and followed the case closely and would welcome the opportunity to enter into a traditional and expedited confirmatory due diligence period.

To continue to help create value for all stakeholders, the New Investors propose to establish an entity (the "SPV") which will manage the assets of the Company on an ongoing basis. The SPV would take over the investment management of RAIT which will generate substantial cost savings. Compensation to the SPV would consist of a management fee plus an incentive fee which better aligns management compensation with the growth of RAIT's book value. For historical perspective, in 2018, RAIT recorded $10.6 million in compensation expense in addition to $15.9 million in General and administrative expense. The New Investors are confident they will vastly reduce these expenses as another lever to deliver value for all stakeholders including the Preferred Holders. Further, the New Investors will be incentivized through their ability to drive book value per share for the reorganized entity. The New Investors intend to focus RAIT's investment strategy to align with their expertise in real estate and middle market loans. The new effort will lead to a simplification and reduction of the current cost burden on the Company and will allow the reorganized RAIT to emerge on solid footing and the new shareholders to benefit.

We are excited to work with the Ad-Hoc Committee as you look to assert your claim through the bankruptcy process and look forward to the opportunity to help create value on an ongoing basis for RAIT. We hope that you find the terms in the attachment acceptable and look forward to entering into confirmatory diligence

If the terms and conditions contained herein meet with your approval, please indicate your acceptance by executing this letter and returning a copy to us.

AGREED AND ACCEPTED

Ad Hoc Committee of Holders of Preferred Equity Issued by RAIT Financial Trust

By: [signature]
Name: Kenneth S. Grossman
Title: Agent for Ad Hoc Committee

Stevens & Lee
By: [signature]
Name: Nicholas F. Kajon
Title: shareholder

Odcon Capital Group LLC

By: [signature]
Name: Andrew L. Feldschreiber
Title: Managing Director

Very truly yours,

Magnetar Capital LLC

By: Karl Wachter
Name: Karl Wachter
Title: General Counsel

Moab Capital Partners, ~~LLC~~

By: [signature]
Name: Michael Rothenberg
Title: President

RAIT FUNDING, LLC, ET AL.
PRELIMINARY TERM SHEET RESPECTING PLAN OF REORGANIZATION AND EXIT FINANCING

Term	Description
Issuer	The Debtor, RAIT Funding, LLC, et al. ("RAIT"), in the Chapter 11 Case administered under case number Case No. 19-11915 (BLS)(Jointly Administered) in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").
Applicable Debtors	The Plan of Reorganization shall pertain to all Debtors except Taberna Realty Finance Trust (obligor on the Subordinated Taberna Note).
Claim Treatment	Pertaining to all stakeholders other than those of Debtor Taberna Realty Finance Trust: • Administrative: 100% Cash Payment • Priority Tax: 100%, paid in 5 annual increments per Bankruptcy Code Section 1129(a)(9)(C) • 7.125% Sr. Notes due 2019: Distribution Election (see below) • 7.625% Sr. Notes due 2024: Replacement Notes • GUCs: Distribution Election • Sub. RF Jr. Note: Unimpaired/Replacement Note • Preferred Interests: 90.0% of new common equity subject to dilution based on exit financing. • Common Interests: No recovery
Distribution Election	Holders of 7.125% Sr. Notes due 2019 and GUCs shall be entitled to vote, not only Plan acceptance/rejection, but also between two distribution options: (1) new 7.125% Sr. Secured Notes due 2022, having substantially the same terms as the 2019 Indenture, plus pro rata allocation of 10.0% of new common equity in the reorganized debtors; and (2) 100% cash payment. Under either Distribution Election, the 2019 Noteholders shall be entitled to post-petition interest at contract rate in the case of 7.125% Sr. Notes due 2019 who elect to exchange and federal judgment rate for non-electing 2019 Noteholders and GUCs. Holders of 7.125% Sr. Notes due 2019 and GUCs that do not vote on the Plan, shall receive new 7.125% Sr. Secured Notes due 2022.
Replacement Notes	Holders of 7.625% Sr. Notes due 2024 and the Sub. RF Jr. Note shall be respectively entitled to new 7.625% Sr. Notes or a Sub. RF Jr. Note, in each case pursuant to indentures having substantially the same terms as the preexisting indentures. Such distributions shall include post-petition interest.
Restructuring Support Agreement ("RSA")	Within seven days of execution of this term sheet, the parties will use commercially reasonable efforts to enter into a Restructuring Support Agreement ("RSA"), subject, with respect to the New Investors, to satisfactory completion of business, legal and tax due diligence as well as definitive documentation, to be prepared for execution by certain holders of the 7.125% Sr. Notes due 2019 and the ad-hoc committee of Preferred Holders controlling ~40% of the Preferred Equity. The RSA shall provide that such signatories are prepared to support the Plan and to make a Distribution Election in favor of new 7.125% Sr. Notes due 2022.

Exit Financing	The Plan shall be funded by a portion of available cash. In addition, on the Plan's Effective Date, $50 million (or such lesser necessary amount) shall be raised by issuing to capital providers (including the New Investor and the exchanging 2019 bondholders): (1) new debt on economic terms equivalent or better than the 7.125% Sr. Notes; and (2) pro rata allocation of 10.0% common equity in the reorganized Debtors (inclusive of the New Investor Backstop notes).
New Investor(s)	Magnetar Capital LLC on behalf of one or more funds or accounts managed by Magnetar Financial LLC and Moab Capital Partners, LLC (or affiliates) (the "New Investor(s)"), who shall have committed to purchase up to $50 million of the 2022 Notes (the "Committed Purchase Amount").
New Investor(s) Election	The New Investors shall have the right but not the obligation to purchase a minimum of $30 million of the 2022 Notes.
New Investor Backstop Pool	In consideration of providing the New Investor Backstop New Investor will receive: 1) A backstop fee equal to 10.0% of the Committed Purchase Amount payable in new 7.125% Sr. Secured Notes due 2022 ("New Investor Backstop Notes") 2) Its pro rata share of the 10.0% equity pool which will be granted to the new 7.125% Senior Secured rolling class. In addition if any Reorganization, Liquidation or Plan of Restructuring is implemented by the courts that provides any recovery to the Preferred Equity class and the New Investor has not made an investment, New Investor will receive 10.0% of any such value.
Effective Date	The "Effective Date" means the date on which the Plan is consummated. On the Effective date the Issuer shall (a) issue the 2022 Notes and (b) appoint a temporary manager to administer the assets for the benefit of all stakeholders
Use of Cash Proceeds	Together with cash on hand, cash proceeds from the New Investor and exchanging 2019 Sr. Noteholders shall be used, as provided for in the Plan, to provide exit financing and working capital for reorganized RAIT based upon a feasible post emergence budget.
Treatment Under Section 1145	2022 Notes and new RAIT shares will be exempt from registration under the Securities Act of 1933 by virtue of Section 4(2) thereof or Regulation D promulgated thereunder. 2022 Notes and new RAIT shares will be exempt from registration pursuant to the order confirming the Plan under section 1145 of the Bankruptcy Code to the extent applicable.
Post-Confirmation Governance	The reorganized RAIT Board shall be selected by the Ad Hoc Committee of Preferred Shareholders in coordination with the New Investor, and shall be disclosed in the Plan Supplement (filed 5 days before the voting deadline).
Externalization of Advisory Function	On the Effective Date, the Issuer will be become externally managed and will be advised by a newly formed legal entity (the "External Manager") controlled by the New Investor(s). The External Manager will charge an annual base management fee equal to the greater of (i) $2.0 million and (ii) 1.50% of Total Net Assets once total net assets exceed $200 million. In addition, the External Manger will earn an annual incentive fee of 17.5% above a hurdle of 6.0% Annualized Return, in line with comparable structures

Governing Law	Applicable Federal law (including conflicts of law rules), and in the absence of applicable Federal law, the law of the State of New York, without regard to conflict of laws doctrine applied in such state.
New Investor Breakup Obligation	Should any New Investor enter into a transaction pertaining to the case materially different than this term sheet without the express written consent of the Ad Hoc Committee, the members of the Ad Hoc Committee shall be entitled to participate in up to 33.33% of the transaction as a participant of the New Investor. The Ad Hoc Committee, or any member thereof, has the right to assign its right to participate in such transaction. The New Investor Breakup Obligation will not be enforceable if the parties are unable to come to acceptable terms and participation levels on the RSA.
Commitment Subject to Due Diligence	Any other provision of this this term sheet notwithstanding, this term sheet is a summary of indicative terms and conditions for discussion purposes only, and is subject to completion of due diligence and review of the Debtors' data room and satisfactory management meetings and other documents and information reasonably requested by the relevant parties and execution of definitive documentation and confirmation of the Plan on terms reasonably acceptable to the Commitment Parties. This Term Sheet does not constitute a commitment on the part of the New Investor(s) and is not binding on New Investor(s).
Successor Preferred Holders	Odeon Capital Group LLC and Stevens & Lee (together, "Advisors"), agree that in the event members of the Ad Hoc Committee sell or otherwise dispose of their Preferred Shares, the Advisors will not communicate with or represent new holders of the Preferred Shares unless they agree to be bound by the terms of the Term Sheet (including amendments and modifications thereto).

EXHIBIT C

10-Q 1 ras-10q_20190630.htm 10-Q

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

FORM 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the quarterly period ended **June 30, 2019**

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from __________ to __________

Commission file number 1-14760

RAIT FINANCIAL TRUST

(Exact Name of Registrant as Specified in its Charter)

Maryland	**23-2919819**
State or Other Jurisdiction of Incorporation or Organization	I.R.S. Employer Identification No.
Two Logan Square, 100 N. 18th Street, 23rd Floor, Philadelphia, PA	**19103**
Address of Principal Executive Offices	Zip Code

(215) 207-2100
Registrant's Telephone Number, Including Area Code

N/A
Former Name, Former Address and Former Fiscal Year, if Changed Since Last Report

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Not applicable	Not applicable	Not applicable

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

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

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

Large accelerated filer ☐	Accelerated filer ☐
Non-accelerated filer ☒	Smaller reporting company ☒
	Emerging growth company ☐

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

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

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Sections 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court. Yes ☐ No ☒

A total of 1,849,252 common shares of beneficial interest, par value $1.50 per share, of the registrant were outstanding as of November 1, 2019.

RAIT FINANCIAL TRUST
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PART I—FINANCIAL INFORMATION

Item 1. **Financial Statements**

RAIT Financial Trust

Consolidated Balance Sheets
(Unaudited and dollars in thousands, except share and per share information)

	As of June 30, 2019	As of December 31, 2018
Assets		
Investment in mortgage loans, held for investment:		
Commercial mortgage loans, mezzanine loans, and preferred equity interests	$ 381,279	$ 502,397
Allowance for loan losses	(20,145)	(22,336)
Total investment in mortgage loans, held for investment, net (including $352,064 and $467,656 held by consolidated VIEs, respectively)	361,134	480,061
Investment in mortgage loans, held for sale	4,973	4,873
Investments in real estate, net of accumulated depreciation of $10,722 and $8,768, respectively (including $17,665 and $18,020 held by consolidated VIEs, respectively)	113,605	107,824
Investments in real estate, held for sale	-	4,918
Cash and cash equivalents	46,705	42,453
Restricted cash	29,282	63,067
Accrued interest receivable	16,754	18,044
Other assets	8,755	10,807
Intangible assets, net of accumulated amortization of $6,050 and $5,703, respectively	1,370	1,717
Total assets	$ 582,578	$ 733,764
Liabilities and Shareholders' Equity		
Indebtedness, net of unamortized discounts, premiums and deferred financing costs of $15,256 and $16,643 respectively (including $301,711 and $440,776 held by consolidated VIEs, respectively)	$ 485,951	$ 625,916
Accrued interest payable	2,160	2,401
Accounts payable and accrued expenses	2,785	3,330
Borrowers' escrows	22,745	31,343
Other liabilities	4,483	2,268
Total liabilities	518,124	665,258
Preferred shares, $0.01 par value per share, 25,000,000 shares authorized;		
7.75% Series A cumulative redeemable preferred shares, liquidation preference $25.00 per share, 8,069,288 shares authorized, 5,727,500 and 5,727,500 shares issued and outstanding, respectively	57	57
8.375% Series B cumulative redeemable preferred shares, liquidation preference $25.00 per share, 4,300,000 shares authorized, 2,508,797 and 2,508,797 shares issued and outstanding, respectively	25	25
8.875% Series C cumulative redeemable preferred shares, liquidation preference $25.00 per share, 3,600,000 shares authorized, 1,758,030 and 1,758,030 shares issued and outstanding, respectively	18	18
Common shares, $1.50 par value per share, 200,000,000 shares authorized 1,849,488 and 1,850,451 issued and outstanding, respectively, including 4,924 and 6,844 unvested restricted common share awards, respectively	2,774	2,776
Additional paid in capital	2,102,435	2,102,274
Accumulated other comprehensive income (loss)	12,673	11,473
Retained earnings (deficit)	(2,053,528)	(2,048,117)
Total shareholders' equity	64,454	68,506
Total liabilities and shareholders' equity	$ 582,578	$ 733,764

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

RAIT Financial Trust

Consolidated Statements of Operations
(Unaudited and dollars in thousands, except share and per share information)

	For the Three Months Ended June 30, 2019	For the Three Months Ended June 30, 2018	For the Six Months Ended June 30, 2019	For the Six Months Ended June 30, 2018
Revenue:				
Investment interest income	$ 6,063	$ 16,324	$ 12,984	$ 35,189
Investment interest expense	(3,727)	(9,590)	(7,890)	(20,139)
Net interest margin	2,336	6,734	5,094	15,050
Property income	3,323	8,666	6,630	17,482
Fee and other income	99	1,153	187	2,362
Total revenue	5,758	16,553	11,911	34,894
Expenses:				
Interest expense	3,966	6,356	7,962	13,127
Real estate operating expense	1,713	5,402	3,716	11,192
Property management expenses	-	1,739	-	3,670
General and administrative expenses:				
Compensation expense	1,976	3,113	4,205	6,038
Other general and administrative expense	3,637	4,085	7,088	10,423
Total general and administrative expenses	5,613	7,198	11,293	16,461
Acquisition and integration expenses	-	-	-	133
Provision (benefit) for loan losses	(9,509)	14,748	(10,092)	22,780
Depreciation and amortization expense	1,295	2,887	2,679	6,330
Total expenses	3,078	38,330	15,558	73,693
Operating (Loss) Income	2,680	(21,777)	(3,647)	(38,799)
Interest and other income (expense), net	254	94	358	443
Gains (losses) on assets	1,230	(3,211)	1,533	(4,148)
Gains (losses) on deconsolidation of VIEs	-	(8,177)	-	(8,177)
Gains (losses) on extinguishments of debt	(346)	(2,438)	(631)	(3,429)
Asset impairment	(2,781)	(21,625)	(2,807)	(30,816)
Change in fair value of financial instruments	(210)	111	(180)	198
Income (loss) before taxes	827	(57,023)	(5,374)	(84,728)
Income tax benefit (provision)	-	-	-	-
Net income (loss)	827	(57,023)	(5,374)	(84,728)
(Income) loss allocated to preferred shares	(5,071)	6,861	(10,134)	472
Net income (loss) allocable to common shares	$ (4,244)	$ (50,162)	$ (15,508)	$ (84,256)
Earnings (loss) per share-Basic:				
Earnings (loss) per share-Basic	$ (2.30)	$ (27.26)	$ (8.41)	$ (45.82)
Weighted-average shares outstanding-Basic	1,844,563	1,839,826	1,844,302	1,838,666
Earnings (loss) per share-Diluted:				
Earnings (loss) per share-Diluted	$ (2.30)	$ (27.26)	$ (8.41)	$ (45.82)
Weighted average shares outstanding-Diluted	1,844,563	1,839,826	1,844,302	1,838,666

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

RAIT Financial Trust

Consolidated Statements of Comprehensive Income (Loss)
(Unaudited and dollars in thousands)

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2019	2018	2019	2018
Net income (loss)	$ 827	$ (57,023)	$ (5,374)	$ (84,728)
Other comprehensive income (loss):				
Unrealized gains (losses) from change in fair value based on instrument specific credit risk	620	2,021	1,200	3,287
Total other comprehensive income (loss)	620	2,021	1,200	3,287
Comprehensive income (loss)	$ 1,447	$ (55,002)	$ (4,174)	$ (81,441)

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

RAIT Financial Trust

Consolidated Statement of Changes in Equity
(Unaudited and dollars in thousands, except share information)

For the three and six months ended June 30, 2019

	Preferred Shares— Series A	Par Value Preferred Shares— Series A	Preferred Shares— Series B	Par Value Preferred Shares— Series B	Preferred Shares— Series C	Par Value Preferred Shares— Series C	Common Shares	Par Value Common Shares	Additional Paid In Capital	AOCI	Retained Earnings (Deficit)	Total Shareholders' Equity	Total Equity
Balance, December 31, 2018	5,727,500	$ 57	2,508,797	$ 25	1,758,030	$ 18	1,850,451	$ 2,776	$2,102,274	$11,473	$(2,048,117)	$ 68,506	$68,506
Net income (loss)											(6,201)	(6,201)	(6,201)
Common dividends declared											(29)	(29)	(29)
Other comprehensive income (loss), net										580		580	580
Share-based compensation									89			89	89
Common shares activity related to equity compensation							(921)	(2)				(2)	(2)
Balance, March 31, 2019	5,727,500	$ 57	2,508,797	$ 25	1,758,030	$ 18	1,849,530	$ 2,774	$2,102,363	$12,053	$(2,054,347)	$ 62,943	$62,943
Net income (loss)											827	827	827
Preferred dividends paid											(8)	(8)	(8)
Other comprehensive income (loss), net										620		620	620
Share-based compensation									72			72	72
Balance, June 30, 2019	5,727,500	$ 57	2,508,797	$ 25	1,758,030	$ 18	1,849,530	$ 2,774	$2,102,435	$12,673	$ (2,053,528)	$ 64,454	$ 64,454

For the three and six months ended June 30, 2018

	Preferred Shares— Series A	Par Value Preferred Shares— Series A	Preferred Shares— Series B	Par Value Preferred Shares— Series B	Preferred Shares— Series C	Par Value Preferred Shares— Series C	Common Shares	Par Value Common Shares	Additional Paid In Capital	AOCI	Retained Earnings (Deficit)	Total Shareholders' Equity	Noncontrolling Interests	Total Equity
Balance, December 31, 2017	5,344,353	$ 53	2,340,969	$ 23	1,640,425	$ 17	1,860,903	$ 2,791	$2,094,804	$ 0	$(1,921,533)	$ 176,155	$ 3,632	$179,787
Cumulative effect adjustments from adoption of recently issued accounting pronouncements										9,257	(8,496)	761		761
Adjusted Balance, January 1, 2018	5,344,353	$ 53	2,340,969	$ 23	1,640,425	$ 17	1,860,903	$ 2,791	$2,094,804	$ 9,257	$(1,930,029)	$ 176,916	$ 3,632	$180,548
Net income (loss)											(27,705)	(27,705)		(27,705)
Preferred dividends paid											(6,389)	(6,389)		(6,389)
Common dividends declared											(105)	(105)		(105)
Other comprehensive income (loss), net										1,266		1,266		1,266
Share-based compensation									(539)			(539)		(539)
Issuance of noncontrolling interests													76	76
Acquisition of noncontrolling interests									3,239			3,239	(3,582)	(343)
Common shares activity related to equity compensation							(9,369)	(14)	(57)			(71)		(71)
Balance, March 31, 2018	5,344,353	$ 53	2,340,969	$ 23	1,640,425	$ 17	1,851,535	$ 2,777	$2,097,447	$10,523	$(1,964,228)	$ 146,612	$ 126	$146,738
Net income (loss)											(57,023)	(57,023)		(57,023)
Preferred shares issued, net	383,147	4	167,828	2	117,605	1			4,359			4,366		4,366
Preferred dividends paid											(8)	(8)		(8)
Impact of Series D redemption (Note 8)											11,932	11,932		11,932
Other comprehensive income (loss), net										2,021		2,021		2,021
									262			262		262

Share-based compensation														
Distribution to noncontrolling interests													(15)	(15)
Derecognition of noncontrolling interests													(111)	(111)
Common shares activity related to equity compensation							(880)	(1)	(2)			(3)		(3)
Balance, June 30, 2018	5,727,500	$ 57	2,508,797	$ 25	1,758,030	$ 18	1,850,655	$ 2,776	$2,102,066	$12,544	$(2,009,327)	$ 108,159	$ 0	$108,159

The accompanying notes are an integral part of these consolidated financial statements

RAIT Financial Trust

Consolidated Statements of Cash Flows
(Unaudited and dollars in thousands)

	For the Six Months Ended June 30,	
	2019	2018
Operating activities:		
Net income (loss)	$ (5,374)	$ (84,728)
Adjustments to reconcile net income (loss) to cash flow from operating activities:		
Provision (benefit) for loan losses	(10,092)	22,780
Share-based compensation expense	161	(277)
Depreciation and amortization expense	2,679	6,330
Amortization of deferred financing costs and debt discounts	1,773	5,771
(Amortization) of loan origination fees and costs, net	(249)	(602)
(Amortization) of above/below market leases	(32)	(282)
(Gains) Losses on assets	(1,533)	4,148
(Gains) Losses on extinguishments of debt	631	3,429
(Gains) Losses on deconsolidation of VIEs	—	8,177
Asset impairment	2,807	30,816
Change in fair value of financial instruments	180	(198)
Changes in assets and liabilities:		
Decrease in accrued interest receivable	1,290	326
(Increase) decrease in other assets	597	1,842
(Decrease) increase in accrued interest payable	(240)	(745)
(Decrease) in accounts payable and accrued expenses	(527)	(568)
(Decrease) increase in other liabilities	(111)	17,237
Proceeds from sale of loans originated for sale	—	14,265
Cash flows provided by (used in) operating activities	(8,040)	27,721
Investing activities:		
Origination of loans for investment	(7,632)	(50,826)
Principal repayments on loans	122,636	170,036
Proceeds from sale of interests in floating rate securitizations, net of cash and restricted cash deconsolidated	—	31,874
Investments in real estate	(288)	(1,443)
Proceeds from sale of loans originated for investment	—	108,494
Proceeds from the disposition of real estate	13,255	34,833
(Decrease) in borrowers' escrows	(8,074)	(38,679)
Cash flows provided by (used in) investing activities	119,897	254,289
Financing activities:		
Repayments on secured credit facilities and loans payable on real estate	(372)	(652)
Repayments and repurchase of CDO notes payable and floating rate securitizations	(140,979)	(168,302)
Repurchase of convertible notes and senior notes	—	(41,094)
Repayments of senior secured notes	—	(2,000)
Net proceeds (repayments) related to floating rate loan repurchase agreements	—	(22,313)
Distribution to noncontrolling interests	—	(15)
Acquisition of noncontrolling interests	—	(343)
Issuance of noncontrolling interests	—	76
Common share issuance, net of costs incurred	(2)	(74)
Repurchase of Series D preferred shares	—	(62,046)
Distributions paid to preferred shareholders	(8)	(11,121)
Distributions paid to common shareholders	(29)	(105)
Cash flows (used in) provided by financing activities	(141,390)	(307,989)
Net change in cash, cash equivalents, and restricted cash	(29,533)	(25,979)
Cash, cash equivalents, and restricted cash at the beginning of the period	105,520	211,294
Cash, cash equivalents, and restricted cash at the end of the period	$ 75,987	$ 185,315

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

RAIT Financial Trust

Notes to Consolidated Financial Statements
As of June 30, 2019
(Unaudited and dollars in thousands, except share and per share amounts)

NOTE 1: THE COMPANY

RAIT Financial Trust is a self-managed and self-advised Maryland real estate investment trust, or REIT, focused on managing a portfolio of commercial real estate, or CRE, loans and properties. References to "RAIT", "we", "us", and "our" refer to RAIT Financial Trust and its subsidiaries, unless the context otherwise requires.

On August 30, 2019, RAIT and its affiliates RAIT Funding LLC ("RAIT Funding"), RAIT General, Inc. ("RAIT General"), RAIT Limited, Inc. ("RAIT Limited"), Taberna Realty Finance Trust ("TRFT"), RAIT JV TRS, LLC, and RAIT JV TRS Sub, LLC (each, a "Debtor", and together, the "Debtors") filed voluntary bankruptcy cases (the "Chapter 11 Cases") under chapter 11, Title 11 of the U.S. Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). No other subsidiaries of RAIT filed for bankruptcy protection. The Chapter 11 Cases are jointly administered under the caption *In re: RAIT Funding, LLC, a Delaware limited liability company, et. al.* Each of the Debtors will continue to operate its business as a "debtor in possession" under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code and the orders of the Bankruptcy Court. The Bankruptcy Court entered orders approving a variety of first-day relief designed primarily to minimize the impact of the Chapter 11 Cases on our operations and employees. We expect to continue our operations during the pendency of the Chapter 11 Cases.

Immediately prior to the filing of the Chapter 11 Cases, on August 30, 2019, RAIT, RAIT General, RAIT Limited and TRFT (together, the "Sellers"), entered into an Equity and Asset Purchase Agreement (the "Purchase Agreement") with CF RFP Holdings LLC, a Delaware limited liability company and an entity owned by funds managed by affiliates of Fortress Investment Group LLC ("Buyer"), pursuant to which, among other things, Buyer agreed to purchase certain subsidiaries and assets of the Sellers (together, the "Purchased Assets") for a purchase price of $174,424, as adjusted pursuant to a cash adjustment (the "Purchase Price"), including the assumption of certain liabilities. Buyer deposited $8,721 as an earnest money deposit. The transactions contemplated by the Purchase Agreement (the "Transactions") will be effected pursuant to a sale process under Section 363 of the Bankruptcy Code. On October 4, 2019, RAIT and the Sellers and the Buyer entered into Amendment No. 1 (the "Amendment") to the Purchase Agreement which, among other things, (i) provided for an additional deposit by the Buyer in the amount of $8,721 if Buyer is the winning bidder or back-up bidder in the auction contemplated by the Purchase Agreement or if there is no such auction and (ii) added a mechanism to adjust the Purchase Price for approved expenses associated with certain new, renewed, modified or amended leases that with the consent of Buyer are entered into by a Seller or an affiliate of Seller after the date of the Amendment and prior to the closing of the transactions contemplated by the Purchase Agreement. The Amendment further provided that if Buyer does not approve a proposed new, renewed, modified or amended lease or, if Buyer approves a proposed new, renewed, modified or amended lease, but does not approve all expenses associated therewith, the Sellers will not be in breach of the Purchase Agreement for the consequences of the determination not to enter into such new, renewed, modified or amended lease or make such unapproved payments, as applicable.

On August 29, 2019, RAIT entered into a Restructuring and Plan Support Agreement with TRFT and TP Management LLC, an affiliate of Buyer, in its capacity as delegate collateral manager ("TPM") (the "Taberna RSA"). On August 31, 2019, RAIT entered into a Restructuring and Plan Support Agreement with RAIT Funding and Kodiak CDO I., Ltd., as holder of certain preferred securities ("Kodiak", and together with TPM, the "RSA Counterparties") (the "Kodiak RSA", and together with the Taberna RSA, the "RSAs"). TPM is the collateral manager and Kodiak is the holder of certain securities that are collateralized by the 2035 Note (defined below, and also referred to as the junior subordinated note, at fair value) and the 2037 Note (defined below, and also referred to as the junior subordinated note, at amortized cost), respectively. Pursuant to the RSAs, each of the RSA Counterparties agreed, among other things, to support, and take reasonable necessary actions in furtherance of, the Transactions, including, among other things, the consummation of the sale of the Purchased Assets under Section 363 of the Bankruptcy Code and support the confirmation of a plan of reorganization of the Debtors. Pursuant to the RSAs, each of the RSA Counterparties has agreed, subject to certain conditions, to accept less than the total unpaid amounts due under the 2035 Note and the 2037 Note. The RSAs contain customary representations and warranties by RAIT, the applicable RAIT subsidiary and the applicable RSA Counterparty. RAIT, the applicable RAIT subsidiary and the applicable RSA Counterparty may terminate their respective RSA under certain circumstances, including, among other things, (a) the failure to satisfy certain bankruptcy-related milestones, (b) the entry of certain orders by, or upon certain actions taken by, the Bankruptcy Court, (c) breaches of representations and obligations under the applicable RSA, and (d) upon the occurrence of a material adverse change.

Subject to certain specific exceptions under the Bankruptcy Code, the Chapter 11 Cases automatically stayed most judicial or administrative actions against the Debtors as well as efforts by creditors to collect on or otherwise exercise rights or remedies with respect to pre-petition claims. As a result, for example, most creditor actions to obtain possession of property from the Debtors, or to create, perfect or enforce any lien against the Debtors, or to collect on or otherwise exercise rights or remedies with respect to a pre-petition claim are stayed.

On October 2, 2019, the Bankruptcy Court entered an order (the "Bidding Procedures Order") approving the bidding procedures (the "Bidding Procedures") by which the Debtors expect to solicit and select the highest and otherwise best offer for the sale (the "Sale") of the Purchased Assets, establishing related dates and deadlines, approving the Debtor's selection of the Buyer as the "stalking horse bidder," the break-up fee and expense reimbursement contemplated by the Purchase Agreement, approving the process of any auction that might be required under the Bidding Procedures, and granting related relief. Pursuant to the Bidding Procedures Order, the Debtors intend to sell all of their right, title and interest in and to the Purchased Assets free and clear of any pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon to the maximum extent permitted by Section 363 of the Bankruptcy Code. The deadline for the submission of bids that satisfies the requirements of the Bidding Procedures Order is November 27, 2019 at 12:00 p.m. (prevailing Eastern Time).

On September 27, 2019, the Debtors filed with the Bankruptcy Court its schedules of assets and liabilities and statements of financial affairs setting forth, among other things, the assets and liabilities of each of the Debtors, subject to the assumptions filed in connection therewith. These schedules and statements of financial affairs may be subject to further amendment or modification after filing. On October 14, 2019, the Debtors filed with the Bankruptcy Court its disclosure statement for Debtors' Joint Chapter 11 Plan (the "Disclosure Statement") and the Debtors' Joint Chapter 11 Plan (the "Plan").

Under the priority requirements established by the Bankruptcy Code, pre-petition and post-petition liabilities to creditors must be satisfied in full before the holders of our outstanding preferred shares and common shares are entitled to receive any distribution or retain any property under a plan of reorganization. The ultimate recovery for creditors, if any, will not be determined until confirmation and implementation of a plan of reorganization. The outcome of the Chapter 11 Cases remains uncertain at this time and, as a result, we cannot accurately estimate the amounts or value of distributions that creditors may receive. The Plan contemplates that our senior notes, which are publicly traded, RAIT's 7.125% Senior Notes due 2019 (the "7.125% Senior Notes") and 7.625% Senior Notes due 2024 (the "7.625% Senior Notes," and, together with the 7.125% Senior Notes, the "Senior Notes"), will be paid all outstanding principal and all accrued and unpaid interest as of (but excluding) the petition date in accordance with the Bankruptcy Code. The Plan contemplates that our junior subordinated notes will receive less than the total unpaid amounts due under each note consistent with the RSAs. The Plan contemplates that our outstanding preferred shares and common shares will be cancelled upon the effective date of the Plan and that the holders of our outstanding preferred shares and common shares will be entitled to no recovery. Article III of the Disclosure Statement sets forth a summary of the Plan, including a Plan Summary Table summarizing the classification and treatment of claims, along with projected recoveries for each class, all of which is subject to all the qualifications and disclaimers set forth in the Plan.

The filing of the Chapter 11 Cases with the Bankruptcy Court constituted an "Event of Default" under each of: (a) that certain Indenture, dated as of December 10, 2013, by and between RAIT and Wells Fargo Bank, National Association, as trustee, as subsequently modified by supplemental indentures setting forth the terms of the 7.125% Senior Notes (such indenture, the "Supplemental Indenture") and 7.625% Senior Notes, (b) that certain Junior Subordinated Indenture, dated February 12, 2007, by and between RAIT Funding and The Bank of New York Trust Company, National Association, as Trustee, relating to the 2037 Note, and (c) that certain Junior Subordinated Indenture, dated October 25, 2010, by and between TRFT and Wells Fargo Bank, National Association, as Trustee, relating to the 2035 Note (collectively, the "Debt Instruments"). We refer to the Events of Default described in this paragraph as the "Bankruptcy Events of Default." Each of the Debt Instruments provides that upon the occurrence of such an Event of Default, all obligations of RAIT or its applicable affiliate thereunder are accelerated and the principal and accrued interest due thereunder shall be automatically and immediately due and payable. Any efforts to enforce such payment obligations under the Debt Instruments were automatically stayed as a result of the filing of the Chapter 11 Cases with the Bankruptcy Court, and the respective creditors' rights of enforcement in respect of the Debt Instruments are subject to the applicable provisions of the Bankruptcy Code and orders of the Bankruptcy Court. As of the date hereof, RAIT or its applicable affiliates had (i) $65,356 of principal amount of 7.125% Senior Notes outstanding, (ii) $56,324 of principal amount of 7.625% Senior Notes outstanding, (iii) $25,100 of principal amount of the 2037 Note, or the junior subordinated note, at amortized cost, outstanding and (iv) $18,671 of principal amount of the 2035 Note, or the junior subordinated note, at fair value, outstanding.

Furthermore, RAIT's failure to pay the principal amount of 7.125% Senior Notes by their maturity date on August 30, 2019 constituted an "Event of Default" under the Supplemental Indenture.

The Plan contemplates the appointment of a Plan Administrator (the "Plan Administrator") to implement the Plan and to distribute any proceeds of the Plan upon confirmation of the Plan by the Bankruptcy Court. We expect that, for the duration of the of the Chapter 11 Cases, our operations will be subject to significant risks and uncertainties associated with Chapter 11 Cases. As a result of these significant risks and uncertainties, our assets, liabilities, shareholders' equity (deficit), officers and/or trustees could be significantly different following the outcome of the Chapter 11 Cases, and the description of our operations, equity, assets and liabilities included in this report may not accurately reflect our operations, assets and liabilities following the conclusion of the Chapter 11 Cases.

Any fair values utilized or disclosed in our consolidated financial statements to determine the amounts of our assets, liabilities, shareholders' equity or otherwise were developed for the purpose of complying with the accounting principles established for fair value measurements, as described below. The fair values of our assets, liabilities, shareholders' equity or otherwise for enterprise value in our Chapter 11 Cases or as a component of the Plan may reflect differing assumptions and methodologies. These estimates of fair value will be subject to a number of approvals and reviews and therefore may be materially different than any fair values utilized in our consolidated financial statements.

NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

a. Basis of Presentation

The accompanying unaudited interim consolidated financial statements have been prepared by management in accordance with U.S. generally accepted accounting principles, or GAAP. Certain information and footnote disclosures normally included in annual consolidated financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations, although we believe that the included disclosures are adequate to make the information presented not misleading. The unaudited interim consolidated financial statements should be read in conjunction with our audited financial statements as of and for the year ended December 31, 2018 included in our Annual Report on Form 10-K, or the Annual Report. In the opinion of management, all adjustments, consisting only of normal recurring adjustments, necessary to present fairly our consolidated financial position and consolidated results of operations, equity and cash flows are included. The results of operations for the interim periods presented are not necessarily indicative of the results for the full year.

The consolidated statement of cash flows for the six-month period ended June 30, 2018 includes the impact of correcting the reporting of certain activity that occurred in the six-month period ended June 30, 2018 and the three-month period ended March 31, 2018. Specifically, the correction re-classified cash proceeds from certain loan sales that were previously reported within cash flows from operating activities and should have been reported within cash flows from investing activities. The impact of this was a decrease to cash flows from operating activities and an increase to cash flows from investing activities of $108,494 for the six-month period ended June 30, 2018 ($89,583 of which related to the three-month period ended March 31, 2018). This correction had no impact to cash and cash equivalents as of June 30, 2018 (or March 31, 2018), nor did it impact any other consolidated financial statement amounts as of June 30, 2018 (or March 31, 2018) or for the six-month period ended June 30, 2018 (or the three-month period ended March 31, 2018).

b. Going Concern Considerations

Under the accounting guidance related to the presentation of financial statements, an entity is required to evaluate on a quarterly basis whether the entity's current financial condition, including its liquidity sources at the date that the financial statements are issued, will enable the entity to meet its obligations arising within one year of the date the entity's financial statements are issued and to make a determination as to whether it is probable, under the application of this accounting guidance, that the entity will be able to continue as a going concern over the applicable period. The accompanying consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. The financial statements do not include any adjustments that might be necessary should RAIT be unable to continue as a going concern. As a result of the considerations articulated below, there is substantial doubt about RAIT's ability to continue as a going concern within one year after the date that the financial statements are issued.

Analysis. In applying the accounting guidance, management considered RAIT's current financial condition and liquidity sources, including current funds available, forecasted future cash flows and RAIT's conditional and unconditional obligations due over the next twelve months. Management considered the following: (i) the impacts of the Chapter 11 Cases including the Events of Default as described in Note 1: The Company, and (ii) RAIT's recurring costs of operating its business.

As described in Note 1: The Company, the filing of the Chapter 11 Cases with the Bankruptcy Court triggered the Bankruptcy Events of Default and RAIT's failure to pay the principal amount of the 7.125% Senior Notes by their maturity date on August 30, 2019 also constituted an Event of Default. Each of the Debt Instruments provides that upon the occurrence of such an Event of Default, all obligations of RAIT and/or its applicable affiliates thereunder were accelerated and the principal and accrued interest due thereunder was automatically and immediately due and payable. Any efforts to enforce such payment obligations under the Debt Instruments are automatically stayed pursuant to Section 362 of the Bankruptcy Code, and the respective creditors' rights of enforcement in respect of the Debt Instruments are limited. As of the date hereof, the Debt Instruments of RAIT and/or its applicable affiliates had (i) $65,356 of principal amount of 7.125% Senior Notes outstanding, (ii) $56,324 of principal amount of 7.625% Senior Notes outstanding, (iii) $25,100 of principal amount of the 2037 Note, or the junior subordinated note, at amortized cost, outstanding, and (iv) $18,671 of principal amount of the 2035 Note, or the junior subordinated note, at fair value, outstanding.

RAIT's current sources of liquidity, including its current cash and cash equivalents balance, are not sufficient to satisfy RAIT's obligations arising over the next twelve months. Subject to receiving a higher and otherwise better bid as a result of the Bidding Procedures, RAIT expects to sell substantially all of its assets pursuant to the Purchase Agreement under Section 363 of the Bankruptcy Code and the Bidding Procedures Order for a purchase price of $174,424, adjusted as provided in the Purchase Agreement, including the assumption of certain liabilities. RAIT's proposed plan of reorganization under the Chapter 11 Cases provides for the ultimate wind down of RAIT's affairs once the transactions contemplated by the Purchase Agreement and the Bidding Procedures are completed and the plan of reorganization is confirmed.

Due to the inherent risks and significant uncertainties associated with the completion of the transactions under the Purchase Agreement, the Plan, the Chapter 11 Cases, and RAIT's recurring costs of operations, there is substantial doubt about RAIT's ability to continue as a going concern within one year after the date that these financial statements are issued.

c. Principles of Consolidation

The consolidated financial statements reflect our accounts and the accounts of our majority-owned and/or controlled subsidiaries. We also consolidate entities that are variable interest entities, or VIEs, where we have determined that we are the primary beneficiary of such entities. The portions of these entities that we do not own are presented as noncontrolling interests as of the dates and for the periods presented in the consolidated financial statements. All intercompany accounts and transactions have been eliminated in consolidation.

Under Financial Accounting Standards Board, or FASB, Accounting Standards Codification, or ASC, Topic 810, "Consolidation", the determination of whether to consolidate a VIE is based on the power to direct the activities of the VIE that most significantly impact the VIE's economic performance together with either the obligation to absorb losses or the right to receive benefits that could be significant to the VIE. We define the power to direct the activities that most significantly impact the VIE's economic performance as the ability to buy, sell, refinance, or recapitalize assets or entities, and solely control other material operating events or items of the entity. For our commercial mortgage loans, mezzanine loans, and preferred equity investments, certain rights we hold are protective in nature and would preclude us from having the power to direct the activities that most significantly impact the VIE's economic performance. Assuming both criteria are met, we would be considered the primary beneficiary and would consolidate the VIE. We will continually assess our involvement with VIEs and consolidate the VIEs when we are the primary beneficiary. See Note 7: Variable Interest Entities for additional disclosures pertaining to VIEs.

d. Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting periods. The items that include significant estimates are fair value of financial instruments and allowance for loan losses. Actual results could differ from those estimates.

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e. Cash and Cash Equivalents

Cash and cash equivalents include cash held in banks and highly liquid investments with maturities of three months or less when purchased. Cash, including amounts restricted, may at times exceed the Federal Deposit Insurance Corporation deposit insurance limit of $250 per institution. We attempt to mitigate credit risk by placing cash and cash equivalents with major financial institutions. To date, we have not experienced any losses on cash and cash equivalents.

f. Restricted Cash

Restricted cash consists primarily of tenant escrows and borrowers' funds held by us to fund certain expenditures or to be released at our discretion upon the occurrence of certain pre-specified events, and to serve as additional collateral for borrowers' loans. As of June 30, 2019 and December 31, 2018, we had $25,102 and $33,300, respectively, of tenant escrows and borrowers' funds.

Restricted cash also includes cash received from the sale, repayment and/or other disposition of assets held by the issuers of our securitizations that are awaiting to be distributed to holders of our CDO notes payable and CMBS securitizations, as well as the proceeds from the issuance of CDO notes payable by securitizations that are restricted for the purpose of funding additional investments in securities subsequent to the balance sheet date. As of June 30, 2019 and December 31, 2018, we had $4,180 and $29,767, respectively, of restricted cash held by securitizations.

g. Investments in Commercial Mortgage Loans, Mezzanine Loans and Preferred Equity Interests

We have invested in commercial mortgage loans, mezzanine loans and preferred equity interests. We account for our investments in commercial mortgage loans, mezzanine loans and preferred equity interests that we do not have the intention or ability to sell, at amortized cost. The carrying value of these investments is adjusted for origination discounts/premiums, nonrefundable fees and direct costs for originating loans which are amortized into income on a level yield basis over the terms of the loans.

Loans that we have the intention and ability to sell are classified as held for sale and are measured at the lower of amortized cost or fair value. If the amortized cost exceeds the loan's fair value, we establish a valuation allowance equal to the difference between the amortized cost and fair value.

h. Allowance for Loan Losses, Impaired Loans and Non-accrual Status

We maintain an allowance for loan losses on our investments in commercial mortgage loans, mezzanine loans and preferred equity interests. Management's periodic evaluation of the adequacy of the allowance is based upon expected and inherent risks in the portfolio, the estimated value of underlying collateral, and current economic conditions. The credit quality of our loans is monitored via quantitative and qualitative metrics. Quantitatively we evaluate items such as the current debt service coverage ratio and annual net operating income of the underlying property. Qualitatively we evaluate items such as recent operating performance of the underlying property and history of the borrower's ability to provide financial support. These items together are considered in developing our view of each loan's risk rating which are categorized as either impaired or satisfactory. Management reviews loans for impairment and establishes specific reserves when a loss is probable under the provisions of FASB ASC Topic 310, "Receivables." A loan is impaired when it is probable that we may not collect all principal and interest payments according to the contractual terms. As part of the detailed loan review, we consider many factors about the specific loan, including payment history, asset performance, borrower's financial capability and other characteristics. Management evaluates loans for non-accrual status each reporting period. A loan is placed on non-accrual status when the loan payment deficiencies exceed 90 days unless it is well secured and in the process of collection, or if the collection of principal and interest in full is not probable. Payments received for non-accrual loans are applied to principal until the loan is removed from non-accrual status. Loans are generally removed from non-accrual status when they are making current interest payments. The allowance for loan losses is increased by the provision for loan losses and decreased by charge-offs (net of recoveries). We recognize recoveries when they are received, and we charge off a loan when we determine that all commercially reasonable means of recovering the loan balance have been exhausted. This may occur at a variety of times, including when we receive cash or other assets in a pre-foreclosure sale or take control of the underlying collateral in full satisfaction of the loan upon foreclosure. We consider circumstances such as these to indicate that the loan collection process has ceased and that a loan is uncollectible.

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Loans which experience a modification to their contractual terms which result in a concession being granted to a borrower experiencing financial difficulties are considered troubled debt restructurings, or TDRs. A concession is deemed granted when, as a result of the restructuring, we do not expect to collect all amounts due, including interest accrued, at the original contractual interest rate. As appropriate, we also consider other qualitative factors in determining whether a concession is deemed granted, including the value of the underlying collateral. We do not consider restructurings that result in a delay in payment, in timing or amount, which is insignificant, to be a concession.

i. Investments in Real Estate

Investments in real estate are shown net of accumulated depreciation. We capitalize those costs that have been determined to improve the real property and depreciate those costs on a straight-line basis over the useful life of the asset. We depreciate real property using the following useful lives: buildings and improvements—30 to 40 years; furniture, fixtures, and equipment—5 to 10 years; and tenant improvements—shorter of the lease term or the life of the asset. Costs for ordinary maintenance and repairs are charged to expense as incurred.

Effective January 1, 2018, FASB ASC Topic 805, "Business Combinations" was amended to clarify the definition of a business by more clearly outlining the requirements for an integrated set of assets and activities to be considered a business and by establishing a practical framework to determine when the integrated set of assets and activities is a business. Prior to January 1, 2018, the properties we acquired were generally considered businesses and were accounted for as business combinations. Subsequent to January 1, 2018, we expect any properties that we acquire to generally not be considered businesses and, therefore, to be accounted for as asset acquisitions.

Under business combination accounting, the fair value of the real estate acquired is allocated to the acquired tangible assets, generally consisting of land, building and tenant improvements, and identified intangible assets and liabilities, consisting of the value of above-market and below-market leases for acquired in-place leases and the value of tenant relationships, based, in each case, on their fair values. Transaction costs and fees incurred related to the acquisition are expensed as incurred. Under asset acquisition accounting, the costs to acquire real estate, including transaction costs related to the acquisition, are accumulated and then allocated to the individual assets and liabilities acquired based upon their relative fair value.

In determining the fair value of the identified intangible assets and liabilities of an acquired property, above-market and below-market in-place lease values are recorded based on the present value (using an interest rate which reflects the risks associated with the leases acquired) of the differences between (i) the contractual amounts to be paid pursuant to the in-place leases and (ii) management's estimate of fair market lease rates for the corresponding in-place leases, measured over a period equal to the remaining term of the lease. The capitalized above-market lease values and the capitalized below-market lease values are amortized as an adjustment to property income over the lease term.

The aggregate value of in-place leases is determined by evaluating various factors, including an estimate of carrying costs during the expected lease-up periods, current market conditions and similar leases. In estimating carrying costs, management includes real estate taxes, insurance and other operating expenses, and estimates of lost rental revenue during the expected lease-up periods based on current market demand. Management also estimates costs to execute similar leases including leasing commissions, legal and other related costs. The value assigned to this intangible asset is amortized over the assumed lease up period.

Management reviews our investments in real estate for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. The review of recoverability is based on an estimate of the future undiscounted cash flows (excluding interest charges) expected to result from the long-lived asset's use and eventual disposition. These cash flows consider factors such as expected future operating income, trends and prospects, as well as the effects of leasing demand, competition and other factors. If impairment exists due to the inability to recover the carrying value of a long-lived asset, an impairment loss is recorded to the extent that the carrying value exceeds the estimated fair value of the property.

j. Revenue Recognition

1) *Interest income*—We recognize interest income from investments in commercial mortgage loans, mezzanine loans, and preferred equity interests, and other securities on a yield to maturity basis. Certain of our commercial mortgage loans, mezzanine loans and preferred equity interests permanently provide for the accrual of interest at specified rates which

differ from current payment terms (which may have minimum payment rates as low as zero percent). Interest income is recognized on such loans, the majority of which were originated prior to 2011, at the accrual rate subject to management's determination that accrued interest and outstanding principal are ultimately collectible. Management will cease accruing interest on these loans when it determines that the interest income is not collectible based on the value of the underlying collateral using discounted cash flow models and market-based assumptions. The accrued interest receivable associated with these loans as of June 30, 2019 and December 31, 2018 was $15,175 and $15,870, respectively. These loans are considered to be impaired when the total amount owed exceeds the estimated value of the underlying collateral. Seven of these loans, with an unpaid principal balance of $32,906 and $33,030, respectively, were considered to be impaired as of June 30, 2019 and December 31, 2018, respectively.

For investments that we do not elect to record at fair value under FASB ASC Topic 825, "Financial Instruments", origination fees and direct loan origination costs are deferred and amortized to net investment income, using the effective interest method, over the contractual life of the underlying loan security or loan, in accordance with FASB ASC Topic 310, "Receivables."

For investments that we elect to record at fair value under FASB ASC Topic 825, origination fees and direct loan costs are recorded in income and are not deferred.

2) *Property income*—We generate rental income from tenant rent and other tenant-related activities at our consolidated real estate properties. For multifamily real estate properties (which we owned none of as of June 30, 2019), property income is recorded when due from residents and recognized monthly as it is earned and realizable, under lease terms which are generally for periods of one year or less. For retail and office real estate properties, property income is recognized on a straight-line basis from the later of the date of the commencement of the lease or the date of acquisition of the property subject to existing leases, which averages minimum rents over the terms of the leases. For retail and office real estate properties, leases also typically provide for tenant reimbursement of a portion of common area maintenance and other operating expenses to the extent that a tenant's pro rata share of expenses exceeds a base year level set in the lease. Such reimbursements are generally recognized on a monthly basis as billed to tenants.

3) *Fee and other income*—We have generated and/or generate, as applicable, fee and other income through our various subsidiaries by (a) providing ongoing asset management services to investment portfolios under cancelable management agreements, and (b) prior to the sale of our retail property manager subsidiary in August 2018, providing property management services to third parties. We recognize revenue for these activities when: (i) a contract has been mutually approved and each party is committed to perform; (ii) both parties can identify the rights of each party; (iii) both parties can identify the payment terms of the contract; (iv) the contract has commercial substance; and (v) it is probable that we will collect substantially all of the consideration to which we are entitled. While we may receive asset management fees when they are earned, we eliminate earned asset management fee income from securitizations while such securitizations are consolidated. During the three and six months ended June 30, 2019, we received $52 and $111, respectively, of earned asset management fees, which were eliminated as they were associated with consolidated securitizations. During the three and six months ended June 30, 2018, we received $152 and $314, respectively, of earned asset management fees, which were eliminated as they were associated with consolidated securitizations.

Certain components of property income and fee and other income fall within the scope of FASB ASC Topic 606, "Revenue from Contracts with Customers". This topic requires entities to disaggregate revenue into categories that depict how the nature, amount, timing, and uncertainty of revenue and cash flows are affected by economic factors. In the following table, revenue from contracts with customers is disaggregated by type of revenue.

There have been no changes in the measurement of revenue from contracts with customers resulting from the adoption of ASC 606.

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	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
Revenue from Contracts with customers	**2019**	**2018**	**2019**	**2018**
Property Management Fee income	$ —	$ 727	$ —	$ 1,493
Parking	—	231	—	433
Leasing Commission income	—	343	—	664
Other miscellaneous	126	229	193	477
Total	$ 126	$ 1,530	$ 193	$ 3,067

k. Fair Value of Financial Instruments

In accordance with FASB ASC Topic 820, "Fair Value Measurements and Disclosures", fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Where available, fair value is based on observable market prices or parameters or derived from such prices or parameters. Where observable prices or inputs are not available, valuation models are applied. These valuation techniques involve management estimation and judgment, the degree of which is dependent on the price transparency for the instruments or market and the instruments' complexity for disclosure purposes. Assets and liabilities recorded at fair value in the consolidated balance sheets are categorized based upon the level of judgment associated with the inputs used to measure their value. Hierarchical levels, as defined in FASB ASC Topic 820, "Fair Value Measurements and Disclosures" and directly related to the amount of subjectivity associated with the inputs to fair valuations of these assets and liabilities, are as follows:

- Level 1: Valuations are based on unadjusted, quoted prices in active markets for identical assets or liabilities at the measurement date. The types of assets carried at Level 1 fair value generally are equity securities listed in active markets. As such, valuations of these investments do not entail a significant degree of judgment.

- Level 2: Valuations are based on quoted prices for similar instruments in active markets or quoted prices for identical or similar instruments in markets that are not active or for which all significant inputs are observable, either directly or indirectly. Fair value assets and liabilities that are generally included in this category are unsecured REIT note receivables, commercial mortgage-backed securities, or CMBS, receivables and certain financial instruments classified as derivatives where the fair value is based on observable market inputs.

- Level 3: Inputs are unobservable inputs for the asset or liability, and include situations where there is little, if any, market activity for the asset or liability. In certain cases, the inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, the level in the fair value hierarchy within which the fair value measurement in its entirety falls has been determined based on the lowest level input that is significant to the fair value measurement in its entirety. Our assessment of the significance of a particular input to the fair value measurement in its entirety requires judgment and considers factors specific to the asset or liability. Generally, assets and liabilities carried at fair value and included in this category are subordinated debentures, and historically included trust preferred obligations and CDO notes payable, where observable market inputs do not exist.

The availability of observable inputs can vary depending on the financial asset or liability and is affected by a wide variety of factors, including, for example, the type of investment, whether the investment is new, whether the investment is traded on an active exchange or in the secondary market, and the current market condition. To the extent that valuation is based on models or inputs that are less observable or unobservable in the market, the determination of fair value requires more judgment. Accordingly, the degree of judgment exercised by us in determining fair value is greatest for instruments
categorized in Level 3.

Fair value is a market-based measure considered from the perspective of a market participant who holds the asset or owes the liability rather than an entity-specific measure. Therefore, even when market assumptions are not readily available, our own assumptions are set to reflect those that management believes market participants would use in pricing the asset or liability at the measurement date. We use prices and inputs that management believes are current as of the measurement date, including during periods of market dislocation. In periods of market dislocation, the observability of prices and inputs may be reduced for many instruments. This condition could cause an instrument to be transferred from Level 1 to Level 2 or Level 2 to Level 3.

Many financial instruments have bid and ask prices that can be observed in the marketplace. Bid prices reflect the highest price that buyers in the market are willing to pay for an asset. Ask prices represent the lowest price that sellers in the market are willing to accept for an asset. For financial instruments whose inputs are based on bid-ask prices, we do not require that fair value always be a predetermined point in the bid-ask range. Our policy is to allow for mid-market pricing and adjusting to the point within the bid-ask range that results in our best estimate of fair value.

Fair value for certain of our Level 3 financial instruments is derived using valuation models that include discounted cash flow analyses. These internal valuation models include discounted cash flow analyses using current interest rates, estimates of the term of the particular instrument, specific issuer information and other market data for securities without an active market. In accordance with FASB ASC Topic 820, "Fair Value Measurements and Disclosures", the impact of our own credit spreads is also considered when measuring the fair value of financial assets or liabilities. Where appropriate, valuation adjustments are made to account for various factors, including bid-ask spreads, credit quality and market liquidity. These adjustments are applied on a consistent basis and are based on observable inputs where available. Management's estimate of fair value requires significant management judgment and is subject to a high degree of variability based upon market conditions, the availability of specific issuer information and management's assumptions.

l. Transfers of Financial Assets

We account for transfers of financial assets under FASB ASC Topic 860, "Transfers and Servicing", as either sales or financings. Transfers of financial assets that result in sales accounting are those in which (1) the transfer legally isolates the transferred assets from the transferor, (2) the transferee has the right to pledge or exchange the transferred assets and no condition both constrains the transferee's right to pledge or exchange the assets and provides more than a trivial benefit to the transferor, and (3) the transferor does not maintain effective control over the transferred assets. If the transfer does not meet these criteria, the transfer is accounted for as a financing. Financial assets that are treated as sales are removed from our accounts with any realized gain (loss) reflected in earnings during the period of sale. Financial assets that are treated as financings are maintained on the balance sheet with proceeds received from the legal transfer reflected as securitized borrowings or security-related receivables.

m. Deferred Financing Costs

Costs incurred in connection with debt financing are deferred and classified within indebtedness and charged to interest expense over the terms of the related debt agreements, under the effective interest method.

n. Intangible Assets

Intangible assets on our consolidated balance sheets represent identifiable intangible assets acquired in business acquisitions. We amortize identified intangible assets to expense over their estimated lives using the straight-line method. We evaluate intangible assets for impairment as events and circumstances change, in accordance with FASB ASC Topic 360, "Property, Plant, and Equipment." The gross carrying amount for our in-place leases and above-market leases was $7,420 as of June 30, 2019 and December 31, 2018. The accumulated amortization for our intangible assets was $6,050 and $5,703 as of June 30, 2019 and December 31, 2018, respectively. We recorded amortization expense of $193, and $391 for the three months ended June 30, 2019 and 2018, respectively, and $386, and $818 for the six months ended June 30, 2019 and 2018, respectively. Based on the intangible assets identified above, we expect to record amortization expense of intangible assets of $339 for 2019, $434 for 2020, $249 for 2021, $145 for 2022, $72 for 2023 and $131 thereafter. As of June 30, 2019, we have determined that no triggering events occurred that would indicate an impairment to our intangible assets.

o. Derivative Instruments

We have historically entered into interest rate derivative contracts to hedge all or a portion of the interest rate risk associated with certain of our borrowings and/or our fixed rate assets. The principal objective of these arrangements is to minimize the risks and/or costs associated with our operating and financial structure as well as to hedge specific anticipated transactions. While these instruments may impact our periodic cash flows, they benefit us by minimizing the risks and/or costs previously described.

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In accordance with FASB ASC Topic 815, "Derivatives and Hedging", we measure each derivative instrument at fair value and record such amounts in our consolidated balance sheet as either an asset or liability. For derivatives designated in hedging relationships, we determine at inception whether the hedge agreement is highly effective in offsetting the related risk by using regression analysis. For derivatives not designated as hedges, the changes in fair value of the derivative instrument are recorded in earnings. For derivatives cleared through the Chicago Mercantile Exchange, or CME, and the London Clearing House, or LCH, variation margin payments are considered settlements of the related derivatives.

As of June 30, 2019, we had no derivative instruments outstanding.

p. Income Taxes

RAIT and Taberna Realty Finance Trust, or TRFT, have each elected to be taxed as a REIT and to comply with the related provisions of the Internal Revenue Code of 1986, as amended, or the Internal Revenue Code. Accordingly, we generally will not be subject to U.S. federal income tax to the extent of any dividends to shareholders and as long as certain asset, income and share ownership tests are met. If we were to fail to meet these requirements, we would be subject to U.S. federal income tax, which could have a material adverse impact on our results of operations. Management believes that all of the criteria to maintain RAIT's and TRFT's REIT qualification have been met for the applicable periods, but there can be no assurance that these criteria will continue to be met in subsequent periods.

We maintain various taxable REIT subsidiaries, or TRSs, which may be subject to U.S. federal, state and local income taxes and foreign taxes. Current and deferred taxes are provided on the portion of earnings (losses) recognized by us with respect to our interest in domestic TRSs. Deferred income tax assets and liabilities are computed based on temporary differences between our GAAP consolidated financial statements and the federal and state income tax basis of assets and liabilities as of the consolidated balance sheet date. We evaluate the realizability of our deferred tax assets (e.g., net operating loss and capital loss carryforwards) and recognize a valuation allowance if, based on the available evidence, it is more likely than not that some portion or all of our deferred tax assets will not be realized. When evaluating the realizability of our deferred tax assets, we consider estimates of expected future taxable income, existing and projected book/tax differences, tax planning strategies available, and the general and industry specific economic outlook. This realizability analysis is inherently subjective, as it requires management to forecast our business and general economic environment in future periods. Changes in estimates of deferred tax asset realizability, if any, are included in income tax expense on the consolidated statements of operations.

In the prior year, our TRS entities generated taxable revenue primarily from property management fees for services provided to RAIT properties and third-party properties. In the current year, our TRS entities have not generated any significant taxable revenue. All income taxes are expensed and are paid by the TRSs in the year in which the revenue is received. These income taxes are not eliminated when the related revenue is eliminated in consolidation.

The TRS entities may be subject to tax laws that are complex and potentially subject to different interpretations by the taxpayer and the relevant governmental taxing authorities. In establishing a provision for income tax expense, we must make judgments and interpretations about the application of these inherently complex tax laws. Actual income taxes paid may vary from estimates depending upon changes in income tax laws, actual results of operations, and the final audit of tax returns by taxing authorities. Tax assessments may arise several years after tax returns have been filed. We review the tax balances of our TRS entities quarterly and, as new information becomes available, the balances are adjusted as appropriate.

q. Recent Accounting Pronouncements

Adopted within these Financial Statements

In February 2016, the FASB issued an accounting standard classified under FASB ASC Topic 842, "Leases". This accounting standard states that a lessee should recognize the assets and liabilities that arise from all leases with a term greater than 12 months. The core principle requires the lessee to recognize a liability to make lease payments and a right-of-use ("ROU") asset. The accounting applied by the lessor is relatively unchanged. During 2017 and 2018, the FASB issued multiple amendments to this accounting standard that provide further clarification to this accounting standard. The new standard is effective for us on January 1, 2019, with early adoption permitted. A modified retrospective transition approach is required, applying the new standard to all leases existing at the date of initial application. An entity may choose to use either (1) its effective date or (2) the beginning of the earliest comparative period presented in the financial statements as its date of initial application. We have adopted the new standard effective January 1, 2019 and have used the effective date as our date of initial application. The new standard provides a number of optional practical expedients in transition. We have elected the "package of practical expedients" for all our leases that exist at the date of initial application. This package permits us not to reassess under the new standard our prior conclusions about lease identification, lease classification and initial direct costs. We also have elected the practical expedient to not separate lease and non-lease components for all of our leases. The adoption of FASB ASC Topic 842 resulted in the recognition of a lease liability of $3,008 and a ROU asset of $2,416 as of the adoption date for one of our operating leases for which we are the lessee. The standard did not have an impact on any of our real estate leases for which we are the lessor.

Not Yet Adopted Within These Financial Statements

In June 2016, the FASB issued an accounting standard classified under FASB ASC Topic 326, "Financial Instruments-Credit Losses". The amendments in this standard provide an approach based on expected losses to estimate credit losses on certain types of financial instruments. The amendments also modify the impairment model for available-for-sale debt securities and provides for a simplified accounting model for purchased financial assets with credit deterioration since their origination. The amendments in this standard expand the disclosure requirements regarding an entity's assumptions, models, and methods for estimating the allowance for loan and lease losses. In addition, public business entities will need to disclose the amortized cost balance for each class of financial asset by credit quality indicator, disaggregated by the year of origination. During 2019, the FASB issued an amendment to this accounting standard which provides further clarification to this accounting standard. This standard and its amendment are effective for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. Early application of the guidance will be permitted for all entities for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. Management is currently evaluating the impact that this standard will have on our consolidated financial statements.

In August 2018, the FASB issued an accounting standard classified under FASB ASC Topic 820, "Fair Value Measurement". The amendments in this standard eliminate, add and modify certain disclosure requirements for fair value measurements. For example, entities will no longer have to disclose the amount of and reasons for transfers between Level 1 and Level 2 of the fair value hierarchy, but public companies will be required to disclose the range and weighted average used to develop significant unobservable inputs for Level 3 fair value measurements. The amendments in this accounting standard are effective for fiscal years beginning after December 15, 2019. Management is currently evaluating the impact that this standard will have on our consolidated financial statements.

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NOTE 3: INVESTMENTS IN COMMERCIAL MORTGAGE LOANS, MEZZANINE LOANS AND PREFERRED EQUITY INTERESTS

Loans Held for Investment

The following table summarizes our investments in commercial mortgage loans, mezzanine loans and preferred equity interests held for investment as of June 30, 2019:

	Unpaid Principal Balance	Unamortized (Discounts) Premiums	Carrying Amount	Number of Loans	Weighted-Average Coupon (1)	Range of Maturity Dates
Commercial Real Estate (CRE)						
Commercial mortgage loans	$ 332,040	$ (61)	$ 331,979	25	6.8%	Jul. 2019 to Jun. 2025
Mezzanine loans	21,114	164	21,278	3	13.3%	Jun. 2020 to Mar. 2023
Preferred equity interests	28,453	(1)	28,452	13	5.9%	Mar. 2023 to Jun. 2029
Total CRE (2)	381,607	102	381,709	41	7.1%	
Deferred fees and costs, net (3)	(430)	-	(430)			
Total	$ 381,177	$ 102	$ 381,279			

(1) Weighted-average coupon is calculated on the unpaid principal balance, which does not necessarily correspond to the carrying amount.
(2) Includes $51,017 of cash flow loans, of which $5,099 are commercial mortgage loans, $21,114 are mezzanine loans and $24,804 are preferred equity interests. See Note 2: Summary of Significant Accounting Policies, (j) Revenue Recognition, for further discussion of our cash flow loans.
(3) Includes $1,290 of deferred fees, net of $860 of deferred costs.

The following table summarizes our investments in commercial mortgage loans, mezzanine loans and preferred equity interests held for investment as of December 31, 2018:

	Unpaid Principal Balance	Unamortized (Discounts) Premiums	Carrying Amount	Number of Loans	Weighted-Average Coupon (1)	Range of Maturity Dates
Commercial Real Estate (CRE)						
Commercial mortgage loans	$ 453,283	$ (66)	$ 453,217	35	6.9%	Feb. 2019 to Jun. 2025
Mezzanine loans	21,114	164	21,278	3	13.3%	Jun. 2020 to Mar. 2023
Preferred equity interests	28,577	(1)	28,576	13	6.0%	Mar. 2023 to Jun. 2029
Total CRE (2)	502,974	97	503,071	51	7.2%	
Deferred fees and costs, net (3)	(674)	-	(674)			
Total	$ 502,300	$ 97	$ 502,397			

(1) Weighted-average coupon is calculated on the unpaid principal balance, which does not necessarily correspond to the carrying amount.
(2) Includes $54,621 of cash flow loans, of which $8,579 are commercial mortgage loans, $21,114 are mezzanine loans and $24,928 are preferred equity interests. See Note 2: Summary of Significant Accounting Policies, (j) Revenue Recognition, for further discussion of our cash flow loans.
(3) Includes $2,558 of deferred fees, net of $1,884 of deferred costs.

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A loan is placed on non-accrual status if it is delinquent for 90 days or more or if there is uncertainty over full collection of principal and interest, which generally includes our impaired loans that have reserves. The following table summarizes the delinquency statistics of our commercial real estate loans held for investment as of June 30, 2019 and December 31, 2018:

	As of June 30, 2019					
Delinquency Status	Current	30 to 59 days	60 to 89 days	90 days or more	Total	Non-accrual (1)
Commercial mortgage loans	$ 298,989	$ 5,098	$ —	$ 27,953	$ 332,040	$ 56,449
Mezzanine loans	21,114	—	—	—	21,114	8,245
Preferred equity interests	28,453	—	—	—	28,453	7,710
Total	$ 348,556	$ 5,098	$ —	$ 27,953	$ 381,607	$ 72,404

(1) Includes five loans that are current, but are on non-accrual due to uncertainty over whether we will fully collect principal and interest. Also includes one loan that is 90 days or more past due in accordance with their terms.

	As of December 31, 2018					
Delinquency Status	Current	30 to 59 days	60 to 89 days	90 days or more	Total	Non-Accrual (1)
Commercial mortgage loans	$ 414,735	$ —	$ —	$ 38,548	$ 453,283	$ 46,793
Mezzanine loans	12,222	—	—	8,892	21,114	8,892
Preferred equity interests	28,577	—	—	—	28,577	37,308
Total	$ 455,534	$ —	$ —	$ 47,440	$ 502,974	$ 92,993

(1) Includes five loans that were current in accordance with their terms, but are on non-accrual due to uncertainty over whether we will fully collect principal and interest, and three loans that are 90 days or more past due in accordance with their terms.

As of June 30, 2019 and December 31, 2018, all of our held for investment commercial mortgage loans, mezzanine loans and preferred equity interests that were 90 days or more past due or in foreclosure were on non-accrual status. As of June 30, 2019, $51,017 of our loans are cash flow loans, which permanently provide for the accrual of interest at specified rates which differ from current payment terms, and in some cases, do not require current payments. See Note 2: Summary of Significant Accounting Policies, (j) Revenue Recognition, for further discussion of our cash flow loans. As of June 30, 2019, and December 31, 2018, $72,404 and $92,993, respectively, of our loans were on non-accrual status and had a weighted-average interest rate of 6.9% and 6.9%, respectively. Also, as of June 30, 2019 and December 31, 2018, five loans with unpaid principal balances of $25,700, and weighted average interest rate of 11.4%, were not recognizing interest based on the estimated value of the underlying collateral.

Allowance For Loan Losses And Impaired Loans

During the three and six months ended June 30, 2019, we recognized a benefit for loan losses of $9,509 and $10,092, respectively. Our provision for loan losses during the three and six months ended June 30, 2019 was primarily driven by a $9,000 settlement payment received on a loan that was previously charged off. See Note 13: Commitments and Contingencies for further information related to this settlement payment.

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We closely monitor our loans, which require evaluation for loan loss in two categories: satisfactory and watchlist. Loans classified as satisfactory are loans that are performing consistent with our expectations. Loans classified as watchlist are generally loans that have performed below our expectations, have credit weaknesses or in which the credit quality of the collateral has deteriorated. This is determined by evaluating quantitative factors including debt service coverage ratios, net operating income of the underlying collateral and qualitative factors such as recent operating performance of the underlying property and history of the borrower's ability to provide financial support. We have classified our loans held for investment by credit risk category as of June 30, 2019 and December 31, 2018 as follows:

	As of June 30, 2019			
Credit Status	**Commercial Mortgage Loans**	**Mezzanine Loans**	**Preferred Equity**	**Total**
Satisfactory	$ 216,242	$ —	$ 5,063	$ 221,305
Watchlist (1)	115,798	21,114	23,390	160,302
Total	$ 332,040	$ 21,114	$ 28,453	$ 381,607

(1) Includes $106,052 of loans that are considered to be impaired and $54,250 of loans that are not considered to be impaired.

	As of December 31, 2018			
Credit Status	**Commercial Mortgage Loans**	**Mezzanine Loans**	**Preferred Equity**	**Total**
Satisfactory	$ 314,104	$ —	$ 5,063	$ 319,167
Watchlist (1)	139,179	21,114	23,514	183,807
Total	$ 453,283	$ 21,114	$ 28,577	$ 502,974

(1) Includes $126,645 of loans that are considered to be impaired and $57,162 of loans that are not considered impaired.

The following tables provide a roll-forward of our allowance for loan losses for our commercial mortgage loans, mezzanine loans and preferred equity interests for the three months ended June 30, 2019 and 2018:

	For the Three Months Ended June 30, 2019			
	Commercial Mortgage Loans	**Mezzanine Loans**	**Preferred Equity**	**Total**
Beginning balance	$ 10,401	$ 6,496	$ 3,830	$ 20,727
Provision (benefit) for loan losses	(9,449)	—	(60)	(9,509)
Charge-offs, net of recoveries	8,927	—	—	8,927
Ending balance	$ 9,879	$ 6,496	$ 3,770	$ 20,145

	For the Three Months Ended June 30, 2018			
	Commercial Mortgage Loans	**Mezzanine Loans**	**Preferred Equity**	**Total**
Beginning balance	$ 8,259	$ 5,231	$ 242	$ 13,732
Provision (benefit) for loan losses	14,748	—	—	14,748
Charge-offs, net of recoveries (1)	(11,781)	—	—	(11,781)
Ending balance	$ 11,226	$ 5,231	$ 242	$ 16,699

(1) Includes $1,423 of charge-offs related to loans transferred to held for sale during the three months ended June 30, 2018.

The following tables provide a roll-forward of our allowance for loan losses for our commercial mortgage loans, mezzanine loans and preferred equity interests for the six months ended June 30, 2019 and 2018:

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	For the Six Months Ended June 30, 2019			
	Commercial Mortgage Loans	Mezzanine Loans	Preferred Equity	Total
Beginning balance	$ 11,912	$ 6,496	$ 3,928	$ 22,336
Provision (benefit) for loan losses	(9,934)	—	(158)	(10,092)
Charge-offs, net of recoveries	7,901	—	—	7,901
Ending balance	$ 9,879	$ 6,496	$ 3,770	$ 20,145

	For the Six Months Ended June 30, 2018			
	Commercial Mortgage Loans	Mezzanine Loans	Preferred Equity	Total
Beginning balance	$ 9,019	$ 5,622	$ 242	$ 12,354
Provision (benefit) for loan losses	19,996	2,784	—	45,614
Charge-offs, net of recoveries (1)	(17,789)	(3,175)	—	$ (43,085)
Ending balance	$ 11,226	$ 5,231	$ 242	$ 16,699

(1) Includes $5,331 of charge-offs related to loans transferred to held for sale during the six months ended June 30, 2018.

Information on those loans considered to be impaired as of June 30, 2019 and December 31, 2018 was as follows:

	As of June 30, 2019			
Impaired Loans	Commercial Mortgage Loans	Mezzanine Loans	Preferred Equity	Total
Impaired loans expecting full recovery	$ 5,099	$ 12,869	$ 19,330	$ 37,298
Impaired loans with reserves	56,449	8,245	4,060	68,754
Total Impaired Loans (1)	61,548	21,114	23,390	106,052
Allowance for loan losses	$ 9,879	$ 6,496	$ 3,770	$ 20,145

(1) As of June 30, 2019, there was no unpaid principal relating to previously identified TDRs that are on accrual status.

	As of December 31, 2018			
Impaired Loans	Commercial Mortgage Loans	Mezzanine Loans	Preferred Equity	Total
Impaired loans expecting full recovery	$ 8,579	$ 12,869	$ 19,334	$ 40,782
Impaired loans with reserves	73,438	8,245	4,180	85,863
Total Impaired Loans (1)	82,017	21,114	23,514	126,645
Allowance for loan losses	$ 11,912	$ 6,496	$ 3,928	$ 22,336

(1) As of December 31, 2018, there was no unpaid principal relating to previously identified TDRs that are on accrual status.

The average unpaid principal balance and recorded investment of total impaired loans was $110,835 and $125,871 during the three months ended June 30, 2019 and 2018, respectively and $116,105 and $126,074 for the six months ended June 30, 2019 and 2018, respectively. We recorded interest income from impaired loans of $0 and $313 for the three months ended June 30, 2019 and 2018, respectively. We recorded interest income from impaired loans of $0 and $440 for the six months ended June 30, 2019 and 2018, respectively.

We have evaluated modifications to our commercial real estate loans to determine if the modification constitutes a troubled debt restructuring, or TDR, under FASB ASC Topic 310, "Receivables". During the three and six months ended June 30, 2019, we determined that restructuring of one commercial real estate loan with an unpaid principal balance totaling $29,478 constituted a TDR as the interest payment rate was decreased through September 2019 although interest continues to accrue at the original contractual interest rate. During the six months ended June 30, 2018, we determined that restructuring of one commercial real estate loan with an unpaid principal balance totaling $7,948 constituted a TDR as the interest payment rate was decreased to zero percent and the maturity date was extended. During the six months ended June 30, 2019, and June 30, 2018, there were no TDRs that subsequently defaulted for restructurings that had been entered into within the previous 12 months.

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Loans Held for Sale

In February 2018, we began to pursue a sale of certain loans. In March 2018, we sold these loans, which had unpaid principal balance of $90,260 and received proceeds of $43,384 after repayment of $45,850 of secured warehouse facility debt and $349 of interest. We recognized a loss of $930 on these loans.

During March 2018, we transferred nine additional loans to held for sale as we had the intent and ability to sell these loans. The transfer was made at the lower of cost or fair value for each respective loan. During the year ended December 31, 2018, six of these loans were sold or repaid, resulting in a net loss of $3,280.

During the three months ended, June 30, 2019, one of the remaining loans held for sale was repaid, resulting in a net gain of $66. The two remaining loans held for sale were measured at the lower of cost or fair value, resulting in a gain of $221. As of June 30, 2019, these loans had an unpaid principal balance of $6,599 and a carrying amount of $4,973.

Loan-to-Real Estate Conversions

In June 2019, we completed the conversion of a portion of a commercial mortgage loan portfolio to real estate owned property. See Note 4: Investments in Real Estate - Acquisitions for further information.

NOTE 4: INVESTMENTS IN REAL ESTATE

The table below summarizes our investments in real estate:

	Book Value	
	As of June 30, 2019	As of December 31, 2018
Office real estate properties	$ 49,027	$ 48,760
Retail real estate properties	56,556	49,088
Parcels of land	18,744	18,744
Subtotal	124,327	116,592
Less: Accumulated depreciation and amortization	(10,722)	(8,768)
Investments in real estate, net	$ 113,605	$ 107,824

As of June 30, 2019, our investments in real estate were comprised of land of $41,119 and buildings and improvements of $83,208. As of December 31, 2018, our investments in real estate were comprised of land of $36,905 and buildings and improvements of $79,687.

As of June 30, 2019, our investments in real estate of $124,327 were financed through $40,351 of mortgage loans or other debt held by third parties and $96,168 of mortgage loans held directly by RAIT or through our RAIT I securitization. As of December 31, 2018, our investments in real estate of $116,592 were financed through $40,724 of mortgage loans or other debt held by third parties and $80,562 of mortgage loans held directly by RAIT or through our RAIT I securitization. Together, along with the other commercial real estate loans held by our RAIT I securitization, these mortgage loans serve as collateral for the CDO notes payable issued by our RAIT I securitization. All intercompany balances and interest charges are eliminated in consolidation.

The following table represents the minimum future lease payments for our office and retail properties as of June 30, 2019.

2019	$ 4,776
2020	7,930
2021	5,690
2022	3,703
2023	1,980
2024 and thereafter	5,168
Total	$ 29,247

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Acquisitions:

As described in Note 3: Investments in Commercial Mortgage Loans, Mezzanine Loans and Preferred Equity Interests, in June 2019, we completed the conversion of a portion of a commercial mortgage loan portfolio with a carrying value of $7,448 to real estate owned property. The conversion resulted in approximately $7,448 of real estate assets being reflected on our consolidated balance sheet.

Property Sales:

During the six months ended June 30, 2019, we disposed of two real estate owned properties. The below table summarizes the current year dispositions and also presents each property's contribution to net income (loss) allocable to common shares, excluding the impact of any gain (loss) on sale:

					Net income (loss) allocable to common shares	
Property Name	Property Type	Date of Sale	Sale Price	Gain (loss) on sale	For the Three Months Ended June 30, 2019	For the Six Months Ended June 30, 2019
Rte 18 Central Plaza	Retail	2/26/2019	$ 5,100	$ -	$ 5	$ (55)
735 Collins Ave	Retail	5/14/2019	8,705	943	(17)	(17)
Total			$ 13,805	$ 943	$ (12)	$ (72)

NOTE 5: INDEBTEDNESS

We maintain various forms of short-term and long-term financing arrangements.

The following tables summarize our total recourse and non-recourse indebtedness as of June 30, 2019 and December 31, 2018, but do not reflect any potential impacts of the Chapter 11 Cases or any other "Event of Default" as discussed in Note 1: The Company or otherwise in "Defaults on Recourse Indebtedness" below.

The following table summarizes our total recourse and non-recourse indebtedness as of June 30, 2019:

Description	Unpaid Principal Balance	Unamortized Discount/Premium and Deferred Financing Costs	Carrying Amount	Weighted-Average Interest Rate	Contractual Maturity
Recourse indebtedness:					
7.625% Senior Notes	$ 56,324	$ (1,107)	$ 55,217	7.6%	Apr. 2024
7.125% Senior Notes	65,356	(92)	65,264	7.1%	Aug. 2019
Junior subordinated notes, at fair value (1)	18,671	(13,581)	5,090	6.6%	Mar. 2035
Junior subordinated notes, at amortized cost	25,100	—	25,100	5.1%	Apr. 2037
Total recourse indebtedness	165,451	(14,780)	150,671	6.9%	
Non-recourse indebtedness:					
CDO notes payable, at amortized cost (2)(3)	99,875	—	99,875	2.4%	Nov. 2046
CMBS securitizations (4)(5)	195,530	(291)	195,239	4.5%	Jun. 2037 to Dec. 2037
Loans payable on real estate	40,351	(185)	40,166	4.7%	Oct. 2021 to Dec. 2021
Total non-recourse indebtedness	335,756	(476)	335,280	3.9%	
Total indebtedness	$ 501,207	$ (15,256)	$ 485,951	4.9%	

(1) Relates to liabilities which we elected to record at fair value under FASB ASC Topic 825.
(2) Excludes CDO notes payable purchased by us which are eliminated in consolidation.

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(3) Collateralized by $156,339 principal amount of commercial mortgage loans, mezzanine loans, other loans and preferred equity interests, $94,585 of which is eliminated in consolidation. These obligations were issued by separate legal entities and consequently the assets of the special purpose entities that collateralize these obligations are not available to our creditors.
(4) Excludes CMBS securitization notes purchased by us which are eliminated in consolidation.
(5) Collateralized by $298,988 principal amount of commercial mortgage loans and participation interests in commercial mortgage loans. These obligations were issued by separate legal entities and consequently the assets of the special purpose entities that collateralize these obligations are not available to our creditors.

The following table summarizes our total recourse and non-recourse indebtedness as of December 31, 2018:

Description	Unpaid Principal Balance	Unamortized Discount/Premium and Deferred Financing Costs	Carrying Amount	Weighted-Average Interest Rate	Contractual Maturity
Recourse indebtedness:					
7.625% Senior Notes	$ 56,324	$ (1,224)	$ 55,100	7.6%	Apr. 2024
7.125% Senior Notes	65,356	(359)	64,997	7.1%	Aug. 2019
Junior subordinated notes, at fair value (1)	18,671	(12,561)	6,110	6.4%	Mar. 2035
Junior subordinated notes, at amortized cost	25,100	—	25,100	5.0%	Apr. 2037
Total recourse indebtedness	165,451	(14,144)	151,307	6.9%	
Non-recourse indebtedness:					
CDO notes payable, at amortized cost (2)(3)	116,102	—	116,102	3.1%	Nov. 2046
CMBS securitizations (4)(5)	320,282	(2,274)	318,008	4.0%	Jun. 2037 to Dec. 2037
Loans payable on real estate	40,724	(225)	40,499	4.7%	Oct. 2021 to Dec. 2021
Total non-recourse indebtedness	477,108	(2,499)	474,609	3.9%	
Total indebtedness	$ 642,559	$ (16,643)	$ 625,916	4.6%	

(1) Relates to liabilities which we elected to record at fair value under FASB ASC Topic 825.
(2) Excludes CDO notes payable purchased by us which are eliminated in consolidation.
(3) Collateralized by $170,124 principal amount of commercial mortgage loans, mezzanine loans, other loans and preferred equity interests, $94,191 of which is eliminated in consolidation. These obligations were issued by separate legal entities and consequently the assets of the special purpose entities that collateralize these obligations are not available to our creditors.
(4) Excludes CMBS securitization notes purchased by us which are eliminated in consolidation.
(5) Collateralized by $409,218 principal amount of commercial mortgage loans and participation interests in commercial mortgage loans. These obligations were issued by separate legal entities and consequently the assets of the special purpose entities that collateralize these obligations are not available to our creditors.

Recourse indebtedness refers to indebtedness that is recourse to our general assets. Non-recourse indebtedness consists of indebtedness of consolidated securitizations and loans payable on real estate which is recourse only to specific assets pledged as collateral to the lenders. The creditors of each consolidated securitization have no recourse to our general credit.

The activity in our financing arrangements occurring as of or during the six months ended June 30, 2019 is as follows:

Recourse Indebtedness

7.625% Senior Notes. During the three months ended June 30, 2019, there was no activity other than recurring interest. As of June 30, 2019, $56,324 of the 7.625% Senior Notes remain outstanding. These notes contain financial covenants that are applicable upon the incurrence of debt as defined in the notes' related indenture including a maximum leverage ratio covenant and a minimum fixed charge ratio covenant. We have not incurred debt, as defined in this indenture, since the three months ended March 31, 2018. As of March 31, 2018, the leverage ratio, calculated in accordance with the indenture, was 74.6% as compared to a maximum leverage ratio not to exceed 80%, and for the preceding four quarters, the fixed charge coverage ratio, calculated in accordance with the indenture, was 1.34x as compared to a minimum fixed charge coverage ratio of no less than 1.20x.

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7.125% Senior Notes. During the three months ended June 30, 2019, there was no activity other than recurring interest. As of June 30, 2019, $65,356 of the 7.125% Senior Notes remain outstanding. These notes contain financial covenants that are applicable upon the incurrence of debt as defined in the notes' related indenture including a maximum leverage ratio covenant and a minimum fixed charge ratio covenant. We have not incurred debt, as defined in this indenture, since the three months ended March 31, 2018. As of March 31, 2018, the leverage ratio, calculated in accordance with the indenture, was 74.6% as compared to a maximum leverage ratio not to exceed 80%, and for the preceding four quarters, the fixed charge coverage ratio, calculated in accordance with the indenture, was 1.34x as compared to a minimum fixed charge coverage ratio of no less than 1.20x.

Junior subordinated notes, at fair value. At issuance, we elected to record the $18,671 junior subordinated notes at fair value under FASB ASC Topic 825, with all subsequent changes in fair value recorded in earnings. Starting in January 2018, in accordance with an update to FASB ASC Topic 825, we began recording the change in fair value due to instrument-specific credit risk in other comprehensive income, with all other changes in fair value recorded in earnings. As of June 30, 2019, the fair value, or carrying amount, of this indebtedness was $5,090. These notes do not contain financial covenants.

Junior subordinated notes, at amortized cost. During the three months ended June 30, 2019, there was no activity other than recurring interest. These notes do not contain financial covenants.

Non-Recourse Indebtedness

CDO notes payable, at amortized cost. CDO notes payable at amortized cost represent notes issued by RAIT I which were used to finance the acquisition of commercial mortgage loans and mezzanine loans in our commercial real estate portfolio. Generally, CDO notes payable are comprised of various classes of notes payable, with each class bearing interest at variable or fixed rates. The RAIT I securitization contains interest coverage trigger tests, or IC triggers, and overcollateralization trigger tests, or OC triggers. If the IC triggers or OC triggers are not met in a given period, then the interest distributions are redirected from lower rated tranches and used to repay the principal amounts to the senior tranches of CDO notes payable. These conditions and the re-direction of interest distributions continue until the triggers are met by curing the underlying cause of the IC trigger or OC trigger failure, which may include curing payment defaults, paying down the CDO notes payable, or other actions permitted under the relevant securitization indenture.

As of December 31, 2018, RAIT I was meeting all its OC and IC trigger tests. Starting in January 2019 through the date of the filing of this Quarterly Report on Form 10-Q, the Class F/G/H OC test for RAIT I has not been met. In October 2019, the Class F/G/H IC test for RAIT I was not met. As a result, certain interest payments that would have otherwise been directed to the Class J notes and equity issued by RAIT I, which are owned by us, are instead being redirected to pay principal on the most senior class of CDO notes payable that are outstanding. The failure of these tests do not represent an event of default under the RAIT I securitization indenture.

CMBS securitizations As of June 30, 2019, our subsidiary, RAIT 2017-FL7 Trust, or RAIT FL7, had $184,911 of total collateral at par value, none of which was defaulted. As of June 30, 2019, RAIT FL7 had classes of investment grade senior notes with an aggregate principal balance outstanding of approximately $119,432 to investors. We currently own the unrated classes of junior notes, including a class with an aggregate principal balance of $65,479, and the equity, or the retained interests, of RAIT FL7. RAIT FL7 does not have OC triggers or IC triggers.

As of June 30, 2019, our subsidiary, RAIT 2017-FL8 Trust, or RAIT FL8, had $120,260 of total collateral at par value, none of which was defaulted. As of June 30, 2019, RAIT FL8 had classes of investment grade senior notes with an aggregate principal balance outstanding of approximately $76,098 to investors. We currently own the unrated classes of junior notes, including a class with an aggregate principal balance of $44,162, and the equity, or the retained interests, of RAIT FL8. RAIT FL8 does not have OC triggers or IC triggers.

The junior notes that we have retained in our CMBS securitizations include the class of junior notes that is subject to the first dollar of loss.

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Maturity of Indebtedness

Generally, the majority of our indebtedness is payable in full upon the maturity or termination date of the underlying indebtedness. The following table displays the aggregate contractual maturities of our indebtedness outstanding as of June 30, 2019 by year, but does not reflect any potential impacts of the Chapter 11 Cases as discussed in Note 1:

	Recourse indebtedness	Non-recourse indebtedness
2019	$ 65,356	$ 376
2020	-	779
2021	-	39,196
2022	-	-
2023	-	-
Thereafter	100,095	295,405
Total	$ 165,451	$ 335,756

Defaults on Recourse Indebtedness

The filing of the Chapter 11 Cases with the Bankruptcy Court triggered the Bankruptcy Events of Default, see Note 1: The Company for further information. Furthermore, RAIT's failure to pay the principal amount of the 7.125% Senior Notes by their maturity date on August 30, 2019 constituted an "Event of Default" under the applicable supplemental indenture.

Prior to the filing of the Chapter 11 Cases, on August 20, 2019, RAIT received a notice of default relating to the 7.125% Senior Notes and the 7.625% Senior Notes from the indenture trustee. The notice stated that RAIT has defaulted under Section 4.02 of each of the supplemental indentures that govern those Senior Notes because RAIT failed to timely file the quarterly report for the fiscal quarter ended March 31, 2019 that RAIT is required to file with the Securities and Exchange Commission. The notice demanded RAIT remedy such default. Under the supplemental indentures, the default will not become an "Event of Default" unless RAIT failed to remedy the default within 60 days after the date on which notice was received. If such an "Event of Default" occurred, then in lieu of acceleration of the repayment obligation, RAIT may at its option elect to pay additional interest on the respective Senior Note at an annual rate equal to 0.50% of the principal amount of the respective Senior Note for up to one year after the occurrence of such "Event of Default". Notwithstanding the foregoing, subject to certain specific exceptions under the Bankruptcy Code, the Chapter 11 Cases automatically stayed most judicial or administrative actions against the Debtors as well as efforts by creditors to collect on or otherwise exercise rights or remedies with respect to pre-petition claims.

(Unaudited and dollars in thousands, except share and per share amounts)

NOTE 6: FAIR VALUE OF FINANCIAL INSTRUMENTS

Fair Value of Financial Instruments

FASB ASC Topic 825, "Financial Instruments" requires disclosure of the fair value of financial instruments for which it is practicable to estimate that value. The fair value of investments in mortgage loans, mezzanine loans, preferred equity interests, CDO notes payable, convertible senior notes, junior subordinated notes, and derivative assets and liabilities is based on significant observable and unobservable inputs. The fair value of cash and cash equivalents and restricted cash approximates their carrying amount or unpaid principal balance due to the nature of these instruments.

Fair Value of Investment in Mortgage Loans, Held for Investment

The fair value of mortgage loans held for investment is determined using an exit price notion. Prior to adopting the January 2016 amendment to FASB ASC Topic 825, we measured the fair value of mortgage loans held for investment under an entry price notion. The entry price notion previously applied used a discounted cash flows technique to calculate the present value of expected future cash flows for a financial instrument. The exit price notion uses the same approach, but also incorporates other factors, such as enhanced credit risk, illiquidity risk, and market factors. We determined the fair value on substantially all of our loans for disclosure purposes, on an individual loan basis. The discount rates reflect current market rates for loans with similar terms to borrowers having similar credit quality on an exit price basis.

The following table summarizes the carrying amount and the fair value of our financial instruments as of June 30, 2019:

Financial Instrument	Carrying Amount	Estimated Fair Value
Assets		
Total investment in mortgage loans, held for investment, net	$ 361,134	$ 333,668
Investment in mortgage loans, held for sale	4,973	4,973
Cash and cash equivalents	46,705	46,705
Restricted cash	29,282	29,282
Liabilities		
Recourse indebtedness:		
7.625% Senior Notes	55,217	38,300
7.125% Senior Notes	65,264	56,834
Junior subordinated notes, at fair value	5,090	5,090
Junior subordinated notes, at amortized cost	25,100	5,780
Non-recourse indebtedness:		
CDO notes payable, at amortized cost	99,875	75,063
CMBS securitizations	195,239	195,765
Loans payable on real estate	40,166	40,911

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The following table summarizes the carrying amount and the fair value of our financial instruments as of December 31, 2018:

Financial Instrument	Carrying Amount	Estimated Fair Value
Assets		
Total investment in mortgage loans, held for investment, net	$ 480,061	$ 444,962
Investment in mortgage loans, held for sale	4,873	4,873
Cash and cash equivalents	42,453	42,453
Restricted cash	63,067	63,067
Liabilities		
Recourse indebtedness:		
7.625% Senior Notes	55,100	41,229
7.125% Senior Notes	64,997	58,010
Junior subordinated notes, at fair value	6,110	6,110
Junior subordinated notes, at amortized cost	25,100	6,550
Non-recourse indebtedness:		
CDO notes payable, at amortized cost	116,102	94,513
CMBS securitizations	318,008	320,711
Loans payable on real estate	40,499	40,608

Fair Value Measurements

The following table summarizes information about our liabilities measured at fair value on a recurring basis as of June 30, 2019, and indicates the fair value hierarchy of the valuation techniques utilized to determine such fair value:

Liabilities:	Quoted Prices in Active Markets for Identical Assets (Level 1) (1)	Significant Other Observable Inputs (Level 2) (1)	Significant Unobservable Inputs (Level 3) (1)	Balance as of June 30, 2019
Junior subordinated notes, at fair value	$ —	$ —	$ 5,090	$ 5,090
Total liabilities	$ —	$ —	$ 5,090	$ 5,090

(1) During the six months ended June 30, 2019, there were no transfers between Level 1 and Level 2, and there were no transfers into and/or out of Level 3.

The following table summarizes information about our liabilities measured at fair value on a recurring basis as of December 31, 2018, and indicates the fair value hierarchy of the valuation techniques utilized to determine such fair value:

Liabilities:	Quoted Prices in Active Markets for Identical Assets (Level 1) (1)	Significant Other Observable Inputs (Level 2) (1)	Significant Unobservable Inputs (Level 3) (1)	Balance as of December 31, 2018
Junior subordinated notes, at fair value	$ —	$ —	$ 6,110	$ 6,110
Total liabilities	$ —	$ —	$ 6,110	$ 6,110

(1) During the year ended December 31, 2018, there were no transfers between Level 1 and Level 2, and there were no transfers into and/or out of Level 3.

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When estimating the fair value of our Level 3 financial instruments, management uses various observable and unobservable inputs. These inputs include yields, credit spreads, duration, effective dollar prices and overall market conditions on not only the exact financial instrument for which management is estimating the fair value, but also financial instruments that are similar or issued by the same issuer when such inputs are unavailable. Generally, an increase in the yields, credit spreads or estimated duration will decrease the fair value of our financial instruments. Due to the inherent uncertainty of determining the fair value of investments that do not have a readily available market value, the fair value, as determined by management, may fluctuate from period to period and any ultimate liquidation or sale of the investment may result in proceeds that may be significantly different than fair value. For the fair value of our junior subordinated notes, at fair value, we estimate the fair value of these financial instruments using significant unobservable inputs. For the junior subordinated notes, at fair value, a discounted cash flow model was used as the valuation technique and the significant unobservable inputs as of June 30, 2019 include a discount rate of 30% and as of December 31, 2018 include a discount rate of 27%. The gains attributable to changes in instrument-specific credit risk were determined by discounting the future cash flows of the notes at base market interest rates and subtracting this amount from the total fair value of the instrument.

The following table summarizes additional information about our liabilities that are measured at fair value on a recurring basis for which we have utilized level 3 inputs to determine fair value for the six months ended June 30, 2019:

Liabilities	Junior Subordinated Notes, at Fair Value	Total Level 3 Liabilities
Balance, as of December 31, 2018	$ 6,110	$ 6,110
Change in fair value of financial instruments	(1,020)	(1,020)
Balance, as of June 30, 2019	$ 5,090	$ 5,090

The following table summarizes additional information about our liabilities that are measured at fair value on a recurring basis for which we have utilized level 3 inputs to determine fair value for the three months ended June 30, 2019:

Liabilities	Junior Subordinated Notes, at Fair Value	Total Level 3 Liabilities
Balance, as of March 31, 2019	$ 5,500	$ 5,500
Change in fair value of financial instruments	(410)	(410)
Balance, as of June 30, 2019	$ 5,090	$ 5,090

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Non-Recurring Fair Value Measurements

Our non-recurring fair value measurements relate primarily to our commercial real estate loans that are considered impaired. In evaluating our impaired loans, we estimate the fair value of the underlying collateral of the respective commercial real estate loan and compare that fair value to our total investment in the loan. When estimating the fair value of the underlying collateral of the commercial real estate loan, management uses discounted cash flow analyses and/or direct capitalization valuation analyses. The significant inputs to these valuations are capitalization rates and discount rates and are based on market information and comparable sales of similar properties. As of June 30, 2019, we measured the underlying collateral of five of our loans at a fair value of $48,872 in our consolidated balance sheet as they were impaired.

Our other non-recurring fair value measurements relate to our commercial real estate loans that are considered held for sale and are recorded at the lower of cost or fair value in our consolidated balance sheets. In evaluating our loans held for sale, we estimate the fair value of each loan and compare that fair value to our total investment in the loan. The estimate of fair value for each loan is determined using a discounted cash flow analysis. The significant inputs to these valuations are estimated future cash flows for each loan and market discount rates. The discount rates are based on underlying property performance and recent data from comparable lending markets. As of June 30, 2019, we measured two loans held for sale at a fair value of $4,973 in our consolidated balance sheet.

Fair Value of Financial Instruments

The following tables summarize the valuation technique and the level of the fair value hierarchy for financial instruments that are not recorded at fair value in the accompanying consolidated balance sheets but for which fair value is required to be disclosed. The fair value of cash and cash equivalents and restricted cash approximates cost due to the nature of these instruments and are not included in the tables below.

	Carrying Amount as of June 30, 2019	Estimated Fair Value as of June 30, 2019	Valuation Technique	Level in Fair Value Hierarchy
Total investment in mortgage loans, held for investment, net	$ 361,134	$ 333,668	Discounted cash flows	Three
Investment in mortgage loans, held for sale	4,973	4,973	Discounted cash flows	Three
7.625% Senior Notes	55,217	38,300	Trading price	Two
7.125% Senior Notes	65,264	56,834	Trading price	Two
Junior subordinated notes, at amortized cost	25,100	5,780	Discounted cash flows	Three
CDO notes payable, at amortized cost	99,875	75,063	Discounted cash flows	Three
CMBS securitizations	195,239	195,765	Discounted cash flows	Three
Loans payable on real estate	40,166	40,911	Discounted cash flows	Three

	Carrying Amount as of December 31, 2018	Estimated Fair Value as of December 31, 2018	Valuation Technique	Level in Fair Value Hierarchy
Total investment in mortgage loans, held for investment, net	$ 480,061	$ 444,962	Discounted cash flows	Three
Investment in mortgage loans, held for sale	4,873	4,873	Discounted cash flows	Three
7.625% Senior Notes	55,100	41,229	Trading price	Two
7.125% Senior Notes	64,997	58,010	Trading price	Two
Junior subordinated notes, at amortized cost	25,100	6,550	Discounted cash flows	Three
CDO notes payable, at amortized cost	116,102	94,513	Discounted cash flows	Three
CMBS securitizations	318,008	320,711	Discounted cash flows	Three
Loans payable on real estate	40,499	40,608	Discounted cash flows	Three

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The following table summarizes realized and unrealized gains and losses on assets and liabilities for which we elected the fair value option of FASB ASC Topic 825, "Financial Instruments" and derivatives as reported in change in fair value of financial instruments in the accompanying consolidated statements of operations:

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
Description	**2019**	**2018**	**2019**	**2018**
Change in fair value of junior subordinated notes	$ (210)	$ (77)	$ (180)	$ (272)
Change in fair value of derivatives	—	188	—	470
Change in fair value of financial instruments	$ (210)	$ 111	$ (180)	$ 198

The changes in the fair value for the junior subordinated notes for which the fair value option was elected for the three and six months ended June 30, 2019 and 2018 was primarily attributable to changes in base market interest rates. The changes in the fair value of derivatives for the three and six months ended June 30, 2018 was primarily attributable to changes in interest rates.

NOTE 7: VARIABLE INTEREST ENTITIES

The determination of when to consolidate a VIE is based on the power to direct the activities of the VIE that most significantly impact the VIE's economic performance together with either the obligation to absorb losses or the right to receive benefits that could be significant to the VIE. We evaluated our investments and determined that, as of June 30, 2019 and December 31, 2018, our consolidated VIEs were: RAIT I, RAIT FL7, RAIT FL8, and the RAIT VIE Properties (Willow Grove and Cherry Hill).

We consolidate the securitizations that we sponsor for which we have retained interests in and control the significant decisions regarding the collateral in these entities, such as the approval of loan workouts. As of June 30, 2019, we consolidated the VIE properties as we own the entities that control the significant capital and operating decisions regarding the properties.

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The following tables present the assets and liabilities of our consolidated VIEs as of each respective date. Certain amounts included in the tables below are eliminated upon consolidation with our other subsidiaries that maintain investments in the debt or equity securities issued by these entities.

	As of June 30, 2019		
	RAIT Securitizations	RAIT VIE Properties	Total
Assets			
Investments in commercial mortgage loans, mezzanine loans and preferred equity interests	$ 437,183	$ —	$ 437,183
Investments in real estate	—	17,665	17,665
Cash and cash equivalents	—	221	221
Restricted cash	4,162	505	4,667
Accrued interest receivable	17,585	—	17,585
Other assets	78	678	756
Total assets	$ 459,008	$ 19,069	$ 478,077
Liabilities and Equity			
Indebtedness, net	$ 479,745	$ 19,426	$ 499,171
Accrued interest payable	1,114	6,143	7,257
Accounts payable and accrued expenses	67	135	202
Deferred taxes, borrowers' escrows and other liabilities	—	201	201
Total liabilities	480,926	25,905	506,831
Equity:			
Shareholders' equity:			
RAIT investment and Retained earnings (deficit)	(21,918)	(6,836)	(28,754)
Total shareholders' equity	(21,918)	(6,836)	(28,754)
Total liabilities and equity	$ 459,008	$ 19,069	$ 478,077

	As of December 31, 2018		
	RAIT Securitizations	RAIT VIE Properties	Total
Assets			
Investments in commercial mortgage loans, mezzanine loans and preferred equity interests	$ 561,101	$ —	$ 561,101
Investments in real estate	—	18,020	18,020
Cash and cash equivalents	—	209	209
Restricted cash	29,658	374	30,032
Accrued interest receivable	18,849	—	18,849
Other assets	153	3,854	4,007
Total assets	$ 609,761	$ 22,457	$ 632,218
Liabilities and Equity			
Indebtedness, net	$ 618,516	$ 19,495	$ 638,011
Accrued interest payable	1,534	5,883	7,417
Accounts payable and accrued expenses	74	3,315	3,389
Deferred taxes, borrowers' escrows and other liabilities	2	197	199
Total liabilities	620,126	28,890	649,016
Equity:			
Shareholders' equity:			
RAIT investment and Retained earnings (deficit)	(10,365)	(6,433)	(16,798)
Total shareholders' equity	(10,365)	(6,433)	(16,798)
Total liabilities and equity	$ 609,761	$ 22,457	$ 632,218

The assets of the VIEs can only be used to settle obligations of the VIEs and are not available to our creditors. The amounts that eliminate in consolidation include $85,119 of total investments in mortgage loans and $197,460 of indebtedness as of June 30, 2019 and $93,445 of total investments in mortgage loans and $197,235 of indebtedness as of December 31, 2018. We do not have any contractual obligation to provide the VIEs listed above with any financial support. We have not and do not intend to provide financial support to these VIEs that we were not previously contractually required to provide.

NOTE 8: SERIES D PREFERRED SHARES

On October 1, 2012, we entered into a Securities Purchase Agreement, or the purchase agreement, with ARS VI Investor I, LLC, or the Investor, an affiliate of Almanac Realty Investors, LLC, or Almanac. During the period from the effective date of the purchase agreement through March 2014, we sold to the Investor on a private placement basis in four separate sales for an aggregate purchase price of $100,000, or the total commitment, the following securities: (i) 4,000,000 of our Series D Cumulative Redeemable Preferred Shares of Beneficial Interest, par value $0.01 per share, or the Series D preferred shares, (ii) common share purchase warrants, or the warrants, exercisable for 9,931,000 of our common shares, or the common shares (which had subsequently adjusted to 11,035,875 shares), and (iii) common share appreciation rights, or the Investor SARs, with respect to up to 6,735,667 common shares (which had subsequently adjusted to 7,485,045 shares). We subsequently repurchased a number of Series D preferred shares in transactions described below. We purchased and cancelled the warrants and the investor SARs in October 2017 pursuant to the Investor's exercise of put rights described below. We used the proceeds received under the purchase agreement to fund our loan origination and investment activities, including CMBS and bridge lending.

All transactions involving the issuance, repurchase, redemption and/or exchange of the Series D preferred shares discussed herein also involved the corresponding preferred units of RAIT Asset Holdings IV, LLC, or RAIT IV, and with respect to the redemption on June 27, 2018 in connection with the below referenced Redemption and Exchange Agreement, resulted from the redemption of the linked preferred units of RAIT IV.

In September 2015, we amended the purchase agreement with the Investor related to the Series D preferred shares. This amendment changed two of the covenants therein. As consideration for this amendment, we paid the Investor $450. We accounted for this amendment as a modification of the Series D preferred shares.

On December 7, 2016, we entered into a securities repurchase agreement with the Investor pursuant to which we repurchased and cancelled 464,000 Series D preferred shares at par for a purchase price of $11,600 which resulted in a decrease from 4,000,000 Series D preferred shares issued and outstanding to 3,536,000 Series D preferred shares issued and outstanding.

On June 22, 2017, we entered into a securities repurchase agreement with the Investor pursuant to which we repurchased and cancelled 402,280 Series D preferred shares at par for a purchase price of $10,057 which resulted in a decrease from 3,536,000 Series D preferred shares issued and outstanding to 3,133,720 Series D preferred shares issued and outstanding.

On March 19, 2018, we redeemed and cancelled 194,530 Series D preferred shares at par for a purchase price of $4,863 which resulted in a decrease from 3,133,720 preferred units of RAIT IV and RAIT's corresponding Series D preferred shares issued and outstanding to 2,939,190 preferred units of RAIT IV and RAIT's corresponding Series D preferred shares issued and outstanding.

On June 27, 2018, we entered into a Redemption and Exchange Agreement with the Investor whereby we redeemed and cancelled the remaining 2,939,190 preferred units of RAIT IV and RAIT's corresponding Series D preferred shares for $56,765 of cash received by RAIT IV from the sale of the FL5 and FL6 Interests, defined available cash held by RAIT IV and $16,715 of liquidation preference of RAIT's publicly traded Series A preferred shares, Series B preferred shares and Series C preferred shares. Accordingly, the Investor received 383,147 of RAIT's Series A preferred shares, 167,828 of RAIT's Series B preferred shares, and 117,605 of RAIT's Series C preferred shares. In addition, RAIT paid the Investor an exchange fee of $418. The Redemption and Exchange Agreement also provided for the termination of the Securities Purchase Agreement and mutual releases between RAIT and the Investor of the previously reported dispute between the two parties.

On October 11, 2017, we received a put right notice from the Investor exercising the Investor's right to require us to purchase for $20,500 all the previous warrants and Investor SARs. On October 17, 2017, RAIT purchased all of the warrants and Investor

SARs. As a result, RAIT had no further obligations beyond October 17, 2017 relating to the warrants and Investor SARs and none remain outstanding, respectively, as of that date.

NOTE 9: SHAREHOLDERS' EQUITY

Preferred Shares

Dividends:

RAIT's Board of Trustees (the "Board") determined that it would suspend the dividend on RAIT's outstanding preferred shares on June 12, 2018. The Board considers dividends on a quarterly basis. As of June 30, 2019, $25,313 of dividends on these shares were unpaid and in arrears. These dividends in arrears are included in (income) loss allocated to preferred shares on our consolidated statements of operations since they represent a claim on earnings superior to common shareholders, but have not been accrued as a liability since they have not been declared.

Common Shares

Dividends:

The Board determined that it would suspend the dividend on RAIT's outstanding common shares on November 1, 2017.

During the six months ended June 30, 2019, we paid $29 of dividends on restricted common share awards that vested in this period. These dividends were declared during the vesting period but remained forfeitable prior to vesting and became payable upon vesting in accordance with the terms of these awards.

Shareholders' Equity Attributable to Common Shares:

As of June 30, 2019, total shareholders' equity attributable to common shares was a deficit of $185,405.

Noncontrolling Interests

RAIT Venture VIEs:

During the year ended December 31, 2018, the 2017 RAIT Venture VIE, which elected to be taxed as a REIT and that was formed in 2017 to hold the junior subordinated notes of FL-6, sold 125 preferred shares of the 2017 RAIT Venture VIE to unaffiliated purchasers. The price was $1,000 per share and the 2017 RAIT Venture VIE received $76 of net proceeds.

Acquisition of noncontrolling interests related to PlazAmericas Mall:

On March 16, 2018, we acquired the noncontrolling interests related to PlazAmericas Mall, a retail real estate property, for $343, including transaction costs. These noncontrolling interests had a carrying amount of $3,582. As we previously held a controlling financial interest in PlazAmericas Mall, we accounted for the acquisition of the noncontrolling interests as an equity transaction.

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NOTE 10: EARNINGS (LOSS) PER SHARE

The following table presents a reconciliation of basic and diluted earnings (loss) per share for the three and six months ended June 30, 2019 and 2018:

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2019	2018	2019	2018
Income (loss)	$ 827	$ (57,023)	$ (5,374)	$ (84,728)
(Income) loss allocated to preferred shares	(5,071)	6,861	(10,134)	472
Net income (loss) allocable to common shares	$ (4,244)	$ (50,162)	$ (15,508)	$ (84,256)
Weighted-average shares outstanding—Basic (1)	1,844,563	1,839,826	1,844,302	1,838,666
Weighted-average shares outstanding—Diluted (1)	1,844,563	1,839,826	1,844,302	1,838,666
Earnings (loss) per share—Basic:				
Earnings (loss) per share—Basic	$ (2.30)	$ (27.26)	$ (8.41)	$ (45.82)
Earnings (loss) per share—Diluted:				
Earnings (loss) per share—Diluted	$ (2.30)	$ (27.26)	$ (8.41)	$ (45.82)

(1) All share and per-share amounts have been retroactively adjusted to reflect the Reverse Stock Split for all periods presented herein.

For the three and six months ended June 30, 2019, securities convertible into 4,966 and 5,488 common shares, respectively, were excluded from the earnings (loss) per share computations because their effect would have been anti-dilutive. For the three and six months ended June 30, 2018, securities convertible into 163,502 and 167,075 common shares, respectively, were excluded from the earnings (loss) per share computations because their effect would have been anti-dilutive.

RAIT Financial Trust

Notes to Consolidated Financial Statements
As of June 30, 2019
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NOTE 11: RELATED PARTY TRANSACTIONS

In the ordinary course of our business operations, we have ongoing relationships and have engaged in transactions with the related entities described below. All of these relationships and transactions were approved or ratified by our audit committee as being on terms comparable to those available from an unaffiliated third party or otherwise not creating a conflict of interest.

Almanac Realty

On June 27, 2018, the purchase agreement that previously provided for Andrew M. Silberstein to serve as a trustee on our board was terminated as part of the Redemption and Exchange Agreement that was entered into with the Investor on June 27, 2018. As part of the Redemption and Exchange Agreement, Mr. Silberstein resigned as a trustee. While Mr. Silberstein was a trustee, his trustee fees were paid to the Investor. Mr. Silberstein is an equity owner of Almanac and an officer of the Investor and holds indirect equity interests in the Investor. The transactions completed pursuant to the purchase agreement are described above in Note 8: Series D Preferred Shares. Subsequent to June 27, 2018, Almanac is not considered a related party.

Ballard Spahr LLP

Justin P. Klein has served as a Trustee on our Board since June 2017 and is a partner of the law firm Ballard Spahr LLP, or Ballard Spahr. RAIT did not have any transactions with Ballard Spahr during the six months ended June 30, 2019. RAIT has paid Ballard Spahr LLP $52 and $84 during the three and six months ended June 30, 2018. The approximate dollar value of Mr. Klein's interest in these fees was $1 for the six months ended June 30, 2018, based on Mr. Klein's Ballard partnership interest.

Mr. Klein is a member of the RAIT board and receives board fees. The fees are paid to Ballard Spahr.

Charles Frischer and the Libby Frischer Family Partnership

On March 30, 2018, the Libby Frischer Family Partnership, or LFFP, Charles F. Frischer, or Mr. Frischer, and RAIT signed a letter which provided that RAIT would exempt LFFP from RAIT's common share ownership limit up to an amount equal to 12.5%. Mr. Frischer is the general partner of LFFP.

On April 6, 2018, RAIT, LFFP and Mr. Frischer entered into a cooperation agreement which sets forth certain transfer restrictions and standstill provisions, among other things, for a period of time. Subsequent to entering into the cooperation agreement, on April 6, 2018, LFFP, and Mr. Frischer and RAIT signed a letter agreement which provided that RAIT would exempt LFFP from RAIT's common share and preferred share ownership limits up to an amount equal to 15.0% with respect to each class of shares.

On May 11, 2018, RAIT, LFFP and Mr. Frischer entered into a letter agreement which provided that RAIT would exempt LFFP from RAIT's common share and preferred share ownership limits up to an amount equal to 20.0% with respect to each class of shares.

Highland Capital Management, L.P.

There were no transactions with Highland Capital Management, L.P. ("Highland") or its affiliates in 2019 or 2018. It is noted that remaining obligations under the previously disclosed cooperation agreement between RAIT and Highland entered into on May 26, 2017 relating to a defined "standstill period" that ended on May 26, 2019 and that Highland and certain of its affiliates filed a Schedule 13G/A with the SEC on February 14, 2019 disclosing that their aggregate holdings of RAIT's common shares had reduced to 4.9% of RAIT's outstanding common shares.

RAIT Financial Trust

Notes to Consolidated Financial Statements
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(Unaudited and dollars in thousands, except share and per share amounts)

NOTE 12: SUPPLEMENTAL DISCLOSURE TO STATEMENT OF CASH FLOWS

The following are supplemental disclosures to the statements of cash flows for the six months ended June 30, 2019 and 2018:

	For the Six Months Ended June 30,	
	2019	2018
Cash paid for interest	$ 14,311	$ 28,483
Cash paid (refunds received) for taxes	(38)	(1)
Non-cash increase in investments in real estate from conversion of loans	7,448	—
Non-cash increase (decrease) in indebtedness from debt extinguishments	—	(1,265)

During the three months ended March 31, 2019, we consolidated the Collins Avenue VIE as described in Note 7: Variable Interest Entities. This resulted in a non-cash increase of $7,448 to investments in real estate, held for sale, and a non-cash decrease of $7,866 to investments in mortgage loans. During the three months ended June 30, 2019, we disposed of the Collins Avenue property. See Note 4: Investments in Real Estate for further discussion.

During the six months ended June 30, 2018, we transferred nine loans to held for sale as we had the intention and ability to sell these loans. The transfer was made at the lower of cost or fair value for each respective loan. During the six months ended June 30, 2018, we sold six loans, which had an unpaid principal balance and carrying amount of $31,377. See Note 3: Investment in Commercial Mortgage Loans, Mezzanine Loans, and Preferred Equity Interests for further discussion.

During the six months ended June 30, 2018, we acquired the noncontrolling interests related to PlazAmericas Mall for $343, including transaction costs. See Note 9: Shareholders' Equity for further discussion.

During the six months ended June 30, 2018, we redeemed and cancelled the remaining 2,939,190 preferred units of RAIT IV and the corresponding Series D preferred shares for $56,765 of cash and $16,715 of liquidation preference of RAIT's publicly traded Series A preferred shares, Series B preferred shares and Series C preferred shares. See Note 8: Series D Preferred Shares for further discussion.

The following table summarizes our cash and cash equivalents and restricted cash balances as of June 30, 2019 and June 30, 2018:

	As of June 30, 2019	As of June 30, 2018
Cash and cash equivalents	$ 46,705	$ 72,224
Restricted cash	29,282	113,091
Total cash and cash equivalents and restricted cash	$ 75,987	$ 185,315

NOTE 13: COMMITMENTS AND CONTINGENCIES

General

We are involved from time to time in litigation on various matters, including disputes with tenants of owned properties, disputes arising out of agreements to purchase or sell properties, disputes arising out of our loan portfolio, discrimination claims, negligence claims, and similar tort claims related to owned properties or employment related disputes. Given the nature of our business activities, these lawsuits are considered routine to the conduct of our business. The result of any particular lawsuit cannot be predicted, because of the very nature of litigation, the litigation process and its adversarial nature, and the jury system. We do not expect that the liabilities, if any, that may ultimately result from such routine legal actions will have a material adverse effect on our consolidated financial position, results of operations or cash flows, except as described below.

The Chapter 11 Cases

For a description of the Chapter 11 Cases, see Note 1: The Company, which is incorporated herein by reference.

RAIT Preferred Funding II, Ltd. v. CWCapital Asset Management LLC, et al.–Index No. 651729/2016 (Sup. Ct. N.Y.)

RAIT Financial Trust

Notes to Consolidated Financial Statements
As of June 30, 2019
(Unaudited and dollars in thousands, except share and per share amounts)

On September 20, 2017, RAIT Preferred Funding II, Ltd., or RAIT II, filed an amended complaint against the following defendants, or the Defendants, CWCapital Asset Management, LLC, or CWCapital, Wells Fargo Bank N.A., or Wells Fargo, and U.S. Bank N.A., or U.S. Bank, in the Supreme Court of the State of New York, County of New York, or the Court. This action concerns a loan, or the mortgage loan, to a non-party borrower, or the borrower, made in 2007. RAIT II purchased $18,500 of the mortgage loan for which it held a promissory note, or note B. U.S. Bank is the trustee for a securitization trust that purchased the remaining $190,000 of the mortgage loan and for which it held a promissory note, or note A. CWCapital is the special servicer and Wells Fargo is the master servicer for the mortgage loan (including note A and note B). The parties' rights and obligations are governed by, among other things, a pooling and servicing agreement and a co-lender agreement. The mortgage loan was repaid in May of 2017, and the defendants have alleged that RAIT II was not entitled to receive any payoff of principal under note B pursuant to the subordination and other provisions of the co-lender agreement. In the amended complaint, RAIT II alleges, among other things, that the defendants breached certain of their obligations under the operative documents and RAIT II should have received, among other things, all of its $18,500 principal under note B.

On October 11, 2017, CWCapital and U.S. Bank moved to dismiss the amended complaint and on November 13, 2017 Wells Fargo moved to dismiss the amended complaint. RAIT II filed its opposition to the motions to dismiss on November 27, 2017. By Decision and Order dated January 29, 2018, the Court denied the defendants' motions to dismiss the contract claims, leaving intact RAIT II's breach of contract claims against all defendants. The Court dismissed RAIT II's non-contract claims (unjust enrichment, conversion, money had and received, and declaratory judgment) as duplicative of the surviving contract claims. The parties have since concluded discovery, and Defendants filed a motion for summary judgment on March 18, 2019. That motion was adjourned as a result of the Settlement Agreement and Agreement to Discontinue referenced below, and the litigation is scheduled to be discontinued with prejudice by Stipulation after TRFT receives payment under the Settlement Agreement.

On December 17, 2018, RAIT II assigned its interest in note B to TRFT in connection with TRFT's redemption of RAIT II described in the 2018 Annual Report, see Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations—Securitization Summary." On April 8, 2019, the Court granted RAIT II's motion to substitute TRFT as the plaintiff in this litigation.

Effective May 8, 2019, TRFT, RAIT II, CWCapital and U.S. Bank entered into a Settlement Agreement and Mutual Release, or the Settlement Agreement. The Settlement Agreement provides (a) that CWCapital and U.S. Bank shall pay, or cause to be paid by the related securitization trust, $9,000, or the Settlement Payment, to TRFT within ten calendar days, (b) that the parties will execute and, after that Settlement Payment is received by TRFT, TRFT will file a Stipulation of Discontinuance with Prejudice, or the Stipulation, with the Court dismissing this litigation, and (c) for mutual releases between TRFT and RAIT II, on the one hand, and the Defendants, on the other hand, of claims relating to this litigation. Also, effective May 8, 2019, TRFT, RAIT II and Wells Fargo entered into an Agreement to Discontinue and Dismiss Litigation with Prejudice, or the Agreement to Discontinue. The Agreement to Discontinue also provides (a) that TRFT, RAIT II and Wells Fargo shall sign the Stipulation, (b) that, after the Settlement Payment is received by TRFT, TRFT will file the Stipulation and (c) for mutual releases between TRFT and RAIT II, on the one hand, and Wells Fargo, on the other hand, of claims relating to this litigation. The $9,000 Settlement Payment was received in May 2019 and is included within provision (benefit) for loan losses in the accompanying consolidated statements of operations.

Loan Funding Commitments

Certain of the existing mortgage loans that we previously originated contain commitments to fund certain amounts that were not funded upon the origination of the mortgage loan. Senior participation interests in these loans are held by certain of our FL securitizations and these FL securitizations are required to purchase additional participation interests in these loans that include the funded portions of these funding commitments from us and at our direction as the commitments are funded by us and as funds become available from loan payoffs in the FL securitization. As of June 30, 2019, we had no outstanding funding commitments.

Lease Obligation

We lease office space in Philadelphia for use in our operations. We account for this lease as an operating lease and recognize lease expense on a straight-line basis over the lease term. As of June 30, 2019, the lease had a remaining term of 12.8 years with an option to extend for an additional 5 years. As discussed in Note 2: Summary of Significant Accounting Policies, (q) Recent Accounting Pronouncements, we adopted the provisions of ASC Topic 842, "Leases" related to this lease on January 1, 2019. When establishing the value of our right-of-use asset and lease liability, we calculated the present value of future lease payments over the

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Notes to Consolidated Financial Statements
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lease term. Since the discount rate implicit in the lease could not be determined, we used our incremental borrowing rate of 12.6%, which was based on information available as of the effective date.

As of June 30, 2019, the office lease liability and corresponding operating lease asset had carrying amounts of $2,983 and $308, respectively, and are included within other liabilities and other assets, respectively, in the accompanying consolidated balance sheet.

During the three months ended June 30, 2019, we recognized an impairment charge of $2,076 on our operating lease asset as it was more likely than not we would not realize the benefits of this asset over its remaining term and a portion of this asset was determined to not be recoverable. During the three months ended June 30, 2019, we also recognized an impairment charge of $705 on other fixed assets as it was more likely than not we would not realize the benefits of these assets over their remaining useful lives and a portion of these assets were determined to not be recoverable.

For the three months ended June 30, 2019, our operating lease costs and variable lease costs associated with the office lease were $107 and $74, respectively. For the six months ended June 30, 2019, our operating lease costs and variable lease costs associated with the office lease were $214 and $153, respectively. Our operating and variable lease costs are included within other general and administrative expenses in the accompanying consolidated statements of operations.

The annual minimum rent due pursuant to the office lease for each of the next five years and thereafter is estimated to be as follows as of June 30, 2019:

2019	$	215
2020		438
2021		447
2022		456
2023		465
Thereafter		4,626
Total undiscounted payments		6,647
Less imputed interest		(3,664)
Total lease liability	$	2,983

The annual minimum rent due pursuant to the office lease for each of the next five years and thereafter is estimated to be as follows as of December 31, 2018:

2019	$	479
2020		438
2021		447
2022		456
2023		465
Thereafter		4,626
Total	$	6,911

NOTE 14: SUBSEQUENT EVENTS

We have evaluated subsequent events or transactions that have occurred after the consolidated balance sheet date of June 30, 2019, but prior to the filing of the consolidated financial statements with the SEC on this Quarterly Report on Form 10-Q. We have determined that, except as disclosed within this Note and other Notes, including, without limitation, Note 1: The Company, there are no subsequent events that require disclosure in this Quarterly Report on Form 10-Q.

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

Forward-Looking Statements

The Securities and Exchange Commission, or SEC, encourages companies to disclose forward-looking information so that investors can better understand a company's future prospects and make informed investment decisions. This report contains or incorporates by reference such "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act.

Words such as "anticipates," "assumes," "estimates," "expects," "projects," "intends," "plans," "believes" and words and terms of similar substance used in connection with any discussion of future operating or financial results and performance identify forward-looking statements. Unless we have indicated otherwise, or the context otherwise requires, references in this report to "RAIT," "we," "us," and "our" or similar terms, are to RAIT Financial Trust and its subsidiaries.

We claim the protection of the safe harbor for forward-looking statements provided in the Private Securities Litigation Reform Act of 1995 for these statements. These statements may be made directly in this report and they may also be incorporated by reference in this report to other documents filed with the SEC, and include, but are not limited to, statements about future financial and operating results and performance, statements about our strategies, plans, objectives, expectations and intentions with respect to future operations, products and services, and other statements that are not historical facts. These forward-looking statements are based upon the current beliefs and expectations of our management and are inherently subject to significant business, economic and competitive uncertainties and contingencies, many of which are difficult to predict and generally beyond our control. In addition, these forward-looking statements are subject to assumptions with respect to future business strategies and decisions that are subject to change. Actual results may differ materially from the anticipated results discussed in these forward-looking statements.

RAIT's forward-looking statements include, but are not limited to, statements regarding:

- the expected impact of confirmation and implementation of the Plan and consummation of a Sale on RAIT, including, without limitation, that such impact is expected to result in the sale of substantially all of RAIT's assets, and the subsequent distribution of such assets in accordance with the Plan and subsequent winding down of RAIT so that RAIT does not continue as a going concern;
- the agreements, bankruptcy filings and transactions described in Part I, Item 1, "Financial Statements —Note 1: The Company", including, without limitation, the Purchase Agreement, the RSAs, the Chapter 11 Cases, the Plan, the Disclosure Statement and the Bidding Procedures; and
- the ability of the Debtors to operate as a "debtor in possession" under the jurisdiction of the Bankruptcy Court.

Risks, uncertainties and contingencies that may affect the results expressed or implied by RAIT's forward-looking statements include, but are not limited to:

- whether RAIT or its affiliates will be able to obtain approval with respect to motions in the Chapter 11 Cases and the Bankruptcy Court's rulings in the Chapter 11 Cases and the outcome of the Chapter 11 Cases in general, including, without limitation, confirmation of the Plan and approval of utilizing cash to fund certain operations;
- whether the agreements, bankruptcy filings and transactions described in Part I, Item 1, "Financial Statements —Note 1: The Company" will be modified or otherwise changed due to actions by the Bankruptcy Court, third parties, the Debtors or otherwise;
- risks associated with third-party motions in the Chapter 11 Cases, which may interfere with RAIT and its affiliates' ability to develop and consummate the sale of the Purchased Assets;
- whether the closing conditions for the Purchase Agreement, any bid resulting from the Bidding Procedures, the RSAs, the Plan and other agreements and transactions described in Part I, Item 1, "Financial Statements —Note 1: The Company" will be satisfied or waived and the related transactions completed as provided therein;
- the Plan as proposed contemplates that, after confirmation of the Plan, RAIT will wind down its affairs and cease to be a going concern;
- the potential impact of the Bidding Procedures on the Chapter 11 Cases;
- the potential adverse effects of the Chapter 11 Cases on the Debtors' liquidity, results of operations and business prospects;
- increased legal, advisor and other costs related to the Chapter 11 Cases and other litigation and the inherent risks involved in a bankruptcy process;
- the effect of the Chapter 11 Cases on the trading price and value of RAIT securities;

- whether RAIT will be able to retain key members of its management team;
- the actions taken by any Plan Administrator appointed to implement the Plan after any confirmation;
- overall conditions in commercial real estate and the economy generally;
- changes in the expected yield of RAIT's investments;
- whether the amount of loan repayments will be at the level assumed;
- risks, disruption, costs and uncertainty caused by or related to the any legal proceedings initiated by third parties against RAIT, its affiliates, trustees, officers and/or advisors; and
- other factors described in the 2018 Annual Report, this Quarterly Report on Form 10-Q and RAIT's other filings with the SEC.

The risk factors discussed and identified in Item 1A of the 2018 Annual Report, elsewhere in this Quarterly Report on Form 10-Q and in other of our public filings with the SEC, among others, could cause actual results to differ materially from the anticipated results or other expectations expressed in the forward-looking statements. We caution you not to place undue reliance on these forward-looking statements, which speak only as of the date of this report. All subsequent written and oral forward-looking statements attributable to us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. Except to the extent required by applicable law or regulation, we undertake no obligation to update these forward-looking statements to reflect events or circumstances after the date of this filing or to reflect the occurrence of unanticipated events.

Overview

We are an internally-managed Maryland real estate investment trust, or REIT, focused on managing a portfolio of commercial real estate (CRE) loans and properties.

We incorporate the disclosure in Part I, Item 1, "Financial Statements —Note 1: The Company" by reference herein. RAIT expects that the Sellers will sell substantially all of its assets in the Sale (which may be to the Buyer pursuant to the Purchase Agreement) and the Plan Administrator will distribute RAIT's assets in accordance with the Plan and proceed with winding down RAIT's business so that RAIT does not continue as a going concern. As part of this winding down, RAIT and TRFT may choose to terminate their respective REIT status.

Other developments related to our financial performance that occurred during the three and six months ended June 30, 2019 included the following:

- For the six months ended June 30, 2019, RAIT monetized certain loans and real estate assets in the aggregate amount of $6.5 million. These monetizations include sales of real estate assets and repayments of loans. After selling costs and repayment of obligations secured by those assets of $4.3 million, RAIT received net proceeds of $2.2 million.
- RAIT's cash and cash equivalents balance as of June 30, 2019 was $46.7 million.
- RAIT's compensation & general and administrative expenses were $11.3 million for the six months ended June 30, 2019 as compared to $16.5 million for the six months ended June 30, 2018. The six months ended June 30, 2019 includes additional legal and consulting expenses related to the resumed strategic and financial alternatives review. The six months ended June 30, 2018 included significant legal and consulting expenses in connection with the previous strategic alternatives process and implementation of the 2018 strategic steps.

During the three months ended June 30, 2019, we generated GAAP net income (loss) allocable to common shares of $(4.2) million, or $(2.30) per common share-diluted, as compared to $(50.2) million, or $(27.26) per common share-diluted, during the three months ended June 30, 2018.

Chapter 11 Bankruptcy Matters

We incorporate the disclosure in Part I, Item 1, "Financial Statements —Note 1: The Company" by reference herein. The Plan, the Disclosure Statement and the Bidding Procedures Order are attached to this report as Exhibit 2.1, Exhibit 2.2 and Exhibit 2.3, respectively and are incorporated by reference herein. Court filings and other information related to the Chapter 11 Cases are available at a website administered by the Debtors' noticing and claims agent, Epiq Corporate Restructuring, LLC, at https://dm.epiq11.com/rait, or www.deb.uscourts,gov, the official Bankruptcy Court website. Information on such websites is not incorporated by reference herein.

The Plan, as currently proposed, provides for the ultimate wind down of RAIT's affairs, if the Plan, as currently proposed, is confirmed by the Bankruptcy Court and thereafter implemented by the Plan Administrator. RAIT is expected to sell substantially all of its assets in the Sale (which may be to the Buyer pursuant to the Purchase Agreement) and the Plan Administrator will then distribute RAIT's assets in accordance with the Plan and proceed with winding down RAIT's business so that RAIT does not continue as a going concern. Subject to the conditions and qualifiers and the disclosure set forth in the Plan and the Disclosure Statement, RAIT expects the Plan as currently proposed to result in the following:

- full payment of administrative, secured and priority claims;
- full payment of Senior Notes claims;
- full payment of general unsecured claims;
- partial payments on the 2037 Note and the 2035 Note claims in accordance with their respective RSAs; and
- no payment on preferred share or common share claims and the cancellation thereof.

The Plan is based upon the proceeds that are expected to be generated under the Purchase Agreement and is consistent with the RSAs entered into with the RSA Counterparties. If the transactions contemplated by the Purchase Agreement are not consummated pursuant to its terms or other alternative transactions are not successfully implemented, the proposed plan of reorganization may be materially and adversely affected. If the Debtors receive a higher and otherwise better bid pursuant to the Bidding Procedures approved in the Bidding Procedures Order, the Debtors would expect to accept that bid instead. If a higher and better bid were accepted as an alternative to a sale under the Purchase Agreement, that would trigger obligations to pay break-up fees and reimburse expenses as provided in the Bidding Procedures Order. RAIT approached many third parties soliciting possible strategic transactions with RAIT in the course of the 2018 Strategic Steps and the most recent process which culminated with the Purchase Agreement, and continues to solicit bids as part of the Bidding Procedures; however, RAIT cannot provide any assurances that a higher and otherwise better bid will be received.

Going Concern Considerations

Please see Part I, Item 1, "Financial Statements —Note 2: Summary of Significant Accounting Policies—Going Concern Considerations" and Part I, Item 2, "Management's Discussion and Analysis of Financial Condition and Results of Operations Liquidity and Capital Resources" for a discussion of going concern considerations.

Commitments and Contingencies

Please see Part I, Item 1, "Financial Statements —Note 13: Commitments and Contingencies" for a description of litigation and certain other possible events that could have a significant impact on our future operating results. As further described therein, in May 2019, we received to a $9.0 million settlement related to an ongoing litigation matter. This settlement will be recorded as a recovery of amounts previously charged off during the second quarter of 2019.

Trends That May Affect our Business

The following trends may affect our business:

Impact of Chapter 11 Cases. See "Chapter 11 Bankruptcy Matters" above for a description of our expectations as to the impact on RAIT of the Chapter 11 Cases.

Impact of Transactions Contemplated by Purchase Agreement and the Bidding Procedures. We expect that the transactions contemplated by the Purchase Agreement, or any alternative developed as a result of the Bidding Procedures, will result in the sale of substantially all of our assets.

In addition, investors should read Management's Discussion and Analysis of Financial Condition and Results of Operations in our 2018 Annual Report for discussion of the following items:

- Impact of the evolution of our business strategy.
- Trends relating to capital markets.
- Trends relating to investments in loans.
- Trends relating to investments in real estate.
- Interest rate environment.
- Prepayment rates.
- Increasing credit risk in our investment portfolio.

CRE Lending

RAIT's CRE lending platform previously focused on the origination of first lien loans. We historically also offered mezzanine loans and preferred equity interests in limited circumstances to support first lien loans. These represent a smaller portion of our CRE loan portfolio. Our mezzanine loans are subordinate in repayment priority to a senior mortgage loan or loans on a property and are typically secured by pledges of ownership interests, in whole or in part, in the entities that own the real property. We generate a return on our preferred equity investments primarily through distributions to us at a fixed rate and the payment of distributions are subject to there being sufficient net cash flow from the underlying real estate to make such payments. We used this investment structure as an alternative to a mezzanine loan where the financial needs and tax situation of the borrower, the terms of senior financing secured by the underlying real estate or other circumstances necessitate holding preferred equity. Our CRE loans are in most cases non-recourse or limited recourse loans secured by commercial real estate assets or real estate entities. This means that we look primarily to the assets securing the loan for repayment, subject to certain standard exceptions. Where possible, we sought to maintain direct lending relationships with borrowers, as opposed to investing in loans controlled by third-party lenders.

Prior to our suspension of originating new loans in February 2018, our financing strategy involved the use of multiple sources of short-term financing to originate assets including warehouse facilities, repurchase agreements and bank conduit facilities. Our ultimate goal was to finance these investments on a long-term, non-recourse, match-funded basis or to sell these assets into CMBS securitizations. Match funding enabled us to match the interest rates and maturities of our assets with the interest rates and maturities of our financing, thereby reducing interest rate risk and funding risks in financing our portfolio on a long-term basis.

During the six months ended June 30, 2019, we received CRE loan repayments of $120.1 million.

The tables below describe certain characteristics of our held-for-investment commercial mortgage loans, mezzanine loans, and preferred equity interests as of June 30, 2019 (dollars in thousands):

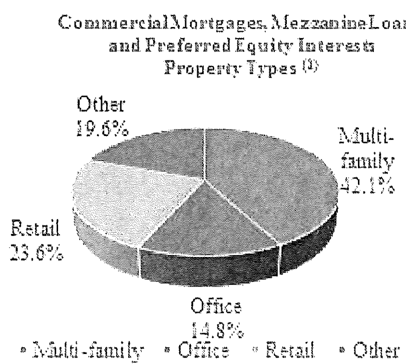
	Carrying Value	Weighted-Average Coupon	Range of Maturities	Number of Loans
Commercial Real Estate (CRE) Loans				
Commercial mortgage loans	$ 331,979	6.8%	Jul. 2019 to Jun. 2025	25
Mezzanine loans	21,278	13.3%	Jun. 2020 to Mar. 2023	3
Preferred equity interests	28,452	5.9%	Mar. 2023 to Jun. 2029	13
Total investments in loans	$ 381,709	7.1%		41

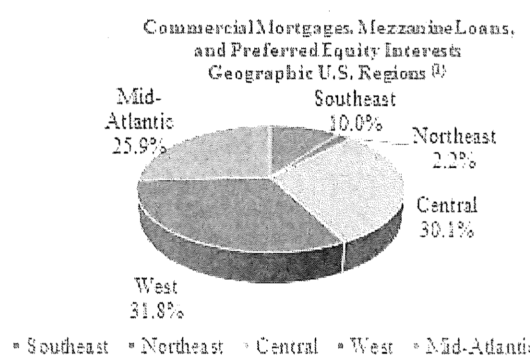
Certain of our commercial mortgage loans, mezzanine loans and preferred equity interests permanently provide for the accrual of interest at specified rates which differ from current payment terms. We refer to these loans as cash flow loans. Although a cash flow loan accrues interest at a stated rate, pursuant to forbearance or other agreements, the borrower is only required to pay interest each month at a minimum rate, which may be as low as zero percent, plus additional interest up to the stated rate to the extent of all cash flow from the property underlying the loan after the payment of property operating expenses and, if applicable, any senior debt service. Please see Part I, Item 1, "Financial Statements—Note 2: Summary of Significant Accounting Policies—Revenue Recognition" for further information on these loans. As of June 30, 2019, we held investments we characterized as cash flow loans, with a recorded investment (including accrued interest) of $67.2 million comprised of preferred equity interests totaling $33.9 million, bridge loans totaling $5.3 million and mezzanine loans totaling $28.0 million.

As of June 30, 2019, our nonaccrual loans total $72.4 million, which is comparable to the $93.0 million of nonaccrual loans as of December 31, 2018. As of June 30, 2019, we had a loan loss reserve of $20.1 million, representing 27.8% of our nonaccrual loans and 5.3% of our total CRE loan portfolio. During the six months ended June 30, 2019, we recognized a benefit for loan losses of $10,092, which was primarily driven by a settlement payment received on a loan that was previously charged off. See Part I, Item 1, "Financial Statements – Note 13: Commitments and Contingencies" for further information on this settlement.

We historically financed our consolidated CRE loans on a long-term basis through securitizations. See Part I, Item 2, "Management's Discussion and Analysis of Financial Condition and Results of Operations—Securitization Summary" for more information about our securitizations.

The charts below describe the property types and the geographic breakdown of our commercial mortgage loans, mezzanine loans, and preferred equity interests as of June 30, 2019:





(1) Based on carrying amount.

REO Portfolio

As of June 30, 2019, our real estate portfolio had an aggregate gross cost (carrying value) of $124.3million ($113.6 million), comprised of $49.0 million ($39.6 million) of office properties, $56.6 million ($55.2 million) of retail properties and $18.7 million ($18.7 million) of land.

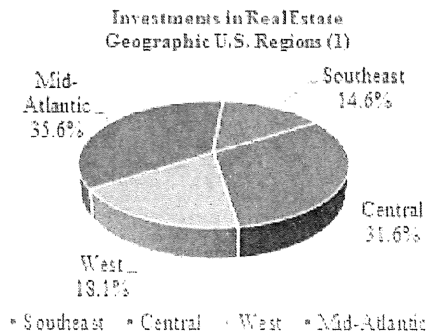
We historically financed our portfolio of investments in commercial real estate through secured commercial mortgage loans held by either third-party lenders or our commercial real estate securitizations.

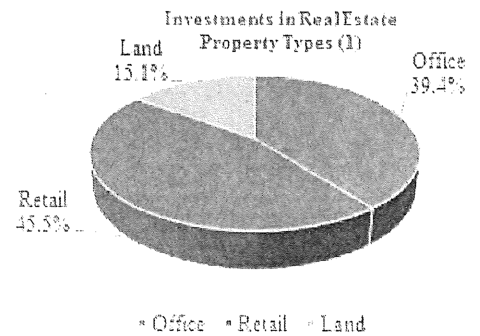
The table below describes certain characteristics of our REO Portfolio as of June 30, 2019 (dollars in thousands).

	Investments in Real Estate (1)	Average Physical Occupancy	Units/ Square Feet/ Acres	Number of Properties
Office real estate properties	$ 49,027	84.1%	349,999	3
Retail real estate properties	56,556	58.0%	588,974	4
Parcels of land	18,744	N/A	9.2	4
Total	$ 124,327	—		11

(1) Based on properties owned as of June 30, 2019.

The charts below describe the property types and the geographic breakdown of our investments in real estate as of June 30, 2019:





(1) Based on gross cost.

Securitization Summary

Overview. We have used securitizations to match fund the interest rates and maturities of our assets with the interest rates and maturities of the related financing. A securitization is a structure in which multiple classes of debt and equity are issued by a special purpose entity to finance a portfolio of assets. Cash flow from the portfolio of assets is used to repay the securitization liabilities sequentially, in order of seniority. The most senior classes of debt typically have credit ratings of "AAA" through "BBB–" and therefore can be issued at yields that are lower than the average yield of the loans collateralizing the securitization. The debt tranches are typically rated based on portfolio quality, diversification and structural subordination. The equity securities issued by the securitization are the "first loss" piece of the capital structure, but they are entitled to all residual amounts available for payment after the obligations to the debt holders have been satisfied. Historically, the stated maturity of the debt issued by a securitization we have sponsored and consolidated has been between 15 and 19 years for our FL securitizations and approximately 40 years for RAIT I. Debt issued by these securitizations is non-recourse to RAIT and payable solely from the payments by the borrowers on the loans collateralizing these securitizations. These assets are in most cases "non-recourse" or limited recourse loans secured by commercial real estate assets or real estate entities. This means that we look primarily to the assets securing the loan for repayment, subject to certain standard exceptions.

As of June 30, 2019, we had sponsored three outstanding securitizations with varying amounts of retained or residual interests held by us which we consolidate in our financial statements as follows: RAIT I, RAIT 2017-FL7 Trust, or RAIT-FL7 and RAIT 2017-FL8 Trust, or RAIT-FL8. We refer to RAIT FL7 and RAIT FL8 as the FL securitizations. We previously exercised our rights and unwound five other securitizations we had sponsored, RAIT 2013-FL1 Trust, or RAIT FL1, in 2015, RAIT 2014-FL2 Trust, or RAIT FL2, in 2016, RAIT 2014-FL3 Trust, or RAIT FL3, and RAIT 2015-FL4 Trust, or RAIT FL4, in 2017, and RAIT Preferred Funding II, Ltd., or RAIT II, in December 2018. During the year ended December 31, 2018, we deconsolidated RAIT 2015-FL5 Trust or RAIT FL5 and RAIT 2016-FL6 Trust or RAIT FL6, as previously reported in the 2018 Annual Report. We previously exercised our rights and unwound a legacy securitization we had sponsored, RAIT Preferred Funding II, Ltd., or RAIT II, in December 2018. We originated substantially all the loans collateralizing RAIT I and the FL securitizations. We serve as the collateral manager, servicer and special servicer on RAIT I and as servicer and special servicer for each of the FL securitizations.

Securitization Performance. RAIT I contains interest coverage triggers, or IC triggers, and over collateralization triggers, or OC triggers. If the IC triggers or OC triggers are not met in a given period, then the cash flows are redirected from lower rated tranches and used to repay the principal amounts to the senior tranches of CDO notes payable. These conditions and the re-direction of cash flow continue until the triggers are met by curing the underlying cause of the IC trigger or OC trigger failure, which may include curing payment defaults, paying down the CDO notes payable, or other actions permitted under the relevant securitization indenture. Since January 2019, the Class F/G/H OC test for RAIT I has not been met. As a result, certain interest payments that would have otherwise been distributed to the Class J notes and equity, which are owned by us, are instead being redirected to pay principal on the most senior class of CDO notes payable that are outstanding. In October 2019, Class F/G/H IC test was not met. This failure resulted in no incremental impact to the interest payment waterfall. The failure of these tests does not represent an event of default under the RAIT I securitization indenture. All other applicable IC triggers and OC triggers continue to be met for RAIT I. The FL securitizations do not have IC triggers or OC triggers.

Repayment of the loans collateralizing RAIT I outside their contractual maturities is expected to be slower than 2018 levels for the foreseeable future.

If the CDO notes issued by RAIT I have not been redeemed in full prior to the distribution date occurring in November 2019, then an auction of the collateral assets of RAIT I will continue to be conducted by the trustee periodically thereafter and, if certain conditions set forth in the indenture are satisfied, such collateral assets will be sold at the auction and the CDO notes will be redeemed, in whole, but not in part, on such distribution date. Twelve auctions for RAIT I have been held but no sales occurred as not all of the conditions precedent were satisfied.

In March 2018, DBRS announced that it had placed all classes of the floating rate notes issued by RAIT FL5, RAIT FL6 and RAIT FL8 under review with negative implications.

A summary of the investments in our consolidated securitizations as of the most recent payment information is as follows:

Our Legacy Securitization

- *RAIT I*—RAIT I has $157.1 million of total collateral at par value, of which $36.2 million is defaulted. The current Class F/G/H OC test is failing at 100.2% with an OC trigger of 116.2%. The current Class C/D/E OC test is passing at 128.9% with an OC trigger of 123.0%. The current Class A/B OC test is passing at 519.7% with an OC trigger of 136.1%. The current Class F/G/H IC test is failing at 98.2% with an OC trigger of 120.0%. The current Class C/D/E IC test is passing at 141.0% with an OC trigger of 140.0%. The current Class A/B IC test is passing at 607.4% with an OC trigger of 160.0%. Except with respect to the OC and IC test failures set forth herein, all of the notes issued by this securitization are performing in accordance with their terms. We currently own $38.9 million of the securities that were originally rated investment grade and $165.0 million of the non-investment grade securities issued by this securitization. Except for any interest being re-directed to more senior classes of notes as a result of the Class F/G/H OC and IC test failures referenced above, we are currently receiving all distributions required by the terms of our retained interests in this securitization and are receiving all of our collateral management fees. We pledged $24.0 million of the securities we own issued by RAIT I as collateral for the junior subordinated note, at fair value, we issued.

Our Floating Rate CMBS Securitizations

- *RAIT FL7*—RAIT FL7 has $123.6 million of total collateral at par value, none of which is in default. RAIT FL7 does not have OC triggers or IC triggers. RAIT FL7, has classes of investment grade senior notes with an aggregate principal balance outstanding of approximately $58.1 million to investors. We currently own the less than investment grade classes of junior notes, including a class with an aggregate principal balance of $65.5 million, and the equity, or the retained interests, of RAIT FL7.

- *RAIT FL8*—RAIT FL8 has $110.8 million of total collateral at par value, none of which is in default. RAIT FL8, has classes of investment grade senior notes with an aggregate principal balance outstanding of approximately $66.6 million to investors. We currently own the less than investment grade classes of junior notes, including a class with an aggregate principal balance of $44.2 million, and the equity, or the retained interests, of RAIT FL8.

The below table summarizes the current outstanding balances in our consolidated securitizations as of the most recent payment date:

($ in millions)	RAIT I	FL 7	FL 8
Total Collateral Outstanding (Par)	$ 157.1	$ 123.6	$ 110.8
Total Bonds Outstanding (Par)	$ 175.0	$ 123.6	$ 110.8
Bonds Held by 3rd Parties Outstanding (Par)	$ 99.8	$ 58.1	$ 66.6
RAIT Investment Grade Bond Ownership (Par) (1) (2)	$ 39.0	$ -	$ -
RAIT Below Investment Grade Bond Ownership (Par) (1) (3)	$ 36.5	$ 65.5	$ 44.2
RAIT Equity Interest Ownership (Par)	$ 165.0	$ -	$ -

(1) Investment grade and below investment grade determinations made based upon ratings of bonds upon their issuance.
(2) RAIT ownership of RAIT I investment grade bonds is as follows: $1.2 million of Class B, $2.2 million of Class C, $2.5 million of Class D, $9.0 million of Class E, $0.5 million of Class F, $12.5 million of Class G, and $11.0 million of Class H.
(3) RAIT ownership of RAIT I below investment grade bonds is as follows: $36.5 million of Class J.

Impact of the Chapter 11 Cases on our Securitizations. None of issuers of RAIT I, RAIT FL7 or RAIT FL8 are Debtors subject to the Chapter 11 Cases and the assets collateralizing each of these securitizations are expected to continue to be available to fund payments on the notes and equity issued by these securitizations in accordance with their respective terms. The Purchase Agreement currently contemplates that RAIT's retained interests in these securitizations would be directly or indirectly transferred to the Buyer and that the Buyer would acquire RAIT Partnership which serves as the collateral manager, servicer and special servicer for RAIT I and as the servicer and special servicer for RAIT FL7 and RAIT FL8. As a result, once the Transactions are completed, RAIT will not consolidate or have any interests in these securitizations.

Results of Operations

Three Months Ended June 30, 2019 Compared to the Three Months Ended June 30, 2018

The following table sets forth information regarding our consolidated results of operations for the three months ended June 30, 2019 and 2018.

	For the Three Months Ended June 30,			
	2019	2018	$ Variance	% Variance
Revenue:				
Investment interest income	$ 6,063	$ 16,324	$ (10,261)	-63%
Investment interest expense	(3,727)	(9,590)	5,863	-61%
Net interest margin	2,336	6,734	(4,398)	-65%
Property income	3,323	8,666	(5,343)	-62%
Fee and other income	99	1,153	(1,054)	-91%
Total revenue	5,758	16,553	(10,795)	-65%
Expenses:				
Interest expense	3,966	6,356	(2,390)	-38%
Real estate operating expense	1,713	5,402	(3,689)	-68%
Property management expenses	-	1,739	(1,739)	-100%
General and administrative expenses:				
Compensation expense	1,976	3,113	(1,137)	-37%
General and administrative expense	3,637	4,085	(448)	-11%
Total general and administrative expenses	5,613	7,198	(1,585)	-22%
Acquisition and integration expenses	-	-	-	N/M
Provision (benefit) for loan losses	(9,509)	14,748	(24,257)	-164%
Depreciation and amortization expense	1,295	2,887	(1,592)	-55%
Total expenses	3,078	38,330	(35,252)	-92%
Operating (Loss) Income	2,680	(21,777)	24,457	-112%
Interest and other income (expense), net	254	94	160	170%
Gains (losses) on assets	1,230	(3,211)	4,441	-138%
Gains (losses) on deconsolidation of VIEs	-	(8,177)	8,177	-100%
Gains (losses) on extinguishments of debt	(346)	(2,438)	2,092	-86%
Asset impairment	(2,781)	(21,625)	18,844	-87%
Change in fair value of financial instruments	(210)	111	(321)	-289%
Income (loss) before taxes	827	(57,023)	57,850	-101%
Income tax benefit (provision)	-	-	-	N/M
Net income (loss)	827	(57,023)	57,850	-101%
(Income) loss allocated to preferred shares	(5,071)	6,861	(11,932)	-174%
Net income (loss) allocable to common shares	$ (4,244)	$ (50,162)	$ 45,918	-92%

Revenue

Net interest margin. Net interest margin decreased $4.4 million, or 65%, to $2.3 million for the three months ended June 30, 2019 from $6.7 million for the three months ended June 30, 2018. The decrease was primarily attributable to the deconsolidation of $266.5 million of loans due to the sale of our interests in RAIT FL5 and RAIT FL6 on June 27, 2018 and the $341.3 million of loan repayments and sales, partially offset by repayments of related indebtedness, since June 30, 2018.

Property income. Property income decreased $5.3 million, or 62%, to $3.3 million for the three months ended June 30, 2019 from $8.7 million for the three months ended June 30, 2018. The decrease is primarily attributable to the sale or divestiture of 7 properties since June 30, 2018.

Fee and other income. Fee and other income decreased $1.1 million, or 91%, to $0.1 million for the three months ended June 30, 2019 from $1.2 million for the three months ended June 30, 2018. The decrease is primarily attributable to no property management fees being earned during the three months ended June 30, 2019 as we sold our retail property management subsidiary in August 2018.

Expenses

Interest expense. Interest expense decreased $2.4 million, or 38%, to $4.0 million for the three months ended June 30, 2019 from $6.4 million for the three months ended June 30, 2018. The decrease is mainly attributable to $81.6 million of recourse debt reductions since June 30, 2018.

Real estate operating expense. Real estate operating expense decreased $3.7 million, or 68%, to $1.7 million for the three months ended June 30, 2019 from $5.4 million for the three months ended June 30, 2018. The decrease is primarily attributable to the sale or divestiture of 7 properties since June 30, 2018.

Property management expense. Property management expense decreased $1.7 million, or 100%, to $0.0 million for the three months ended June 30, 2019 from $1.7 million for the three months ended June 30, 2018. The decrease is primarily attributable to no property management expenses being incurred during the three months ended June 30, 2019 as we sold our retail property management subsidiary in August 2018.

Compensation expense. Compensation expense decreased $1.1 million, or 37%, to $2.0 million for the three months ended June 30, 2019 from $3.1 million for the three months ended June 30, 2018. The primary driver of the decrease was a decrease in the number of employees.

General and administrative expense. General and administrative expense decreased $0.5 million, or 11%, to $3.6 million for the three months ended June 30, 2019 from $4.1 million for the three months ended June 30, 2018. This is primarily due to a decrease in consulting fees.

Provision (benefit) for loan losses. Provision for loan losses decreased $24.3 million, or 164%, to a benefit of $9.5 million for the three months ended June 30, 2019 from a provision of $14.7 million for the three months ended June 30, 2018. During the three months ended June 30, 2019, the benefit for loan losses was primarily driven by a $9 million settlement payment received on a loan that was previously charged off.

Depreciation and amortization expense. Depreciation and amortization expense decreased $1.6 million, or 55%, to $1.3 million for the three months ended June 30, 2018 from $2.9 million for the three months ended June 30, 2018. The decrease is primarily attributable to the sale or divestiture of 7 properties since June 30, 2018.

Other income (expense)

Interest and other income (expense). Interest and other income (expense) increased $0.2 million, or 170%, to $0.3 million for the three months ended June 30, 2019 from $0.1 million for the three months ended June 30, 2018. The increase was mainly attributable to interest income earned on excess cash.

Gains (losses) on assets. During the three months ended June 30, 2019, we recognized a $1.2 million gain on assets. This includes a $0.9 million gain on the sale of one retail property and a $0.3 million gain on loans held for sale, which are measured at the lower of cost or fair value.

Gains (losses) on extinguishment of debt. During the three months ended June 30, 2019, we recognized a loss on extinguishment of debt of $0.3 million due to the write-off of the unamortized deferred financing costs associated with indebtedness that was repaid during the three months ended June 30, 2019.

Asset impairment. During the three months ended June 30, 2019, we recognized asset impairment charges of $2.8 million related to our operating lease assets and other fixed assets as it was determined we would not realize the benefits of these assets over their remaining terms and useful lives and a portion of these assets was determined to not be recoverable.

Change in fair value of financial instruments. During the three months ended June 30, 2019, the change in fair value of financial instruments decreased our net income by $0.2 million. The fair value adjustments we recorded were as follows (dollars in thousands):

Description	For the Three Months Ended June 30, 2019	For the Three Months Ended June 30, 2018
Change in fair value of junior subordinated notes	$ (210)	$ (77)
Change in fair value of derivatives	—	188
Change in fair value of financial instruments	$ (210)	$ 111

The changes in the fair value for the junior subordinated notes for which the fair value option was elected for the three months ended June 30, 2019 and 2018 was primarily attributable to changes in interest rates.

Six Months Ended June 30, 2019 Compared to the Six Months Ended June 30, 2018

The following table sets forth information regarding our consolidated results of operations for the six months ended June 30, 2019 and 2018.

	For the Six Months Ended June 30,			
	2019	2018	$ Variance	% Variance
Revenue:				
Investment interest income	$ 12,984	$ 35,189	$ (22,205)	-63%
Investment interest expense	(7,890)	(20,139)	12,249	-61%
Net interest margin	5,094	15,050	(9,956)	-66%
Property income	6,630	17,482	(10,852)	-62%
Fee and other income	187	2,362	(2,175)	-92%
Total revenue	11,911	34,894	(22,983)	-66%
Expenses:				
Interest expense	7,962	13,127	(5,165)	-39%
Real estate operating expense	3,716	11,192	(7,476)	-67%
Property management expenses	-	3,670	(3,670)	-100%
General and administrative expenses:				
Compensation expense	4,205	6,038	(1,833)	-30%
General and administrative expense	7,088	10,423	(3,335)	-32%
Total general and administrative expenses	11,293	16,461	(5,168)	-31%
Acquisition and integration expenses	-	133	(133)	-100%
Provision (benefit) for loan losses	(10,092)	22,780	(32,872)	-144%
Depreciation and amortization expense	2,679	6,330	(3,651)	-58%
Total expenses	15,558	73,693	(58,135)	-79%
Operating (Loss) Income	(3,647)	(38,799)	35,152	-91%
Interest and other income (expense), net	358	443	(85)	-19%
Gains on assets	1,533	(4,148)	5,681	-137%
Gains (losses) on deconsolidation of properties and VIEs	-	(8,177)	8,177	-100%
Gains (losses) on extinguishments of debt	(631)	(3,429)	2,798	-82%
Asset impairment	(2,807)	(30,816)	28,009	-91%
Change in fair value of financial instruments	(180)	198	(378)	-191%
Income (loss) before taxes	(5,374)	(84,728)	79,354	-94%
Income tax benefit (provision)	-	-	-	N/M
Net income (loss)	(5,374)	(84,728)	79,354	-94%
(Income) loss allocated to preferred shares	(10,134)	472	(10,606)	-2247%
Net income (loss) allocable to common shares	$ (15,508)	$ (84,256)	$ 68,748	-82%

Revenue

Net interest margin. Net interest margin decreased $10.0 million, or 66%, to $5.1 million for the six months ended June 30, 2019 from $15.1 million for the six months ended June 30, 2018. The decrease was primarily attributable to the deconsolidation of $266.5 million of loans due to the sale of our interest in RAIT FL5 and RAIT FL6 on June 27, 2018 and the $341.3 million of loan repayments and sales, partially offset by repayments of related indebtedness, since June 30, 2018.

Property income. Property income decreased $10.9 million, or 62%, to $6.6 million for the six months ended June 30, 2019 from $17.5 million for the six months ended June 30, 2018. The decrease is primarily attributable to the sale or divesture of 7 properties since June 30, 2018.

Fee and other income. Fee and other income decreased $2.2 million or 92%, to $0.2 million for the six months ended June 30, 2019 from $2.4 million for the six months ended June 30, 2018. The decrease is primarily attributable to no property management fees being earned during the six months ended June 30, 2019 as we sold our retail property management subsidiary in August 2018.

Expenses

Interest expense. Interest expense decreased $5.2 million, or 39%, to $8.0 million for the six months ended June 30, 2019 from $13.1 million for the six months ended June 30, 2018. The decrease is mainly attributable to $81.6 million of recourse debt reductions since June 30, 2018.

Real estate operating expense. Real estate operating expense decreased $7.5 million, or 67%, to $3.7 million for the six months ended June 30, 2019 from $11.2 million for the six months ended June 30, 2018. The decrease is primarily attributable to the sale or divesture of 7 properties since June 30, 2018.

Property management expense. Property management expense decreased $3.7 million, or 100% to $0.0 million for the six months ended June 30, 2019 from $3.7 million for the six months ended June 30, 2018. The decrease is primarily attributable to no property management expenses being incurred during the six months ended June 30, 2019 as we sold our retail property management subsidiary in August 2018.

Compensation expense. Compensation expense decreased $1.8 million, or 30%, to $4.2 million for the six months ended June 30, 2019 from $6.0 million for the six months ended June 30, 2018. The primary driver of the decrease was a decrease in the number of employees.

General and administrative expense. General and administrative expense decreased $3.3 million, or 32%, to $7.1 million for the six months ended June 30, 2019 from $10.4 million for the six months ended June 30, 2018. This is primarily due to a decrease in legal and consulting fees.

Provision (benefit) for loan losses. Provision for loan losses decreased $32.9 million, or 144%, for the six months ended June 30, 2019 from a provision of $22.8 million for the six months ended June 30, 2018 to a benefit of $10.1 million for the six months ended June 30, 2019. During the six months ended June 30, 2019, the benefit for loan losses was primarily driven by a $9 million settlement payment received on a loan that was previously charged off.

Depreciation and amortization expense. Depreciation and amortization expense decreased $3.7 million, or 58%, to $2.7 million for the six months ended June 30, 2019 from $6.3 million for the six months ended June 30, 2018. The decrease is primarily attributable to the sale or divesture of 7 properties since June 30, 2018.

Other income (expense)

Interest and other income (expense). Interest and other income expense decreased $0.1 million, or 19%, to $0.3 million for the three months ended June 30, 2019 from $0.4 million for the three months ended June 30, 2018.

Gains (losses) on assets. During the six months ended June 30, 2019, we recognized a $1.5 million gain on assets. This includes a $0.9 million gain on the sale of one retail property and a $0.6 million gain on loans held for sale, which are measured at the lower of cost or fair value.

Gains (losses) on extinguishment of debt. During the six months ended June 30, 2019, we recognized a loss on extinguishment of debt of $0.6 million due to the write-off of the unamortized deferred financing costs associated with indebtedness that was repaid during the three months ended June 30, 2019.

Asset impairment. During the three months ended June 30, 2019, we recognized asset impairment charges of $2.8 million primarily related to our operating lease assets and other fixed assets as it was determined we would not realize the benefits of these assets over their remaining terms and useful lives and a portion of these assets was determined to not be recoverable.

Change in fair value of financial instruments. During the six months ended June 30, 2019, the change in fair value of financial instruments decreased our net income by $0.2 million. The fair value adjustments we recorded were as follows (dollars in thousands):

Description	For the Six Months Ended June 30, 2019	For the Six Months Ended June 30, 2018
Change in fair value of junior subordinated notes	$ (180)	$ (272)
Change in fair value of derivatives	—	470
Change in fair value of financial instruments	$ (180)	$ 198

The changes in the fair value for the junior subordinated notes for which the fair value option was elected for the six months ended June 30, 2019 and 2018 was primarily attributable to changes in interest rates.

Liquidity and Capital Resources

Liquidity is a measure of our ability to meet potential cash requirements, including ongoing commitments to repay borrowings, fund and maintain investments, pay dividends and other general business needs.

Our primary cash requirements are as follows:

- to pay claims in accordance with orders of the Bankruptcy Court and the terms of the Plan, once confirmed;
- to pay any post-petition liabilities of the Debtors;
- to pay our expenses and any other liabilities, including compensation to our employees and fees to our legal and financial advisors;
- to pay U.S. federal, state, and local taxes of our taxable REIT subsidiaries; and
- to distribute a minimum of 90% of our REIT taxable income and to make investments in a manner that enables us to maintain our qualification as a REIT.

We intend to meet these liquidity requirements primarily through the following:

- the use of proceeds received from the sale of substantially all our assets under the Purchase Agreement or any alternative bid accepted under the Bidding Procedures, including our cash and cash equivalents; and
- cash generated from operating activities, including net investment income from our investment portfolio.

The financial statements included in this report have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities and other commitments in the normal course of business. As described in Part I, Item 1, "Financial Statements —Note 2: Summary of Significant Accounting Policies—Going Concern Considerations", there is substantial doubt about our ability to continue to operate as a going concern.

In evaluating RAIT's potential cash requirements over the next 12 months, management considered the impacts of the Chapter 11 Cases, including the Events of Default described in Part I, Item 1, "Financial Statements —Note 1: The Company", and RAIT's recurring costs of operations. As described in Part I, Item 1, "Financial Statements —Note 1: The Company", the filing of the Chapter 11 Cases with the Bankruptcy Court triggered the Bankruptcy Events of Default and, each of the Debt Instruments provides that upon the occurrence of such an Event of Default, all obligations of RAIT and/or its applicable affiliates thereunder were accelerated and the principal and accrued interest due thereunder was automatically and immediately due and payable and any efforts to enforce such payment obligations under the Debt Instruments are automatically stayed and the respective creditors' rights of enforcement in respect of the Debt Instruments are limited. As of the date hereof, RAIT and/or its applicable affiliates had (i) $65.4 million principal amount of 7.125% Senior Notes outstanding, (ii) $56.3 million principal amount of 7.625% Senior Notes outstanding, (iii) $25.1 million principal amount of the 2037 Note outstanding, and (iv) $18.7 million principal amount of the 2035 Note outstanding. Furthermore, RAIT's failure to pay the principal amount of 7.125% Senior Notes by their maturity date on August 30, 2019 constituted an Event of Default under the Supplemental Indenture.

RAIT's current sources of liquidity, including its current cash and cash equivalents balance, are not sufficient to satisfy RAIT's obligations arising over the next twelve months. RAIT expects to sell substantially all of its assets pursuant to the Purchase Agreement under Section 363 of the Bankruptcy Code and the Bidding Procedures Order for a purchase price of $174.4 million, adjusted as contemplated by the Purchase Agreement, including the assumption of certain liabilities. RAIT's proposed Plan provides for the ultimate wind down of RAIT's affairs once the transactions contemplated by the Purchase Agreement and the Bidding Procedures are completed and the Plan is confirmed by the Bankruptcy Court.

Due to the inherent risks and significant uncertainties associated with the completion of the transactions under the Purchase Agreement, the Plan, the Chapter 11 Cases, and RAIT's recurring costs of operations over the next twelve months, there is substantial doubt about RAIT's ability to continue as a going concern within one year after the date that these financial statements are issued.

Cash Flows

As of June 30, 2019, and 2018, we maintained cash and cash equivalents of approximately $46.7 million and $72.2 million, respectively, and restricted cash of approximately $29.3 million and $113.1 million, respectively. Our cash and cash equivalents and restricted cash were generated from the following activities (dollars in thousands):

	For the Six Months Ended June 30,	
	2019	2018
Cash flow from operating activities	$ (8,040)	$ 27,721
Cash flow from investing activities	119,897	254,289
Cash flow from financing activities	(141,390)	(307,989)
Net change in cash, cash equivalents and restricted cash	(29,533)	(25,979)
Cash, cash equivalents and restricted cash at beginning of year	105,520	211,294
Cash, cash equivalents and restricted cash at end of year	$ 75,987	$ 185,315

Cash flow from operating activities for the six months ended June 30, 2019, as compared to the same period in 2018, decreased $35.8 million primarily due to proceeds received from the sale of loans during the six months ended June 30, 2018 while no such proceeds were received during the six months ended June 30, 2019, and lower earnings during the six months ended June 30, 2019 as a result of lower loan volumes and the timing of payments for various accounts payable, accrued expenses and other liabilities.

The cash inflow for investing activities for the six months ended June 30, 2019 was substantially due to loan repayments of $122.6 million. The cash inflow for investing activities for the six months ended June 30, 2018 was substantially due to loan repayments of $170.0 million, loan sales of $108.5 million, and sale of floating rate securitization interests of $31.9 million outpacing new investments in loans of $50.8 million.

The cash outflow from our financing activities during the six months ended June 30, 2019 was primarily due to repayments of indebtedness of $141.4 million. The cash outflow from our financing activities during the six months ended June 30, 2018 was primarily due to repayments of indebtedness of $234.4 million and the repurchase and cancellation of the remaining preferred units of RAIT IV and RAIT's corresponding Series D preferred shares of $62.0 million.

As a REIT, we evaluate our dividend coverage based on our cash flow from operating activities, excluding acquisition and integration expenses, the origination and sale of loans originated for sale, and changes in assets and liabilities. During the six months ended June 30, 2019, we paid distributions of $0.03 million upon the vesting of restricted common share awards granted to our employees, representing the aggregate amount of dividends paid on such shares while these awards were unvested, and generated cash flows from operating activities, before acquisition expenses, origination and sale of loans, and changes in assets and liabilities of $(9.0) million. The excess distributions were funded through cash flow from previously available cash.

Capitalization

A discussion of our capitalization is incorporated by reference to Note 5: Indebtedness and Note 9: Shareholders' Equity of Notes to Consolidated Financial Statements for information regarding our capitalization.

Due to our expectation that RAIT will wind down its business as described above after the confirmation and implementation of the Plan, the current trading levels of our publicly traded securities and other factors, we do not expect to generate liquidity from future offerings of our securities. In addition, we do not currently meet the eligibility requirements to use our shelf registration statement on Form S-3 to offer securities on our own behalf for cash.

Off-Balance Sheet Arrangements and Commitments

There have been no material changes in off-balance sheet arrangements or commitments during the three and six months ended June 30, 2019 from the disclosures included in our 2018 Annual Report.

Critical Accounting Estimates and Policies

Our 2018 Annual Report contains a discussion of our critical accounting policies. On January 1, 2019 we adopted a new accounting pronouncement and revised our accounting policies accordingly. See Note 2: Summary of Significant Accounting Policies in the Notes to Consolidated Financial Statements. Management discusses our critical accounting policies and management's judgments and estimates with the audit committee of our board.

Item 3. <u>Quantitative and Qualitative Disclosures about Market Risk</u>

We are a smaller reporting company as defined by Rule 12b-2 of the Exchange Act and are not required to provide the information required under this item.

Item 4. <u>Controls and Procedures</u>

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) that are designed to ensure that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer, or CEO, and our Chief Financial Officer, or CFO, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, our management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. Also, projections of any evaluation of effectiveness of future periods are subject to the risk that controls may become inadequate because of changes in conditions or that the degree of compliance with the policies and procedures may deteriorate.

Under the supervision of our CEO and CFO and with the participation of our disclosure committee, we have carried out an evaluation of the effectiveness of our disclosure controls and procedures as of the end of the period covered by this report. Based upon that evaluation, our CEO and CFO concluded that our disclosure controls and procedures were not effective at the reasonable assurance level. Based upon a previously identified material weakness in our internal control over financial reporting as of December 31, 2018 related to an ineffective continuous risk assessment process and monitoring activities to reflect changes in our business operations, our CEO and CFO concluded that our disclosure controls and procedures were not effective at June 30, 2019.

Management is in the process of remediating the material weakness. Management is continuing its risk assessment and monitoring activities and testing of its enhanced controls to ensure timely identification of changes in business operations such that necessary changes in financial reporting processes and related internal controls continue to be implemented.

Notwithstanding the material weakness discussed above, RAIT's management, including the CEO and CFO, has concluded that our consolidated financial statements included in this Form 10-Q fairly present, in all material respects, our financial position, results of operations and cash flows as of the dates, and for the periods presented, in conformity with U.S. generally accepted accounting principles.

Changes in Internal Control Over Financial Reporting

Except as otherwise stated above, there were no changes in our internal control over financial reporting or in other factors during the quarter ended June 30, 2019, that have materially affected, or were reasonably likely to materially affect, our internal control over financial reporting.

Part II. OTHER INFORMATION

Item 1. Legal Proceedings

General

We are involved from time to time in litigation on various matters, including disputes with tenants of owned properties, disputes arising out of agreements to purchase or sell properties and disputes arising out of our loan portfolio, discrimination claims, negligence claims, and similar tort claims related to owned properties or employment related disputes. Given the nature of our business activities, these lawsuits are considered routine to the conduct of our business. The result of any particular lawsuit cannot be predicted, because of the very nature of litigation, the litigation process and its adversarial nature, and the jury system. We do not expect that the liabilities, if any, that may ultimately result from such routine legal actions will have a material adverse effect on our consolidated financial position, results of operations or cash flows, except as described below.

The Chapter 11 Cases

For a description of the Chapter 11 Cases, see Part I, Item 1, "Financial Statements —Note 1: The Company", which is incorporated herein by reference.

RAIT Preferred Funding II, Ltd. v. CWCapital Asset Management LLC, et al.–Index No. 651729/2016 (Sup. Ct. N.Y.)

On September 20, 2017, RAIT Preferred Funding II, Ltd., or RAIT II, filed an amended complaint against the following defendants, or the Defendants, CWCapital Asset Management, LLC, or CWCapital, Wells Fargo Bank N.A., or Wells Fargo, and U.S. Bank N.A., or U.S. Bank, in the Supreme Court of the State of New York, County of New York, or the Court. This action concerns a loan, or the mortgage loan, to a non-party borrower, or the borrower, made in 2007. RAIT II purchased $18.5 million of the mortgage loan for which it held a promissory note, or note B. U.S. Bank is the trustee for a securitization trust that purchased the remaining $190.0 million of the mortgage loan and for which it held a promissory note, or note A. CWCapital is the special servicer and Wells Fargo is the master servicer for the mortgage loan (including note A and note B). The parties' rights and obligations are governed by, among other things, a pooling and servicing agreement and a co-lender agreement. The mortgage loan was repaid in May of 2017, and the defendants have alleged that RAIT II was not entitled to receive any payoff of principal under note B pursuant to the subordination and other provisions of the co-lender agreement. In the amended complaint, RAIT II alleges, among other things, that the defendants breached certain of their obligations under the operative documents and RAIT II should have received, among other things, all of its $18.5 million principal under note B.

On October 11, 2017, CWCapital and U.S. Bank moved to dismiss the amended complaint and on November 13, 2017 Wells Fargo moved to dismiss the amended complaint. RAIT II filed its opposition to the motions to dismiss on November 27, 2017. By Decision and Order dated January 29, 2018, the Court denied the defendants' motions to dismiss the contract claims, leaving intact RAIT II's breach of contract claims against all defendants. The Court dismissed RAIT II's non-contract claims (unjust enrichment, conversion, money had and received, and declaratory judgment) as duplicative of the surviving contract claims. The parties have since concluded discovery, and Defendants filed a motion for summary judgment on March 18, 2019. That motion was adjourned as a result of the Settlement Agreement and Agreement to Discontinue referenced below, and the litigation is scheduled to be discontinued with prejudice by Stipulation after TRFT receives payment under the Settlement Agreement.

On December 17, 2018, RAIT II assigned its interest in note B to TRFT in connection with TRFT's redemption of RAIT II described in the 2018 Annual Report, see Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations—Securitization Summary." On April 8, 2019, the Court granted RAIT II's motion to substitute TRFT as the plaintiff in this litigation.

Effective May 8, 2019, TRFT, RAIT II, CWCapital and U.S. Bank entered into a Settlement Agreement and Mutual Release, or the Settlement Agreement. The Settlement Agreement provides (a) that CWCapital and U.S. Bank shall pay, or cause to be paid by the related securitization trust, $9.0 million, or the Settlement Payment, to TRFT within ten calendar days, (b) that the parties will execute and, after that Settlement Payment is received by TRFT, TRFT will file a Stipulation of Discontinuance with Prejudice, or the Stipulation, with the Court dismissing this litigation, and (c) for mutual releases between TRFT and RAIT II, on the one hand, and the Defendants, on the other hand, of claims relating to this litigation. Also, effective May 8, 2019, TRFT, RAIT II and Wells Fargo entered into an Agreement to Discontinue and Dismiss Litigation with Prejudice, or the Agreement to Discontinue. The Agreement to Discontinue also provides (a) that TRFT, RAIT II and Wells Fargo shall sign the Stipulation, (b) that, after the Settlement Payment is received by TRFT, TRFT will file the Stipulation and (c) for mutual releases between TRFT and RAIT II, on the one hand, and Wells Fargo, on the other hand, of claims relating to this litigation. TRFT received the payment contemplated by the Settlement Agreement in May 2019.

Item 1A. **Risk Factors**

There have not been any material changes from the risk factors previously disclosed in Item 1A—"Risk Factors" in our 2018 Annual Report except as set forth below or as stated under Part I, Item 2, "Management's Discussion and Analysis of Financial Condition and Results of Operations-Forward-Looking Statements" above.

The Debtors are subject to the risks and uncertainties associated with Chapter 11 cases.

For the duration of the Chapter 11 Cases, the Debtors' ability to operate their business as debtors in possession are subject to the risk and uncertainties associated with bankruptcy. These risks include the following:

- The Debtors' ability to develop, negotiate, confirm and consummate the Plan, or alternative restructuring;
- The Debtors' ability to obtain Bankruptcy Court approval with respect to motions filed in the Chapter 11 Cases from time to time;
- The Debtors' ability to complete the transactions contemplated by the Purchase Agreement and the Bidding Procedures Order;
- The Debtors' ability to maintain relationships with third parties;
- The Debtors' ability to execute and fund their operations;
- The Debtors' ability to retain management and other employees;
- The ability of third parties to seek and obtain Bankruptcy Court approval to terminate contracts and other agreements with the Debtors; and
- The actions and decisions of the Debtors' creditors and other third parties who have interests in the Chapter 11 Cases that may be inconsistent with the Debtors' plans.

These risks and uncertainties could affect the Debtors' business and operations in various ways. For example, negative events associated with the Chapter 11 Cases could adversely affect the Debtors' relationships with third parties, which in turn could adversely affect the Debtors' operations and financial condition. Furthermore, the Debtors need the prior approval of the Bankruptcy Court for transactions outside the ordinary course of business, which may limit the Debtors' ability to respond timely to certain events or take advantage of certain opportunities. Because of the risks and uncertainties associated with the Chapter 11 Cases, the Debtors cannot accurately predict or quantify the ultimate impact of the events that will occur during the Chapter 11 Cases that may be inconsistent with the Debtors' plans.

Operating under the jurisdiction of the Bankruptcy Court for a long period of time would likely increase related expenses and thereby reduce amounts payable to the Debtors' stakeholders under the Plan.

The Debtors have incurred and expect to continue to incur substantial additional expenses related to the Chapter 11 Cases, including the expenses of their own financial and legal advisors and those of the unsecured creditors committee appointed in the Chapter 11 Cases. A long period of operations under Bankruptcy Court protection would likely increase the amount paid by the Debtors for these expenses and thereby reduce amounts ultimately payable to the Debtors' stakeholders under the Plan.

Operating under the jurisdiction of the Bankruptcy Court for a long period of time may harm the Debtors' business.

The Debtors' future results are dependent upon the successful confirmation and implementation of a plan of reorganization. A long period of operations under Bankruptcy Court protection could have a material adverse effect on the Debtors' business, financial condition, results of operations and liquidity. So long as the Chapter 11 Cases continue, the Debtors' senior management will be required to spend a significant amount of time and effort dealing with the reorganization instead of focusing exclusively on the Debtors' business operations. A prolonged period of operating under Bankruptcy Court protection also may make it more difficult to retain management and other key personnel necessary to the Debtors' continued operation in the ordinary course. Furthermore, the Debtors cannot predict the ultimate amount of all settlement terms for the liabilities that will be subject to a plan of reorganization.

The Debtors' long-term liquidity requirements and the adequacy of their capital resources are difficult to predict at this time.

The Debtors face uncertainty regarding the adequacy of their liquidity and capital resources and have extremely limited, if any, access to additional financing. In addition to the cash requirements necessary to fund ongoing operations, the Debtors have incurred significant professional fees and other costs in connection with their evaluation of strategic alternatives and preparation for the Chapter 11 Cases and expect that the Debtors will continue to incur significant professional fees and costs throughout the Chapter 11 Cases. The Debtors cannot assure you that cash on hand and cash flow from operations will be sufficient to continue to fund their operations and allow the Debtors to satisfy their obligations related to the Chapter 11 Cases.

The Debtors may experience increased levels of employee attrition as a result of the Chapter 11 Cases.

As a result of the Chapter 11 Cases, the Debtors may experience increased levels of employee attrition, and employees likely will face considerable distraction and uncertainty. A loss of key personnel or material erosion of employee morale could adversely affect the Debtors' operations. The loss of services of members of the Debtors' senior management team could impair their ability to continue to operate in the ordinary course, which would be likely to have a material adverse effect on the Debtors' business, financial condition and results of operations.

The pursuit of the Chapter 11 Cases has consumed and will continue to consume a substantial portion of the time and attention of the Debtors' management, which may have an adverse effect on the Debtors' business and results of operations, and the Debtors may face increased levels of employee attrition.

While the Chapter 11 Cases continue, the Debtors' management will be required to spend a significant amount of time and effort focusing on the cases. This diversion of attention may materially adversely affect the conduct of the Debtors' business, and, as a result, the Debtors' financial condition and results of operations, particularly if the Chapter 11 Cases are protracted.

In certain instances, a Chapter 11 case may be converted to a case under Chapter 7 of the Bankruptcy Code.

There can be no assurance as to whether the Debtors will successfully reorganize and wind down under the Chapter 11 Cases or, if the Debtors do successfully reorganize and wind down, as to when that would be contemplated.

If the Bankruptcy Court finds that it would be in the interest of creditors and/or the Debtors, the Bankruptcy Court may convert the Chapter 11 Cases to cases under Chapter 7 of the Bankruptcy Code. In such event, a Chapter 7 trustee would be appointed or elected to liquidate the Debtors' assets for distribution in accordance with the priorities established by the Bankruptcy Code.

Upon the closing of the transactions contemplated by the Purchase Agreement and the Bidding Procedures, the Debtors will have sold substantially all of their operating assets.

Upon the closing of the transactions contemplated by the Purchase Agreement and the Bidding Procedures, the Debtors will have sold substantially all of their operating assets. Accordingly, the Debtors' only sources of liquidity will be cash on hand.

The Plan currently contemplates no payments on account of the outstanding common shares and preferred shares of RAIT Financial Trust and Taberna Realty Finance Trust and the cancellation of all such shares. As a result, holders of such common and preferred shares are likely to suffer a total loss of their investment.

As contemplated by the bankruptcy risks described in the 2018 Annual Report, the Plan as currently contemplated sets forth the level of expected recovery for the claims of each of the Debtors' stakeholders. The Plan provides that no payment will be made on account of the outstanding common shares and outstanding preferred shares of RAIT Financial Trust and Taberna Realty Finance Trust and that these shares will be cancelled upon confirmation of the Plan. We cannot provide any assurance that a higher and otherwise better bid will result from the Bidding Procedures and that, even if such a bid did result, whether it would be sufficient to result in any payment on account of such outstanding common shares and/or such outstanding preferred shares.

If the Sale pursuant to the Bidding Procedures does not occur (including the Transactions contemplated by the Purchase Agreement), RAIT expects that the proceeds from any liquidation of RAIT would result in significantly lower distributions to RAIT's stakeholders.

RAIT estimated the likely proceeds and the timing of their receipt if RAIT engaged in an orderly liquidation of its assets and winding down of its affairs if the Transactions contemplated by the Purchase Agreement and the Bidding Procedures did not occur. Based on that analysis, RAIT expects that the proceeds from any such liquidation of RAIT would result in significantly lower distributions to RAIT's stakeholders and such distributions would be made over a much longer period of time. As a result, in the event the Sale pursuant to the Bidding Procedures did not occur (including the Transactions contemplated by the Purchase Agreement) for any reason, the likelihood of losses on any securities issued by RAIT would increase.

The Implementation of the Plan is subject to factors set forth in the Plan.

Article V "Certain Factors to be Considered Regarding the Plan" of the Plan, included as Exhibit 2.1 to this Quarterly Report on Form 10-Q, is incorporated herein by reference.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

We withheld the following common shares to satisfy tax withholding obligations during the quarter ended June 30, 2019 arising from the vesting of restricted share awards made pursuant to the RAIT Financial Trust 2017 Incentive Award Plan. These common shares may be deemed to be "issuer purchases" of common shares that are required to be disclosed pursuant to the item.

Period	Total Number of Shares Purchased	Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number (or Approximate Dollar Value) of Shares that May Yet Be Purchased Under the Plans or Programs
04/01/2019 to 04/30/2019	-	-	-	-
05/01/2019 to 05/31/2019	26	0.92	26	-
06/01/2019 to 06/30/2019	-	-	-	-
Total	26	$ 0.92	26	-

(1) The price reported is the weighted average price paid per share using our closing stock price on the OTCQB on the vesting date of the relevant award.

Item 3. Defaults Upon Senior Securities

(a) As described in Part I, Item 1, "Financial Statements—"Note 5—Indebtedness", on August 20, 2019, RAIT received a notice of default relating to the 7.125% Senior Notes and the 7.625% Senior Notes from the indenture trustee. The notice stated that RAIT has defaulted under Section 4.02 of each of the supplemental indentures that govern those Senior Notes because RAIT failed to timely file the quarterly report for the fiscal quarter ended March 31, 2019 that RAIT is required to file with the Securities and Exchange Commission. The notice demanded RAIT remedy such default. Under the supplemental indentures, the default will not become an "Event of Default" unless RAIT failed to remedy the default within 60 days after the date on which notice was received. If such an "Event of Default" occurred, then in lieu of acceleration of the repayment obligation, RAIT may at its option elect to pay additional interest on the respective Senior Note at an annual rate equal to 0.50% of the principal amount of the respective Senior Note for up to one year after the occurrence of such "Event of Default". Notwithstanding the foregoing, subject to certain specific exceptions under the Bankruptcy Code, the Chapter 11 Cases automatically stayed most judicial or administrative actions against the Debtors as well as efforts by creditors to collect on or otherwise exercise rights or remedies with respect to pre-petition claims.

As described in Part I, Item 1, "Financial Statements —Note 1: The Company", the filing of the Chapter 11 Cases with the Bankruptcy Court triggered the Bankruptcy Events of Default and all obligations of RAIT and/or its applicable affiliates thereunder were accelerated and the principal and accrued interest due thereunder was automatically and immediately due and payable and any efforts to enforce such payment obligations under the Debt Instruments are automatically stayed and the respective creditors' rights of enforcement in respect of the Debt Instruments are limited. As of the date hereof, RAIT and/or its applicable affiliates had (i) $65.4 million principal amount of 7.125% Senior Notes outstanding (and $1.2 million of accrued interest payable thereon through, but excluding, the Bankruptcy Cases petition filing date in accordance with the Bankruptcy Code), (ii) $56.3 million principal amount of 7.625% Senior Notes outstanding (and $0.6 million of accrued interest payable thereon through, but excluding, the Bankruptcy Cases petition filing date in accordance with the Bankruptcy Code), (iii) $25.1 million principal amount of the 2037 Note outstanding (and $0.1 million of accrued interest payable thereon through, but excluding, the Bankruptcy Cases petition filing date in accordance with the Bankruptcy Code), and (iv) $18.7 million principal amount of the 2035 Note outstanding (and $0.2 million of accrued interest payable thereon through, but excluding, the Bankruptcy Cases petition filing date in accordance with the Bankruptcy Code). Furthermore, as described in Part I, Item 1, "Financial Statements—Note 1: The Company", RAIT's failure to pay the principal amount of 7.125% Notes by their maturity date on August 30, 2019 constituted an "Event of Default" under the Supplemental Indenture.

(b) In June 2018, the Board determined to suspend the quarterly dividend on RAIT's 7.75% Series A Cumulative Redeemable Preferred Shares, RAIT's 8.375% Series B Cumulative Redeemable Preferred Shares, and RAIT's 8.875% Series C Cumulative Redeemable Preferred Shares. Suspension of the dividends did not constitute an event of default under any of our indebtedness. However, as a result of such suspension, we are in arrears in the payment of dividends with respect to our preferred shares, which gives the holders of those shares the right to seek to have two representatives elected to the Board. The table below details the arrearage of our preferred stock dividends, as of June 30, 2019.

($ in millions)	Series A	Series B	Series C
Dividends in arrears	$ 14	$ 6	$ 5

Item 6. Exhibits

The exhibits filed as part of this quarterly report on Form 10-Q are identified below.

EXHIBIT INDEX

Exhibit Number	Description of Documents
2.1	Debtors' Joint Chapter 11 Plan (the "Chapter 11 Plan") filed October 14, 2019 in the cases consolidated as In re: RAIT Funding, LLC, a Delaware limited liability company, et. al. in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). Incorporated by reference to RAIT's Form 10-Q for the quarterly period ended March 31, 2019 (File No. 1-14760).
2.2	Disclosure Statement for the Chapter 11 Plan (the "Disclosure Statement") filed October 14, 2019 in the Bankruptcy Court. Incorporated by reference to RAIT's Form 10-Q for the quarterly period ended March 31, 2019 (File No. 1-14760).
2.3	Order of the Bankruptcy Court filed October 2, 2019 (i) establishing the bidding procedures, including approval of a break-up fee and expense reimbursement and (ii) granting related relief. Incorporated by reference to RAIT's Form 10-Q for the quarterly period ended March 31, 2019 (File No. 1-14760).
3.1.1	Amended and Restated Declaration of Trust of RAIT Financial Trust ("RAIT"). Incorporated by reference to Exhibit 3.1(b) to RAIT's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission ("SEC") on September 8, 1997 (Registration No. 333-35077).
3.1.2	Articles of Amendment to Amended and Restated Declaration of Trust of RAIT. Incorporated by reference to Exhibit 3.3.1 to RAIT's Registration Statement on Form S-11/A as filed with the SEC on June 8, 1998 (Registration No. 333-53067).
3.1.3	Articles of Amendment to Amended and Restated Declaration of Trust of RAIT. Incorporated by reference to Exhibit 4(iii) to RAIT's Registration Statement on Form S-2 as filed with the SEC on February 13, 2001 (Registration No. 333-55518).
3.1.4	Certificate of Correction to the Amended and Restated Declaration of Trust of RAIT. Incorporated by reference to RAIT's Form 10-Q for the Quarterly Period ended March 31, 2002 (File No. 1-14760).
3.1.5	Articles of Amendment to Amended and Restated Declaration of Trust of RAIT. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on December 15, 2006 (File No. 1-14760).
3.1.6	Articles of Amendment to Amended and Restated Declaration of Trust of RAIT. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on July 1, 2011 (File No. 1-14760).
3.1.7	Articles Supplementary (the "Series A Articles Supplementary") relating to the 7.75% Series A Cumulative Redeemable Preferred Shares of Beneficial Interest (the "Series A Preferred Shares") of RAIT. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on March 18, 2004 (File No. 1-14760).
3.1.8	Certificate of Correction to the Series A Articles Supplementary. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on March 18, 2004 (File No. 1-14760).
3.1.9	Articles Supplementary relating to the 8.375% Series B Cumulative Redeemable Preferred Shares of Beneficial Interest, (the "Series B Preferred Shares") of RAIT. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on October 1, 2004 (File No. 1-14760).
3.1.10	Articles Supplementary relating to the 8.875% Series C Cumulative Redeemable Preferred Shares of Beneficial Interest, (the "Series C Preferred Shares") of RAIT. Incorporated by reference to RAIT's Form 8-A as filed with the SEC on June 29, 2007 (File No. 1-14760).
3.1.11	Articles Supplementary relating to Series A Preferred Shares, Series B Preferred Shares and Series C Preferred Shares. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on May 25, 2012 (File No. 1-14760).
3.1.12	Certificate of Correction relating to Series A Preferred Shares, Series B Preferred Shares and Series C Preferred Shares. Incorporated by reference to RAIT's Form 10-Q for the quarterly period ended June 30, 2012 (File No. 1-14760).
3.1.13	Articles Supplementary (the "Series D Articles Supplementary") relating to the Series D Cumulative Redeemable Preferred Shares of Beneficial Interest (the "Series D Preferred Shares") of RAIT. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on October 4, 2012 (File No. 1-14760).
3.1.14	Articles Supplementary relating to the Series E Cumulative Redeemable Preferred Shares of Beneficial Interest (the "Series E Preferred Shares") of RAIT. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on December 4, 2012 (File No.1-14760).
3.1.15	Amendment dated November 30, 2012 to the Series D Articles Supplementary. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on December 4, 2012 (File No.1-14760).
3.1.16	Articles Supplementary relating to the Series A Preferred Shares. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on June 13, 2014 (File No. 1-14760).
3.1.17	Articles Supplementary dated June 27, 2018. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on June 28, 2018 (File No. 1-14760).
3.1.18	Articles of Amendment to Amended and Restated Declaration of Trust of RAIT dated August 6, 2018. Incorporated by reference to RAIT's Form 10-Q for the quarterly period ended June 30, 2018. (File No. 1-14760).
3.2.1	Amended and Restated Bylaws of RAIT, as adopted on November 16, 2016. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on November 17, 2016 (File No. 1-14760).
3.2.2	First Amendment to the Amended and Restated Bylaws of RAIT. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on June 28, 2017 (File No. 1-14760).
3.2.3	Second Amendment to the Amended and Restated Bylaws of RAIT. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on August 3, 2017 (File No. 1-14760).
4.1.1	Form of Certificate for Common Shares of Beneficial Interest. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on July 1, 2011 (File No. 1-14760).

Exhibit Number	Description of Documents
4.1.2	Form of Certificate for the Series A Preferred Shares. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on March 22, 2004 (File No. 1-14760).
4.1.3	Form of Certificate for the Series B Preferred Shares. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on October 1, 2004 (File No. 1-14760).
4.1.4	Form of Certificate for the Series C Preferred Shares. Incorporated by reference to RAIT's Form 8-A as filed with the SEC on June 29, 2007 (File No. 1-14760).
4.1.5	Form of Certificate for the Series D Preferred Shares. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on October 23, 2012 (File No. 1-14760).
4.1.6	Form of Certificate for the Series E Preferred Shares. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on October 23, 2012 (File No. 1-14760).
4.1.7	Form of Certificate for Common Shares of Beneficial Interest. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on August 13, 2018 (File No. 1-14760).
4.2.1	Base Indenture dated as of December 10, 2013 between RAIT, as issuer, and Wells Fargo Bank, National Association., as trustee. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on December 13, 2013 (File No. 1-14760).
4.2.2	Supplemental Indenture dated as of December 10, 2013 between RAIT, as issuer, and Wells Fargo Bank, National Association., as trustee. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on December 13, 2013 (File No. 1-14760).
4.2.3	Form of RAIT 4.00% Convertible Senior Note due 2033 (included in Exhibit 4.2.2). Incorporated by reference to RAIT's Form 8-K as filed with the SEC on December 13, 2013 (File No. 1-14760).
4.3.1	Base Indenture dated as of March 21, 2011 between RAIT, as issuer, and Wells Fargo Bank, National Association., as trustee. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on March 22, 2011 (File No. 1-14760).
4.3.2	Supplemental Indenture dated as of March 21, 2011 between RAIT, as issuer, and Wells Fargo Bank, National Association., as trustee. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on March 22, 2011 (File No. 1-14760).
4.4	Indenture dated as of October 5, 2011 between RAIT and Wilmington Trust, National Association, as trustee. Incorporated by reference to RAIT's Form 10-Q for the quarterly period ended September 30, 2011 (File No. 1-14760).
4.5.1	Registration Rights Agreement dated as of October 1, 2012 by and among RAIT and ARS VI Investor I, LP, formerly known as ARS VI Investor I, LLC ("ARS VI"). Incorporated by reference to RAIT's Form 8-K as filed with the SEC on October 4, 2012 (File No. 1-14760).
4.5.2	Amendment No. 1 to Registration Rights Agreement dated as of April 25, 2014 by and among RAIT and ARS VI. Incorporated by reference to RAIT's Registration Statement on Form S-3 as filed with the SEC on April 28, 2014 (Registration No. 333-195547).
4.5.3	Common Share Purchase Warrant No.1 dated October 17, 2012 issued by RAIT to ARS VI. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on October 23, 2012 (File No. 1-14760).
4.5.4	Common Share Appreciation Right No.1 dated October 17, 2012 issued by RAIT to ARS VI. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on October 23, 2012 (File No. 1-14760).
4.5.5	Common Share Purchase Warrant No. 2 dated November 15, 2012 issued by RAIT to ARS VI. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on November 21, 2012 (File No.1-14760).
4.5.6	Common Share Appreciation Right No. 2 dated November 15, 2012 issued by RAIT to ARS VI. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on November 21, 2012 (File No.1-14760).
4.5.7	Common Share Purchase Warrant No. 3 dated December 18, 2012 issued by RAIT to ARS VI. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on December 18, 2012 (File No.1-14760).
4.5.8	Common Share Appreciation Right No. 3 dated December 18, 2012 issued by RAIT to ARS VI. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on December 18, 2012 (File No.1-14760).
4.5.9	Common Share Purchase Warrant No. 4 dated March 27, 2014 issued by RAIT to ARS VI. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on March 27, 2014 (File No. 1-14760).
4.5.10	Common Share Appreciation Right No. 4 dated March 27, 2014 issued by RAIT to ARS VI. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on March 27, 2014 (File No. 1-14760).
4.5.11	Put Right Notice dated October 10, 2017 from ARS VI to RAIT. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on October 17, 2017 (File No. 1-14760).
4.5.12	Extension Agreement dated as of March 12, 2018 by and among ARS VI, RAIT, RAIT Partnership, L.P. ("RAIT Partnership"), Taberna Realty Finance Trust, ("TRFT") and RAIT Asset Holdings IV, LLC ("RAIT IV"). Incorporated by reference to RAIT's Form 10-K for the fiscal year ended December 31, 2017 (File No. 1-14760).
4.5.13	Letter Agreement dated as of June 8, 2018 by and among ARS VI, RAIT, RAIT Partnership, TRFT, and RAIT IV. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on June 8, 2018 (File No. 1-14760).
4.5.14	Consent and Acknowledgment dated as of June 12, 2018 by and among ARS VI, RAIT, RAIT Partnership, TRFT and RAIT IV. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on June 13, 2018 (File No. 1-14760).

Exhibit Number	Description of Documents
4.5.15	Redemption and Exchange Agreement dated as of June 27, 2018 among RAIT, RAIT IV and ARS VI. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on June 28, 2018 (File No. 1-14760).
4.5.16	Termination Agreement dated as of June 27, 2018 among RAIT, RAIT Partnership, TRFT, RAIT IV and ARS VI. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on June 28, 2018 (File No. 1-14760).
4.6.1	Base Indenture dated as of December 10, 2013 between RAIT, as issuer, and Wells Fargo Bank, National Association., as trustee. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on December 13, 2013 (File No. 1-14760).
4.6.2	Supplemental Indenture dated as of December 10, 2013 between RAIT, as issuer, and Wells Fargo Bank, National Association., as trustee. Incorporated by reference to RAIT's Form 8-K as filed with the SEC on December 13, 2013 (File No. 1-14760).
4.6.3	Form of RAIT 4.00% Convertible Senior Note due 2033 (included in Exhibit 4.6.2). Incorporated by reference to RAIT's Form 8-K as filed with the SEC on December 13, 2013 (File No. 1-14760).
4.6.4	Second Supplemental Indenture, dated as of April 14, 2014, between RAIT, as issuer, and Wells Fargo Bank, National Association, as trustee. Incorporated by reference to RAIT's Form 8-A as filed with the SEC on April 14, 2014. (File No. 1-14760).
4.6.5	Form of 7.625% Senior Notes due 2024 (included as Exhibit A to Exhibit 4.6.4 hereto).
4.6.6	Third Supplemental Indenture, dated as of August 14, 2014, between RAIT, as Issuer, and Wells Fargo Bank, National Association, as trustee. Incorporated by reference to RAIT's Form 8-A as filed with the SEC on August 14, 2014.
4.6.7	Form of 7.125% Senior Notes due 2019 (included as Exhibit A to Exhibit 4.6.6 hereto).
4.7	Indenture, dated as of June 23, 2017 among RAIT 2017-FL7 Trust, as issuer, RAIT Partnership, as advancing agent, and Wells Fargo Bank, National Association, as trustee, paying agent, calculation agent, transfer agent, custodian, backup advancing agent and note registrar. Incorporated by reference to RAIT's Form 10-K for the fiscal year ended December 31, 2018 (File No. 1-14760).
4.8	Indenture, dated as of November 29, 2017 among RAIT 2017-FL8 Trust, as issuer, RAIT Partnership, as advancing agent, and Wells Fargo Bank, National Association, as trustee, paying agent, calculation agent, transfer agent, custodian, backup advancing agent and note registrar. Incorporated by reference to RAIT's Form 10-K for the fiscal year ended December 31, 2018 (File No. 1-14760).
	Certain Instruments defining the rights of holders of long-term debt securities of the Registrant and its subsidiaries are omitted pursuant to Item 601(b)(4)(iii) of Regulation S-K. The Registrant hereby undertakes to furnish to the SEC, upon request, copies of any such instruments.
10.1.1	Equity and Asset Purchase Agreement (the "Purchase Agreement") dated August 30, 2019 among RAIT, RAIT General, Inc., RAIT Limited, Inc., Taberna Realty Finance Trust ("TRFT"), as sellers (together, the "Sellers"), with CF RFP Holdings LLC, as buyer ("Buyer"). Incorporated by reference to RAIT's Form 10-Q for the quarterly period ended March 31, 2019 (File No. 1-14760).
10.1.2	Amendment No. 1 to the Purchase Agreement dated October 4, 2019 among the Sellers and the Buyer. Incorporated by reference to RAIT's Form 10-Q for the quarterly period ended March 31, 2019 (File No. 1-14760).
10.2.1	Restructuring and Plan Support Agreement dated August 29, 2019 among RAIT, TRFT, as borrower, and TP Management LLC, in its capacity as delegate collateral manager, relating to that certain Junior Subordinated Note due 2035 issued by TRFT. Incorporated by reference to RAIT's Form 10-Q for the quarterly period ended March 31, 2019 (File No. 1-14760).
10.2.2	Restructuring and Plan Support Agreement dated August 31, 2019 among RAIT, as guarantor, RAIT Funding, LLC ("RAIT Funding"), as borrower, and Kodiak CDO I., Ltd., as holder of certain preferred securities, relating to that certain Junior Subordinated Note due 2037 issued by RAIT Funding. Incorporated by reference to RAIT's Form 10-Q for the quarterly period ended March 31, 2019 (File No. 1-14760).
31.1	Rule 13a-14(a) Certification by the Chief Executive Officer of RAIT. Filed herewith.
31.2	Rule 13a-14(a) Certification by the Chief Financial Officer of RAIT. Filed herewith.
32.1	Section 1350 Certification by the Chief Executive Officer of RAIT. Filed herewith.
32.2	Section 1350 Certification by the Chief Financial Officer of RAIT. Filed herewith.
101	Pursuant to Rule 405 of Regulation S-T, the following financial information from RAIT's Quarterly Report on Form 10-Q for the period ended June 30, 2019 is formatted in XBRL interactive data files: (i) Consolidated Statements of Operations for the three and six months ended June 30, 2019 and 2018; (ii) Consolidated Balance Sheets as of June 30, 2019 and December 31, 2018; (iii) Consolidated Statements of Comprehensive Income (Loss) for the three and six months ended June 30, 2019 and 2018; (iv) Consolidated Statement of Changes in Equity for the three and six months ended June 30, 2019 and 2018; (v) Consolidated Statements of Cash Flows for the six months ended June 30, 2019 and 2018; and (vi) Notes to Unaudited Consolidated Financial Statements, filed herewith.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

RAIT FINANCIAL TRUST
(Registrant)

Date: November 7, 2019	By:	/s/ John J. Reyle John J. Reyle, Chief Executive Officer, President and General Counsel (On behalf of the registrant and as its Principal Executive Officer)
Date: November 7, 2019	By:	/s/ Alfred J. Dilmore Alfred J. Dilmore, Chief Financial Officer, Treasurer and Chief Accounting Officer (On behalf of the registrant and as its Principal Financial Officer and Principal Accounting Officer)

EXHIBIT D

brownrudnick

ROBERT J. STARK
direct dial: 212.209.4862
rstark@brownrudnick.com

September 6, 2019

By Electronic Mail and Hand Delivery

Richard Schepacarter, Esq.
Office of the United States Trustee
844 King Street, Suite 2207 Lockbox 35
Wilmington, DE 19801

RE: In re RAIT Funding LLC, et al., Case No. 19-11915 (Bankr. D. Del.) (BLS)

Dear Mr. Schepacarter:

As you know, this firm is counsel to an *ad hoc* committee (the "***Ad Hoc* Committee**") comprised of institutional and individual holders of equity securities issued by RAIT Financial Trust.[1] The *Ad Hoc* Committee respectfully requests that the United States Trustee appoint an Official Equity Committee in these Chapter 11 cases. The facts of these cases compellingly show that an Official Equity Committee is "necessary" within the meaning Bankruptcy Code Section 1102(a)(1), and that the appointment should occur as soon as possible.

I. The Applicable Legal Standard.

Bankruptcy jurisprudence establishes a five-part inquiry into whether the United States Trustee should appoint an Official Equity Committee:

(1) Are the Debtors "hopelessly" insolvent?
(2) Are shareholder interests already adequately represented in the case?
(3) Is the case large and complex?
(4) Is the request timely?
(5) Does the need for adequate representation outweigh the cost?

See, e.g., In re Eastman Kodak Co., 2012 WL 2501071, at *1-3 (Bankr. S.D.N.Y. June 28, 2012); In re Spansion, Inc., 421 B.R. 151 (Bankr. D. Del. 2009); In re Pilgrim's Pride Corp, 2009 WL 1231251, at *3 (Bankr. N.D. Tex. Apr. 30, 2009); In re Williams Commc'ns Group, Inc., 281 B.R. 216 (Bankr. S.D.N.Y. 2002); In re Kalvar Microfilm, 195 B.R. 599 (Bankr. D. Del. 1996); In re Wang Labs., Inc., 149 B.R. 1 (Bankr. D. Mass. 1992); Albero v. Johns-Manville Corp. (In re Johns-Manville Corp.), 68 B.R. 155 (S.D.N.Y. 1986), appeal dismissed, 824 F.2d 176 (2d Cir. 1987); In re Beker Indus. Corp., 55

[1] Several of the Debtors' equity holders have expressed interest in joining the *Ad Hoc* Committee. As soon as membership of the *Ad Hoc* Committee is finalized (anticipated no later than next week), a Bankruptcy Rule 2019 statement listing all members will be filed with the Court and provided to the Office of the U.S. Trustee.

B.R. 945 (Bankr. S.D.N.Y. 1985); In re Evans Prods. Co., 58 B.R. 572 (S.D. Fla. 1985); In re Emons Indus., Inc. 50 B.R. 692 (Bankr. S.D.N.Y. 1985).

Courts have also considered probative whether the appointment of an Official Equity Committee will facilitate a more reliable adversary process. See, e.g., In re Oneida Ltd., 2006 Bankr. LEXIS 780 (Bankr. S.D.N.Y. May 4, 2006) (ordering the appointment of an official equity committee where the debtors advanced a plan providing for full payment of unsecured debt, thereby mollifying the official creditors committee, thus depriving the case of "the usual checks and balances").

II. Each Of These Factors Favor Appointment Of An Official Equity Committee.

(1) The Debtors Are Not "Hopelessly" Insolvent; To The Contrary, The Evidence Shows Substantial Likelihood Of Value For The Debtors' Equity Security Holders.

The jurisprudence in this area does not ask whether the debtor is simply insolvent. The jurisprudence asks whether the debtor appears "hopelessly" insolvent. Williams Commc'ns, 281 B.R. at 220-21; see also Wang Labs., 149 B.R. at 3 (bankruptcy court appointed committee even though debtor was operating "at a loss" because debtor was not "hopelessly" insolvent). Many courts consider the debtor's potential solvency to be the most important factor in determining whether to appoint an official equity committee. See, e.g., National R.V. Holdings, 390 B.R. 690, 696 (Bankr. C.D. Cal. 2008); In re Ampex Corp., No. 08-11094, 2008 WL2051128, at *1, (Bankr. S.D.N.Y. 2008).

There is no litmus test for determining when a debtor appears "hopelessly" insolvent. Williams Commc'ns, 281 B.R. at 220. "[Insolvency] is not a simple matter of statutory construction where the Court can rest with citation to the balance sheet test of 11 U.S.C. § 101(32)." Wang Labs., 149 B.R. at 3. Instead, the determination is a "practical conclusion, based upon a confluence of factors." Williams Commc'ns, 281 B.R. at 221.

Pertinent data, as well as the Debtors' own factual concessions, establish that there is, at the very least, a substantial likelihood of equity value. See Declaration of John J. Reyle in Support of Debtors' Chapter 11 Petitions and First Day Relief, dated September 2, 2019 [Docket Number 7] (the "Reyle Declaration"). This is established in the following ways:

- **The Reyle Declaration Attests To Solvency—Not Insolvency—And Certainly Not "Hopeless" Insolvency.** Paragraphs 13 through 21 of the Reyle Declaration describes the Debtors' total debt-load. As described in Mr. Reyle's sworn testimony, there is no secured indebtedness, only unsecured indebtedness. Such unsecured indebtedness is only in the form of bond debt, which is unsurprising given that the Debtors operate as a REIT (i.e., the Debtors' business does not involve trade relationships). There are four issues of unsecured bonds: (i) 7.625% Senior Notes amounting to approximately $56.3 million; (ii) 7.125% Senior Notes amounting to approximately $65.5 million; (iii) the Junior Subordinated Notes (RAIT Funding) amounting to approximately $25.1 million; and (iv) the Subordinated Taberna Junior Note amounting to approximately $18.7 million. Paragraph 16 of the Reyle Declaration also mentions a potential $2 million guarantee issued to Liberty Bank. Taken together, Mr. Reyle's sworn testimony (corroborated by the Chapter 11 petitions) attests to total debt of approximately **$167.6 million**. Paragraph 52 of the Relye Declaration indicates, in juxtaposition, that the proposed "stalking-horse" bid totals approximately **$174.4 million**. The evidence already in the record thus shows **solvency today of nearly $7 million**.[2]

- **A "Mapping" Analysis May Reveal Even Greater Stockholder Value**. Page 1 of Exhibit 1 to the Reyle Declaration shows that the Debtors are organized under the parent (RAIT Financial Trust) company in "silos," with each silo having its own trail of subsidiaries. Only three of the four bond issuances are obligations at the parent level; the Subordinated Taberna Junior Note ($18.7 million) is an obligation only of the Taberna Realty Finance Trust silo. (Reyle Declaration at ¶ 18.) Substantial enterprise value flows around Taberna Realty Finance Trust -- thus evading the Subordinated Taberna Junior Note -- up to RAIT Financial Trust (Id. at ¶¶ 26-35.) Thus, the amount of parent-level debt that must be repaid before stockholders are "in-the-money" is not $167.6 million, but actually less than $150 million. Depending on how value allocates in the corporate structure, stockholders may be due even greater value than reflected in the prior bullet -- and that is true even if the Taberna Junior Note is substantially "impaired." (Id. at ¶ 56.)

- **The "Stalking-Horse" Bid Is Subject To Higher Bids.** Paragraph 52 of the Reyle Declaration attests: "The Stalking Horse Purchaser will acquire . . . certain assets owned by the certain of the Debtors . . . subject to higher and better offers pursuant to a Bankruptcy Court-approved auction and sale process." On this point, it bears observing that the Debtors ran their pre-bankruptcy M&A process a very long time ago: Paragraphs 48 and 49 of the Reyle Declaration states that the M&A bid deadline was set for January 23, 2019 (i.e., eight and a half months ago) and that the bid advanced by Fortress Credit Advisors was accepted and memorialized in the form of a term sheet on March 6, 2019 (i.e., six months ago). Fortress has enjoyed almost a nine-month negotiating "exclusivity" period, meaning that any post-petition bidding process will necessarily start fresh. No one today knows what a competitive process can or will yield.

(2) An Official Equity Committee Is Necessary To Provide Stockholders With "Adequate Representation".

In determining whether equity has "adequate representation" in the Chapter 11 process, courts reject the idea that a debtor-in-possession can serve as its own effective case counter-balance. See, e.g., Pilgrim's Pride Corp., 407 B.R. at 218 ("While it is unquestionably true that Debtors' officers and directors have a duty to maximize Debtors' estates to the benefit of shareholders as well as creditors, the reorganization process is not so simple that that ensures shareholders are adequately represented by even equity-owning management. The principal concern of Debtors and their managers . . . must be preservation of Debtors' going concern value and their successful emergence from chapter 11.").

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[2] At the "first day" hearing, Debtors' counsel mentioned an agreed-upon impairment for the Junior Notes. Specifically, the Subordinated Taberna Junior Noteholders ($18.7 million) purportedly "agreed to take $12.25 million in an initial cash payment upon confirmation of a plan and then they're also entitled to some upside if there's escrows." (9/4/19 hr'g trans. at 13, ll. 13-16.) Additionally, the Junior Subordinated Noteholders ($25.1 million) purportedly agreed to "a 60-percent dividend on that claim, subject to higher and better offers [on the sale]." (Id. at 14, ll. 11-12.) These purported impairments (presuming that they are, in fact, impairments) total only about $16 million. Applying the $7 million equity surplus described above leaves the Debtors' estates "in the red" by around $9 million — a tiny percentage of the aggregate debt-load and, regardless, a far cry from "hopeless" insolvency.

Courts also generally reject the idea that an official creditors' committee will protect equity's due value entitlement. See, e.g., In re Evans Prods. Co., 58 B.R. 572, 575 (S.D. Fla.1985) ("[t]he interest of creditors and shareholders are likely to conflict over the course of a Chapter 11 proceeding"); In re Saxon Indus., Inc., 29 B.R. 320, 321 (Bankr. S.D.N.Y. 1983) (unsecured creditors' committees and equity committees "are separate and distinct entities with the members of the unsecured creditors and equity creditors class possessing variant priorities and interests with respect to their relationship with the debtor"). This is especially true where the official creditors' committee lacks reason "to challenge the status quo." Oneida, 2006 Bankr. LEXIS 780 (ordering the appointment of an official equity committee because, among other things, the official creditors' committee lacked "a clear mission" because the debtor's plan "provided for the payment of their claims in full.").

Here, there is substantial reason to worry that equity's due value entitlement will not be realized without appointment of an Official Equity Committee:

- **The Underlying Case Circumstances Are Troubling**. These Chapter 11 cases were not triggered by sudden underperformance or otherwise unforeseeable business development. This bankruptcy was about as foreseeable as could be—the August 30, 2019 maturity of the 7.125% Senior Notes. (Reyle Declaration at ¶ 15.) Indeed, the Debtors were preparing for Chapter 11 many months beforehand. (Id. at ¶¶ 48, 49.) And, yet, the year preceding bankruptcy observed corporate behavior that seems unusual for a company in distress:

    (i) The Debtors and Fortress expended nearly nine months to document the deal. (Id. at ¶¶ 48-52.) Much of that time was dedicated to "confirmatory" diligence by Fortress. (Id. at ¶ 50.) This remarkable diligence period prompts concern that there was an intentional (perhaps strategic) delay, to sign up the deal just moments before the bond maturity.

    (ii) During the intervening months, Fortress enjoyed an "exclusive" negotiating opportunity with management. It appears that the Debtors and/or their investment bankers (UBS) rebuffed in-bound calls by bidders and stockholders hoping to present more favorable and value-accretive solutions for the company. (See **Exhibit A** hereto.)

    (iii) Also during the Fortress "exclusivity" period, the Debtors found themselves unable to file any SEC statements. (Reyle Declaration at 57.) The Reyle Declaration describes the sudden accounting issue as pertaining to "whether its owned preferred equity interests should be accounted for as loans, equity method investments, or debt securities." (Id.) This explanation seems incredible, given that the Debtors have been public reporting companies (owning preferred stock) for many years. It also seems a bit suspicious, given how it conveniently impairs competitive bidding.

    (iv) The Debtors' stated Chapter 11 goals include "consummat[ing] the Sale Transaction as expeditiously as possible … in accordance with any applicable 'Bankruptcy Milestone' in the Stalking Horse Purchase Agreement." (Id. at ¶¶ 59-60.) The rushed agenda is particularly concerning, given that: (a) again, Fortress enjoyed nearly nine-months of negotiating "exclusivity"; (b) the Debtors, consequently, must start afresh their pre-petition (now very stale) M&A process; (c) that process is artificially constrained by the lack of reliable financial statements (id. at ¶ 57); (d) the Debtors have ample unencumbered cash ($40 million) and are completely free of "case control" DIP Loan covenants and thus lack the typical reasons for a rushed, less thoughtful bankruptcy process; and, importantly, (e) it took Fortress six months to complete its diligence. (Id.

at ¶ 50.) Yet, the Debtors intend to afford competitors only a small fraction of that time to formulate alternative bids.

- **Where Are The Expected Disclosures?** It bears observing that, for a company that spent the better part of a year preparing for a Chapter 11 filing (around the August 30th bond maturity), the docket is surprisingly devoid of information. Noticeably absent are the following: (i) the Fortress Asset Purchase Agreement; (ii) any substantive description of same; (iii) either of the two Restructuring Support Agreements (see id. at ¶¶ 55-56); (iv) identification of the parties signing same;[3] (v) any of the RSAs' substantive terms; (vi) any substantive information regarding estate value (except for the proposed "stalking-horse" price) or its allocation among the myriad debtor and non-debtor affiliates; (vii) the bid procedures motion or the "dual-track" plan of liquidation; or (viii) any substantive advance pre-view of their terms.[4] Against the factual backdrop described above, and the Debtors' desire to exit bankruptcy by year-end, this failure to supply data adds meaningfully to the process concerns.

- **Why Didn't The Debtors' Pursue Plan Negotiations?** Paragraphs 53 of the Reyle Declaration notes that, "while RAIT was negotiating the definitive Stalking Horse Purchase Agreement, RAIT was also engaging in discussions with holders of the beneficial interests in the Junior Subordinated Notes." Noticeably absent is disclosure of any effort to engage with holders of the 7.125% Senior Notes—the notes that actually matured on August 30, 2019. Also noticeably absent is disclosure of any discussions with any party regarding a potential plan of reorganization for the Debtors. **Exhibit A** hereto shows that the Debtors rebuffed inbound calls by parties hoping to discuss plan concepts. The Debtors' decision seems particularly odd, given that the Debtors today hold $40 million in unencumbered cash (out of the $65.5 million owed on the 7.125% Senior Notes) and likely could reinstate the other three bond issuances. Case circumstances suggest that a plan of reorganization may continue to be a viable exit strategy, and one that might yield substantial value to stockholders. Yet, obviously, that is not an exit strategy that the Debtors have any desire pursuing; they want only to pursue a sale strategy that they say will wipe out all stockholder value. That creates substantial issues under the law. See, e.g., In re Lionel Corp., 722 F.2d 1063 (2d Cir. 1983)(absent an "emergency" situation, a pre-plan asset sale under Section 363 should be allowed only after rigorous scrutiny into whether the sale—as opposed to a plan of reorganization—is in the best interests of the estate).

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3 The *Ad Hoc* Committee has not been able to verify, for example, a market rumor that Fortress owns or otherwise controls the Subordinated Taberna Junior Note, has long been involved with the company, and is an RSA signatory. If true, Fortress's role in the bankruptcy and capital structure, in addition to the sale process, warrants deeper probe.

4 Paragraph 60 of the Reyle Declaration indicates that the Fortress bid includes "Bankruptcy Milestones" but it does not delineate the milestones. Given that it took Fortress six months to complete its own diligence of the Debtors' assets (id. at ¶ 50), the shorter milestones Fortress and the Debtors intend to impose on alternative bidders will require vetting.

- **<u>Presuming An Official Creditors Actually Can Be Appointed, It Cannot Be Relied Upon To Ferret Out Underlying Facts</u>**. The Debtors' exit strategy anticipates full cash payment of all creditors other than the Junior Neteholders. (9/4/19 h'g trans, at 14; ll. 2-6 (THE COURT: "And so, Paragraph 56 of Mr. [Reyle's] declaration reflects that based upon that deal, you're going to pay admins, priority, and general unsecured claims in full?" MR. POMPEO: "That's correct.").) For their part, all Junior Noteholders have executed RSAs. (See Reyles Declaration at ¶¶ 54-55.) Thus, from the creditors perspective, this case is done. Even if creditors that did not sign RSAs are interested in serving on the official creditors committee, they are not incentivized to do anything other than wind-up this case as soon as possible, and entirely consistent with the Debtors' exit strategy. The official creditors committee cannot provide the necessary "checks and balances" of the Chapter 11 adversary process. <u>In re Oneida, Ltd.</u>, No. 06-10489 2006 WL 1288576, at *2-3 (Bankr. S.D.N.Y. 2006). Only an Official Equity Committee can do that.

(3) <u>The Debtors' Chapter 11 Cases Are Complex</u>.

A case does not need to involve an intricate capital or corporate structure or voluminous documents to necessitate a finding that the case is complex and worthy of appointment of an official equity committee. <u>See</u> <u>In re Pilgrim's Pride Corp.</u>, 407 B.R. 211, 220 (Bankr. N.D. Tex. 2009).

And, yet, this case **<u>does</u>** involve an intricate capital and corporate structure and presumptively voluminous documents. Today, it is an utter "black-box," affording outside observers absolutely no data or reason to confidently believe it will end as it should. As observed by the Court at the "first day" hearing:

> THE COURT: "I will say I think you [the Debtors] get the prize for the most complicated eight-page org chart." (9/4/19 h'g trans, at 8, ll. 2-3.)
>
> THE COURT: "I note that the nature of this debtors' business with its non-debtor affiliates does create certainly a level of complexity that's not typical." (<u>Id</u>. at 28, ll. 19-21.)
>
> THE COURT: "I acknowledge that this is a complicated case with a lot of moving parts to it" (<u>Id</u>. at 49, ll. 10-11.)
>
> THE COURT: "I walk out of this [hearing] with the sense that there's going to be a fair amount of activity in the case going forward . . . ." (<u>Id</u>. at 48, ll. 16-18.)

This comports with your hearing observations as well:

> MR. SCHEPACARTER: "This is a complicated case. It took me a long while over the weekend to read through it and try to piece everything together." (<u>Id</u>. at 17, ll. 14-16.)
>
> MR. SCHEPACARTER: "But that is a little bit of concern when you have a [ ] multitude of non-debtors in this case." (<u>Id</u>. at 19, ll. 23-24; 20, ll. 1-2.)

(4) The Request For An Official Equity Committee Is Timely; Indeed, A Request Any Later Would Be Too Late.

Generally speaking, an official equity committee will "most effectively exercise its responsibilities at the beginning of a reorganization, prior to the formulation of a plan." Johns-Manville Corp., 68 B.R. at 161. It is beyond refute that this request is "at the beginning" of the case and, thus, timely. But, given the particular circumstances of these cases – including anticipated but yet undisclosed "Bankruptcy Milestones" imposed by the Fortress bid (Reyle Declaration at ¶ 24) -- the timing of this request takes on greater importance. Notwithstanding the case's factual complexity and vagaries, the Debtors have stated that they intend to rush it to a quick conclusion. (Id. at ¶ 59.) Time is absolutely of the essence.

(5) The Need For Adequate Representation In This Case Outweighs The Cost Of An Additional Official Committee.

The *Ad Hoc* Committee is mindful of concerns regarding the additional expense associated with the formation of an Official Equity Committee, but "[c]ost alone cannot, and should not, deprive . . . security holders of representation." In re McLean Indus., Inc., 70 B.R. 852, 860 (Bankr. S.D.N.Y. 1987); see also In re Enron Corp., 279 B.R. 671, 694 (Bankr. S.D.N.Y. 2002) ("[a]dded cost alone does not justify the denial of appointment of an additional committee where it is warranted.").

Once the need for adequate representation is established, "the burden shifts to the opponent of the motion [to appoint an official equity committee] to show that the cost of the additional committee sought significantly outweighs the concern for adequate representation and cannot be alleviated in other ways." Beker Indus., 55 B.R. at 949; 4 Norton Bankr. L.& Prac. § 78:5 (2d ed. 2005) ("Should the moving party be successful in showing that an additional committee is required, the burden then shifts to the opponent to demonstrate that the cost of such an additional committee notably outweighs the interest in adequate representation.").

As set forth above, it is abundantly clear that the interests of the Debtors' stockholders are not adequately represented in these cases. Ensuring a good, reliable Chapter 11 process and, in turn, maximizing recoveries for the benefit of all stakeholders far outweighs the comparably modest cost to the Debtors' estates of appointing an Official Equity Committee.

* * *

For the foregoing reasons, the *Ad Hoc* Committee respectfully requests that the United States Trustee promptly appoint an Official Equity Committee. Thank you for your consideration and prompt attention to this matter. We are available to address any questions or concerns you may have.

Very truly yours,

Robert J. Stark

CC: Michael P. Pompeo, Esq.
(michael.pompeo@dbr.com)
Patrick A. Jackson, Esq.
(patrick.jackson@dbr.com)

brownrudnick

Exhibit A

CONFIDENTIAL

Albion River

September 6, 2019

Richard Shepacarter, Esquire
Office of the United States Trustee
844 King Street, Suite 2207 Lockbox 35
Wilmington, DE 19801

Dear Mr. Shepacarter:

I have been a preferred shareholder of RAIT Financial Trust ("RAIT") since approximately 2009. During this time I have become familiar with the assets and business of RAIT.

On Friday, July 26, 2019 I reached out to Jamie Reyle and Michael Malter at RAIT to inquire whether there was an opportunity to participate or lead a restructuring transaction. I was then referred to Andrew Kramer, Managing Director, UBS Investment Bank who I spoke with on August 5th. I suggested that we could fund a restructuring or other transaction that would provide cash to maximize value for all stakeholders (e.g., a rights offering).

Mr. Kramer explained to me that RAIT was winding down the assets (including FL7 and FL8, one CLO, some real estate, and some other whole loans). He noted that UBS was retained some time ago and the way the situation would play out was that RAIT would sell off its assets in a piecemeal liquidation, finding the highest price for each asset. Mr. Kramer referred to the process as a "liquidation sale," which I understood to be a similar process to those used in other real estate investment trust liquidations, such as New York REIT or Winthrop REIT. This is a conventional approach to maximizing value in a REIT wind down or liquidation. On this basis I did not continue to pursue discussions with RAIT, given that Mr. Kramer suggested there was no opportunity for a restructuring or other transaction (except to buy individual assets).

I was extremely surprised to learn that at the time of my conversation with Mr. Kramer RAIT had already agreed to sell all its assets in a single transaction to Fortress. That revelation is both inconsistent with what Mr. Kramer told me about the "liquidation sale" process and does not appear to be a value maximizing approach to asset disposition.

I would like to learn more about what occurred during the sale process and why a willing participant in the sale process was rebuffed.

Regards,

DocuSigned by:
Mark U. Schneiderman
79CE66D5681D4EA...
Mark Schneiderman

cc: Robert Stark. Esq
(RStark@brownrudnick.com)

ALBION RIVER LLC

10122 River Road, Suite 205, Potomac, Maryland 20854

250 West 57TH Street, Suite 1820, New York, New York 10107

Schlan, Max D.

From:	Stark, Robert J.
Sent:	Friday, September 06, 2019 3:56 PM
To:	Schlan, Max D.
Subject:	FW: RAIT

From: Comparato, Michael [mailto:m.comparato@benefitstreetpartners.com]
Sent: Wednesday, September 04, 2019 6:30 PM
To: Stark, Robert J.
Cc: Goodman, Micah
Subject: RAIT

External E-mail. Use caution accessing links or attachments.

Robert -

Pleasure briefly speaking with you today.

As I mentioned, we were a bit surprised by the RAIT announcement. I've copied Micah Goodman, general counsel.

We have followed RAIT for years. Have had face to face meetings with them. Have had multiple conference calls with them. Theme was always the same, we would be interested in buying assets or consider other options that were mutually beneficial.

A similar call took place within the last few months. I forget who I spoke with at RAIT, but it was to again express our interest in buying some or all of the assets. The gentlemen said at the time that they were not certain of direction, but we would reach out to me when ready. Clearly that never happened. (I'm certain I could dig up the name)

We do not know what RAIT agreed to sell to Fortress. We do not know the price. We do not know the value. But given Benefit Street Partners' and Benefit Street Partners Realty Trust, Inc.'s expertise and financial wherewithal (BSP is owned by an affiliate of Franklin Templeton Investments, which currently has over $700 billion AUM), we would certainly liked to have taken a look, and remain very interested if there is an opportunity.

Look forward to your thoughts

Sincerely,

Michael A. Comparato
Head of Commercial Real Estate
Benefit Street Partners Realty Trust
9 West 57th Street, 49th Floor
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September 18, 2019

VIA EMAIL

Richard L. Schepacarter, Esq.
Trial Attorney
Office of the U.S. Trustee for Region 3
Richard.Schepacarter@usdoj.gov

Re: In re RAIT Funding, LLC, et al., Case No. 19-11915(BLS); Debtors' Opposition to Appointment of Official Equity Committee

Dear Mr. Schepacarter:

We write in response to the September 6, 2019, letter of the *ad hoc* equity committee ("AHEC") requesting appointment of an equity committee, and again thank you for providing us an opportunity to respond before the U.S. Trustee makes his decision. As discussed below, we believe strongly that appointment of an equity committee in these cases is unwarranted. We therefore urge that the U.S. Trustee deny the AHEC's request—or, at the very least, that he *defer consideration* of the request until after conclusion of the auction for the Debtors' assets (which will provide more certainty as to the prospects for any recovery to equity in these cases).

Denial or deferral of consideration of the AHEC's request at this time will not materially prejudice the Debtors' equity holders, because the AHEC can (and presumably will) participate in the cases and be heard with respect to the proposed bid procedures and any chapter 11 plan. And of course, the AHEC is free at any time to move Judge Shannon for appointment of an equity committee under section 1102(a)(2) of the Bankruptcy Code. By contrast, appointing an official equity committee at this juncture could end up snatching defeat from the jaws of victory for the estates' creditors. If it turns out there is no overbid for the Debtors' assets sufficient to put equity in the money, then the additional case administrative expenses—which we do not at all expect to be "comparably modest," as the AHEC suggests—would be borne entirely by the estates' creditors.

I. Factual Background

The AHEC's letter rests largely upon presumed facts and innuendo that have little basis in reality. We highlight below some issues that we believe are most in need of correction or additional context, but we are of course happy to discuss any questions or additional requests for information the U.S. Trustee may have.

The Corporate Structure, Simplified

While the corporate organizational chart attached to the first-day declaration was complex in terms of the number of entities, the upshot is this: there are three "silos" of entities/assets under the ultimate parent, RAIT Financial Trust ("RAIT Parent").

The first, and most valuable, silo is the non-debtor RAIT Partnership, L.P. ("RAIT Partnership"), which is owned 100% by RAIT Parent (through RAIT General, Inc. and RAIT Limited, Inc.) and is where the principal operations and assets of the RAIT enterprise are located.

The second, and next-most-valuable, silo is the debtor Taberna Realty Finance Trust ("Taberna"), which owns cash, a senior participation interest in a matured first mortgage loan, and certain classes of notes issued by the CDO I securitization. Taberna's other assets consist of equity in various non-debtor subsidiaries and the other debtors (RAIT JV TRS, LLC, RAIT JV TRS Sub, LLC, and RAIT Funding, LLC), none of which have any material value.

The third, and least valuable, silo is the non-debtor RAIT Asset Holdings, LLC ("RAIT Holdings"), which has no material value and is owned 100% by RAIT Parent (also through RAIT General, Inc. and RAIT Limited, Inc.). RAIT Holdings owns the equity of various inactive RAIT entities and, together with Taberna, owns the equity of the other debtors (RAIT JV TRS, LLC, RAIT JV TRS Sub, LLC, and RAIT Funding, LLC), none of which have any material value, as noted above.

The Total Debt Hurdle and the Taberna "Mapping" Issue

As is common, the discussion of the debt structure in Mr. Reyle's declaration focused on funded debt. The AHEC's back-of-the-envelope solvency analysis assumes this is the only debt hurdle to a recovery for his clients. But in addition to the funded debt, we estimate (preliminarily, and of course without the benefit of a bar date) that there will be between \$3.8 and \$5.1 million of other prepetition general unsecured claims and another \$16.6 million of post-petition operating expenses, professionals' fees,[1] and post-confirmation wind-down expenses at the RAIT Parent level that would be payable before any distribution could be made to equity. This means that, in addition to the amount of the funded debt, the total unsecured debt and expense hurdle at RAIT Parent

[1] For purposes of estimating professionals' fees, we assumed appointment of a creditors' committee only, with no official equity committee. Appointment of an official equity committee would, of course, increase the case professionals' fees substantially.

that must be cleared before *any* distribution could be made to equity of RAIT Parent is between approximately $22.3 and $27.6 million.[2]

The AHEC is correct that the debt at the Taberna level is structurally subordinated to the debt at the RAIT Parent level and that, as a result, the $18.7 million subordinated note at Taberna (the "Taberna Note") is not part of the debt hurdle that must be cleared at the RAIT Parent level in order to provide a distribution to equity. However, approximately $12.5 million of the approximately $174.4 million purchase price under the stalking-horse asset purchase agreement with CF RFP Holdings LLC (the "Stalking Horse APA" and "Stalking Horse Bidder," respectively) is allocable to Taberna's assets. And in a chapter 11 plan, this value would of course be trapped at Taberna and distributed on account of the Taberna Note, rather than flowing up to RAIT Parent for distribution to its equity holders. Thus, while the debt at Taberna is not part of the debt hurdle for RAIT Parent equity holders, the assets at Taberna likewise are not a source of recovery for them.

The Stalking Horse Bid and "Bankruptcy Milestones"

The AHEC wrote its letter without the benefit of seeing the actual Stalking Horse APA or the proposed bid procedures (which were both filed last week [D.I. 53]), and it assumed that the "Bankruptcy Milestones" therein would create a "rushed agenda" for which the prompt appointment of an equity committee would be the only possible cure. In point of fact, however, the milestones are totally benign. They require the filing of a bidding procedures motion acceptable to the Stalking Horse Bidder within five business days after the Petition Date (which was satisfied), the conclusion of a hearing on that motion within 24 days after filing (which is on track to be satisfied), the entry of a bid procedures order approving the stalking-horse protections within three days after the hearing, the setting of a bid deadline no later than 70 days after filing of the bid procedures motion, the holding of an auction five days after that, the conclusion of a sale hearing three days after that, and the entry of a sale order three days after that. This is hardly a breakneck pace by Delaware standards, and it sets up the transaction for a possible closing by year end, which would significantly reduce transaction costs for the Debtors and reduce (and possibly eliminate) REIT compliance issues and expenses for RAIT Parent and Taberna. (Notably, however, the year-end closing is only aspirational,

[2] To be clear, these amounts take into account the breakup fee and expense reimbursement payable under the Stalking Horse APA in the event of closing on an overbid. They also assume no official equity committee is formed; if one is formed, of course, the amounts would be higher as a result of the increased costs.

since the outside closing date under the Stalking Horse APA is not until late February 2020.)

The deal itself is for substantially all of the Debtors' assets of any value, including cash. In terms of the "silos" discussed above, it will be everything in the RAIT Partnership silo, a portion of the Taberna silo (i.e., cash, the mortgage loan participation interest, and CDO I notes), and nothing in the RAIT Holdings silo. This is an important point, because it means that the outcome of the sale will likely set the upper limit of value that is ultimately distributable under any chapter 11 plan in these cases.

The Purchase Price of $174.4 million is calculated based on the cash of RAIT Parent, Taberna, certain excluded entities, and the acquired entities as of August 26, 2019 (in the amount of $45,174,273), plus a base purchase price of $129,250,000 for the non-cash assets. The final purchase price will be calculated based on the ending cash balance (taking into account certain inflows and outflows of cash prior to closing), subject to a dollar-for-dollar adjustment if the sellers elect at closing to retain cash actually held by the sellers, rather than selling and receiving purchase price for such cash. The transaction also includes a $4 million tax escrow to be set aside from the purchase price for certain tax-related indemnities to the Stalking Horse Bidder. Importantly, the Stalking Horse APA contains an express "fiduciary out" that permits the Debtors to consider alternative transaction structures (including, conceivably, chapter 11 plan proposals) in addition to apples-to-apples bids for the Debtors' assets.

The Junior Subordinated Note RSAs

The RSAs with respect to the $18.7 million Taberna Note and the $25.1 million junior note at RAIT Funding, LLC (the "Funding Note") were filed last week [D.I. 51]. Their absence from the docket was in no way "notable" as suggested by in the AHEC's letter—they simply were not relevant to the requests for relief that were then pending before the Court, and the gist of the agreements was accurately summarized in the first-day declaration.

Both notes are structurally subordinated to claims against RAIT Parent. However, the Funding Note is supported by a guaranty from RAIT Parent, which in turn is subordinated to funded debt at the RAIT Parent level. Thus, conceptually, the distribution waterfall for the net sale proceeds from the Stalking Horse APA would be as follows: (i) the purchase price allocable to Taberna's assets would go to satisfy the Taberna Note, with any surplus upstreamed to RAIT Parent as a dividend, and (ii) the purchase price allocable to RAIT Parent's assets, together with any dividend from Taberna, would go first to satisfy the administrative expenses of these cases, then to satisfy the senior indebtedness at RAIT Parent (both funded and other unsecured debt), and then to satisfy the Funding Note (on account of the subordinated guaranty). Given this dynamic, there is a natural adversity between the holders of the Taberna Note and the Funding Note on the issue of the proper allocation of the purchase price between Taberna's and RAIT Parent's assets. And given the total transaction value, it was clear that the Funding Note and the Taberna Note would be the fulcrum security in the bankruptcy cases unless and until there is a substantial overbid. For this reason, we approached the holders of the ultimate economic interest in the Funding Note and Taberna Note and negotiated RSAs that would resolve any purchase-price-allocation issues and pave the way for a fully consensual chapter 11 plan.

The RSA counterparties engaged with us promptly, diligently, and in good faith, and the resulting RSAs require only that a plan and disclosure statement be proposed within 30 days post-petition, that the disclosure statement be approved within 90 days post-petition, and that the plan be confirmed within 240 days post-petition. Under the RSAs, there would be initial cash distributions on the Taberna Note and Funding Note followed by a sharing of any additional proceeds realized by the estate (e.g., from the release of the $4 million tax escrow).

The 7.125% and 7.625% Senior Notes (a.k.a. "Baby Bonds")

That the AHEC attempts to take the Debtors to task for not engaging in plan discussions with the holders of the 7.125% and 7.625% Senior Notes further demonstrates its lack of understanding of the facts on the ground. These notes are commonly referred to as "baby bonds," which were issued in denominations of $25 par value, and, while there are some concentrations of ownership, they are primarily held by by retail investors. The Debtors did consider the possibility of pursuing a compromise of the Senior Notes through a consent solicitation or exchange offer. However, they ultimately concluded that the slim likelihood of executing on this strategy was substantially outweighed by the substantial logistical costs of pursuing it. Moreover, attempting to negotiate with the indenture trustee for the Senior Notes on a discounted payoff or RSA was not a viable strategy because (i) the Senior Notes were not yet in default so as to empower the indenture trustee to consider compromise proposals, (ii) in any event, the indenture trustee would not be willing to compromise without seeking guidance from the noteholders (presenting the same cost and logistical problems as with a consent solicitation or exchange offer), and (iii) there was not a compelling case to be made for compromise in any event, since the deal with the Stalking Horse Bidder would provide ample proceeds to pay the Senior Notes in full.

The Alleged "Rebuffed Bidders"

The Debtors vigorously dispute the AHEC's suggestion that the Debtors "rebuffed" potential transaction counterparties in the run-up to the bankruptcy filing, in furtherance of which it attaches a letter from an alleged preferred equity holder (Mark Schneiderman from Albion River LLC) and an email from alleged prospective transaction counterparty (Michael Comparato at Benefit Street Partners Realty Trust), both of which appear contrived.

The Debtors ran a process that extended more than one year before deciding to move forward with the Stalking Horse Bidder, which process was properly disclosed through numerous SEC filings. During this time, Benefit Street had at least three opportunities to propose a transaction with the Debtors. The first was in late 2017, when Benefit Street was approached to participate in the first phase of the Debtors' exploration of strategic alternatives. Benefit Street declined to participate or sign an NDA at that time. In February 2018, Benefit Street did sign an NDA to look at buying certain balance-sheet loans. However, after learning that the Debtors already had a bid for the loans that was very near par value, Benefit Street did not submit an offer because it was looking to transact at a discount to par value. In May or June 2018, Benefit Street reached out to inquire about purchasing RAIT Partnership's and its affiliates' interests in the FL7 securitization, and the Debtors advised that they had not yet decided whether to sell them on a stand-alone basis, but that they would get back to Benefit Street if they decided to do so. The Debtors never decided to sell the FL7 securitization on a stand-alone basis, so they did not get back to Benefit Street. Given this history, it is not clear what Mr. Comparato meant when he said, "we would certainly liked [*sic*] to have taken a look," in his email to Mr. Stark.

As a result of the extensive marketing conducted by the Debtors and their investment bankers, there were multiple bids received, of which the Stalking Horse Bidder's was selected as the highest and best. The Debtors went exclusive with the Stalking Horse Bidder on March 6, 2019. Between then and August, there were times when this exclusivity lapsed and UBS reached out to prospective bidders.[3] Mr. Schneiderman emailed RAIT on July 26, 2019, which the company and its advisors understood to be an inquiry on behalf of Albion River.[4] Andrew Kramer from UBS

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[3] There were three exclusivity periods with the Stalking Horse Bidder prepetition: March 6 – April 15, 2019; May 3 – May 17, 2019; and August 14 – August 30, 2019.

[4] His email began, "I am a partner (and general counsel) of Albion River LLC, a family office based in New York City and Washington DC. I'm familiar with RAIT's company, assets and overall situation. To the extent you have hired advisors or are in the market for some kind of transaction (e.g., a purchase of equity in the company or other

followed up and spoke with Mr. Schneiderman, and his recollection of that conversation differs from the characterization of it in Mr. Schneiderman's letter to Mr. Stark. In any event, UBS added Albion River to the list of parties to follow up with after the launch of the Court-supervised sale process (and intends to do so regardless of whether an equity committee is appointed or if Mr. Schneiderman is on it).

The bottom line is that neither Benefit Street nor Albion River (nor indeed, anyone else) was "rebuffed" by UBS or the Debtors prepetition. The Debtors' board and management made an affirmative effort to limit the times that the Stalking Horse Bidder enjoyed exclusivity, so as to permit them to reach out to and engage in discussions with other parties. Except when prohibited by exclusivity, they regularly engaged with incoming inquiries and proposals of substance. And during the lapses in exclusivity, they regularly directed UBS to seek competitive proposals, both for the sake of having a backup plan if they were unable to get to the finish line with the Stalking Horse Bidder, and to educate other potential bidders so as to position them well to be a potential overbidder in the auction process that was always intended to occur.[5] UBS complied with these directives, focusing primarily on the handful of potential transaction counterparties it believed had done enough historical work, were knowledgeable about RAIT's business and assets, and had the financial wherewithal to be able to make a competitive proposal. And official equity committee or no, everyone is free to participate in the Court-supervised sale process.

The "Suspicious" Delay in Filing the 10-Q

The AHEC's suggestion that the Debtors strategically delayed the filing of RAIT Parent's quarterly report on Form 10-Q in order to impair competitive bidding is equal parts wrong and nonsensical. The reason stated in the first-day declaration is in fact the

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restructuring transaction, we would be interested in exploring the opportunity to transact." It appears from the Rule 2019 statement of AHEC counsel that Mr. Schneiderman has a small position in RAIT Parent's preferred stock, though the timing of his acquisition of that position is not disclosed. RAIT and its advisors were unaware that Mr. Schneiderman was an equity holder, as he never mentioned as much in any of his communications with them.

[5] The AHEC's assertion that the Stalking Horse Bidder had "9 months of diligence" and its suggestion that the Debtors intentionally delayed the execution of the Stalking Horse APA and the commencement of these cases are unfounded. There was about 4-6 weeks of active diligence, strictly speaking. The remaining time between the letter of intent and the final deal documentation was due to exploration of different deal structure alternatives, deal structure changes, and the drafting and negotiation of documentation.

reason it was delayed—i.e., a question arose between RAIT and its long-time auditor as to the proper accounting treatment of preferred equity interests, which precluded the issuance of financial statements on the timetable necessary for a timely SEC filing. The question has since been submitted to the SEC for definitive guidance, and it has literally nothing to do with the Stalking Horse APA or the sale process.

And the notion that a prospective bidder, having access to an extensive dataroom containing all of the underlying financial data that ultimately rolls up into RAIT Parent's consolidated financial statements, would be unable to formulate a bid because the 10-Q was not filed, is simply untenable.

II. Standards Guiding the U.S. Trustee's Discretion

The AHEC's letter discusses the standards applied by bankruptcy courts in evaluating requests for appointment of an equity committee under section 1102(a)(2) of the Bankruptcy Code. But whether Judge Shannon would ultimately exercise his discretion to appoint an equity committee—after notice, a hearing, and an evaluation of evidence in an adversary setting, mind you—is not really the question presented by the letter. Rather, the question presented by the letter is whether the U.S. Trustee (not Judge Shannon) "deems appropriate," in his discretion, that an equity committee should be appointed at this time under section 1102(a)(1) of the Bankruptcy Code.

We understand that the U.S. Trustee's exercise of his discretion in this regard is informed by Volume 3 of the United States Trustee Program Policy and Practices Manual (the "UST Manual").

The UST Manual makes clear that the appointment of an equity committee under section 1102(a)(1) is a "rare exception" to the norm, and an "extraordinary remedy" that should be employed *only* where (i) there is a "substantial likelihood" that equity holders will receive a "meaningful distribution" in the case, *and* (ii) equity holders are "unable to represent their interests in the bankruptcy case" otherwise. UST Manual § 3-4.14 (quotation marks, citation omitted).

In evaluating whether these requirements are met, the U.S. Trustee may consider "all relevant factors," including (but not limited to) the five factors identified in the AHEC's letter. *Id.* Thus, strictly speaking, we do not believe it is a "five-part inquiry" as the AHEC suggests. Rather, it is a *two*-part inquiry—i.e., whether there is a substantial likelihood of a meaningful recovery and a lack of representation of equity holders' interests in the case—which is informed by the consideration of a variety of factors. (We note this distinction because the AHEC appears to view its "five factors" each as an independent, sufficient ground for appointment, and it makes no effort to tie any of them to the gating requirement of a substantial likelihood of a meaningful recovery for equity holders.)

III. There Are No Grounds for Appointment of an Equity Committee at this Juncture

At Present, There is No Substantial Likelihood of a Meaningful Recovery

As noted above, the Stalking Horse APA provides for the sale of substantially all of the Debtors' assets of any value. And based on that transaction value, even the AHEC's back-of-the-envelope solvency analysis (in footnote 2 of its letter) shows that RAIT Parent is "'in the red' by around $9 million." Correcting this analysis for the flaws discussed above and for other impediments to equity distribution,[6] the incremental amount that would be necessary to put RAIT Parent "in the black" for chapter 11 plan purposes would be between $22.3 and $27.6 million (again, assuming no official equity committee is formed)—representing a 17-21% premium over the stalking-horse bid.[7] While this would be a welcome result, it would be hard to conclude it is "substantially likely" to occur.

The AHEC attempts to avoid dealing with this reality by flipping the applicable legal standard, from one where appointment of an official equity committee is presumed inappropriate unless there is a substantial likelihood of a meaningful recovery, to one where appointment is presumed appropriate unless there is "hopeless insolvency." But that is not what the cases (or the UST Manual) say. Rather, they say that where the debtor is "hopelessly insolvent," appointment of an equity committee is improper—which makes sense, given that "hopeless" insolvency denotes zero likelihood of any recovery for equity. Without speculating what amount of insolvency would render RAIT

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[6] Such impediments include the proposed breakup fee and expense reimbursement for Stalking Horse Bidder that would be payable upon closing on any overbid; the post-petition interest that would be payable upon allowed unsecured claims prior to any distribution to equity under section 726(a)(5) of the Bankruptcy Code; the anticipated wind-down reserve that would be set aside for administration of the chapter 11 plan; and a middle-of-the-road estimate of the chapter 11 administrative expenses that would be incurred to get through the sale and plan process.

[7] And this is just the amount that would be necessary to provide *any* recovery to equity (again, assuming no official equity committee is formed). For that recovery to be "meaningful"—say, $0.10 per share on the approximately 10 million shares of outstanding preferred stock—the amount would need to be about $1 million more.

Parent "hopeless," we can say with certainty that unless and until the Debtors have a viable overbid of at least $22.3 million in hand, we believe there is no likelihood of any recovery for RAIT Parent's equity holders. We submit this should end the inquiry for present purposes.[8]

Equity Holders' Interests Are Adequately Represented in the Cases

Even if the U.S. Trustee were to conclude that there is a substantial likelihood of a meaningful recovery for equity holders, appointment of an official committee would still only be appropriate if it was necessary to secured adequate representation of equity holders' interests in these cases. The UST Manual is instructive on this point, stating, in pertinent part, as follows:

> Inadequacy of representation is not demonstrated simply because the interests of equity security holders differ from those of unsecured creditors. There are many sources of adequate representation aside from the appointment of an official committee. Generally, the board of directors acts for the equity security holders.... Pure speculation that a debtor's board and management will sacrifice the interests of the equity security holders to placate the creditors is insufficient to establish the need for an official equity security holders' committee.

UST Manual § 3-4.14 (citations omitted). Against this backdrop, all of the AHEC's arguments regarding the alleged inadequacy of representation of equity holders' interests fall flat. Most of these arguments rely on incorrect factual presumptions and innuendo that was debunked above. The remaining arguments amount to "pure speculation" that the board of trustees of a public REIT comprised of individuals with extensive experience in law, capital markets, financial services, and commercial real estate,[9] will suddenly, and for no apparent reason, abdicate their fiduciary duties and hang their public shareholders

[8] We also note that, contrary to the AHEC's suggestion, the Debtors' business is indeed a "melting ice cube." While the Debtors have succeeded in reducing their overall operating cash flow burn from about $1.8 million per month in Q1 2019 to about $1.1 million per month in Q2 2019, they are still cash-flow negative. Thus, any delay in execution on the Debtors' sale strategy will impair recoverable value for the Debtors' estates and creditors.

[9] See https://www.rait.com/about/leadership-team/.

out to dry. Such speculation is both unfounded and insufficient to justify appointment of an official equity committee.

Other Factors Disfavor Appointment of an Official Equity Committee

The other factors cited by the AHEC in its letter also disfavor appointment of an official committee of equity security holders. First, the size and complexity of the case are not remarkable for Delaware. This is a solidly "middle market" case in terms of asset value and debt load, and while there was some colloquy at the first-day hearing regarding the complexity of the organizational chart, that structure reduces neatly to the three "silos" discussed above. The AHEC's statement that the Debtors are a "'black box' affording outside observers absolutely no data or reason to confidently believe it will end as it should" is belied by RAIT Parent's long history as a publicly traded, reporting company. Indeed, if anything, by virtue of the detailed first-day declaration and comprehensive corporate organizational chart, the AHEC members (all of whom appear to be sophisticated individuals and entities) now have *more* information about the company's organizational structure than they did at the time they first purchased their investments. (RAIT Parent's SEC filings have historically reported everything on a consolidated basis.)

Second, the AHEC's letter, though "timely" in that it was submitted promptly after the commencement of the cases, was nonetheless premature, both in its grasp of the relevant facts and in its request for action prior to the formation of a creditors' committee or the filing of the Debtors' Schedules and SOFAs. One gets the impression the AHEC is trying to rush this request through before the actual facts on the ground catch up to its "alternative narrative."

Finally, the AHEC's suggestion that the incremental costs of an official equity committee would be "comparably modest" is absurd. An official equity committee would not just *add* to the professionals' fees in the case, it would *multiply* them. The equity committee would not be operating in a vacuum; rather, its actions would often (if not always) require some reaction by the Debtors or the creditors' committee (or both). The resulting cost increases would further increase the functional debt hurdle necessary to clear any distribution to equity, and would erode creditor recoveries, beginning first with the RSA counterparties and, over time, extending to other creditors.

IV. Conclusion

For the foregoing reasons, the Debtors urge that the U.S. Trustee deny the AHEC's request for appointment of an official committee of equity security holders at this juncture. Its letter is riddled with misleading or flat-out wrong statements of both the applicable law and the relevant facts. And granting the AHEC the relief it seeks, certainly *before* it is known what the sale of the Debtors' assets will yield, risks serious harm to the creditor body.

As the upcoming proceedings relating to the Debtors' sale motion will demonstrate, the Stalking Horse APA was the result of an extended process, guided by sophisticated legal counsel, restructuring advisors, and investment bankers, with active participation by the Debtors' board and management, culminating in a Court-supervised, public sale process where all will be welcome to submit a bid (or propose an alternative transaction). The AHEC is free to "kick the tires" on all of this, of course, and its counsel are perfectly capable of representing them in that endeavor. But importantly, the two RSA counterparties—who, between them, have the most direct economic stake in ensuring an effective sale process—are on board with the Debtors' proposed process. For the moment, the economic risks lie precisely where they should. If the AHEC's counsel make a "substantial contribution" to the cases as a result of its efforts on behalf of its client, they can apply for compensation from the estate. If they do not, then they should not.

If circumstances in the case change—e.g., if the Debtors get a viable overbid in hand that could result in a recovery for RAIT Parent's equity—then the U.S. Trustee is of course free to reevaluate whether appointment of an official equity committee is appropriate. But under the circumstances as they exist now, we submit it would be improper to surcharge the recoveries of the estates' creditors for the significant costs that an official equity committee would incur.

We are available to discuss at your convenience and would be happy to provide any further information to assist the U.S. Trustee in his deliberation.

Very truly yours,

/s/ Michael P. Pompeo
/s/ Patrick A. Jackson

PAJ/paj

DOCUMENT SEPARATOR

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September 23, 2019

BY EMAIL AND HAND DELIVERY

Richard Schepacarter, Esq.
Office of the United States Trustee
844 King Street, Suite 2207 Lockbox 35
Wilmington, DE 19801

RE: In re RAIT Funding LLC, et al., Case No. 19-11915 (Bankr. D. Del.) (BLS)

Dear Mr. Schepacarter:

We write: (i) in further support of our September 6, 2019 letter, on behalf of the Ad Hoc Committee,[1] requesting appointment of an Official Equity Committee in the Debtors' Chapter 11 cases and (ii) in response to the September 18, 2019 letter sent by counsel to the Debtors opposing such appointment. A few points in reply.

- **The Applicable Legal Standard.** Despite the Debtors' insistence to the contrary, the legal standard for the appointment an Official Equity Committee is set forth in a substantial body of case law[2] and involves five factors:

  (1) Are the Debtors "hopelessly" insolvent?
  (2) Are shareholder interests already adequately represented in the case?
  (3) Is the case large and complex?
  (4) Is the request timely?
  (5) Does the need for adequate representation outweigh the cost?

  No one factor is dispositive and any factor may be determinative. See Kalvar Microfilm, 195 B.R. at 600-01. This accords with Section 3-4.14 of the United States Trustee Manual (the Trustee "may consider all relevant factors in determining whether or not to appoint an equity security holders' committee") and recent cases. See, e.g., In re Breitburn Partners LP, No. 16-11390 (Bankr. S.D.N.Y. Oct. 14, 2016), Hr'g Tr. at 67:17-68:3 (appointing official equity committee in part because of conflicting representations in SEC and bankruptcy filings); In re

1 Capitalized terms shall have the meanings ascribed thereto in our September 6th letter.

2 See, e.g., In re Eastman Kodak Co., 2012 WL 2501071, at *1-3 (Bankr. S.D.N.Y. June 28, 2012); In re Spansion, Inc., 421 B.R. 151 (Bankr. D. Del. 2009); In re Pilgrim's Pride Corp, 2009 WL 1231251, at *3 (Bankr. N.D. Tex. Apr. 30, 2009); In re Williams Commc'ns Group, Inc., 281 B.R. 216 (Bankr. S.D.N.Y. 2002); In re Kalvar Microfilm, 195 B.R. 599 (Bankr. D. Del. 1996); In re Wang Labs., Inc., 149 B.R. 1 (Bankr. D. Mass. 1992); Albero v. Johns-Manville Corp. (In re Johns-Manville Corp.), 68 B.R. 155 (S.D.N.Y. 1986), appeal dismissed, 824 F.2d 176 (2d Cir. 1987); In re Beker Indus. Corp., 55 B.R. 945 (Bankr. S.D.N.Y. 1985); In re Evans Prods. Co., 58 B.R. 572 (S.D. Fla. 1985); In re Emons Indus., Inc. 50 B.R. 692 (Bankr. S.D.N.Y. 1985).

Energy XXI Ltd., No. 16-31928 (Bankr. S.D. Tex. June 15, 2016), Hr'g Tr. at 164:9 (appointing official equity committee, although there was no evidence dispelling "hopeless" insolvency contention); In re Horsehead Holding Corp., No. 16-108287 (Bankr. D. Del. May 2, 2016), Hr'g Tr. at 100:25-101:1 (appointing official equity committee because "something does not smell right" with respect to irregularities in how the debtors portrayed valuation).

- **The Evidence Continues to Show Solvency—Not Insolvency—And Certainly Not "Hopeless" Insolvency.** In our September 6th letter, we compared the Debtors' "stalking horse" bid ($174.4 million) against the Debtors' representations of total debt ($167.6 million) to show that, as presented by the Debtors themselves, the estates are solvent by $7 million. In their September 18th reply letter, the Debtors attempt to increase the "claim hurdle" by adding self-described "estimates" of incremental unsecured claims (between $3.8 and $5.1 million) and administrative expenses ($16.6 million), which appears to include the "break-up" fee ($5.3 million) and expense reimbursement ($1.7 million) for the stalking horse bidder. This does not work. First, respecting incremental unsecured claims ($3.8 to $5.1 million), it again bears observing that no such claims were identified on the petition's list of 20 largest creditors, which was verified for accuracy—under penalty of perjury—per Bankruptcy Rules 1007(d) and 1008. Second, it is fundamentally incorrect to add the stalking-horse break-up fee and expense reimbursement ($7 million) to the "claim hurdle," as it is earned only if the protections are first approved (which has not yet happened) and the bid is topped by a bid that is sufficiently high to effectively pay that fee. Thus, at most, the Debtors move the "claims hurdle" by only $9.6 million, which is largely paid by the $7 million equity cushion (described in the first sentence of this bullet). Of equal importance, the Debtors offer absolutely no back-up for the $9.6 million "estimate" of administrative claims, which renders the whole contention unsubstantiated legal argument. And, regardless, the stalking-horse bid is subject to an M&A process, which the Debtors contend (albeit subject to monitoring) will be conducted in a proper manner.

- **New Information Showing Management Connectivity To Fortress.** In our September 6th letter (at footnote 3), we identified a "market rumor" that the Subordinated Taberna Junior Notes were entirely owned by the stalking horse bidder (Fortress). We further noted that, if this was true, further investigation is warranted, given: (i) the remarkably long (10-month) exclusivity period Fortress enjoyed in formulating its bid; and (ii) that the bid was finally documented at or around the day the 7.125% Senior Notes matured (on August 30th). After our September 6th submission, but before the September 18th reply letter, the Debtors filed the RSAs, including the RSA signed by the holder of the Subordinated Taberna Junior Notes (TP Management LLC). [See D.I 52-2.] The signatory for TP Management LLC is Mr. Constantine M. Dakolias, who happens to be the Co-Chief Investment Officer of the credit funds group at Fortress. See https://therealdeal.com/issues_articles/the-closing-dean-dakolias. None of this is mentioned in the Debtors' filings or their September 18th letter. Also noticeably absent is any discussion respecting any future opportunities Fortress has offered to Debtors' management in connection with the proposed sale transaction (another point warranting independent investigation).

- **Historical Legal Proceedings Concerning Management Oversight**. Your attention is respectfully drawn to the following SEC case concerning one of the Debtors' affiliated companies and certain former members of the Debtor. The "cease and desist" complaint may be found at the following web-link: http://www.tabernafairfund.com/Portals/0/Document%20Files/Taberna%20OIP.pdf?ver=2019-05-17-122230-000. The terms of settlement (including penalties payable by former

RAIT executives) may be found at the following web-link: https://www.sec.gov/divisions/enforce/claims/taberna.htm. The SEC order approving the "fair funds" distribution plan may be found at the following web-link: https://www.sec.gov/litigation/admin/2019/34-85762.pdf. Pages 2 and 3 of this third document reflect comments made to the SEC by the stalking horse bidder, Fortress. Perhaps reflecting lingering stakeholder discomfort with executive oversight, an involuntary bankruptcy petition was filed in the Southern District of New York against Taberna towards the end of last year. A hot litigation ensued. The involuntary bankruptcy petition was dismissed on technical grounds (relating to the non-recourse nature of that Debtors' bond debt). See Taberna Preferred Funding IV, Ltd. v. Opportunities II Ltd. (In re Taberna Preferred Funding IV, Ltd.), 2018 WL 5880980 (Bankr. S.D.N.Y. Nov. 8, 2018). On information and belief, there is a general market perception that the Debtors' management team is suspect.

- **Case Complexity And Need For Adversary Probe.** The Debtors contend on page 11 of their September 18th letter that the "size and complexity of the case are not remarkable for Delaware." The Debtors go on to characterize the case as "solidly 'middle market'" with a "structure that reduces into three 'silos.'" None of this is evidence; it is ipsit dixit (i.e., "it is because I say it is") legal argument. The corporate structure and cash management is astoundingly complex, as Judge Shannon observed at the "first day" hearing (quoted in our September 6th letter). The capital and asset allocation structures are also complex given the placement of debt within the corporate structure, the resulting "mapping" issues, and the lack of clarity respecting where value resides and in turn flows among stakeholders. Moreover, the circumstances underlying this case are complex, in part because of the Debtors' tendency to only half-reveal facts (e.g., Fortress connectivity) or dispute stakeholder contentions without evidence (e.g., the Debtors' stated disagreement with the two letters attached to our September 6th letter). As Judge Henry Friendly famously stated in In re Ira Haupt & Co., 361 F.2d 164 (2d Cir. 1966), "[t]he conduct of bankruptcy proceedings not only should be right but must seem right." In sum, this Chapter 11 process will only comport with Judge Friendly's admonition if there are appropriate "checks and balances," and that mandates appointment of an Official Equity Committee. See In re Oneida Ltd., 2006 Bankr. LEXIS 780 (Bankr. S.D.N.Y. May 4, 2006) (ordering the appointment of an official equity committee where the debtors advanced a plan providing for full payment of unsecured debt, thereby mollifying the official creditors committee and, in turn, depriving the case of "the usual checks and balances").

- **The "Deferment" Argument.** The Debtors request that the United States Trustee defer its decision to appoint an Official Equity Committee until after the auction. See September 18th letter at p. 1. Of course, this is tantamount to a "pocket-veto" of the appointment request. The Debtors have stated their intension to drive this case to conclusion by year-end (i.e., in about 3 months). They are, in turn, already moving fast—the bid procedures motion was filed last week, is scheduled to be heard October 2, 2019, and objections are due on September 25, 2019—and, under the Debtors' case agenda, creditors are either receiving 100% cash payment or they signed RSA's committing to support the Debtors' plan construct. For creditors, this case is over (except for defending the stalking horse bid and closing it as soon as possible), and the Official Creditors' Committee has retained large and sophisticated firms to ensure that objective is achieved with minimum disruption. Only an Official Equity Committee can act as a proper "check" or "balance" on the Debtors' case agenda, and only if the appointment decision comes now.

- **The "Let Them Defend Themselves" Argument**. On this point, we respectfully direct your attention to the Ad Hoc Committee's Rule 2019 Statement. The Statement shows that the Ad Hoc Committee is largely comprised of individual (i.e., "mom and pop") stockholders—people who do not have the resources to challenge the Debtors, Official Creditors' Committee, or financial behemoths like Fortress, BONY (indenture trustee), and Wells Fargo (indenture trustee). The formation of an Official Equity Committee would put equity on equal footing with these parties, thus adding meaningfulness and reliability to the Chapter 11 process.

As set forth above, there are several aspects of these Cases that require actions that no other party in interest other than an Official Equity Committee is likely able or willing to perform. For these reasons, the Ad Hoc Committee respectfully requests that the United States Trustee promptly appoint an Official Equity Committee. Thank you for your continued consideration. We are available to address any questions or concerns you may have.

Very truly yours,

s/ Robert J. Stark

Robert J. Stark

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September 25, 2019

VIA EMAIL

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Re: In re RAIT Funding, LLC, et al., Case No. 19-11915(BLS); Further Opposition to Appointment of Official Equity Committee

Dear Mr. Schepacarter:

We write briefly in response to the September 23, 2019, letter of the *ad hoc* equity committee ("AHEC"). Capitalized terms not defined herein have the meanings ascribed to them in our September 18, 2019, letter.

I. Legal and "Evidentiary" Standard

The AHEC's September 6, 2019, letter to the U.S. Trustee was just that—a letter to the U.S. Trustee. It was not a motion filed with Judge Shannon, signed by counsel with the attendant certifications of Bankruptcy Rule 9011, supported by testimony of a competent witness offered under penalty of perjury. It was a request to the U.S. Trustee to exercise his discretion under section 1102(a)(1) of the Bankruptcy Code to appoint an official equity committee, which, per the UST Manual, should occur *only* where (i) there is a "substantial likelihood" that equity holders will receive a "meaningful distribution" in the case, *and* (ii) equity holders are "unable to represent their interests in the bankruptcy case" otherwise. UST Manual § 3-4.14 (quotation marks, citation omitted). Nothing in the AHEC's September 23 letter suggests that these requirements are met here.

A. Likelihood of a Meaningful Distribution to Equity

With respect to the likelihood of a distribution to equity, the AHEC simply ignores the Debtors' assertions regarding the applicable debt hurdle as having "no back-up," and then reiterates its original, back-of-the-envelope solvency analysis from its September 6 letter. To be clear, we are happy to provide the U.S. Trustee whatever "back-up" for the Debtors' calculations that he deems necessary to make his decision. But we do not think it necessary or appropriate for the Debtors to provide such information to the non-fiduciary AHEC (at least one member of which is, apparently, a potential bidder for the Debtors' assets), in response to letters that contain no "back-up" for the AHEC's own analysis (and for which, as noted above, there is no Rule 9011 accountability).

B. Adequacy of Representation for Equity

With respect to the adequacy of representation of equity holders' interests, the AHEC offers no explanation why the Official Committee of Unsecured Creditors ("OCUC"), an estate fiduciary whose constituency (and membership) includes the fulcrum unsecured creditors who would be the immediate beneficiaries of any overbid, is inadequate to serve as a "check" on the Debtors' sale process. In this connection, we note that, while the RSAs *contemplate* a sale to the Stalking Horse Purchaser, they do not *pre-ordain* it. The Debtors entered into the RSAs in order to ensure there could be a prompt and definitive exit for the cases in the event that there were no overbids. If there is an overbid that renders the plan structure contemplated by the RSAs unworkable—*e.g.*, by putting equity "in the money" so that a plan providing for no recovery to equity would no longer be appropriate—then the Debtors are free to pivot to an alternate plan structure. (*See* RSAs ¶ 1 ("[T]he Debtors' obligations hereunder shall in all respects be subject to the exercise by each of the Debtors of its respective fiduciary duty as a debtor and debtor in possession in the Chapter 11 Cases.").) The RSA counterparties are similarly permitted to pivot—*e.g.*, in the event that the Debtors abandon the proposed plan structure (*id.* ¶ 6(c)), or there is a "Material Adverse Change" (*id.* ¶ 6(n)). Thus, if there is a potential overbid to be had, then the Debtors (acting as fiduciaries for all stakeholders), the OCUC (acting as fiduciaries for unsecured creditors), and the RSA counterparties (acting in their own economic interests) have both the incentive and opportunity to obtain and realize upon that overbid. The only thing an official equity committee would add at this juncture is cost, which, ironically, would only serve to push the threshold higher for any overbid to clear distributable value to equity.

The AHEC asserts that it is "largely comprised of individual (i.e., 'mom-and-pop') stockholders" who lack the resources to obtain representation in the chapter 11 cases, but this is simply false. AHEC members Charles Frischer and Howard Amster (individually and through various affiliates) are sophisticated individuals who invested tens of millions of dollars in RAIT Financial Trust ("RAIT").[1] The table below shows the preferred stock holdings of the AHEC members (based on the AHEC's most recent Rule 2019 disclosure) relative to the total shares outstanding. Even assuming for the sake of argument that the individuals other than Frischer and Amster are "moms and pops," their holdings pale in comparison to the holdings of the sophisticated individual and

[1] Based on their SEC disclosures (available at https://www.sec.gov/cgi-bin/own-disp?CIK=0001402258&action=getowner (Frischer) and https://www.sec.gov/cgi-bin/own-disp?CIK=0000904853&action=getowner (Amster)), Frischer and Amster also have substantial holdings in public companies other than RAIT.

institutional AHEC members, who between them own about 35% of the total outstanding shares of RAIT preferred stock.

Series (shares outstanding)	**Frischer Holdings**		**Amster Holdings**		**Other Institutional Holdings**		**Other Individual Holdings**	
	#	%	#	%	#	%	#	%
A (5,727,500)	892,980	15.59	525,293	9.2	476,881	8.33	1,500	0.03
B (2,508,797)	353,526	14.09	373,589	14.9	244,228	8.94	1,500	0.06
C (1,758,030)	229,800	13.07	236,632	13.5	130,674	7.43	-	-
Unspecified	-		-	-	38,000	-	11,500	-
TOTAL (9,994,327)	1,476,306	14.77	1,134,514	11.35	889,783	8.9	19,250	0.19

In sum, the AHEC and its members have both the wherewithal and the financial incentive to procure representation and participate in these chapter 11 cases. The only thing appointing an official equity committee will do for them is to automatically shift the costs of this representation to other stakeholders, thus bypassing the ordinary "substantial contribution" mechanism in section 503(b)(3)(D) and (4) of the Bankruptcy Code.

II. The New, Baseless Factual Assertions

The "New Information" Regarding Connectivity to Fortress

In its SEC Form 8-K announcing its bankruptcy filing and entry into material definitive agreements (available at http://www.snl.com/Cache/c399446198.html), RAIT disclosed that (i) the Stalking Horse Purchaser, CF RFP Holdings LLC, is an affiliate of Fortress Investment Group LLC ("Fortress"), and (ii) the non-debtor counterparty to the Taberna RSA, TP Management LLC ("TPM"), is an affiliate of the Stalking Horse Purchaser. This 8-K was filed on September 3 and was presumably the source of the "market rumor" cited in the AHEC's September 6 letter—i.e., that "the Taberna Subordinated Junior Notes [*sic*] were entirely owned by the stalking horse bidder (Fortress)." We do not understand this "market rumor" to be true. As discussed in the first-day declaration of Mr. Reyle (at ¶ 18), there is but one Taberna Subordinated Junior Note, and it is held by Taberna Preferred Funding I, Ltd. ("TPF I"), not the Stalking Horse Purchaser (or Fortress). TPM, in turn, acts as collateral manager for TPF I. None of this is new information, and it ultimately has no bearing on the sale since the Debtors negotiated the sale transaction with the Stalking Horse Purchaser independently from the RSA with TPM, as will be established at the bid procedures hearing. (Nor was there, as suggested by the AHEC, a ten-month exclusivity period for the Stalking Horse Purchaser—the various exclusivity periods were discussed at length in our September 18 letter.)

The AHEC's suggestion that the lack of a discussion in the Debtors' filings of future employment opportunities offered to the Debtors' management warrants an investigation is ridiculous. There are no such offers for the Debtors' management at this time. If there had been, then in accordance with the local rules of the Bankruptcy Court, they would have been disclosed in the sale motion.

The "Historical Legal Proceedings"

The AHEC cites an old (2014/15) SEC enforcement proceeding against Taberna Capital Management, LLC ("TCM"), Michael Fralin, and Raphael Licht, and a recent (2018) involuntary bankruptcy against a "Taberna" entity, Taberna Preferred Funding IV, Ltd. ("TPF IV"), as supportive of a so-called "general market perception that the Debtors' management team is suspect." However, none of the employees or executive officers of RAIT, Taberna Realty Finance Trust ("TRFT"), or any of their respective subsidiaries or affiliates involved in the SEC investigation and enforcement action have been employed by RAIT, TRFT, or their respective subsidiaries or affiliates since the end of 2014, at which time the remainder of TCM's collateral management rights/contracts were sold or delegated to an affiliate of Fortress. (The "Taberna" debtor entities in the chapter 11 cases—i.e., TRFT and RAIT Funding, LLC (f/k/a Taberna Funding, LLC)—own some legacy assets but have no active collateral management, origination, or securitization operations.) And the attempted involuntary bankruptcy filed against TPF IV last year had literally nothing to do with the Debtors or their management, since that entity has not been affiliated with any of the Debtors since approximately ten years ago, which was when all retained interests in Taberna IV were sold to a third party.

III. Conclusion

Again, the Debtors urge that the U.S. Trustee deny the AHEC's request for appointment of an official committee of equity security holders at this juncture. The Debtors have worked since 2017, with advisors and with counsel, to secure a strategic partner or source of financing for their business (and ultimately, over the past year, to secure the agreement with the Stalking Horse Purchaser), communicating with over 80 potential counterparties during that period, and it is their view at this point that the equity of RAIT Financial Trust are, and are likely to remain, out of the money. As such, the appointment of the equity committee is likely to serve only to further diminish recoveries for the fulcrum unsecured creditors.

As always, we are available to discuss at your convenience and would be happy to provide any further information to assist the U.S. Trustee in his deliberation.

Very truly yours,

/s/ Michael P. Pompeo
/s/ Patrick A. Jackson

PAJ/paj

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September 25, 2019

BY ELECTRONIC MAIL

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Re: In re RAIT Funding, LLC, et al., Case No. 19-11915 (BLS): Official Committee of Unsecured Creditors' Objection to Request for Appointment of an Equity Committee

Dear Mr. Schepacarter:

This firm is proposed co-counsel to the Official Committee of Unsecured Creditors (the "Creditors' Committee") of the above debtors (the "Debtors" or the "Company") in these chapter 11 cases (the "Chapter 11 Cases"). By letter dated September 6, 2019 (the "Request"), an ad hoc group of equity holders represented by Brown Rudnick LLP (the "Ad Hoc Group") requested that the office of the United States Trustee for the District of Delaware (the "U.S. Trustee") appoint an official committee of equity security holders in the Chapter 11 Cases. We reviewed the Request, the Debtors' September 18, 2019 objection to the Request (the "Debtors' Objection"), as well as the Ad Hoc Group's reply letter, dated September 23, 2019 (the "Reply"). For the reasons set forth herein, the Creditors' Committee **opposes** the Request for the formation of an official committee of equity security holders.

I. Applicable Standard

The Ad Hoc Group states in both its Request and Reply that the legal standard for whether the U.S. Trustee should appoint an equity committee is a five factor test, the first factor of which focuses on whether the debtor is "hopelessly" insolvent. *See* Request at 1; Reply at 1. The Ad Hoc Group cites to a number of cases, only two of which were decided by courts in this district. Importantly, neither of these cases mention a "hopelessly insolvent" prong, nor use the five factor approach in its analysis. See In re Spansion, Inc., 421 B.R. 151 (Bankr. D. Del. 2006); In re Kalvar Microfilm, 195 B.R. 599 (Bankr. D. Del. 1996).

In fact, the U.S. Trustee's decision to appoint an equity committee is guided by Volume 3 of the United States Trustee Program Policy and Practices Manual (the "UST Manual"), which cites to numerous decisions in the district of Delaware and other districts with respect to the standards for appointment of an equity committee. *See* UST Manual § 3-4.14.

As set forth in the UST Manual, the party requesting the appointment of an equity committee — here the Ad Hoc Group — bears the burden of proof to show that:

> (i) there is a substantial likelihood that they will receive a meaningful distribution in the case under a strict application of the absolute priority rule, and
>
> (ii) they are unable to represent their interests in the bankruptcy case without an official committee.

Id.; In re Nw. Corp., Case No. 03-12872 (CGC), 2004 WL 1077913, at *2 (Bankr. D. Del. May 13, 2004) (quoting In re Williams Commc'ns Grp., Inc., 281 B.R. 216, 223 (Bankr. S.D.N.Y. 2002)); see also Smurfit-Stone Container Corp., *Memorandum Order Denying Motion of Caspian Capital Advisors for an Order Appointing an Official Committee of Equity Security Holders*, Case No. 09-10235 (BLS), ECF No. 3071 (Bankr. D. Del. Dec. 10, 2009) (hereinafter, the "Smurfit Order")[1] (stating that the two-prong standard for the appointment of an equity committee is "not in dispute"); Spansion, 421 B.R. at 156 (applying the same two-prong analysis in denying a request to appoint an equity committee).

Furthermore, the cases make clear that the appointment of an equity committee is considered "extraordinary relief" and should be "the rare exception." Id.; see also UST Manual § 3-4.14 (same).

As set forth in more detail below, this case should not be the rare exception where an equity committee is appointed. Not only is the Ad Hoc Group unable to satisfy either prong of the test, but also the appointment of an equity committee (at least at this time) will be detrimental to equity holders because it will only increase the amount an alternative bidder will need to provide to furnish a recovery to equity holders.

II. The Ad Hoc Group Cannot Show that Equity Holders Will Receive a Meaningful Distribution

For an equity committee to be approved, the Ad Hoc Group must show that equity holders are likely to receive a "meaningful distribution" in the case. In doing so, the Ad Hoc Group must show that the Debtors will be able to provide a recovery to equity holders after full payment of all senior classes. See, e.g., Nw. Corp., 2004 WL 1077913, at *2 (stating that where there is a shortfall that must be overcome before there is any value for equity, the "meaningful distribution" test is not satisfied).

[1] A copy of the Smurfit Order is attached hereto as **Exhibit 1**.

In an effort to satisfy this requirement, the Ad Hoc Group points out that the Debtors' funded liabilities are listed at $167.6 million, while the current "stalking horse" bid provided by Fortress Credit Advisors totals approximately $174.4 million, leaving the Debtors with approximately $6.8 million for equity recovery. Request at 2-3; Reply at 2. However, even a cursory review of the facts of these cases demonstrates serious flaws in the Ad Hoc Group's analysis.

As an initial matter, and as explained in the Debtors' Objection, the Ad Hoc Group's analysis fails to take into consideration any other unsecured claims that must be paid before equity can receive a recovery. The Debtors estimate that there will be an additional $3.8-5.1 million of other prepetition general unsecured claims filed in the Chapter 11 Cases.[2] Even these unsecured claim amounts are understated because they do not include postpetition interest, which must be paid on account of all unsecured claims before equity holders receive a distribution. See In re Tribune Co., 464 B.R. 126, 206, n.92 (Bankr. D. Del. 2011) (stating that when a debtor is solvent, unsecured creditors are entitled to postpetition interest before shareholders receive any recovery).[3]

Moreover, and again as explained in the Debtors' Objection, the Ad Hoc Group fails to account for any of the expenses that must be paid in accordance with the absolute priority rule before equity can receive a distribution. For example, the Debtors note that there are approximately $16.6 million of estimated postpetition operating expenses, professional fees, and wind-down expenses which must be paid and which are subtracted from the sale consideration because the stalking horse bid includes the purchase of remaining cash. See Debtors' Objection at 2.[4] After taking into account these projected expenses, there will be no funds left for distribution to equity holders and unsecured creditors will be impaired by $13.6 to $14.9 million.[5] Importantly, this hole understates the amount equity is out of the money because (i) it does not take into account postpetition interest which must be paid before equity receives a recovery, and (ii) if any alternative bidder arises as part of the auction process, the Debtors will need to pay the break fee and expense reimbursement of the stalking horse bidder, increasing the administrative claims that will need to be paid to get equity holders in the money by an additional $6.9 million. The appointment of an

[2] In the Reply, the Ad Hoc Group complains that the Debtors did not disclose these amounts with the petition. It is the Creditors' Committee's understanding that they were not disclosed because all general unsecured claims (other than the subordinated claims) are projected to be paid in full. Nevertheless, at the present time they represent the Debtors' best estimates of general unsecured claims and should be included for purposes of potential recovery to equity holders. The Creditors' Committee is still analyzing the Debtors' projections and believes there could be additional claims not included in these amounts.

[3] The Creditors' Committee estimates that with respect to just the funded debt of $167.6 million approximately $4.9 million of postpetition contract-rate interest will accrue in the five months between the Petition Date and January 31, 2020.

[4] The Creditors' Committee is still conducting diligence of the Debtors' analysis and believes the expenses could potentially be higher than stated.

[5] This number is calculated by subtracting the estimated administrative expenses of $16.6 million from the projected sale proceeds of $174.4 million, leaving an estimated $157.8 million of distributable value for estimated unsecured claims of between $171.3 and $172.6 million.

equity committee will only worsen this hole as any professional fees for the equity committee would need to be paid by the Debtors' estates.

Lastly, the $174.4 million headline "Purchase Price" number is subject to certain adjustments as set forth in the Stalking Horse Agreement. For example, $4 million of the purchase price is being escrowed for tax indemnities and, if not released to the Debtors, will reduce the proceeds of the sale. These amounts may further reduce the consideration available for unsecured creditors and put equity further out of the money.

In sum, the contemplated sale of the Debtors' assets will not provide enough consideration to pay all unsecured creditors in full. Unless meaningful additional consideration is brought into the estates at the auction, equity holders are not likely to receive any recovery in the Chapter 11 Cases. The Ad Hoc Group, therefore, cannot satisfy its burden that the equity holders will receive a "meaningful recovery," let alone any recovery in these Chapter 11 Cases.

III. The Ad Hoc Group and Other Equity Holders Are Adequately Represented in These Chapter 11 Cases

A party seeking the formation of an official equity committee must also show that such a committee is "necessary to assure adequate representation . . . of equity security holders." 11 U.S.C. § 1102(a)(2). Thus, even if a meaningful distribution has been established — which is not the case here — an equity committee should not be appointed unless the Ad Hoc Group proves that they are "unable to represent their interests in the bankruptcy case." Nw. Corp., 2004 WL 1077913, at *2; see also Smurfit Order at ¶ 1 (stating that appointment of an equity committee is only appropriate where equity holders "are unable to adequately represent their interests in the case absent appointment of an official committee").

The Ad Hoc Group has made no showing that the interests of equity holders cannot be adequately represented without an official equity committee. Nor could they. According to the UST Manual, "[t]here are many sources of adequate representation aside from the appointment of an official committee." UST Manual § 3-4.14. Generally, the board of directors of the debtor acts for equity holders and once a company becomes insolvent or files for bankruptcy protection, "the directors still owe a fiduciary duty to the equity security holders." Id. The Ad Hoc Group has not explained why the Debtors' board cannot continue to represent equity holders in the Chapter 11 Cases.

Moreover, now that the Creditors' Committee is in place, its interests are aligned with those of the equity holders, namely maximizing the sale price of the Debtors' assets to provide the highest possible recovery to all parties in interest. See UST Manual § 3-4.14 ("At times, even the official creditors' committee has been found to represent the interests of the equity security holders when their interests are sufficiently aligned."). The Creditors' Committee has a fiduciary duty to maximize the value of the Debtors' estates for the benefit of all parties in interest. See In re Leap Wireless Int'l Inc., 295 B.R. 135, 139-40 (Bankr. S.D. Cal. 2003) ("The economic interests of bondholders and shareholders appear to be the same – that is, to find the highest realistic value for the company. And it is the fiduciary duty of the [creditors' committee] to do so."); Williams, 281

B.R. at 221 ("A higher valuation is in both the Creditors' Committee's and the Shareholders' interest.").

In fact, contrary to the statements by the Ad Hoc Group that "from the creditors perspective, this case is done", the current restructuring support agreement was structured to incentivize a postpetition marketing and sale process to generate a higher price for the Debtors' assets, which would inure to the benefit of junior constituents (first the subordinated creditors and then equity holders). At this time, all case constituents are focused on ensuring an efficient and value-maximizing sale transaction. To the extent the Ad Hoc Group knows of any parties that are interested in participating in the sale process, it should connect those parties with the Debtors and the Creditors' Committee. The Creditors' Committee, for its part, will exert all its efforts to ensure that party can participate in the process.

Finally, equity holders are adequately represented through the formation of and the retention of competent counsel by the Ad Hoc Group. See UST Manual § 3-4.14 ("[E]ven unofficial committees can provide adequate representation of the interests of equity security holders without burdening the estate with the costs of such a committee's professionals"); Spansion, 421 B.R. at 163 ("Even if I were to conclude on this record that neither the Debtors, its management, nor the Creditors' Committee are adequately representing the interest of the equity security holders, the Ad Hoc Equity Committee is well organized, well represented by counsel, and adequate to the task of representing its interests without 'official' status."). The Ad Hoc Group asserts their group is largely comprised of individual (i.e., "mom and pop") stockholders. Reply at 4. However, based on the Ad Hoc Group's Rule 2019 Statement, it appears that the top five holders (who may not reasonably be described as "mom and pop" holders) in the Ad Hoc Group hold roughly 35% of the entire RAIT Preferred Shares series and nearly 100% of the securities owned by the Ad Hoc Group are owned by these top five holders. The Ad Hoc Group has not explained why it is unable to represent its interests through its current counsel.

As such, the appointment of an equity committee at this time will only burden the estates with additional administrative costs. Until and unless equity, as opposed to the unsecured debt, becomes the fulcrum security in these Chapter 11 Cases, an equity committee is unnecessary to ensure that estate value is maximized. If anything, the appointment of an equity committee at this time will put equity holders further out of the money.

IV. **Conclusion**

For the reasons set forth above and set forth further in the Debtors' Objection, it is both inappropriate and unnecessary to appoint an official equity committee in these Chapter 11 Cases. There are no exceptional circumstances that warrant the rare step of appointing an official equity committee. The Ad Hoc Group has not made any showing that there is a substantial likelihood of a distribution to equity. Moreover, interests of equity holders and unsecured creditors are currently fully aligned. Equity holders are therefore adequately represented by the Creditors' Committee and the Debtors' board and counsel to the Ad Hoc Group has the opportunity to participate fully in the Chapter 11 Cases.

Appointing an official equity committee to pursue the same goals as the Creditors' Committee will be an unnecessary and unwarranted drain on the estate's resources, and harms the very constituents an equity committee would seek to protect. Given that the Debtors are currently engaged in a competitive process to sell substantially all of their assets, the Request should be denied by the U.S. Trustee. If necessary, the Request can be revisited when the results of the auction are finalized and the U.S. Trustee has better information.

I am available to discuss this letter and the Creditors' Committee's position with your office at your earliest convenience.

Sincerely,

/s/ Stephen Zide

Stephen Zide

SZ:ls

cc: Douglas Mannal
David Dean
Robert J. Stark
Michael P. Pompeo
Patrick A. Jackson

Exhibit 1

Smurfit Order

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
SMURFIT-STONE CONTAINER CORPORATION, et al.,	)	Case No. 09-10235 (BLS)
	)	
	)	(Jointly Administered)
Debtors.	)	
	)	Docket Reference Nos. 1661

MEMORANDUM ORDER DENYING MOTION OF CASPIAN CAPITAL ADVISORS FOR AN ORDER APPOINTING AN OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS

Upon consideration of the Motion of Caspian Capital Advisors for an Order Appointing an Official Committee of Equity Security Holders (the "Motion") [Docket No. 1661]; and the Court having reviewed objections to the Motion filed by the Debtors [Docket No. 1983 and 2959], the Official Committee of Unsecured Creditors [Docket No. 1982] and the Office of the United States Trustee [Docket No. 2001]; and the Court having conducted an evidentiary hearing on the Motion on December 4, 2009; and upon due deliberation, the Court finds as follows:

1. The applicable standard is not in dispute. Appointment of an equity committee is appropriate only where (i) movants can establish that there is substantial likelihood that they will receive a meaningful distribution in the case, and (ii) equity holders are unable to adequately represent their interests in the case absent appointment of an official committee.[1]

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[1] Courts have articulated a variety of additional factors to be considered in evaluating requests for appointment of an equity committee, including:

a. Whether the shares are widely held and publicly traded;
b. The size and complexity of the Chapter 11 case;
c. The delay and additional cost that would result if the court grants the motion;
d. The likelihood of whether the debtors are insolvent;

2. In support of the Motion, Movants submitted the report of Moelis & Company. The Debtors submitted the Rebuttal Report of Lazard Freres & Co. LLC in opposition to the Motion. Representatives of each of Moelis & Lazard testified at the hearing on the Motion.

3. The record reflects that the aggregate secured and unsecured claims against the Debtors total at least $5.627 billion.[2]

4. The Moelis Report relies heavily on the industry pricing forecast of a single analyst. See Debtor's Exhibit 2. The record reflects that this forecast is 10-35% above the consensus estimates of other industry analysts. See Debtor's Exhibit 6 (RISI Paper Packaging Monitor, October 2009, at 14).

5. The record adduced at trial reflects that the valuation methodology employed by the Moelis Report is dependent upon projections of increased revenues in coming years as a result of the aggressive pricing forecast referenced above. The Moelis Report does not adequately consider or take into account likely cost increases in its projections.

6. Aside from pricing projections, the Moelis Report identifies certain potential additional sources of distributable value. See Movants' Exhibit 1 at 26-28. However, the record developed at trial reflects that the Black Liquor Tax Credit expires on December 31, 2009 and will not be an ongoing source of revenue for the Debtors. Similarly, the record reflects that the Debtors will not be able to obtain any material economic benefit under the Biomass Conversion

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e. The timing of the motion relative to the status of the Chapter 11 case; and
f. Other factors relevant to the adequate representation issue.

See Matter of Kalvar Microfilm, Inc., 195 B.R. 599, 600 (Bankr. D. Del. 1996).

[2] The Lazard Rebuttal Report posits a higher claims pool by adding in $216 million of post-petition interest owed to holders of unsecured claims, which presumably would have to be paid before a distribution could be made to equity.

Agricultural Program. As to the potential value to the Debtors of net operating loss carry-forwards, the evidence is sufficiently conflicting so as to preclude the Court from attributing material value to such tax attributes.

7. The Lazard Rebuttal Report reflects that, on both a "comparable company" analysis and a "precedent transaction" analysis[3], the range of estimated values falls (at best) between $700 million and $900 million short of the point at which distributable value is likely to be available for shareholders.

8. The record reflects that the Movants have engaged able and experienced professionals, have vigorously participated in these cases to date and have identified numerous grounds upon which to challenge the Debtors' recently filed Joint Plan [Docket No. 2914] and the accompanying Disclosure Statement [Docket No. 2915]. The Court concludes that appointment of an equity committee is not necessary to ensure adequate representation of the interests of shareholders.

Based upon the foregoing, it is hereby ORDERED that the Motion is DENIED.

Dated: Wilmington, Delaware
December 10, 2009

Brendan Linehan Shannon
United States Bankruptcy Judge

[3] The Moelis Report did no include a discounted cash flow analysis and hence the Lazard Rebuttal Report does not address or cover that methodology.

DOCUMENT SEPARATOR

ROBER J. STARK
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September 27, 2019

BY EMAIL AND HAND DELIVERY

Richard Schepacarter, Esq.
Office of the United States Trustee
844 King Street, Suite 2207 Lockbox 35
Wilmington, DE 19801

RE: In re RAIT Funding LLC, et al., Case No. 19-11915 (Bankr. D. Del.) (BLS)

Dear Mr. Schepacarter:

Thank you for the invitation to respond to the September 25, 2019 letters sent by the Debtors and Official Creditors' Committee in further opposition to our request for the appointment of an Official Equity Committee. We are prepared to the rest on the evidence and argument already presented, which establishes among other things: (i) solvency; (ii) enormous case complexity; (iii) historical M&A process weaknesses; (iv) unreliable—to this very day—corporate books and records; (v) concerns over historical management practices, prompting SEC enforcement and continuing oversight; (vi) long-standing connectivity to the "stalking horse" bidder; and (vii) structural reasons why the Official Creditors' Committee has little incentive to challenge the Debtors' Chapter 11 agenda and why, in juxtaposition, only an Official Equity Committee is sufficiently incentivized to serve as a true case counter-balance.

We close our submission with one additional data point: the relevant portion of a hearing transcript from In re Washington Mutual, Inc., No. 08-12229 (MFW) (Bankr. D. Del. Jan. 28, 2010), attached hereto as **Exhibit A**. As you can see, Judge Walrath found "hopeless insolvency" to be the applicable legal standard under Bankruptcy Code section 1102.

Thank you again for your continued consideration. We continue to be available to address any questions or concerns you may have.

Very truly yours,

s/ Robert J. Stark

Robert J. Stark

CC: Michael P. Pompeo, Esq.
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Douglas Mannal, Esq.
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G. David Dean, Esq.
(ddean@coleschotz.com)

Exhibit A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11
WASHINGTON MUTUAL, INC., *et al.*,	Case No. 08-12229(MFW) (Jointly Administered)
	January 28, 2010 4:00 p.m. (Wilmington)
Debtors.	
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,	
Plaintiff,	
v.	Adv.Proc.No. 09-50551(MFW)
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP.,	
Defendant for all claims	
-and-	
FEDERAL DEPOSIT INSURANCE CORPORATION, Additional Defendant for Interpleader claim	
WASHINGTON MUTUAL, INC. AND WMI INVESTMENT CORP.,	
Plaintiffs,	
v.	Adv.Proc.No. 09-50934(MFW)
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,	
Defendant.	

discoverable or admissible evidence. Thanks.

THE COURT: Thank you. Well, let me issue my ruling. First on the appropriate standard. I'm not sure the United States Trustee is suggesting that the Court has no power to review, but the US Trustee suggests that 1102(a)(2) gives the United States Trustee authority to appoint additional committees. And I'll quote the language, because I think it is significant as, excuse me, 1102(a)(1), as the United States Trustee deems appropriate. The Committee argues that the Court has no power, therefore, to review that appointment by the US Trustee. And there is at least one case that does suggest that. The New Life Fellowship case. But I disagree. I think that to suggest that the Court has no power to review that appointment, particularly where there might be changed circumstances that affect that, I think the Williams and the Texaco cases suggest that the Court does have the power to review it. While I don't agree with the standard they suggest, I think that clearly the Court has to have some power to review the US Trustee's decision in that regard. I think the standard of review, however, is not *de novo*. Clearly Congress did suggest that in the first instance it would be the United States Trustee to make that decision, and I think that if I have the power to review it, it's clearly not within my power to substitute my judgment for that of the United States Trustee. So I do agree with the Imperial decision and the Edison decision that it's an abuse of discretion. Whether reviewing under (a)(1) or the other provisions of §1102. I think that in this instance, we all know what the standard is for abuse of discretion. Whether the United States Trustee acted irrationally, capriciously, or arbitrarily. And I, quite frankly, cannot find that on the record before me. There is clearly evidence both ways as to the insolvency of the Debtor. And if the Debtors' pleadings filed in this case are accepted, I think the Debtor believes that it is not hopelessly insolvent. That it has legitimate claims against others that would result in there being sufficient funds in this estate to pay all creditors in full. I don't have to find that the Debtor is going to win those. I think the standard is not to make a final determination as to whether the Debtor is insolvent, just whether I can determine that the Debtor is hopelessly insolvent. And again, on this record, I cannot find that. I think the evidence that the debt and equity in this case are still trading, at any number, establishes that at least the market thinks that the Debtor is not hopelessly insolvent. With respect to whether there's adequate protection of the interests of the Equity Committee, excuse me, the equity holders, which is the other prong of a determination of whether or not the decision was inappropriate. I think that certainly falls in favor of the equity. While the Debtor clearly is representing all constituents in this case, and fulfilling its fiduciary duty, I think that the fact that we have §1102 in the Code makes it clear that there are instances where other parties have a right to be, have a right to have a place at the table. And the US Trustee has made a determination that the equity should be present, and I don't think they're wrong. Even if I were reviewing this under a *de novo* review. I think that at this point it is appropriate to have the equity represented in this case. With respect to Black Horse Capital's request that I reconstitute it, I won't make them go through the motions of filing a separate motion, because I think that under this case, I think there's certainly sufficient representation of the preferreds on the existing Equity Committee, that no reconstitution need be done. So I don't think they've met the 1102(a)(4) standard, even had they filed a motion. So I will deny the Debtors' motion and I will deny Black Horse Capital's - -

MR. ROSEN: Your Honor?

THE COURT: - - request in its response.

MR. ROSEN: Your Honor, not that I'm glutton here, but we did file alternative relief.

THE COURT: Ah. Thank you. I do have comments on that. With respect to the issue of capping the fees, I've been instructed that I can't cap fees without a full evidentiary hearing, and I'm not, I am not prepared today to impose a cap under the Federal Mogul case. But I think it's clear that I do have the power to monitor the case, and that power can be exercised in two ways. First with respect to any retention applications that are filed by the Equity Committee. And if professionals are appointed, my power to review the fee applications, I think gives me sufficient power to assure that, I'll use a colloquialism, they don't run amuck. I think the parties certainly have heard the arguments as to what the role of the Equity Committee is in this case, and I have not heard anything from counsel for the Equity Committee that they don't understand their role here. So with that said, I will not grant the alternative relief of capping the fees. But will exercise my authority with respect to retention applications and fee applications. All right. The Debtor will get me a form of order?

MR. ROSEN: We will, Your Honor.

THE COURT: Okay.

MR. ROSEN: Your Honor, I know that there are many people in the courtroom who came for this motion just now. Perhaps - -

THE COURT: Let's take a short break and then we'll go on with the remainder of the agenda.

MR. ROSEN: Thank you, Your Honor.

(Whereupon at 5:33 p.m. a recess was taken in the

EXHIBIT E

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November 12, 2019

BY EMAIL AND FEDERAL EXPRESS

Richard Schepacarter, Esq.
Office of the United States Trustee
844 King Street, Suite 2207
Wilmington, DE 19801

Re: In re RAIT Funding LLC, et al., Case No. 19-11915 (Bankr. D. Del.) (BLS)

Dear Mr. Schepacarter:

As you know, an ad hoc committee of preferred equity security holders ("Ad Hoc Committee") of RAIT Financial Trust ("RAIT Parent"), then represented by Brown Rudnick, exchanged correspondence with you in September 2019 seeking the appointment of an official equity committee herein pursuant to Section 1102(a)(1) of the Bankruptcy Code ("Prior Correspondence").[1] We now represent the Ad Hoc Committee.[2]

We write to bring to your attention recent admissions by RAIT Parent. On November 7, 2019, RAIT Parent filed a Form 10-Q with the United States Securities and Exchange Commission for the period ending June 30, 2019 ("10-Q"). In the 10-Q, the RAIT Parent balance sheet represents that shareholders' equity was in excess of $65 million at fair value,[3] clearly rebutting the Debtors' prior contention that "the incremental amount that would be necessary to put RAIT Parent 'in the black' for chapter 11 plan purposes would be between $22.3 and $27.6 million."[4]

Specifically, in its 10-Q, RAIT Parent represented that shareholders' equity was $64,454,000 (on a consolidated basis). Even after adjusting the Debtors' investment in mortgage

[1] The legal arguments made in the Prior Correspondence is respectfully incorporated herein.
[2] The Ad Hoc Committee currently consists of some shareholders who were previously members, as well as one or more new members. Several of the Debtors' other equity holders have expressed interest in joining the Ad Hoc Committee. As soon as membership of the Ad Hoc Committee is finalized (anticipated to be no later than next week), a Bankruptcy Rule 2019 statement listing all members will be filed with the Court and provided to the Office of the U.S. Trustee.
[3] *See* https://www.sec.gov/Archives/edgar/data/1045425/000156459019041794/ras-10q_20190630.htm, at p. 1, 26 & 31.
[4] *See* September 18, 2019 letter of Michael P. Pompeo and Patrick A. Jackson ("Pompeo Letter") at p. 3.

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loans to reflect fair value, shareholders' equity would be $36,988,000 ($333,668,000 in mortgage loans at fair value versus $361,134,000 carrying value - *see* 10-Q at page 26). However, the consolidated balance sheet in the 10-Q includes shareholders' deficits for RAIT Securitizations and RAIT VIE Properties in the amounts of $21,918,000 and $6,836,000, respectively [page 31], which are non-recourse and for which RAIT Parent therefore has no liability. Once those non-Debtor shareholders' deficits in the aggregate amount of $28,754,000 are eliminated, the fair value of shareholders' equity is $65,742,000. The fact that this figure reflects fair value, rather than book value, is further bolstered by the fact that the Debtors recently obtained a court order authorizing retention of four professionals to provide valuation and appraisal services.[5]

Thus, one can only conclude that, contrary to its prior assertion, RAIT Parent now admits that "there is a 'substantial likelihood' that equity holders will receive a 'meaningful distribution' in the case."[6] At least there would be a meaningful distribution to equity if the Debtors were not pursuing a misguided sales process designed to wipe out that substantial quantum of shareholders' equity for no legitimate reason, thus necessitating the appointment of an official equity committee to safeguard over $65 million in value that will otherwise be squandered. Nor does there appear to be any evidence of a substantial decrease in value since June 30, 2019. In fact, the Debtors' assets appear to be performing well and providing significant liquidity to the estates.[7]

Based on the foregoing, we respectfully request that you reconsider your prior position that there are insufficient grounds for the appointment of an official equity committee. In fact, based on RAIT Parent's own admissions in its recent 10-Q, it is manifest that there is substantial equity and that the appointment of an official equity committee is necessary and justified.

Very truly yours,

s/ Nicholas F. Kajon

NFK:mot

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[5] *See* Order dated October 23, 2019 [Dkt. No. 164] approving retention of, *inter alia*, Appraisal Economics Inc., CBRE, Inc., Chatham Financial and Newmark Knight Frank Valuation & Advisory, LLC as ordinary course professionals.

[6] Pompeo Letter at p. 8 (*citing* UST Manual § 3-4.14 (quotation marks, citation omitted)).

[7] In their Monthly Operating Report for the period ending September 30, 2019 [Dkt. No. 168], the Debtors reported over $44 million in cash and cash equivalents on consolidated basis, of which over $31 million was held by RAIT Financial Trust.

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Cc by email: Michael P. Pompeo, Esq.
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November 14, 2019

VIA EMAIL

Richard L. Schepacarter, Esq.
Trial Attorney
Office of the U.S. Trustee for Region 3
Richard.Schepacarter@usdoj.gov

Re: In re RAIT Funding, LLC, et al., Case No. 19-11915(BLS); Debtors' Response to November 12, 2019, Letter from the AHEC

Dear Mr. Schepacarter:

We write in response to the November 12, 2019 letter (the "Letter") of the *ad hoc* equity committee ("AHEC") renewing its request for appointment of an official equity committee based on purported "admissions" in the most recent SEC Form 10-Q filed by RAIT Financial Trust ("RAIT") on November 7, 2019, for the quarter ending June 30, 2019 (the "10-Q"). As discussed below, it is the Debtors' continued expectation that, absent a new bid for the Debtors' assets that is substantially higher than the stalking-horse bid, there will be no recovery to preferred or common stockholders in these chapter 11 cases. The Debtors therefore remain strongly opposed to the appointment of an official equity committee for the reasons set forth in our prior letters on September 18 and 25, 2019, which are incorporated herein by reference.

The AHEC Conflates Book Value and Fair Value

RAIT did not admit or represent in the 10-Q that "shareholders' equity was in excess of $65 million at fair value" as suggested by the AHEC. The shareholders' equity figures referenced in the Letter and set forth in the 10-Q are based on the accounting *book value* of the net assets of RAIT and its consolidated subsidiaries as prepared in accordance with generally accepted accounting principles in the United States (GAAP). The accounting *book value* of the net assets of RAIT and its consolidated subsidiaries is not an accurate or representative indication of the *fair value* of RAIT's net assets—either at the value that could reasonably be obtained if sold collectively (whether through a bankruptcy court-supervised sale process or otherwise), or if each asset were to be measured separately at fair value.

To further explain, the 10-Q was prepared in accordance with GAAP on a going-concern basis, which assumes that the issuer will be able to continue to operate as a going concern in the ordinary course. Under that basis of presentation, the applicable accounting for a majority of RAIT assets was not fair value (or based upon fair value) as of June 30, 2019. As RAIT disclosed in various sections of the 10-Q (including within footnote 2 to the financial statements), there was substantial doubt that RAIT would be able to continue as a going concern. Indeed, in each of RAIT's quarterly and annual financial statements since the third quarter of 2017, a similar disclosure was made (i.e., that there was substantial doubt that RAIT would be able to continue as a going concern). And in light of RAIT's actual bankruptcy filing, which post-dated the reporting period and definitively resolved any such doubt, reliance on GAAP financial statements that had been prepared on a going-concern basis as being conclusive of the actual, realizable value of RAIT's assets would be misguided at best.[1]

The AHEC's "Fair Value" Calculation from Inputs in the 10-Q is Incorrect

The AHEC calculates "the fair value of [preferred] shareholders' equity [a]s $65,742,000" based on certain information that is indeed reported in the 10-Q; however, the AHEC's calculation is incorrect. Specifically, while the downward adjustment made to mortgage loans is correct, the upward adjustment related to "RAIT Securitizations" and "RAIT VIE Properties" is mistaken. This is because the amounts disclosed related to the "RAIT Securitizations" and "RAIT VIE Properties" on page 31 of the 10-Q represent the balance sheets of the securitization issuers and property-owning entities themselves, as applicable, but they do not reflect any amounts that are eliminated upon consolidation of those entities with RAIT's other subsidiaries that maintain investments in the debt or equity securities issued by the "RAIT Securitizations" or "RAIT VIE Properties." This point is clearly disclosed in the 10-Q in the lead-in paragraph to the tables on page 31.

The AHEC also fails to account for other adjustments that would be necessary to arrive at an estimated "value" of RAIT's net assets in order to determine the "value" that may be available for holders of RAIT's preferred shares, especially in the context of a sale of RAIT's assets. For example, at its issuance, RAIT elected the "fair value option" for one of the junior subordinated notes (see pages 22 through 24 of the 10-Q), which requires that liability to be measured at fair value on a recurring basis. While the estimated fair value of that liability was approximately $5.1 million at June 30, 2019, calculated in accordance with GAAP, the contractual amount owed (i.e., the unpaid principal balance) for that liability was approximately $18.7 million. Other adjustments

[1] Contrary to the AHEC's assertion, the Court's entry of a standard "OCP order" authorizing the Debtors to retain valuation and appraisal professionals they had used prepetition in no way "bolsters" the AHEC's reading of the 10-Q. The Debtors had used these professionals over a number of recent periods in the course of conducting their business, including for purposes of valuing certain assets and liabilities as part of the Debtors' processes for preparing financial statements and related disclosures in accordance with GAAP. The OCP order merely provides the Debtors the optionality to engage these professionals, if for some reason the Debtors should need similar services post-petition. To date, the Debtors have not engaged these professionals to perform any services post-petition.

may relate to items that are recognized as assets (or contra-liabilities) under GAAP that have little to no tangible benefits to a buyer of substantially all of RAIT's assets, such as prepaid expenses and debt issuance costs.

In addition, the AHEC fails to account for the ongoing erosion of value resulting from RAIT's net monthly cash outflow, as RAIT's ongoing monthly operating expenses exceed RAIT's monthly operating income, as discussed in our prior letters. In sum, the AHEC's attempt to correlate a snapshot of accounting book value as of June 30, 2019, with actual distributions to equity holders in these chapter 11 cases is inherently flawed.

There Remains No "Substantial Likelihood" of a "Meaningful Distribution" to Equity

As set forth at length in the record on the Debtors' request for approval of bidding procedures—to which the AHEC did not object—the proposed transaction with the stalking-horse purchaser was the result of extensive prepetition marketing conducted by the Debtors and their investment bankers over the course of two years (soliciting all manner of proposals, including sale, recapitalization, and restructuring transactions), and it is subject to a public, bankruptcy court-supervised sale process post-petition in which all potential bidders are welcome to participate. As you may recall, bidding procedures were approved by the Court on October 2, 2019, and bids are currently due on November 27, 2019. Persons affiliated with the AHEC requested and received a form of non-disclosure agreement (NDA) from the Debtors on November 8, 2019, but to date they have not executed the NDA to receive access to the sale dataroom.[2] And, at least to date, none of the other parties who have executed NDAs and done diligence on the Debtors' assets have submitted a competing bid.

Simply put, there has been no change in facts or circumstances since last month that would warrant reconsideration of the U.S. Trustee's decision not to appoint an equity committee. As we stated previously, if the Debtors' sale process actually yields a transaction sufficient to provide a meaningful likelihood of distribution to equity holders, then of course the U.S. Trustee would be free to re-evaluate the AHEC's request. Unless and until that occurs, however, appointment of an official equity committee would serve only to add to the chapter 11 administrative expenses and diminish the already-discounted recoveries we hope and expect to provide to the junior creditors that negotiated restructuring support agreements in good faith with the Debtors regarding the terms of the now-pending chapter 11 plan of liquidation.

[2] AHEC counsel provided a markup of the Debtors' form of NDA on November 12, 2019, to which the Debtors responded on November 13, 2019. Later that day, AHEC counsel rejected the Debtors' proposed resolution of their changes without suggesting any other compromise position.

The AHEC Is Adequately Represented in the Cases

In closing, we note that the AHEC's new counsel made an informal, expedited discovery demand of the Debtors yesterday and advised that the AHEC intends to notice a deposition of the Debtors' CEO for November 26, and to file a motion to terminate exclusivity and for appointment of an official equity committee with a proposed hearing date of December 5, 2019. This underscores that the AHEC is more than capable of representing its interests in the case without the appointment of an official equity committee, as we had noted in our prior letters.

We are available to discuss at your convenience and would be happy to provide any further information to assist the U.S. Trustee in his deliberation.

Very truly yours,

/s/ Michael P. Pompeo
/s/ Patrick A. Jackson

PAJ/paj

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November 14, 2019

BY ELECTRONIC MAIL

Richard L. Schepacarter, Esq.
Trial Attorney
Office of the United States Trustee
844 King Street, Suite 2207, Lockbox 35
Wilmington, Delaware 19801

Re: In re RAIT Funding, LLC, et al., Case No. 19-11915 (BLS): Official Committee of Unsecured Creditors' Objection to Request for Appointment of an Equity Committee

Dear Mr. Schepacarter:

This firm is counsel to the Official Committee of Unsecured Creditors (the "Creditors' Committee") of the above debtors (the "Debtors" or the "Company") in these chapter 11 cases (the "Chapter 11 Cases"). We are writing in opposition to the letter dated November 12, 2019 (the "Reconsideration Request"), by an ad hoc group of equity holders represented by Stevens & Lee (the "Ad Hoc Group") which requests reconsideration of the prior decision of the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") not to appoint an official committee of equity security holders in the Chapter 11 Cases.[1]

As set forth in the September 25th letter of the Creditors' Committee, for an equity committee to be appointed the party requesting appointment of an equity committee must prove that (i) there is a substantial likelihood equity holders will receive a meaningful distribution in the case under a strict application of the absolute priority rule and (ii) equity holders are unable to represent their interests in the bankruptcy without an official committee. As the Reconsideration Request does not provide any new information relevant to either of these prongs, the Reconsideration Request should be denied.

The main argument in the Reconsideration Request is that "recent admissions" in the Debtors' 10-Q for the period ending June 30, 2019, purportedly shows a positive equity value of approximately $65 million. This assertion cannot demonstrate that equity holders are substantially likely to receive a meaningful recovery in these cases. As an initial matter, the information in the most recent 10-Q is over five months old and does not take into account such matters as the Debtors

[1] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the proposed chapter 11 plan [Docket No. 139].

filing of Chapter 11 and the Debtors' continuing net losses in operating the business. Furthermore, the numbers in the 10-Q, whether described as "book value" or "fair value," are based on GAAP principles. As a result, the company's financial statements are not determinative of whether the Debtors' estates are solvent or whether equity holders are likely to receive the "meaningful distribution" required to appoint an equity committee.[2]

Moreover, the Debtors are currently running a Court-approved process to sell substantially all of their assets. That process, which has been and will continue to be monitored by all parties is the best indicator of whether equity will receive any recovery.[3] As was pointed out in detail in the initial letters of the Debtors (dated September 18th and September 25th) and the Creditors' Committee, the Stalking Horse Purchase Agreement does not provide sufficient value to pay unsecured creditors in full. Indeed, the Debtors' pending Disclosure Statement indicates that under the Stalking Horse Purchase Agreement, the Subordinated RF Junior Note Claim/RAIT Parent Subordinated Guaranty Claim is expected to receive a recovery of 46% to 77%, the Subordinated Taberna Note Claim is expected to receive a recovery of 65% to 66% and other general unsecured creditors are not receiving post-petition interest. In the face of a current market test, the Ad Hoc Group's reliance on five month old GAAP based numbers, prepared on a going concern basis in the Debtors' June 30, 2019 financial statements, is unsupportable. The simple reality is if the Debtors are as valuable as the Ad Hoc Group purports, bids will come in offering substantially more value than the Stalking Horse Purchase Agreement.

It is precisely because unsecured creditors are not being paid in full that the Creditors' Committee has focused on maximizing value in the Chapter 11 sale process. Before the hearing on approval of the bidding procedures, the Creditors' Committee negotiated significant modifications to the bidding procedures with the Debtors and the Stalking Horse Purchaser to ensure a thorough post-petition marketing process. Indeed, the Court recognized these developments at the bid procedures hearing:

> In addition, the record clearly reflects that there's been substantial dialogue and colloquy between the stakeholders, particularly the committee, the debtor, and the purchaser,

[2] *See Lids Corp. v. Marathon Inv. Partners, L.P. (In re Lids Corp.)*, 281 B.R. 535, 542 (Bankr. D. Del. 2002) ("Although the Generally Accepted Accounting Principles are relevant in solvency analysis, they are not determinative."); *In re Merry-Go-Round Enterprises, Inc. v. The Cit Group/Commerical Serv., Inc.*, 229 B.R. 337, 342-43 (Bankr. D. Md. 1999) (concluding that Form 10-Q financial statement did not rebut presumption of insolvency because it valued debtor's assets and debts under GAAP standard).

[3] *See Cohen v. KB Mezzanine Fund II, LP (In re Submicron Sys. Corp.)*, 432 F.3d 448, 461 (3d Cir. 2006) (Section 363 "is premised on the notion that the market's reaction to a sale best reflects the economic realities of assets' worth. Naturally, then, courts are not required first to determine the assets' worth before approving such a market sale."); *Official Comm. of Unsecured Creditors of Champion Enters. v. Credit Suisse (In re Champion Enters.)*, Adv. No. 10-50514 (KG), 2012 Bankr. LEXIS 4009, at *93-94 (Bankr. D. Del. 2012) ("The Third Circuit has held that sales pursuant to Section 363 are an efficient and reliable mechanism for valuing assets [and a] market test is the best evidence of a company's value at a given point in time.").

> regarding proposed modifications that have now been identified, I think, with particularity to the Court. I understand all of the changes and I'm satisfied that they are appropriate and warranted. . . In addition, the record before the Court does lay out a salient marketing process that the Court believes and that the committee has represented provides a sufficient and meaningful opportunity to market these assets in advance of a sale process that will hopefully conclude at a sale hearing on the 5th of December and in connection with the goal of concluding the transaction or closing the transaction by year-end, which the debtor represents would afford significant material benefits to all stakeholders.

See October 2, 2019 Hearing Transcript, 32:7– 33:3.

Since that hearing, the Creditors' Committee has engaged actively with the Debtors to encourage and facilitate bids by the bid deadline. Bids are due November 27, 2019 and the Creditors' Committee is supportive of higher value coming in through the marketing process. To the extent the Ad Hoc Group believes the Stalking Horse Purchase Agreement undervalues the Debtors' assets, it is free to participate in the auction and submit a higher and better bid. Any additional value from the sale process must first be used to pay off unsecured creditors in full (including post-petition interest) and only then are equity holders entitled to a recovery. Until the Debtors enter into such a transaction, there is no basis to appoint an equity committee.

The other issues raised by the Ad Hoc Group similarly do not warrant reconsideration of the U.S. Trustee's prior decision. The Ad Hoc Group has not explained how retention of valuation professionals is indicative of solvency. After conferring with the Debtors, we understand that these firms were placed on the ordinary course professionals list in the event site-specific valuations are needed, but their services have not yet been used post-petition. In addition, the $44 million of cash shown in the Monthly Operating Report does not demonstrate that the Debtors' assets are performing in any particular way. The cash number has not changed significantly from the petition date and is a "purchased asset" by the Stalking Horse Purchaser.

For the same reasons it was premature to appoint an equity committee in October, it is premature to appoint an equity committee today. There is no need to waste further estate assets and resources with the formation of an official equity committee given the current anticipated level of distributions to unsecured creditors.

In closing, we note that the Ad Hoc Group's new counsel made an informal, expedited discovery demand of the Debtors yesterday and advised that the Ad Hoc Group intends to notice a deposition of the Debtors' CEO for November 26, and to file a motion to terminate exclusivity and for appointment of an official equity committee with a proposed hearing date of December 5, 2019. This underscores that the Ad Hoc Group is more than capable of representing its interests in the case without the appointment of an official equity committee, as we had noted in our prior letter.

I am available to discuss this letter and the Creditors' Committee's position with your office at your earliest convenience.

Sincerely,

/s/ Stephen Zide
Stephen Zide

SZ:ls

cc: Douglas Mannal
David Dean
Nicholas F. Kajon
Michael P. Pompeo
Patrick A. Jackson

DOCUMENT SEPARATOR

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November 15, 2019

BY EMAIL

Richard Schepacarter, Esq.
Office of the United States Trustee
844 King Street, Suite 2207
Wilmington, DE 19801

Re: In re RAIT Funding LLC, et al., Case No. 19-11915 (Bankr. D. Del.) (BLS)

Dear Mr. Schepacarter:

As you know, my firm now represents the *ad hoc* committee of preferred equity security holders ("Ad Hoc Committee") of RAIT Financial Trust ("RAIT Parent"). I write concerning the November 14, 2019 letters of Debtors' counsel and counsel to the Official Committee of Unsecured Creditors responding to my November 12, 2019 letter asking your office to reconsider the appointment of an Official Committee of Equity Holders.

Amazingly, the Debtors attempt to contradict the representations they made in their own recent SEC filing. This makes the appointment of an official equity committee all the more urgent. The letters from both Debtors' counsel and Committee counsel assert nearly identical bases to attempt to refute the grounds set forth in my November 12 letter. Since Debtors counsel's letter provides more detail, we address those assertions and offer our rebuttal to each assertion:[1]

1. *The accounting book value of the net assets of RAIT and its consolidated subsidiaries is not an accurate or representative indication of the fair value of RAIT's net assets—either at the value that could reasonably be obtained if sold collectively (whether through a bankruptcy court-supervised sale process or otherwise), or if each asset were to be measured separately at fair value.* (Debtors Letter, p. 1)

The going concern basis in Debtors' Form 10-Q for the period ending June 30, 2019, filed with the Securities and Exchange Commission on November 7, 2019 (the "10-Q") says the exact opposite: "The accompanying consolidated financial statements have been prepared on a

[1] All responses herein shall apply to both Debtors counsel's letter and Committee counsel's letter.

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going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business." 10-Q, at p. 8. The 10-Q further states: "The financial statements do not include any adjustments that might be necessary should RAIT be unable to continue as a going concern. As a result of the considerations articulated below, there is substantial doubt about RAIT's ability to continue as a going concern within one year after the date that the financial statements are issued." The issue thus arises whether the Debtors acknowledge that if the Debtors had the funding to enable the issuer to operate as a going concern, then the valuation would match the 10-Q balances. If so, then there would be substantial equity value. In fact, as explained in my November 12 letter, the Debtors have over $40 million in cash and their assets are performing well. There is absolutely no basis to conclude that the Debtors cannot continue as a going concern. The only threat the Debtors faced was the maturity of the 2019 notes in August 2019. Now that they have the benefit of the automatic stay, that threat has evaporated. Therefore, there is no reason not to use going concern values.

2. *Under that basis of presentation, the applicable accounting for a majority of RAIT assets was not fair value (or based upon fair value) as of June 30, 2019.* (Debtors Letter, pp. 1-2)

This statement contradicts the representation in the 10-Q, which says "We determined the fair value on substantially all of our loans for disclosure purposes, on an individual loan basis." 10-Q, at p. 26. Since loans represent the vast majority of the RAIT's assets, the Ad Hoc Committee does not see how that is possible. The larger point is this: RAIT Financial Trust owns a collection of disparate loan and real estate assets. Whether or not RAIT is in or out of Chapter 11 should have no bearing on the performance of a mortgage loan backed by real estate asset managed by a third party. Nor should it affect the performance of shopping malls in Michigan managed by RAIT itself. Underscoring this point, performance of loans in two of the most visible portfolios – RAIT FL7 and RAIT FL8 – have been fantastic, with more than 20% of asset pay downs since the Petition Date.

3. *the amounts disclosed related to the "RAIT Securitizations" and "RAIT VIE Properties" on page 31 of the 10-Q represent the balance sheets of the securitization issuers and property-owning entities themselves, as applicable, but they do not reflect any amounts that are eliminated upon consolidation of those entities with RAIT's other subsidiaries that maintain investments in the debt or equity securities issued by the "RAIT Securitizations" or "RAIT VIE Properties."* (Debtors Letter, p. 2)

This statement appears to represent the Debtors' belief that there is at least $37 million of shareholder's equity ($65 million shareholder's equity minus $27 million fair value markdown). The Ad Hoc Committee does recognize that some of the negative value in securitizations may be cancelled because of liabilities from those securitizations are held by RAIT itself, but we have

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not been provided any information by Debtors that would support their equity valuation, whether it is \$37 million, \$65 million, or something in between.

4. *For example, at its issuance, RAIT elected the "fair value option" for one of the junior subordinated notes (see pages 22 through 24 of the 10-Q), which requires that liability to be measured at fair value on a recurring basis. While the estimated fair value of that liability was approximately \$5.1 million at June 30, 2019, calculated in accordance with GAAP, the contractual amount owed (i.e., the unpaid principal balance) for that liability was approximately \$18.7 million* (Debtors Letter, p. 2)

If RAIT's assets are worth less because it is not a going concern (which we refute above in connection with point 1), the Debtors must explain why junior notes are expected to recover more than 2.5 times as much as their fair value at June 30, 2019. Thus far, Debtors have failed to do so.

5. *In addition, the AHEC fails to account for the ongoing erosion of value resulting from RAIT's net monthly cash outflow, as RAIT's ongoing monthly operating expenses exceed RAIT's monthly operating income, as discussed in our prior letters.* (Debtors letter, p. 3)

The Ad Hoc Committee agrees that the Debtors have been mismanaged and that the management team has been egregiously overpaid. The Ad Hoc Committee expects that a properly re-capitalized RAIT would reduce expenses such that it would be cash flow positive.

In short, the Debtors make a series of astounding, unsupportable and contradictory statements to try to undermine the representations they made in the 10-Q. It is shocking, and frankly unprecedented, the extent to which the Debtors attempt to repudiate their own recent SEC filing. This matter clearly warrants further investigation. I will be deposing the Debtors' CEO on these and other issues prior to the December 5 hearing.

Based on the foregoing, the appointment of an official equity committee is even more imperative than we originally believed. Therefore, we reiterate our request that you reconsider your prior position that there are insufficient grounds for the appointment of an official equity committee.

Very truly yours,

s/ Nicholas F. Kajon

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Cc by email: Michael P. Pompeo, Esq.
Patrick A. Jackson, Esq.
Douglas H. Mannal, Esq.
Stephen Zide, Esq.
Joseph H. Huston, Jr., Esq.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: RAIT FUNDING, LLC, a Delaware limited liability company, *et al.*[1] Debtors.	Chapter 11 Case No. 19-11915 (BLS) (Jointly Administered) **Hearing Date: December 5, 2019 at 10:00 a.m.** **Objection Deadline: December 2, 2019 at noon.**

NOTICE OF MOTION OF THE AD HOC COMMITTEE OF PREFERRED EQUITY SECURITY HOLDERS OF RAIT FINANCIAL TRUST FOR ENTRY OF AN ORDER DIRECTING THE UNITED STATES TRUSTEE TO APPOINT AN OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS

PLEASE TAKE NOTICE that on November 21, 2019, Ad Hoc Committee of Holders of Preferred Equity (the "**Ad Hoc Committee**") issued by RAIT Financial Trust, filed the *Motion Of The Ad Hoc Committee Of Preferred Equity Security Holders of Rait Financial Trust For Entry of an Order Directing The United States Trustee to Appoint An Official Committee Of Equity Security Holders* (the "**Motion**") with the Court.

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion is scheduled for December 5, 2019 at 10:00 a.m. (Eastern Time) before The Honorable Brendan Linehan Shannon, United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Courtroom No. 1, Wilmington, Delaware 19801.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number (if applicable), are as follows: RAIT Funding, LLC, a Delaware limited liability company (9983); RAIT Financial Trust, a Maryland real estate investment trust (9819); RAIT General, Inc., a Maryland corporation (9987); RAIT Limited, Inc., a Maryland corporation (9773); Taberna Realty Finance Trust, a Maryland real estate investment trust (3577); RAIT JV TRS, LLC, a Delaware limited liability company (3190); and RAIT JV TRS Sub, LLC, a Delaware limited liability company (4870).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be filed in writing with the Bankruptcy Court, 824 Market Street, 6th Floor, Wilmington, Delaware 19801, and served upon and received by undersigned counsel **on or before December 2, 2019 at noon (Eastern Time)**.

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

DATED: November 21, 2019

Respectfully submitted,

/s/Joseph H. Huston, Jr.

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*Admission *pro hac vice* pending

Counsel to Ad Hoc Committee of Preferred Equity Security Holders of RAIT Financial Trust

CERTIFICATE OF SERVICE

I certify that on November 21, 2019, I served a copy of this Motion and proposed order via electronic mail to counsel for the Debtors, the U.S. Trustee, and Counsel for the Official Committee of Unsecured Creditors. A copy of the Motion was also served electronically through the Court's CM/ECF system upon all other parties having filed a request for notice.

Dated: November 21, 2019

/s/Joseph H. Huston, Jr.
Joseph H. Huston, Jr. (No. 4035)