

REFINITIV

## DELTA REPORT

10-Q

WHLR - WHEELER REAL ESTATE INVE

10-Q - SEPTEMBER 30, 2023 COMPARED TO 10-Q - JUNE 30, 2023

The following comparison report has been automatically generated

TOTAL DELTAS 4592

█ CHANGES 209  
█ DELETIONS 3912  
█ ADDITIONS 471

**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, 2023** **September 30, 2023**

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 001-35713

**WHEELER REAL ESTATE INVESTMENT TRUST, INC.**

(Exact Name of Registrant as Specified in Its Charter)

**Maryland**

**45-2681082**

(State or Other Jurisdiction of  
Incorporation or Organization)

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

**2529 Virginia Beach Blvd,  
Virginia Beach, Virginia**

**23452**

(Address of Principal Executive Offices)

(Zip Code)

**(757) 627-9088**

(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:**

<b>Title of each class</b>	<b>Trading Symbol(s)</b>	<b>Name of each exchange on which registered</b>
Common Stock, \$0.01 par value per share	WHLR	Nasdaq Capital Market
Series B Convertible Preferred Stock	WHLRP	Nasdaq Capital Market
Series D Cumulative Convertible Preferred Stock	WHLRD	Nasdaq Capital Market
7.00% Subordinated Convertible Notes due 2031	WHLRL	Nasdaq Capital Market

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 and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or 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 Exchange Act). Yes □ No

As of August 4, 2023 November 3, 2023, there were 9,809,195 3,226,691 common shares, \$0.01 par value per share, outstanding.

### Wheeler Real Estate Investment Trust, Inc. and Subsidiaries

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#### **Forward-Looking Statements**

Certain statements made in this Quarterly Report on Form 10-Q or incorporated by reference herein are “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and, as such, may involve known and unknown risks, uncertainties and other factors which may cause the actual results, performance or achievements of Wheeler Real Estate Investment Trust, Inc. (the “Company”) to be materially different from future results, performance or achievements expressed or implied by such forward-looking statements. Forward-looking statements, which are based on certain assumptions and describe the Company’s future plans, strategies and expectations, are generally identifiable by use of the words “may”, “will”, “should”, “estimates”, “projects”, “anticipates”, “believes”, “expects”, “intends”, “future”, and words of similar import, or the negative thereof.

Important factors that we think could cause our actual results to differ materially from those expressed or forecasted in the forward-looking statement are summarized below:

- the adverse effect any future pandemic, endemic or outbreak of infectious disease, and mitigation efforts to control their spread;
- the use of and demand for retail space;

- general and economic business conditions, including those affecting the ability of individuals to spend in retail shopping centers and/or the rate and other terms on which we are able to lease our properties;
- tenant bankruptcies;
- the state of the U.S. economy generally, or specifically in the Southeast, Mid-Atlantic and Northeast where our properties are geographically concentrated;
- consumer spending and confidence trends;
- availability, terms and deployment of capital;
- substantial dilution of our common stock, par value \$0.01 ("Common Stock") and steep decline in its market value resulting from the exercise by the holders of our Series D Preferred Stock of their redemption rights and downward adjustment of the conversion price on our outstanding Convertible Notes, each of which has already occurred and is anticipated to continue;
- the degree and nature of our competition;
- changes in governmental regulations, accounting rules, tax rates and similar matters;
- adverse economic or real estate developments in our markets of South Carolina, Georgia, Virginia, Pennsylvania, North Carolina, Massachusetts, New Jersey, Florida, Connecticut, Kentucky, Tennessee, Alabama, Maryland, West Virginia, and Oklahoma;
- the ability and willingness of the Company's tenants and other third parties to satisfy their obligations under their respective contractual arrangements with the Company;
- the ability and willingness of the Company's tenants to renew their leases with the Company upon expiration, the Company's ability to re-lease its properties on the similar or better terms in the event of non-renewal or in the event the Company exercises its right to replace an existing tenant, and obligations the Company may incur in connection with the replacement of an existing tenant;
- litigation risks;
- increases in the Company's financing and other costs as a result of changes in interest rates and other factors;
- the Company's ability to maintain listing on Nasdaq Capital Market;
- the effects of the one-for-ten reverse stock split of our Common Stock (which we refer to as the "Reverse Stock Split") on the trading market of our Common Stock;
- inability to successfully integrate the acquisition of Cedar Realty Trust, Inc.;
- changes in our ability to obtain and maintain financing;
- damage to the Company's properties from catastrophic weather and other natural events, and the physical effects of climate change;
- an uninsured loss on the Company's properties or a loss that exceeds the limits of the Company's insurance policies could subject the Company to lost capital or revenue on those properties;
- continued increases in the cost of necessary insurance could negatively impact the Company's profitability;
- information technology security breaches;
- the Company's ability and willingness to maintain its qualification as a REIT;
- the ability of our operating partnership, Wheeler REIT, L.P., and each of our other partnerships and limited liability companies to be classified as partnerships or disregarded entities for federal income tax purposes;
- the impact of e-commerce on our tenants' business; and
- inability to generate sufficient cash flows due to market conditions, competition, uninsured losses, changes in tax or other applicable laws.

The forward-looking statements contained in this Quarterly Report on Form 10-Q are based on our current expectations and beliefs concerning future developments and their potential effects on the Company. There can be no assurance that future developments affecting the Company will be those that the Company has anticipated. Except for ongoing obligations to disclose material information as required by the federal securities laws, the Company undertakes no obligation to release publicly any revisions to any forward-looking statements to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events. All of the above factors are difficult to predict, contain uncertainties that may materially affect the Company's actual results and may be beyond the Company's control. New factors emerge from time to time, and it is not possible for the Company's management to predict all such factors or to assess the effects of each factor on the Company's business. Accordingly, there can be no assurance that the Company's current expectations will be realized.

You should carefully consider the risks and uncertainties described in this Quarterly Report on Form 10-Q as they identify and address other important risks and uncertainties that could cause actual events and results to differ materially from those contained in the forward-looking statements. Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements.

**Wheeler Real Estate Investment Trust, Inc. and Subsidiaries**  
**Condensed Consolidated Balance Sheets**  
**(in thousands, except par value and share data)**

ASSETS:	ASSETS:	June 30, 2023	December 31, 2022	September 30, 2023	December 31, 2022
		(unaudited)		(unaudited)	
Real estate:	Real estate:			ASSETS:	
				Real estate:	

Land and land improvements	Land and land improvements	\$ 145,368	\$ 144,537	Land and land improvements	\$ 149,272	\$ 144,537
Buildings and improvements	Buildings and improvements	499,740	494,668	Buildings and improvements	504,123	494,668
		645,108	639,205		653,395	639,205
Less accumulated depreciation	Less accumulated depreciation	(86,685)	(78,225)	Less accumulated depreciation	(91,176)	(78,225)
Real estate, net	Real estate, net	558,423	560,980	Real estate, net	562,219	560,980
Cash and cash equivalents	Cash and cash equivalents	28,735	28,491	Cash and cash equivalents	25,419	28,491
Restricted cash	Restricted cash	22,410	27,374	Restricted cash	23,438	27,374
Receivables, net	Receivables, net	11,048	13,544	Receivables, net	11,691	13,544
Assets held for sale		878	—			
Investment securities - related party	Investment securities - related party	3,031	—	Investment securities - related party	6,580	—
Above market lease intangibles, net	Above market lease intangibles, net	2,573	3,134	Above market lease intangibles, net	2,347	3,134
Operating lease right-of-use assets	Operating lease right-of-use assets	14,978	15,133	Operating lease right-of-use assets	9,502	15,133
Deferred costs and other assets, net	Deferred costs and other assets, net	31,286	35,880	Deferred costs and other assets, net	30,741	35,880
<b>Total Assets</b>	<b>Total Assets</b>	<b>\$ 673,362</b>	<b>\$ 684,536</b>	<b>Total Assets</b>	<b>\$ 671,937</b>	<b>\$ 684,536</b>
<b>LIABILITIES:</b>	<b>LIABILITIES:</b>			<b>LIABILITIES:</b>		
Loans payable, net	Loans payable, net	\$ 469,288	\$ 466,029	Loans payable, net	\$ 477,432	\$ 466,029
Liabilities associated with assets held for sale		297	—			
Below market lease intangibles, net	Below market lease intangibles, net	20,479	23,968	Below market lease intangibles, net	19,022	23,968
Derivative liabilities	Derivative liabilities	2,229	7,111	Derivative liabilities	13,392	7,111
Operating lease liabilities	Operating lease liabilities	16,380	16,478	Operating lease liabilities	10,377	16,478
Series D Preferred Stock redemptions				Series D Preferred Stock redemptions	6,448	—
Accounts payable, accrued expenses and other liabilities	Accounts payable, accrued expenses and other liabilities	17,209	18,398	Accounts payable, accrued expenses and other liabilities	18,291	18,398
<b>Total Liabilities</b>	<b>Total Liabilities</b>	<b>525,882</b>	<b>531,984</b>	<b>Total Liabilities</b>	<b>544,962</b>	<b>531,984</b>
Series D Cumulative Convertible Preferred Stock (no par value, 6,000,000 shares authorized, 3,308,603 and 3,152,392 shares issued and outstanding, respectively; \$121.5 million and \$113.4 million aggregate liquidation value, respectively)		107,866	101,518			
Series D Cumulative Convertible Preferred Stock				Series D Cumulative Convertible Preferred Stock	117,353	101,518
<b>EQUITY:</b>	<b>EQUITY:</b>			<b>EQUITY:</b>		
Series A Preferred Stock (no par value, 4,500 shares authorized, 562 shares issued and outstanding; \$0.6 million in aggregate liquidation value)	Series A Preferred Stock (no par value, 4,500 shares authorized, 562 shares issued and outstanding; \$0.6 million in aggregate liquidation value)	453	453	Series A Preferred Stock (no par value, 4,500 shares authorized, 562 shares issued and outstanding; \$0.6 million in aggregate liquidation value)	453	453

Series B Convertible Preferred Stock (no par value, 5,000,000 authorized, 3,379,142 shares issued and outstanding; \$84.5 million aggregate liquidation preference)	Series B Convertible Preferred Stock (no par value, 5,000,000 authorized, 3,379,142 shares issued and outstanding; \$84.5 million aggregate liquidation preference)	44,955	44,911	Series B Convertible Preferred Stock (no par value, 5,000,000 authorized, 3,379,142 shares issued and outstanding; \$84.5 million aggregate liquidation preference)	44,976	44,911
Common Stock (\$0.01 par value, 200,000,000 shares authorized, 9,800,211 and 9,793,957 shares issued and outstanding, respectively)		98	98			
Common Stock (\$0.01 par value, 200,000,000 shares authorized, 980,857 and 979,396 shares issued and outstanding, respectively)				Common Stock (\$0.01 par value, 200,000,000 shares authorized, 980,857 and 979,396 shares issued and outstanding, respectively)	10	10
Additional paid-in capital	Additional paid-in capital	235,120	234,993	Additional paid-in capital	235,295	235,081
Accumulated deficit	Accumulated deficit	(307,213)	(295,617)	Accumulated deficit	(337,231)	(295,617)
Total Stockholders' Deficit	Total Stockholders' Deficit	(26,587)	(15,162)	Total Stockholders' Deficit	(56,497)	(15,162)
Noncontrolling interests	Noncontrolling interests	66,201	66,196	Noncontrolling interests	66,119	66,196
<b>Total Equity</b>	<b>Total Equity</b>	<b>39,614</b>	<b>51,034</b>	<b>Total Equity</b>	<b>9,622</b>	<b>51,034</b>
<b>Total Liabilities and Equity</b>	<b>Total Liabilities and Equity</b>	<b>\$ 673,362</b>	<b>\$ 684,536</b>	<b>Total Liabilities and Equity</b>	<b>\$ 671,937</b>	<b>\$ 684,536</b>

See accompanying notes to condensed consolidated financial statements.

**Wheeler Real Estate Investment Trust, Inc. and Subsidiaries**  
**Condensed Consolidated Statements of Operations**  
(in thousands, except share and per share data)  
(Unaudited)

REVENUE:	REVENUE:	Three Months Ended June 30,				Three Months Ended September 30,				Nine Months Ended September 30,			
		2023		2022		2023		2022		2023		2022	
		Rental revenues	Other revenues	257	155	823	320	549	232	1,372	552	76,110	49,694
<b>Total Revenue</b>	<b>Total Revenue</b>	<b>24,840</b>	<b>15,479</b>	<b>50,906</b>	<b>30,976</b>								
OPERATING EXPENSES:	OPERATING EXPENSES:												
Property operations	Property operations	8,342	4,732	17,297	9,982	Property operations	8,771	6,655			26,068	16,637	
Depreciation and amortization	Depreciation and amortization	7,301	3,625	14,767	7,241	Depreciation and amortization	6,875	4,981			21,642	12,222	

Impairment of assets held for sale	Impairment of assets held for sale	—	100	—	760	Impairment of assets held for sale	—	—	—	760
Corporate general & administrative	Corporate general & administrative	2,818	1,673	5,889	2,937	Corporate general & administrative	2,475	2,498	8,364	5,434
<b>Total Operating Expenses</b>	<b>Total Operating Expenses</b>	18,461	10,130	37,953	20,920	<b>Total Operating Expenses</b>	18,121	14,134	56,074	35,053
Loss on disposal of properties		—	—	—	(15)					
Gain (loss) on disposal of properties						Gain (loss) on disposal of properties			2,204	—
<b>Operating Income</b>	<b>Operating Income</b>	6,379	5,349	12,953	10,041	<b>Operating Income</b>	9,287	4,584	22,240	14,626
Interest income	Interest income	126	14	173	27	Interest income	163	15	336	42
Gain on investment securities, net	Gain on investment securities, net	31	—	31	—	Gain on investment securities, net	49	—	80	—
Interest expense	Interest expense	(10,179)	(7,501)	(16,656)	(12,129)	Interest expense	(7,469)	(6,949)	(24,125)	(19,079)
Net changes in fair value of derivative liabilities	Net changes in fair value of derivative liabilities	3,030	2,085	4,882	(1,877)	Net changes in fair value of derivative liabilities	(11,163)	(656)	(6,281)	(2,533)
Other expense	Other expense	(635)	—	(3,040)	(691)	Other expense	(2,233)	—	(5,273)	(691)
<b>Net Loss Before Income Taxes</b>	<b>Net Loss Before Income Taxes</b>	(1,248)	(53)	(1,657)	(4,629)	<b>Net Loss Before Income Taxes</b>	(11,366)	(3,006)	(13,023)	(7,635)
Income tax expense	Income tax expense	(46)	—	(46)	—	Income tax expense	(2)	—	(48)	—
<b>Net Loss</b>	<b>Net Loss</b>	(1,294)	(53)	(1,703)	(4,629)	<b>Net Loss</b>	(11,368)	(3,006)	(13,071)	(7,635)
Less: Net income (loss) attributable to noncontrolling interests		2,676	(1)	5,368	3					
Less: Net income attributable to noncontrolling interests						Less: Net income attributable to noncontrolling interests			2,693	1,234
<b>Net Loss Attributable to Wheeler REIT</b>	<b>Net Loss Attributable to Wheeler REIT</b>	(3,970)	(52)	(7,071)	(4,632)	<b>Net Loss Attributable to Wheeler REIT</b>	(14,061)	(4,240)	(21,132)	(8,872)
Preferred Stock dividends - undeclared	Preferred Stock dividends - undeclared	(2,261)	(2,264)	(4,525)	(4,528)	Preferred Stock dividends - undeclared	(2,415)	(2,264)	(6,940)	(6,792)
Deemed distribution related to preferred stock redemptions						Deemed distribution related to preferred stock redemptions			(13,542)	—
<b>Net Loss Attributable to Wheeler REIT Common Stockholders</b>	<b>Net Loss Attributable to Wheeler REIT Common Stockholders</b>	\$ (6,231)	\$ (2,316)	\$ (11,596)	\$ (9,160)	<b>Net Loss Attributable to Wheeler REIT Common Stockholders</b>	\$ (30,018)	\$ (6,504)	\$ (41,614)	\$ (15,664)

Loss per share:	Loss per share:	Loss per share:
Basic and Diluted	Basic and Diluted	Basic and Diluted
Weighted average number of shares:	Weighted average number of shares:	Weighted average number of shares:
Basic and Diluted	Basic and Diluted	Basic and Diluted

See accompanying notes to condensed consolidated financial statements.

**Wheeler Real Estate Investment Trust, Inc. and Subsidiaries**  
**Condensed Consolidated Statements of (Deficit) Equity**  
(Uaudited, in thousands, except share data)

	Series A										Series B														
	Preferred Stock		Preferred Stock		Common Stock		Additional Paid-in Capital		Accumulated Deficit		Stockholders' Equity		Preferred Stock		Preferred Stock		Common Stock		Additional Paid-in Capital						
	Shares	Value	Shares	Value	Shares	Value	Capital	Deficit	Shares	Value	Shares	Value	Shares	Value	Shares	Value	Shares	Value	Shares	Value					
Balance, December 31, 2022	Balance, December 31, 2022	562	\$ 453	3,379,142	\$ 44,911	9,793,957	\$ 98	\$ 234,993	\$ (295,617)	\$ (15,162)	22	Stock discount	—	—	—	22	—	—	562	\$ 453	3,379,142	\$ 44,911	979,396	\$ 10	\$ 235,
Accretion of Series B Preferred	Accretion of Series B Preferred																								
Stock discount	Stock discount	—	—	—	—	22	—	—	—	—	22	Stock discount	—	—	—	22	—	—	—	—	—	—	—	—	
Conversion of Series D Preferred	Conversion of Series D Preferred																								
Stock to Common	Stock to Common																								
Stock	Stock	—	—	—	—	6,254	—	140	—	140	Stock	—	—	—	—	—	—	—	—	625	—				
Adjusted for noncontrolling interest in operating partnership	Adjusted for noncontrolling interest in operating partnership	—	—	—	—	—	—	(13)	—	(13)	partnership	—	—	—	—	—	—	—	—	—	—	—	—	—	
Dividends and distributions	Dividends and distributions	—	—	—	—	—	—	—	—	(2,264)	(2,264)	Dividends and distributions	—	—	—	—	—	—	—	—	—	—	—	—	
Net (Loss) Income	Net (Loss) Income	—	—	—	—	—	—	—	—	(3,101)	(3,101)	Net (Loss) Income	—	—	—	—	—	—	—	—	—	—	—	—	
Balance, March 31, 2023 (Unaudited)	Balance, March 31, 2023 (Unaudited)	562	\$ 453	3,379,142	\$ 44,933	9,800,211	98	\$ 235,120	\$ (300,982)	\$ (20,378)	(Unaudited)	562	\$ 453	3,379,142	\$ 44,933	980,021	\$ 10	\$ 235,							
Accretion of Series B Preferred	Accretion of Series B Preferred																								
Stock discount	Stock discount	—	—	—	—	22	—	—	—	—	22	Stock discount	—	—	—	22	—	—	—	—	—	—	—	—	
Dividends and distributions	Dividends and distributions	—	—	—	—	—	—	—	—	(2,261)	(2,261)	Dividends and distributions	—	—	—	—	—	—	—	—	—	—	—	—	
Net (Loss) Income	Net (Loss) Income	—	—	—	—	—	—	—	—	(3,970)	(3,970)	Net (Loss) Income	—	—	—	—	—	—	—	—	—	—	—	—	
Balance, June 30, 2023 (Unaudited)	Balance, June 30, 2023 (Unaudited)	562	\$ 453	3,379,142	\$ 44,955	9,800,211	\$ 98	\$ 235,120	\$ (307,213)	\$ (26,587)	(Unaudited)	562	\$ 453	3,379,142	\$ 44,955	980,021	\$ 10	\$ 235,							

Accretion of	Accretion of
Series B	Series B
Preferred	Preferred
Stock discount	Stock discount — — — 21 — —
Conversion of	Conversion of
Operating	Operating
Partnership	Partnership
units to	units to
Common	Common
Stock	Stock — — — — 898 —
Adjustments	Adjustments
for	for
noncontrolling	noncontrolling
interest in	interest in
operating	operating
partnership	partnership — — — — — —
Adjustment of	Adjustment of
Series D	Series D
Preferred	Preferred
Stock	Stock
to redemption	to redemption
value	value — — — — — —
Redemption	Redemption
of fractional	of fractional
units	units
as a result of	as a result of
reverse stock	reverse stock
split	split — — — — (62) —
Dividends and	Dividends and
distributions	distributions — — — — — —
Net (Loss)	Net (Loss)
Income	Income — — — — — —
Balance,	Balance,
September 30,	September 30,
2023	2023
(Unaudited)	(Unaudited) 562 \$ 453 3,379,142 \$ 44,976 980,857 \$ 10 \$ 235,

**Wheeler Real Estate Investment Trust, Inc. and**

**Subsidiaries**

**Condensed Consolidated Statements of (Deficit)**

**Equity (Unaudited, in thousands, except share**

**data) Continued**

Wheeler Real Estate Investment Trust, Inc. and Subsidiaries		Condensed Consolidated Statements of (Deficit) Equity (Unaudited, in thousands, except share data) Continued										Noncontrolling Interests	
		Operating Partnership			Consolidated Subsidiary			Total			Noncontrolling Interests		
		Partnership	Subsidiary	Total	Equity		Partnership	Subsidiary	Total	Equity			
Balance,	Balance,					Balance,							
December 31,	December 31,					December 31,							
2022	2022	\$ 1,351	\$ 64,845	\$ 66,196	\$ 51,034	2022	\$ 1,351	\$ 64,845	\$ 66,196	\$ 51,034			
Accretion of	Accretion of					Accretion of							
Series B	Series B					Series B							
Preferred	Preferred					Preferred							
Stock discount	Stock discount	—	—	—	22	Stock discount	—	—	—	22			
Conversion of	Conversion of	—	—	—	140	Conversion of	—	—	—	140			
Series D	Series D					Series D							
Preferred	Preferred					Preferred							

Stock to Common Stock	Stock to Common Stock	Stock to Common Stock
Adjusted for noncontrolling interest in operating partnership	Adjusted for noncontrolling interest in operating partnership	Adjusted for noncontrolling interest in operating partnership
Dividends and distributions	Dividends and distributions	Dividends and distributions
Net (Loss) Income	Net (Loss) Income	Net (Loss) Income
Balance, March 31, 2023 (Unaudited)	Balance, March 31, 2023 (Unaudited)	Balance, March 31, 2023 (Unaudited)
Accretion of Series B Preferred Stock discount	Accretion of Series B Preferred Stock discount	Accretion of Series B Preferred Stock discount
Dividends and distributions	Dividends and distributions	Dividends and distributions
Net (Loss) Income	Net (Loss) Income	Net (Loss) Income
Balance, June 30, 2023 (Unaudited)	Balance, June 30, 2023 (Unaudited)	Balance, June 30, 2023 (Unaudited)
Accretion of Series B Preferred Stock discount	Accretion of Series B Preferred Stock discount	Accretion of Series B Preferred Stock discount
Conversion of Operating Partnership units to Common Stock	Conversion of Operating Partnership units to Common Stock	Conversion of Operating Partnership units to Common Stock
Adjustments for noncontrolling interest in operating partnership	Adjustments for noncontrolling interest in operating partnership	Adjustments for noncontrolling interest in operating partnership
Adjustment of Series D Preferred Stock to redemption value	Adjustment of Series D Preferred Stock to redemption value	Adjustment of Series D Preferred Stock to redemption value
Redemption of fractional units as a result of reverse stock split	Redemption of fractional units as a result of reverse stock split	Redemption of fractional units as a result of reverse stock split
Dividends and distributions	Dividends and distributions	Dividends and distributions
Net (Loss)	Net (Loss)	Net (Loss)

Income	Income
--------	--------

Balance, September 30, 2023 (Unaudited)	Balance, September 30, 2023 (Unaudited)	\$ 1,274	\$ 64,845	\$ 66,119	\$ 9,622
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**Wheeler Real Estate Investment Trust, Inc. and Subsidiaries**  
**Condensed Consolidated Statements of (Deficit) Equity**  
**(Unaudited, in thousands, except share data)**

**Continued**

	Series A										Series B										Noncontrolling		Preferred Shares		
	Preferred					Common Stock					Additional					Stockholders' (Deficit)		Interests		Total					
	Stock		Preferred Stock			Common Stock		Shares		Value			Paid-in Capital		Shares			Value		Accumulated Deficit		Equity			
	Shares	Value	Shares	Value	Shares	Value	Shares	Value	Capital	Shares	Value	Shares	Value	Deficit	Shares	Value	Equity	Partnership	Equity	Equity	Shares	Shares			
Balance, December 31, 2021	Balance, December 31, 2021	562	\$ 453	1,872,448	\$ 41,189	9,720,532	\$ 97	\$ 234,229	\$ (274,107)				\$ 1,861		\$ 1,941	\$ 3,802								B D A P S d	
Accretion of Series B Preferred Stock discount	Accretion of Series B Preferred Stock discount	—	—	—	22	—	—	—	—	—	—	—	—	22		—	—	—	—	—	—	—	—	Conversion of Series B Preferred Stock	
Conversion of Series B Preferred Stock to Common Stock	Conversion of Series B Preferred Stock to Common Stock	—	—	(4,105)	(90)	2,561	—	90	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	Dividends and distributions	
Dividends and distributions	Dividends and distributions	—	—	—	—	—	—	—	—	—	—	—	(2,264)		(2,264)	—	—	(2,264)	—	—	—	—	—	Net (Loss)	
Net (Loss) Income	Net (Loss) Income	—	—	—	—	—	—	—	—	—	—	—	(4,580)		(4,580)	4	—	(4,576)	—	—	—	—	—	Balance, March 31, 2022 (Unaudited)	
Balance, March 31, 2022 (Unaudited)	Balance, March 31, 2022 (Unaudited)	562	453	1,868,343	41,121	9,723,093	97	234,319	(280,951)				(4,961)		1,945	(3,016)	(Unaudited)	56							Accretion of Series B Preferred Stock discount
Accretion of Series B Preferred Stock discount	Accretion of Series B Preferred Stock discount	—	—	—	22	—	—	—	—	—	—	—	—	22	—	—	—	—	—	—	—	—	—	Conversion of Operating Partnership units to Common Stock	
Conversion of Operating Partnership units to Common Stock	Conversion of Operating Partnership units to Common Stock	—	—	—	—	69,620	1	158	—	—	—	—	—	159	(159)	—	—	—	—	—	—	—	—	Common	

Adjustments for noncontrolling interest in operating partnership	Adjustments for noncontrolling interest in operating partnership	—	—	—	—	—	470	—	470	(470)	—	Adjustments for noncontrolling interest in operating partnership
Paid-in-kind interest, issuance of Series B Preferred Stock	Paid-in-kind interest, issuance of Series B Preferred Stock	—	—	432,994	2,099	—	—	—	2,099	—	2,099	Paid-in-kind interest, issuance of Series B Preferred Stock
Dividends and distributions	Dividends and distributions	—	—	—	—	—	—	(2,264)	(2,264)	—	(2,264)	Dividends and distributions
Net Loss	Net Loss	—	—	—	—	—	—	(52)	(52)	(1)	(53)	Net Loss
Balance, June 30, 2022 (Unaudited)	Balance, June 30, 2022 (Unaudited)	562	\$ 453	2,301,337	\$ 43,242	9,792,713	\$ 98	\$ 234,947	\$ (283,267)	\$ (4,527)	\$ 1,315	\$ (3,212)
Accretion of Series B Preferred Stock discount	Conversion of Operating Partnership units to Common Stock	Adjustments for noncontrolling interest in operating partnership	Noncontrolling interests assumed from the acquisition	Dividends and distributions	Net Loss	Balance, September 30, 2022 (Unaudited)	56					

### Wheeler Real Estate Investment Trust, Inc. and Subsidiaries

### Condensed Consolidated Statements of (Deficit) Equity

(Unaudited, in thousands, except share data)

Continued

#### Noncontrolling Interests

	Operating Partnership	Consolidated Subsidiary	Total	Total Equity
Balance, December 31, 2021	\$ 1,941	\$ —	\$ 1,941	\$ 3,802

Accretion of Series B Preferred				
Stock discount	—	—	—	22
Conversion of Series B Preferred				
Stock to Common Stock	—	—	—	—
Dividends and distributions	—	—	—	(2,264)
Net (Loss) Income	4	—	4	(4,576)
Balance, March 31, 2022 (Unaudited)	1,945	—	1,945	(3,016)
Accretion of Series B Preferred				
Stock discount	—	—	—	22
Conversion of Operating Partnership				
units to Common Stock	(159)	—	(159)	—
Adjustments for noncontrolling interest in operating partnership	(470)	—	(470)	—
Paid-in-kind interest, issuance of Series B Preferred Stock	—	—	—	2,099
Dividends and distributions	—	—	—	(2,264)
Net Loss	(1)	—	(1)	(53)
Balance, June 30, 2022 (Unaudited)	1,315	—	1,315	(3,212)
Accretion of Series B Preferred				
Stock discount	—	—	—	21
Conversion of Operating Partnership				
units to Common Stock	(2)	—	(2)	—
Adjustments for noncontrolling interest in operating partnership	(7)	—	(7)	—
Noncontrolling interests assumed from acquisition	—	64,845	64,845	64,845
Dividends and distributions	—	(1,225)	(1,225)	(3,489)
Net Loss	9	1,225	1,234	(3,006)
Balance, September 30, 2022 (Unaudited)	\$ 1,315	\$ 64,845	\$ 66,160	\$ 55,159

See accompanying notes to condensed consolidated financial statements.

**Wheeler Real Estate Investment Trust, Inc. and Subsidiaries**  
**Condensed Consolidated Statements of Cash Flows**  
(in thousands)  
(Unaudited)

OPERATING ACTIVITIES:	OPERATING ACTIVITIES:	For the Six Months Ended June 30,		For the Nine Months Ended September 30,	
				2023	2022
		Net Loss	Net Loss	\$ (1,703)	\$ (4,629)
Net Loss	Net Loss	\$ (1,703)	\$ (4,629)	\$ (13,071)	\$ (7,635)
Adjustments to reconcile consolidated net loss to net cash provided by operating activities:	Adjustments to reconcile consolidated net loss to net cash provided by operating activities:				
Depreciation and amortization	Depreciation and amortization	14,767	7,241	21,642	12,222
Deferred financing cost amortization	Deferred financing cost amortization	1,721	1,348	2,357	2,154

Changes in fair value of derivative liabilities	Changes in fair value of derivative liabilities	(4,882)	1,877	Changes in fair value of derivative liabilities	6,281	2,533
Above (below) market lease amortization, net	Above (below) market lease amortization, net	(2,633)	16	Above (below) market lease amortization, net	(3,865)	(478)
Paid-in-kind interest	Paid-in-kind interest	2,006	2,099	Paid-in-kind interest	2,006	2,099
Loss on repurchase of debt securities	Loss on repurchase of debt securities	594	—	Loss on repurchase of debt securities	1,647	—
Unrealized gain on investment securities, net	Unrealized gain on investment securities, net	(31)	—	Unrealized gain on investment securities, net	(80)	—
Straight-line expense	Straight-line expense	15	16	Straight-line expense	7	24
<b>Loss on disposal of properties</b>		—	15	<b>(Gain) loss on disposal of properties</b>	(2,204)	15
Credit losses on operating lease receivables	Credit losses on operating lease receivables	182	190	Credit losses on operating lease receivables	481	267
Impairment of assets held for sale	Impairment of assets held for sale	—	760	Impairment of assets held for sale	—	760
<b>Net changes in assets and liabilities:</b>	<b>Net changes in assets and liabilities:</b>			<b>Net changes in assets and liabilities:</b>		
Receivables, net	Receivables, net	2,315	598	Receivables, net	1,373	222
Deferred costs and other assets, net	Deferred costs and other assets, net	(1,358)	(2,543)	Deferred costs and other assets, net	(3,166)	3,074
Accounts payable, accrued expenses and other liabilities	Accounts payable, accrued expenses and other liabilities	514	2,963	Accounts payable, accrued expenses and other liabilities	1,624	12,697
Net cash provided by operating activities	Net cash provided by operating activities	11,507	9,951	Net cash provided by operating activities	15,032	27,954
<b>INVESTING ACTIVITIES:</b>	<b>INVESTING ACTIVITIES:</b>			<b>INVESTING ACTIVITIES:</b>		
Investment property acquisitions	Investment property acquisitions	(191)	(1,538)	Investment property acquisitions	(4,259)	(135,510)
Expenditures for real estate improvements	Expenditures for real estate improvements	(6,845)	(3,495)	Expenditures for real estate improvements	(11,618)	(6,382)
<b>Purchase of marketable securities</b>		(3,000)	—	<b>Purchase of investment securities</b>	(6,500)	—
Purchase of investment securities				Cash received from disposal of properties	2,759	1,786
Cash received from disposal of properties	Cash received from disposal of properties	—	1,786	Cash received from disposal of properties	—	—
Net cash used in investing activities	Net cash used in investing activities	(10,036)	(3,247)	Net cash used in investing activities	(19,618)	(140,106)
<b>FINANCING ACTIVITIES:</b>	<b>FINANCING ACTIVITIES:</b>			<b>FINANCING ACTIVITIES:</b>		
Payments for deferred financing costs	Payments for deferred financing costs	(4,116)	(3,729)	Payments for deferred financing costs	(4,440)	(8,748)
Dividends and distributions paid on noncontrolling interests	Dividends and distributions paid on noncontrolling interests	(5,376)	—	Dividends and distributions paid on noncontrolling interests	(8,064)	—

Loan proceeds	Loan proceeds	114,170	75,000	Loan proceeds	123,230	265,000
Loan principal payments	Loan principal payments	(107,922)	(70,384)	Loan principal payments	(108,274)	(127,603)
Repurchase of debt securities	Repurchase of debt securities	(1,189)	—	Repurchase of debt securities	(3,116)	—
Loan prepayment penalty	Loan prepayment penalty	(1,758)	(1,458)	Loan prepayment penalty	(1,758)	(2,614)
Net cash used in financing activities		(6,191)	(571)	Net cash (used in) provided by financing activities		
Net cash (used in) provided by financing activities				Net cash (used in) provided by financing activities		
<b>(DECREASE) INCREASE IN CASH, CASH EQUIVALENTS AND RESTRICTED CASH</b>	<b>(DECREASE) INCREASE IN CASH, CASH EQUIVALENTS AND RESTRICTED CASH</b>			<b>(DECREASE) INCREASE IN CASH, CASH EQUIVALENTS AND RESTRICTED CASH</b>		
CASH, CASH EQUIVALENTS AND RESTRICTED CASH, beginning of period	RESTRICTED CASH	(4,720)	6,133	RESTRICTED CASH	(7,008)	13,883
CASH, CASH EQUIVALENTS AND RESTRICTED CASH, end of period	CASH, CASH EQUIVALENTS AND RESTRICTED CASH, beginning of period	55,865	40,419	CASH, CASH EQUIVALENTS AND RESTRICTED CASH, end of period	55,865	40,419
CASH, CASH EQUIVALENTS AND RESTRICTED CASH, end of period	RESTRICTED CASH, end of period	\$ 51,145	\$ 46,552	RESTRICTED CASH, end of period	\$ 48,857	\$ 54,302
<b>Supplemental Disclosure:</b>	<b>Supplemental Disclosure:</b>			<b>Supplemental Disclosure:</b>		
The following table provides a reconciliation of cash, cash equivalents and restricted cash:	The following table provides a reconciliation of cash, cash equivalents and restricted cash:			The following table provides a reconciliation of cash, cash equivalents and restricted cash:		
Cash and cash equivalents	Cash and cash equivalents	\$ 28,735	\$ 24,606	Cash and cash equivalents	\$ 25,419	\$ 24,057
Restricted cash	Restricted cash	22,410	21,946	Restricted cash	23,438	30,245
Cash, cash equivalents, and restricted cash	Cash, cash equivalents, and restricted cash	\$ 51,145	\$ 46,552	Cash, cash equivalents, and restricted cash	\$ 48,857	\$ 54,302

See accompanying notes to condensed consolidated financial statements.

**Wheeler Real Estate Investment Trust, Inc. and Subsidiaries**  
**Notes to Condensed Consolidated Financial Statements (Continued)**  
**(Unaudited)**

## 1. Business and Organization

Wheeler Real Estate Investment Trust, Inc. (the "Trust," the "REIT," the "Company," "we," "our" or "us") is a Maryland corporation formed on June 23, 2011. The Trust serves as the general partner of Wheeler REIT, L.P. (the "Operating Partnership" "Operating Partnership"), which was formed as a Virginia limited partnership on April 5, 2012. At **June 30, 2023** **September 30, 2023**, the Trust owned **99.05%** **99.11%** of the Operating Partnership. As of **June 30, 2023** **September 30, 2023**, the Trust, through the Operating Partnership, owned and operated seventy-five retail shopping centers and four undeveloped properties in South Carolina, Georgia, Virginia, Pennsylvania, North Carolina, Massachusetts, New Jersey, Florida, Connecticut, Kentucky, Tennessee, Alabama, Maryland, West Virginia, and Oklahoma. These centers and undeveloped properties include the properties acquired through the Cedar Acquisition (described (defined below). Accordingly, the use of the word "Company" refers to the Trust and its consolidated subsidiaries, except where the context otherwise requires.

The Trust through the Operating Partnership owns Wheeler Interests ("WI") and Wheeler Real Estate, LLC ("WRE") (collectively (WRE and, together with WI, the "Operating Companies"). The Operating Companies are Taxable taxable REIT Subsidiaries ("TRS") to accommodate serving the Non-REIT Properties non-REIT properties since applicable REIT regulations consider the income derived from these services to be "bad" income subject to taxation. The regulations allow for costs incurred by the Company commensurate with the services performed for the Non-REIT Properties non-REIT properties to be allocated to a TRS.

### **Acquisition of Cedar Realty Trust**

On August 22, 2022, the Company completed a merger transaction (the "Cedar Acquisition") with Cedar Realty Trust, Inc. ("Cedar"). As a result of the merger, the Company acquired all of the outstanding shares of Cedar's common stock, which ceased to be publicly traded on the New York Stock Exchange ("NYSE"). Through this acquisition, the Company acquired an additional 19 retail shopping centers in the Northeast. Cedar's outstanding 7.25% Series B Preferred Stock and 6.50% Series C Preferred Stock remain outstanding and continue to trade on the NYSE. As a result of the Cedar Acquisition, Cedar became a subsidiary of the REIT.

## 2. Summary of Significant Accounting Policies

**Principles of Consolidation/Basis of Preparation**

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with the instructions to Form 10-Q and include all of the information and disclosures required by U.S. Generally Accepted Accounting Principles ("GAAP") for interim reporting. Accordingly, they do not include all of the disclosures required by GAAP for complete financial statement disclosures. In the opinion of management, all adjustments necessary for fair presentation (including normal recurring accruals) have been included. All material balances and transactions between the consolidated entities of the Company have been eliminated. All per share amounts, common units and shares outstanding, warrants, and conversion features of our 7.00% Subordinated Convertible Notes due 2031 (the "Convertible Notes") for all periods presented reflect the one-for-ten Reverse Stock Split, which took effect on August 17, 2023. The financial statements are prepared on the accrual basis in accordance with GAAP, which requires management to make estimates and assumptions that affect the disclosure of contingent assets and liabilities, the reported amounts of assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses during the periods covered by the financial statements. Actual results could differ from these estimates. The unaudited condensed consolidated financial statements in this Quarterly Report on Form 10-Q should be read in conjunction with the audited consolidated financial statements and related notes contained in the Company's Annual Report on Form 10-K for the year ended December 31, 2022 (the "2022 Form 10-K").

The unaudited condensed consolidated financial statements included in this Quarterly Report on Form 10-Q include Cedar starting from the date of acquisition, the Cedar Acquisition. We have determined that this acquisition is not a variable interest entity, as defined under the consolidation topic of the Financial Accounting Standards Board (the "FASB"), Accounting Standards Codification, or ASC, and we evaluated such entity under the voting model and concluded we should consolidate the entity. Under the voting model, we consolidate the entity if we determine that we, directly or indirectly, have greater than 50% of the voting rights and that other equity holders do not have substantive participating rights.

See the Company's audited 2022 Form 10-K for the year ended December 31, 2022 for further disclosure regarding the Cedar Acquisition.

**Wheeler Real Estate Investment Trust, Inc. and Subsidiaries**  
**Notes to Condensed Consolidated Financial Statements (Continued)**  
**(Unaudited)**

**2. Summary of Significant Accounting Policies (continued)**

**Supplemental Condensed Consolidated Statements of Cash Flows Information**

	For the Six Months Ended June 30,		For the Nine Months Ended September 30,			
	2023	2022	2023	2022		
Non-Cash Transactions:	Non-Cash Transactions:		Non-Cash Transactions:			
Conversion of common units to common stock	\$ —	\$ 159				
Conversion of Series B Preferred Stock to common stock	\$ —	\$ 90				
Conversion of Series D Preferred Stock to common stock	\$ 140	\$ —				
Conversion of common units to Common Stock			Conversion of common units to Common Stock	\$ 57 \$ 160		
Conversion of Series B Preferred Stock to Common Stock			Conversion of Series B Preferred Stock to Common Stock	\$ — \$ 90		
Conversion of Series D Preferred Stock to Common Stock			Conversion of Series D Preferred Stock to Common Stock	\$ 140 \$ —		
Accretion of Preferred Stock discounts	Accretion of Preferred Stock discounts	\$ 292	\$ 292	Accretion of Preferred Stock discounts	\$ 438	\$ 438
Buildings and improvements included in accounts payable, accrued expenses and other liabilities	Buildings and improvements included in accounts payable, accrued expenses and other liabilities	\$ 101	\$ 56	Buildings and improvements included in accounts payable, accrued expenses and other liabilities	\$ 1,979	\$ 736

Other Cash Transactions:		Other Cash Transactions:		Other Cash Transactions:			
Cash paid for amounts included in the measurement of operating lease liabilities		Cash paid for amounts included in the measurement of operating lease liabilities				Cash paid for amounts included in the measurement of operating lease liabilities	
Cash paid for interest		\$ 556	\$ 452			\$ 798	\$ 700
		Cash paid for interest		\$ 12,700	\$ 8,937	Cash paid for interest	
						\$ 18,951	\$ 14,137

#### **Other Expense**

Other expense represents expenses which are non-operating in nature. Other expenses were \$0.6 million and \$3.0 million for the three and six months ended **June 30, 2023** **September 30, 2023**, respectively, which consisted of \$0.6 million and \$2.4 million for an exchange offer (the "Exchange Offer") for outstanding shares of the Company's Series D Cumulative Convertible Preferred Stock (the "Series D Preferred Stock") and \$1.1 million and \$1.6 million for the repurchase 23,784 units three and nine months ended **September 30, 2023**, respectively, for the repurchases of the Company's Convertible Notes described in Note 7 in this Form 10-Q and \$2.4 million for an exchange offer for 10-Q. Additionally, other expense included transaction costs related to the Company's outstanding shares redemptions by holders of the Series D Preferred (the "Exchange Offer"). Stock and Reverse Stock Split for \$1.1 million and \$1.3 million for the three and nine months ended **September 30, 2023**, respectively.

Other expenses were \$0.0 million and \$0.7 million for the three and six months ended **June 30, 2022** **September 30, 2022**, respectively, which consisted of legal settlement costs.

#### **Recently Issued and Adopted Accounting Pronouncements**

Accounting standards that have been recently issued or proposed by the FASB or other standard-setting bodies are not currently applicable to the Company or are not expected to have a significant impact on the Company's financial position, results of operations and cash flows.

#### **Reclassifications**

The Company has reclassified certain prior period amounts in the accompanying condensed consolidated financial statements in order to be consistent with the current period presentation. These reclassifications had no effect on net loss, total assets, total liabilities or equity, loss. All per share amounts, common units and shares outstanding, warrants, and conversion features of the Convertible Notes for all periods presented reflect our one-for-ten Reverse Stock Split which was effective August 17, 2023.

### **3. Real Estate**

A significant portion of the Company's land, buildings and improvements serve as collateral for its mortgage loans. Accordingly, restrictions exist as to the encumbered property's transferability, use and other common rights typically associated with property ownership.

#### **St. George Plaza Land Acquisition**

#### **Wheeler Real Estate Investment Trust, Inc. and Subsidiaries** **Notes to Condensed Consolidated Financial Statements (Continued)** **(Unaudited)**

### **3. Real Estate (continued)**

On February 21, 2023 the Company purchased a 2.5 acre land parcel adjacent to St. George Plaza, located in St. George, South Carolina, for \$0.2 million.

#### **Devine Street Land Acquisition**

On August 18, 2023, the Company purchased a 3.25 acre land parcel within Devine Street, located in Columbia, South Carolina, for \$4.1 million (the "Devine Street Land Acquisition"). The Devine Street Land Acquisition terminated the Company's ground lease associated with this property.

#### **Assets Held for Sale, Impairment and Dispositions**

At June 30, 2023, assets held for sale included an outparcel building adjacent to Carl's Corner, in Bridgeton, New Jersey, as the Company has committed to a plan to sell the outparcel. Assets held for sale on the condensed consolidated

#### **Wheeler Real Estate Investment Trust, Inc. and Subsidiaries** **Notes to Condensed Consolidated Financial Statements (Continued)** **(Unaudited)**

### **3. Real Estate (continued)**

balance sheets are primarily real estate, net and deferred costs and other assets, net. Liabilities held for sale on the condensed consolidated balance sheets are primarily below market lease intangibles, net.

Impairment expenses on assets held for sale are a result of reducing the carrying value for the amount that exceeded the property's fair value less estimated selling costs. The valuation assumptions are based on the three-level valuation hierarchy for fair value measurement and represent Level 2 inputs. No impairment expense was recorded for the three and **six** nine months ended **June 30, 2023** **September 30, 2023**. Impairment expense was **\$0.1** **\$0.0** million and **\$0.8** million for the three and **six** nine months ended **June 30, 2022** **September 30, 2022**, respectively, resulting from reducing the carrying value of Harbor Pointe Associates, LLC, an approximate 5 acre land parcel ("Harbor Pointe Land Parcel"). The Harbor Pointe Land Parcel did not meet the requirements to be classified as held for sale at **June 30, 2023** **September 30, 2023** or December 31, 2022.

There were no property sales during the six months ended June 30, 2023. The following property was properties were sold during the **six** nine months ended **June 30, 2022** **September 30, 2023** and 2022 (in thousands, unaudited):

Disposal Date	Disposal					Disposal Date	Disposal			
	Date	Property	Contract Price	Gain (Loss)	Net Proceeds		Property	Contract Price	Gain (Loss)	Net Proceeds
July 11, 2023						July 11, 2023	Carl's Corner Outparcel	\$ 3,000	\$ 2,204	\$ 2,759
January 11, 2022	January 11, 2022	Walnut Hill Plaza	\$ 1,986	\$ (15)	\$ 1,786	January 11, 2022	Walnut Hill Plaza	\$ 1,986	\$ (15)	\$ 1,786

#### 4. Investment Securities - Related Party

On June 1, 2023, the Company subscribed for an investment in the amount of \$3.0 million for limited partnership interest interests in Stilwell Activist Investments, L.P. ("SAI"), a Delaware limited partnership formed in exchange the State of Delaware ("SAI"). On September 1, 2023, the Company subscribed for a \$3.0 an additional investment in the amount of \$3.5 million capital contribution, for limited partnership interests in SAI. The investment objective of SAI is to seek long-term capital appreciation through investing primarily in publicly-traded undervalued financial institutions, or businesses with a strong financial component, or the securities of any of them, and pursuing an activist shareholder agenda with respect to those institutions.

Stilwell Value LLC ("Value") is the general partner of SAI. Joseph Stilwell, a member of the Company's Board of Directors (the "Board"), is the managing member of Value and a limited partner in funds advised by Value. Additionally, E.J. Borrack, a member of the Company's Board, of Directors, serves as the General Counsel to Value and its affiliated entities, including SAI and related funds, and is a limited partner in one of the funds advised by Value. Megan Parisi, a member of the Company's Board, of Directors, serves as the Director of Communications to Value and its affiliated entities, including SAI and related funds, is a non-managing member of Value and is a limited partner in one of the funds advised by Value.

The Company's initial subscription for SAI's limited partnership interest was approved by the disinterested directors of the Company, Company, and, after the formation of the Related Person Transactions Committee, the second subscription was approved by that Committee.

A portion of SAI's underlying investments are in the Company's own equity and debt securities.

SAI records investment transactions based on trade date. Realized gains and losses from investment transactions are determined on a specific identification basis. Dividend income, net of withholding taxes, and dividend expense are recognized on the ex-dividend date, and interest income and expense are recognized on an accrual basis. Discounts and premiums to the face amount of debt securities are accreted and amortized using the effective interest rate method over the lives of the respective debt securities.

The Company may not withdraw its capital from SAI for a period of one year measured from the date of the Company's initial contribution, investment, subject to certain exceptions.

**Wheeler Real Estate Investment Trust, Inc. and Subsidiaries**  
**Notes to Condensed Consolidated Financial Statements (Continued)**  
**(Unaudited)**

#### 4. Investment securities (continued)

In consideration for management, administrative and operational services, limited partners of SAI pay a management fee to an affiliate of Value each calendar quarter, in advance, equal to 0.25% (an annualized rate of 1%) of each limited partner's capital account balance on the first day of such calendar quarter. In addition, as of the last day of each specified performance period, an incentive allocation of 20% of the amount by which the "positive performance change", change, if any, that has been credited to the capital account of a limited partner during such period exceeds any positive balance in such limited partner's "carryforward account", account, is debited from the limited partner's capital account and is simultaneously credited to the capital account of Value.

**Wheeler Real Estate Investment Trust, Inc. and Subsidiaries**  
**Notes to Condensed Consolidated Financial Statements (Continued)**  
**(Unaudited)**

The Company's SAI investment is accounted for under the equity method and measured at net asset value as a practical expedient and has not been classified within the fair value hierarchy. All gains and losses, realized and unrealized, and fees are recorded through "gains (losses) on investment securities, net" on the condensed consolidated statements of operations. As of **June 30, 2023** **September 30, 2023**, the fair value of the Company's SAI investment was **\$3.0** **\$6.6** million, which includes the **\$3.0** **\$6.5** million subscription, **\$10** from subscriptions and **\$33** thousand in fees. Unrealized gains on investment securities, net of fees were **\$49** thousand and **\$41** **\$80** thousand in unrealized gains for the three and nine months ended September 30, 2023, respectively.

## 5. Deferred Costs and Other Assets, Net

Deferred costs and other assets, net of accumulated amortization are as follows (in thousands, unaudited):

		June 30, 2023	December 31, 2022		September 30, 2023		December 31, 2022
Leases in place, net	Leases in place, net	20,296	\$ 24,956	Leases in place, net	\$ 18,374	\$ 24,956	
Lease origination costs, net	Lease origination costs, net	6,670	7,165	Lease origination costs, net	6,573	7,165	
Ground lease sandwich interest, net	Ground lease sandwich interest, net	1,256	1,393	Ground lease sandwich interest, net	1,188	1,393	
Tenant relationships, net	Tenant relationships, net	379	500	Tenant relationships, net	328	500	
Legal and marketing costs, net	Legal and marketing costs, net	344	389	Legal and marketing costs, net	331	389	
Prepaid expenses	Prepaid expenses	2,341	1,456	Prepaid expenses	3,944	1,456	
Other	Other	—	21	Other	3	21	
<b>Total deferred costs and other assets, net</b>	<b>Total deferred costs and other assets, net</b>	<b>\$ 31,286</b>	<b>\$ 35,880</b>	<b>Total deferred costs and other assets, net</b>	<b>\$ 30,741</b>	<b>\$ 35,880</b>	

As of **June 30, 2023** **September 30, 2023** and December 31, 2022, the Company's intangible accumulated amortization totaled **\$66.3** **\$68.2** million and \$62.4 million, respectively.

## 6. Rental Revenue and Tenant Receivables

### Tenant Receivables

As of **June 30, 2023** **September 30, 2023** and December 31, 2022, the Company's allowance for uncollectible tenant receivables totaled **\$1.6** **\$1.3** million and \$3.1 million, respectively.

### Lease Contract Revenue

At **June 30, 2023** **September 30, 2023** and December 31, 2022, there were **\$7.2** **\$7.5** million and \$6.5 million, respectively, in unbilled straight-line rent, which is included in "rents and other tenant receivables, "receivables, net."

The below table disaggregates the Company's revenue by type of service (in thousands, unaudited):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Base rent	\$ 18,117	\$ 11,907	\$ 36,126	\$ 23,816
Tenant reimbursements - variable lease revenue	4,861	3,275	10,437	6,580
Above (below) market lease amortization	1,237	7	2,633	(16)
Straight-line rents	373	156	719	233
Percentage rent - variable lease revenue	152	116	350	233
Lease termination fees	—	32	115	107
Other	257	123	708	213
<b>Total</b>	<b>24,997</b>	<b>15,616</b>	<b>51,088</b>	<b>31,166</b>
Credit losses on operating lease receivables	(157)	(137)	(182)	(190)
<b>Total</b>	<b>\$ 24,840</b>	<b>\$ 15,479</b>	<b>\$ 50,906</b>	<b>\$ 30,976</b>

**Wheeler Real Estate Investment Trust, Inc. and Subsidiaries**  
**Notes to Condensed Consolidated Financial Statements (Continued)**  
**(Unaudited)**

**6. Rental Revenue and Tenant Receivables (continued)**

The below table disaggregates the Company's revenue by type of service (in thousands, unaudited):

	Three Months Ended September 30		Nine Months Ended September 30	
	2023	2022	2023	2022
Base rent	\$ 18,190	\$ 13,791	\$ 54,316	\$ 37,607
Tenant reimbursements - variable lease revenue	5,030	3,875	15,467	10,455
Above (below) market lease amortization	1,232	494	3,865	478
Straight-line rents	285	314	1,004	547
Percentage rent - variable lease revenue	217	89	567	322
Lease termination fees	—	10	115	117
Other	549	222	1,257	435
<b>Total</b>	<b>25,503</b>	<b>18,795</b>	<b>76,591</b>	<b>49,961</b>
Credit losses on operating lease receivables	(299)	(77)	(481)	(267)
<b>Total</b>	<b>\$ 25,204</b>	<b>\$ 18,718</b>	<b>\$ 76,110</b>	<b>\$ 49,694</b>

**Wheeler Real Estate Investment Trust, Inc. and Subsidiaries**  
**Notes to Condensed Consolidated Financial Statements (Continued)**  
**(Unaudited)**

**7. Loans Payable**

The Company's loans payable consist of the following (in thousands, except monthly payment):

Property/Description	Property/Description	December				Property/Description	December					
		Monthly Payment	Interest Rate	Maturity	2023		Monthly Payment	Interest Rate	Maturity	2023		
Cypress Shopping Center	Cypress Shopping Center	\$ 34,360	4.70%	July 2024	\$ 5,837	\$ 5,903	Cypress Shopping Center	\$ 34,360	4.70%	July 2024	\$ 5,804	\$ 5,903
Conyers Crossing	Conyers Crossing	Interest only	4.67%	October 2025	5,960	5,960	Conyers Crossing	Interest only	4.67%	October 2025	5,960	5,960
Winslow Plaza	Winslow Plaza	\$ 24,295	4.82%	December 2025	4,370	4,409	Winslow Plaza	\$ 24,295	4.82%	December 2025	4,351	4,409
Tuckernuck	Tuckernuck	\$ 32,202	5.00%	March 2026	4,844	4,915	Tuckernuck	\$ 32,202	5.00%	March 2026	4,807	4,915
Chesapeake Square	Chesapeake Square	\$ 23,857	4.70%	August 2026	4,060	4,106	Chesapeake Square	\$ 23,857	4.70%	August 2026	4,038	4,106
Sangaree/Tri-County	Sangaree/Tri-County	\$ 32,329	4.78%	December 2026	6,038	6,086	Sangaree/Tri-County	\$ 32,329	4.78%	December 2026	6,014	6,086
Timpany Plaza						Timpany Plaza	Interest only	7.27%	September 2028	9,060	—	
Village of Martinsville	Village of Martinsville	\$ 89,664	4.28%	July 2029	14,970	15,181	Village of Martinsville	\$ 89,664	4.28%	July 2029	14,864	15,181
Laburnum Square	Laburnum Square	Interest only	4.28%	September 2029	7,665	7,665	Laburnum Square	Interest only	4.28%	September 2029	7,665	7,665
Rivergate (1)	Rivergate (1)	\$ 100,222	4.25%	September 2031	17,782	18,003	Rivergate (1)	\$ 100,222	4.25%	September 2031	17,670	18,003
Convertible Notes	Convertible Notes	Interest only	7.00%	December 2031	32,405	33,000	Convertible Notes	Interest only	7.00%	December 2031	31,530	33,000
Guggenheim Loan Agreement (2)	Guggenheim Loan Agreement (2)	Interest only	4.25%	July 2032	75,000	75,000	Guggenheim Loan Agreement (2)	Interest only	4.25%	July 2032	75,000	75,000
JANAF Loan Agreement (3)	JANAF Loan Agreement (3)	Interest only	5.31%	July 2032	60,000	60,000	JANAF Loan Agreement (3)	Interest only	5.31%	July 2032	60,000	60,000
Guggenheim-Cedar Loan Agreement (4)	Guggenheim-Cedar Loan Agreement (4)	Interest only	5.25%	November 2032	110,000	110,000	Guggenheim-Cedar Loan Agreement (4)	Interest only	5.25%	November 2032	110,000	110,000

Patuxent Crossing/Coliseum		Patuxent Crossing/Coliseum					Patuxent Crossing/Coliseum				
Marketplace Loan	Marketplace Loan	Interest only	6.35%	January 2033	25,000	25,000	Marketplace Loan	Interest only	6.35%	January 2033	25,000
Agreement	Agreement						Agreement				
Term loan, 12 properties	Term loan, 12 properties	Interest only	6.19%	June 2033	61,100	—	Term loan, 12 properties	Interest only	6.19%	June 2033	61,100
Term loan, 8 properties	Term loan, 8 properties	Interest only	6.24%	June 2033	53,070	—	Term loan, 8 properties	Interest only	6.24%	June 2033	53,070
Term loans - fixed interest rate	Term loans - fixed interest rate	various	4.47% (5)	various	—	107,219	Term loans - fixed interest rate	various	4.47% (5)	various	—
Total Principal Balance	Total Principal Balance			488,101	482,447		Total Principal Balance			495,933	482,447
Unamortized deferred financing cost	Unamortized deferred financing cost			(18,813)	(16,418)		Unamortized deferred financing cost			(18,501)	(16,418)
Total Loans Payable, net	Total Loans Payable, net			\$ 469,288	\$ 466,029		Total Loans Payable, net			\$ 477,432	\$ 466,029

(1) In October 2026, the interest rate changes to variable interest rate equal to the 5 years U.S. Treasury Rate plus 2.70%, with a floor of 4.25%.

(2) Collateralized by 22 properties.

(3) Collateralized by JANA福 properties.

(4) Collateralized by 10 Cedar Properties. properties.

(5) Contractual interest rate weighted average.

### ***Debt Maturity***

The Company's scheduled principal repayments on indebtedness as of **June 30, 2023** **September 30, 2023** are as follows (in thousands, unaudited):

For the remaining <b>six</b> months ended December 31, 2023	\$	<b>713,361</b>
December 31, 2024		<b>7,146</b> 7,220
December 31, 2025		<b>12,007</b> 12,313
December 31, 2026		<b>15,931</b> 16,260
December 31, 2027		<b>2,695</b> 3,049
December 31, 2028		<b>4,928</b> 12,924
Thereafter		<b>444,681</b> 443,806
<b>Total principal repayments and debt maturities</b>	\$	<b>488,101</b> 495,933

### ***Term Loan Agreement, 12 properties***

On May 5, 2023, the Company entered into a loan agreement (the "Term Loan Agreement, 12 properties") for \$61.1 million at a fixed rate of 6.194% and interest-only payments due monthly through June 2025. Commencing in July 2025, until the maturity date of June 1, 2033, monthly principal and interest payments will be \$0.4 million. Loan proceeds were used to refinance 12 properties, including \$1.1 million in defeasance.

### **Term Loan Agreement, 8 properties**

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**Wheeler Real Estate Investment Trust, Inc. and Subsidiaries**  
**Notes to Condensed Consolidated Financial Statements (Continued)**  
**(Unaudited)**

## 7. Loans Payable (continued)

On May 18, 2023, the Company entered into a loan agreement (the "Term Loan Agreement, 8 properties") for \$53.1 million at a fixed rate of 6.24% and interest-only payments due monthly through June 2028. Commencing in July

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**Wheeler Real Estate Investment Trust, Inc. and Subsidiaries**  
**Notes to Condensed Consolidated Financial Statements (Continued)**  
**(Unaudited)**

## 7. Loans Payable (continued)

2028, until the maturity date of June 10, 2033, monthly principal and interest payments will be \$0.3 million. Loan proceeds were used to refinance 8 properties, including \$0.7 million in defeasance.

## ***Timpany Plaza Loan Agreement***

On September 12, 2023, the Company entered into a term loan agreement with Cornerstone Bank for \$11.6 million at a fixed rate of 7.27% with interest-only payments due monthly for the first twelve months (the "Timpany Plaza Loan Agreement"). Commencing on September 12, 2024, until the maturity date of September 12, 2028, monthly principal and interest payments will be made based on a 30-year amortization schedule calculated based on the principal amount as of that time. On the closing date, the Company received \$9.1 million of the \$11.6 million, and the remaining \$2.5 million will be received upon certain lease-related contingencies being met. The Timpany Plaza Loan Agreement is collateralized by the Timpany Plaza shopping center.

#### Convertible Notes

Interest payments expense on the Convertible Notes were made as follows consisted of the following (in thousands, except for shares):

For the six months ended June 30,	Series B Preferred number of shares	Series D Preferred number of shares	Convertible Note interest at 7% coupon	Fair value adjustment	Paid-in-kind interest expense	For the nine months ended September 30,	Series B Preferred number of shares <sup>(1)</sup>	Series D Preferred Stock number of shares <sup>(1)</sup>	Convertible Note interest at 7% coupon	Fair value adjustment	Interest expense	
2023	2023	—	160,455	\$ 1,155	\$ 851	2023	—	160,455	\$ 1,718	\$ 851	\$ 2,569	
2022	2022	432,994	—	\$ 1,155	\$ 944	\$ 2,099	2022	432,994	—	\$ 1,733	\$ 944	\$ 2,677

(1) Shares issued as interest payment on Convertible Notes.

(1) Shares issued as interest payment on Convertible Notes.

On June 8, 2023, the Company paid down \$0.6 million of the Convertible Notes through an open market purchase of 23,784 units totaling \$1.2 million. On September 11, 2023, the Company paid down \$0.9 million resulting in of the Convertible Notes through an open market purchase of 35,000 units totaling \$1.9 million. As a result of these transactions, the Company recognized a \$1.1 million and \$1.6 million loss for the three and nine months ended September 30, 2023, respectively, which represents the fair value of the purchase over principal pay down. The loss is included in "other expense" on the condensed consolidated statements of operations.

#### Fair Value Measurements

The fair value of the Company's fixed rate secured term loans was estimated using available market information and discounted cash flow analyses based on borrowing rates the Company believes it could obtain with a similar term and maturities. As of June 30, 2023 September 30, 2023 and December 31, 2022, the fair value of the Company's fixed rate secured term loans, which were determined to be Level 3 within the valuation hierarchy, was \$439.6 \$441.8 million and \$429.1 million, respectively, and the carrying value of such loans, was \$455.7 \$451.2 million and \$449.4 \$440.2 million, respectively.

The fair value of the Convertible Notes was estimated using available market information. As of June 30, 2023 September 30, 2023 and December 31, 2022, the fair value of the Convertible Notes, which were determined to be Level 1 within the valuation hierarchy, was \$59.9 \$69.4 million and \$40.9 million, respectively, and the carrying value, was \$32.4 \$26.2 million and \$33.0 \$25.8 million, respectively.

## 8. Derivative Liabilities

#### Fair Value of Warrants

The Company utilized the Monte Carlo simulation model to calculate the fair value of the two warrant agreements (the "Warrant Agreements") described within the 2022 Form 10-K. Significant observable and unobservable inputs include stock price, conversion price, risk-free rate, term, likelihood of an event of contractual conversion and expected volatility. The Monte

#### Table of Contents Wheeler Real Estate Investment Trust, Inc. and Subsidiaries

#### Notes to Condensed Consolidated Financial Statements (Continued) (Unaudited)

#### 8. Derivative Liabilities (continued)

Carlo simulation is a Level 3 valuation technique because it requires the development of significant internal assumptions in addition to observable market indicators. The Warrant Agreements contain terms and features that give rise to derivative liability classification.

Warrants to purchase shares of common stock Common Stock outstanding at June 30, 2023 September 30, 2023 and December 31, 2022 are as follows:

Warrant Name	Warrant Name	Warrants	Exercise Price	Expiration Date	Warrant Name	Warrants	Exercise Price	Expiration Date
Powerscourt Warrant		496,415	\$3.120	12/22/2023	Powerscourt Warrant	49,641	\$31.20	12/22/2023
Powerscourt Warrant					Wilmington Warrant Tranche A	51,020	\$34.30	3/12/2026
Wilmington Warrant Tranche A	Wilmington Warrant Tranche A	510,204	\$3.430	3/12/2026	Wilmington Warrant Tranche B	42,424	\$41.25	3/12/2026
Wilmington Warrant Tranche B	Wilmington Warrant Tranche B	424,242	\$4.125	3/12/2026	Wilmington Warrant Tranche C	12,727	\$68.75	3/12/2026
Wilmington Warrant Tranche C	Wilmington Warrant Tranche C	127,273	\$6.875	3/12/2026				

In measuring the warrant liabilities, the Company used the following inputs in its Monte Carlo model:

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Notes to Condensed Consolidated Financial Statements (Continued)

(Unaudited)

**8. Derivative Liabilities (continued)**

		June 30, 2023	December 31, 2022		September 30, 2023		December 31, 2022
Common Stock price	Common Stock price	\$0.62	\$1.40	Common Stock price	\$3.28		\$13.96
Weighted average contractual term to maturity	Weighted average contractual term to maturity	2.0 years	2.5 years	Weighted average contractual term to maturity	1.7 years		2.5 years
Range of expected market volatility %	Range of expected market volatility %	84.32% - 119.28%	66.00% - 72.88%	Range of expected market volatility %	92.98% - 168.12%		66.00% - 72.88%
Range of risk free interest rate	Range of risk free interest rate	4.53% - 5.47%	4.14% - 4.68%	Range of risk free interest rate	4.92% - 5.55%		4.14% - 4.68%

**Fair Value of Conversion Features Related to Convertible Notes**

The Company identified certain embedded derivatives related to the conversion features of the Convertible Notes. In accordance with ASC 815-40, *Derivatives and Hedging Activities*, the embedded conversion options contained within the Convertible Notes were accounted for as derivative liabilities at the date of issuance and shall be adjusted to fair value through each reporting date. The Company utilized a binomial lattice model to calculate the fair value of the embedded derivatives. Significant observable and unobservable inputs include conversion price, stock price, dividend rate, expected volatility, risk-free rate, optional conversion price and term. The binomial lattice model is a Level 3 valuation technique because it requires the development of significant internal assumptions in addition to observable market indicators.

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Notes to Condensed Consolidated Financial Statements (Continued)

(Unaudited)

**8. Derivative Liabilities (continued)**

In measuring the embedded derivative liability, the Company used the following inputs in its binomial lattice model:

		June 30, 2023	December 31, 2022		September 30, 2023		December 31, 2022
Conversion price	Conversion price	\$6.25	\$6.25	Conversion price	\$1.85 <sup>(1)</sup>		\$62.50
Common Stock price	Common Stock price	\$0.62	\$1.40	Common Stock price	\$3.28		\$13.96
Contractual term to maturity	Contractual term to maturity	8.5 years	9.0 years	Contractual term to maturity	8.3 years		9.0 years
Expected market volatility %	Expected market volatility %	75.00%	205.00%	Expected market volatility %	80.00%		205.00%

Risk-free interest rate	Risk-free interest rate	3.90%	3.87%	Risk-free interest rate	4.60%	3.87%
Traded WHRL price, % of par	Traded WHRL price, % of par	184.76%	120.50%	Traded WHRL price, % of par	220.00%	120.50%
(1) Represents the volume weighted average of the Company's closing Common Stock price for the 10 trading days preceding the valuation date of September 30, 2023, less a discount of 45%.				(1) Represents the volume weighted average of the Company's closing Common Stock price for the 10 trading days preceding the valuation date of September 30, 2023, less a discount of 45%.		

The following table sets forth a summary of the changes in fair value of the Company's derivative liabilities, which include both the warrant liabilities and embedded derivative liability (in thousands, unaudited):

		<b>Six Months Ended June 30, 2023</b>	<b>Year Ended December 31, 2022</b>		<b>Nine Months Ended September 30, 2023</b>	<b>Year Ended December 31, 2022</b>
Balance at the beginning of period	Balance at the beginning of period	\$ 7,111	\$ 4,776	Balance at the beginning of period	\$ 7,111	\$ 4,776
Changes in fair value - Warrants	Changes in fair value - Warrants	(400)	(753)	Changes in fair value - Warrants	(466)	(753)
Changes in fair value - Convertible Notes	Changes in fair value - Convertible Notes	(4,482)	3,088	Changes in fair value - Convertible Notes	6,747	3,088
Balance at end of period	Balance at end of period	\$ 2,229	\$ 7,111	Balance at end of period	\$ 13,392	\$ 7,111

## 9. Equity and Mezzanine Equity

### Common Stock One-for-Ten Reverse Stock Split

On August 7, 2023, we announced that our Board of Directors had approved the Reverse Stock Split. The Reverse Stock Split took effect as of 5:00 p.m., Eastern Standard Time, on August 17, 2023 (the "Effective Time"). At the Effective Time, every ten issued and outstanding shares of Common Stock were converted into one share of Common Stock, and as a result, the number of outstanding shares of Common Stock was reduced from approximately 9,809,195 to approximately 980,919. The par value of each share of Common Stock remained unchanged. No fractional shares were issued in connection with the Reverse Stock Split. Stockholders who would have otherwise been issued a fractional share of the Company's Common Stock as a result of the Reverse Stock Split instead received a cash payment in lieu of such fractional share in an amount equal to the applicable fraction multiplied by the closing price of the Company's Common Stock on the Nasdaq Capital Market ("Nasdaq") on August 17, 2023 (as adjusted for the Reverse Stock Split), without any interest. All share and share-related information presented in this Quarterly Report on Form 10-Q, including our condensed consolidated financial statements, has been retroactively adjusted to reflect the decreased number of shares resulting from the Reverse Stock Split.

### Series D Preferred Stock - Redeemable Preferred Stock

The changes in the carrying value After September 21, 2023, each holder of the Series D Preferred Stock has the six months ended June 30, 2023 right, at such holder's option, to request that the Company redeem any or all of such holder's shares of Series D Preferred Stock on a monthly basis ("Holder Redemption Date"). Redemptions commenced on September 22, 2023 and 2022 are the first Holder Redemption Date was October 5, 2023.

At September 30, 2023 and December 31, 2022, the Company had 3,308,603 and 3,152,392 issued shares, respectively and 6,000,000 authorized shares of Series D Preferred Stock, without par value with a \$25.00 liquidation preference per share, or \$123.8 million and \$113.4 million in aggregate liquidation value, respectively, of which the Company had received requests to redeem 172,241 shares as follows (in thousands, unaudited): of September 30, 2023. These redemptions were considered certain at September 30, 2023 and \$6.4 million was reclassified from mezzanine equity to a liability, "Series D Preferred Stock redemptions," on the condensed consolidated balance sheets.

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### Wheeler Real Estate Investment Trust, Inc. and Subsidiaries Notes to Condensed Consolidated Financial Statements (Continued) (Unaudited)

## 9. Equity and Mezzanine Equity (continued)

The changes in the carrying value of the Series D Preferred Stock for the nine months ended September 30, 2023 and 2022 are as follows (in thousands, unaudited):

	Series D Preferred Stock
Balance December 31, 2022	\$ 101,518
Accretion of Preferred Stock discount	125
Conversion of Series D Preferred Stock to Common Stock	(140)
Undeclared dividends	2,118
Balance March 31, 2023	103,621
Accretion of Preferred Stock discount	124
Undeclared dividends	2,115
Paid-in-kind interest, issuance of Preferred Stock	2,006
Balance June 30, 2023	107,866
Accretion of Preferred Stock discount	124
Undeclared dividends	2,269
Accretion to liquidation preference (1)	13,542
Series D Preferred Stock redemptions	(6,448)
Balance September 30, 2023	\$ 107,866 117,353

(1) As of the Series D Redemption Date, the Series D Preferred Stock was adjusted to \$25.00 liquidation preference plus accrued and unpaid dividends, representing a \$13.5 million adjustment to its carrying value.

	Series D Preferred Stock
Balance December 31, 2021	\$ 92,548
Accretion of Preferred Stock discount	125
Undeclared dividends	2,118
Balance March 31, 2022	94,791
Accretion of Preferred Stock discount	124
Undeclared dividends	2,118
Balance June 30, 2022	\$97,033
Accretion of Preferred Stock discount	125
Undeclared dividends	2,118
Balance September 30, 2022	\$ 99,276

#### **Earnings per share**

Basic earnings per share for the Company's common stockholders is calculated by dividing income (loss) from continuing operations, excluding amounts attributable to preferred stockholders and the net income (loss) attributable to noncontrolling interests, by the Company's weighted average shares of Common Stock outstanding during the period. Diluted earnings per share is computed by dividing the net income (loss) attributable to common stockholders, excluding amounts attributable to preferred stockholders and the net income (loss) attributable to noncontrolling interests, by the weighted average number of common shares including any dilutive shares.

The following table summarizes the potential dilution of conversion of Operating Partnership common units ("Common Units"), Series B Preferred, Series D Preferred Stock, warrants and Convertible Notes into the Company's Common Stock. These have been excluded from the Company's diluted earnings per share calculation because their inclusion would be antidilutive.

	June 30, 2023	
	Outstanding shares	Potential Dilutive Shares
Common units	144,942	144,942
Series B Preferred Stock	3,379,142	2,111,964
Series D Preferred Stock	3,308,603	7,165,764
Warrants to purchase Common Stock	—	1,558,134
Convertible Notes	—	97,886,504

#### **Dividends**

The following table summarizes the Series D Preferred dividends (in thousands except for per share amounts, unaudited):

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#### **Wheeler Real Estate Investment Trust, Inc. and Subsidiaries**

**Notes to Condensed Consolidated Financial Statements (Continued)**  
(Unaudited)

**9. Equity and Mezzanine Equity (continued)**

	Arrears Date	Series D Preferred	
		Arrears	Per Share
For the six months ended June 30, 2023		\$ 4,233	\$ 1.28
For the six months ended June 30, 2022		\$ 4,236	\$ 1.34
antidilutive.			
		September 30, 2023	
Outstanding shares		Potential Dilutive Shares	
		13,566	13,566
Common units		3,379,142	211,196
Series B Preferred Stock		3,308,603	729,958
Series D Preferred Stock		—	155,812
Warrants to purchase Common Stock		—	9,405,539
Convertible Notes			

**Dividends**

The following table summarizes the Series D Preferred Stock dividends (in thousands except for per share amounts, unaudited):

	Arrears Date	Series D Preferred Stock	
		Arrears	Per Share
For the nine months ended September 30, 2023		\$ 6,502	\$ 1.97
For the nine months ended September 30, 2022		\$ 6,354	\$ 2.01

The total cumulative dividends in arrears for Series D Preferred Stock is \$38.8 million \$41.1 million as of June 30, 2023 September 30, 2023 (per share \$11.73) \$12.42). Commencing September 21, 2023, the Series D Preferred Stock holders are entitled to cumulative cash dividends at an annual dividend rate of 12.75% increased by 2% of the liquidation preference per annum on each subsequent anniversary thereafter, subject to a maximum annual dividend rate of 16%, including the 2% default rate.

There were no dividends declared to holders of Common Stock, Series A Preferred, Series B Preferred or Series D Preferred Stock during the six nine months ended June 30, 2023 September 30, 2023 and 2022.

**10. Commitments and Contingencies**

**Lease Commitments**

The Company has ground leases and leases its corporate headquarters; both are accounted for as operating leases. Most leases include one or more options to renew, with renewal terms that can extend the lease term from 5 to 50 years. As of June 30, 2023 September 30, 2023 and 2022, the weighted average remaining lease term of our leases was 34.36 and 30.34 years, respectively. Rent expense under the operating lease agreements were \$0.3 million \$0.3 million and \$0.3 million for the three months ended June 30, 2023 September 30, 2023 and 2022, respectively. Rent expense under the operating lease agreements were \$0.6 was \$0.9 million and \$0.5 \$0.8 million for the six nine months ended June 30, 2023 September 30, 2023 and 2022, respectively.

**Litigation**

The Company is involved in various legal proceedings arising in the ordinary course of its business, including, but not limited to commercial disputes. The Company believes that such litigation, claims and administrative proceedings will not have a material adverse impact on its financial position or its results of operations. The Company records a liability when it considers the loss probable and the amount can be reasonably estimated. In addition, the below legal proceedings are in process:

*In Re: Cedar Realty Trust, Inc. Preferred Shareholder Litigation*, Case No.: 1:22-cv-1103, in the United States District Court for the District of Maryland. On April 8, 2022, several purported holders of outstanding Cedar preferred stock filed a putative class action complaint against Cedar, Cedar's Board of Directors prior to the Cedar Acquisition and the Company in Montgomery County Circuit Court, Maryland entitled *Sydney, et al. v. Cedar Realty Trust, Inc., et al.*, (Case No. C-15-CV-22-001527). On May 6, 2022, the Plaintiffs in *Sydney* filed a motion for a preliminary injunction. Also on May, 6, 2022, a purported holder of Cedar's outstanding preferred stock filed a separate putative class action complaint against Cedar and Cedar's Board of Directors prior to the Cedar Acquisition in the United States District

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**Wheeler Real Estate Investment Trust, Inc. and Subsidiaries**  
**Notes to Condensed Consolidated Financial Statements (Continued)**  
(Unaudited)

## 10. Commitments and Contingencies (continued)

Court for the District of Maryland, entitled *Kim v. Cedar Realty Trust, Inc., et al.*, Civil Action No. 22-cv-01103. On May 11, 2022, Cedar, former Board of Directors of Cedar and the Company removed the *Sydney* action to the United States District Court for the District of Maryland, Case No. 8:22-cv-01142-GLR. On May 16, 2022, the court ordered that a hearing on the *Sydney* Plaintiffs' motion for preliminary injunction be held on June 22, 2022. On June 2, 2022, the Plaintiffs in *Kim* also filed a motion for a preliminary injunction. The court consolidated the motions for preliminary injunction.

On June 23, 2022, following a hearing, the court issued an order denying both motions for preliminary injunction, holding that the Plaintiffs in both cases were unlikely to succeed on the merits and that Plaintiffs had not established that they would suffer irreparable harm if the injunction was denied.

By order dated July 11, 2022, the court consolidated the *Sydney* and *Kim* cases and set an August 24, 2022 deadline for the Plaintiffs in both cases to file a consolidated amended complaint. Plaintiffs filed their amended complaint on August 24, 2022. The amended complaint alleges on behalf of a putative class of holders of Cedar's preferred stock, among other things, claims for breach of contract against Cedar and Cedar's former Board of Directors with respect to the articles supplementary governing the terms of Cedar's preferred stock, breach of fiduciary duty against Cedar's former Board of Directors, and tortious interference and aiding and abetting breach of fiduciary duty against the Company. On October 7, 2022, Defendants moved to dismiss the amended complaint. Plaintiffs opposed the motion to dismiss and filed a motion to certify a question of law to Maryland's Supreme Court. On August 1, 2023, the court issued a decision and order granting Defendants' motions to dismiss, without leave to amend, and denying

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## Wheeler Real Estate Investment Trust, Inc. and Subsidiaries Notes to Condensed Consolidated Financial Statements (Continued) (Unaudited)

### 10. Commitments and Contingencies (continued)

Plaintiffs' motion to certify a question of law to the Maryland Supreme Court. The decision becomes final unless Plaintiffs seek reconsideration within 14 days or file an appeal within 30 days. appealed the dismissal to the United States Court of Appeals for the Fourth Circuit, Case No. 23-1905, docketed on August 30, 2023. The Court has set a briefing schedule. At this juncture, the outcome of the litigation remains uncertain.

*High Income Securities Fund v. Cedar Realty Trust, Inc., et al.*, No. 2:22-cv-4031, in the United States District Court for the Eastern District of New York. On July 11, 2022, a purported holder of Cedar's outstanding preferred stock filed a complaint against Cedar and Cedar's Board of Directors prior to the Merger in the United States District Court for the Eastern District of New York, entitled *High Income Securities Fund v. Cedar Realty Trust, Inc., et al.*, No. 2:22-cv-4031. The complaint alleged that the Defendants violated Section 10(b) of the Exchange Act and SEC Rule 10b-5 promulgated thereunder by making false and misleading statements and omissions, and that Cedar's former Board of Directors are control persons under Section 20(a) of the Exchange Act. On August 12, 2022 September 25, 2023, Defendants requested permission to file a the Court granted Defendants' motion to dismiss the complaint with prejudice, and the time within which the Plaintiff responded opposing Defendants' request on September 7, 2022. The court granted Defendants' request to file a motion to dismiss on October 25, 2022. Defendants served their motion to dismiss on December 23, 2022, which Plaintiff opposed on January 27, 2023. Defendants filed a reply brief on the motion to dismiss on February 17, 2023. At this juncture, the outcome of the litigation is uncertain. could have appealed such decision has passed.

*Krasner v. Cedar Realty Trust, Inc., et al.*, in the United States District Court for the Eastern District of New York, Case No. 2:22-cv-06945. On October 14, 2022, a purported holder of Cedar's outstanding preferred stock filed a putative class action against Cedar, the Board of Directors prior to the Cedar Acquisition, and the Company in Nassau County Supreme Court, New York entitled *Krasner v. Cedar Realty Trust, Inc., et al.*, (Case No. 613985/2022). The complaint alleges on behalf of a putative class of holders of Cedar's preferred stock, among other things, claims for breach of contract against Cedar and the former Board of Directors with respect to the articles supplementary governing the terms of Cedar's preferred stock, breach of fiduciary duty against the former Board of Directors, and tortious interference and aiding and abetting breach of fiduciary duty against the Company. The complaint seeks, among other relief, an award of monetary damages, attorneys' fees, and expert fees. Defendants removed the case to a federal court. On April 24, 2023, the federal court granted Plaintiff's motion to remand the case to the Nassau County Supreme Court. Defendants have sought and received leave from the federal appellate court for permission to appeal the remand decision. The appeal has been briefed and argued. In the interim, Defendants have filed motions in the Nassau County action to dismiss or stay the case based both on the pendency of the lawsuit in Maryland in which the same claims were asserted by other preferred stockholders and on the merits. Plaintiff has opposed The motions have been fully briefed, including supplemental briefing on the motions, impact of the Maryland decision. The court has set held a hearing on the motions for August 23, 2023, on October 27, 2023, but has not yet issued a ruling thereon. At this juncture, the outcome of the litigation is uncertain.

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## Wheeler Real Estate Investment Trust, Inc. and Subsidiaries Notes to Condensed Consolidated Financial Statements (Continued) (Unaudited)

### 11. Related Party Transactions

#### **Related Party Transactions with Cedar**

The Company performs property management and leasing services for Cedar, a wholly-owned subsidiary of the Company, pursuant to the Wheeler Real Estate Company Management Agreement. During the three and six nine months ended June 30, 2023 September 30, 2023, Cedar paid the Company \$0.0 \$0.7 million and \$0.4 \$1.1 million, respectively, for these services. During the three and nine months ended September 30, 2022, Cedar paid the Company \$0.1 million and \$0.1 million, respectively, for these services.

The Operating Partnership and Cedar's operating partnership, Cedar Realty Trust Partnership, L.P., are party to a cost sharing and reimbursement agreement, pursuant to which the parties agreed to share costs and expenses associated with certain employees, certain facilities and property, and certain arrangements with third parties (the "Cost Sharing Agreement"). Related party amounts due to the Company from Cedar as of **June 30, 2023** **September 30, 2023** and December 31, 2022 are comprised of:

	June 30, 2023 (b)		December 31, 2022 (b)		September 30, 2023 (b)		December 31, 2022 (b)	
2022 financings and real estate taxes	2022 financings and real estate taxes	\$ 7,166	\$ 7,166	2022 financings and real estate taxes	\$ 7,166	\$ 7,166		
Management fees	Management fees	533	110	Management fees	220		110	
Leasing commissions	Leasing commissions	418	85	Leasing commissions	555		85	
Cost Sharing Agreement allocations (a)	Cost Sharing Agreement allocations (a)	322	—	Cost Sharing Agreement allocations (a)	424		—	
Other	Other	117	(33)	Other	21		(33)	
<b>Total</b>	<b>Total</b>	<b>\$ 8,556</b>	<b>\$ 7,328</b>	<b>Total</b>	<b>\$ 8,386</b>	<b>\$ 7,328</b>		

(a) Includes allocations for executive compensation and directors' liability insurance. In 2022, there were no allocations made to Cedar for these services due to certain limitations set forth in the Cost Sharing Agreement.

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### Wheeler Real Estate Investment Trust, Inc. and Subsidiaries Notes to Condensed Consolidated Financial Statements (Continued) (Unaudited)

#### 11. Related Party Transactions (continued)

(b) These related party amounts have been eliminated for consolidation purposes.

##### Investment securities - related party

The Company has investments held with SAI, a related party. See Note 4 in this Form 10-Q for additional details.

#### 12. Subsequent Events

##### Sale of Outparcel Series D Preferred Stock Redemption update

On July 11, 2023, the first monthly Holder Redemption Date occurred on October 5, 2023. The Company received fully complete and timely redemption requests from 50 Series D Preferred Holders, collectively redeeming 172,911 shares of Series D Preferred Stock for a redemption price per share of approximately \$37.48. The Company settled the redemption price in Common Stock. The volume weighted average of the closing sales price, as reported on the Nasdaq, per share of Common Stock for the ten consecutive trading days immediately preceding, but not including, the Holder Redemption Date was approximately \$2.89. Accordingly, the Company sold issued 2,245,591 shares of Common Stock in settlement of an outparcel building adjacent to Carl's Corner, located in Bridgeton, New Jersey for an aggregate redemption price of approximately \$6.5 million.

The second monthly Holder Redemption Date occurred on November 6, 2023. The Company received fully complete and timely redemption requests from 90 Series D Preferred Holders, collectively redeeming 319,762 shares of Series D Preferred Stock for a redemption price per share of approximately \$37.76. The Company settled the redemption price in Common Stock. The volume weighted average of the closing sales price, as reported on the Nasdaq, per share of Common Stock One-for-Ten Reverse for the ten consecutive trading days immediately preceding, but not including, the Holder Redemption Date was approximately \$0.84. Accordingly, the Company issued 14,355,723 shares of Common Stock Split in settlement of an aggregate redemption price of approximately \$12.1 million.

On August 7, 2023, the Company recognized an aggregate \$5.9 million gain as a result of the difference between the VWAP used to calculate the number of shares of Common Stock distributed to redeeming holders of Series D Preferred Stock and the fair market value of such Common Stock on each of the two Holder Redemption Dates.

### Wheeler Real Estate Investment Trust, Inc. and Subsidiaries Notes to Condensed Consolidated Financial Statements (Continued) (Unaudited)

#### 12. Subsequent Events (continued)

##### Adjustment to Conversion Price of Convertible Notes

Because at least 100,000 shares of the Series D Preferred Stock have been redeemed, pursuant to Section 14.02 (Optional Conversion) of the indenture governing the Company's Convertible Notes (the "Convertible Notes Indenture"), effective October 5, 2023, the Company announced that its Board of Directors unanimously approved a one-for-ten reverse stock split conversion price for the Convertible Notes was adjusted to \$1.59 per share of the Company's issued

and outstanding Common Stock, (15.72 shares of common stock (the "Reverse Common Stock Split") for each \$25.00 of principal amount of the Convertible Notes being converted). The Reverse

For the November redemptions, the lowest price at which any Series D Preferred Stock Split is expected was converted by a holder into Common Stock was approximately \$0.84.

Accordingly, pursuant to take effect as Section 14.02 (Optional Conversion) of 5:00 p.m. Eastern Time, on August 17, 2023 (the "Effective Time"). At the Effective Time, every ten issued and outstanding Convertible Notes Indenture, the conversion price for the Convertible Notes was further adjusted to \$0.46 per share of Common Stock (54.05 shares of common stock Common Stock for each \$25.00 of principal amount of the Company will be converted into one share of common stock of the Company. The par value of each share of common stock will remain unchanged. Trading in the Company's common stock on Convertible Notes being converted), representing a split adjusted basis is expected 45% discount to begin at the market open on August 18, 2023. The Company's common stock will continue trading on the NASDAQ under the symbol "WHLR" but will be assigned a new CUSIP number. No adjustments have been made to the historical financial statements as the reverse split has not been completed. \$0.84.

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

You should read the following discussion of our financial condition and results of operations in conjunction with our unaudited condensed consolidated financial statements and the notes thereto included in this Quarterly Report on Form 10-Q, along with the consolidated financial statements and the notes thereto, and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in our 2022 Form 10-K 10-K. All per share amounts, common units and shares outstanding, warrants, and conversion features of the Convertible Notes for all periods presented reflect the year ended December 31, 2022 one-for-ten Reverse Stock Split, which took effect on August 17, 2023. For more detailed information regarding the basis of presentation for the following information, you should read the notes to the unaudited condensed consolidated financial statements included in this Form 10-Q.

When used in In addition to historical information, this discussion and elsewhere in this Form 10-Q, the words "believes," "should," "estimates," "expects," and similar expressions are intended to identify analysis contains forward-looking statements within based on current expectations that involve risks, uncertainties and assumptions, such as our plans, objectives, expectations and intentions. These statements are not guarantees of future performance and are subject to risks, uncertainties and other factors, including those discussed under the meaning of that term in Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and in Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), section entitled "Forward-Looking Statements." These forward-looking statements are not historical facts but are the intent, belief or current expectations of our management based on its knowledge and understanding of our business and industry. These statements are not guarantees of future performance and are subject to risks, uncertainties and other factors, some of which are beyond our control, are difficult to predict and could cause actual results to differ materially from those expressed or forecasted in the forward-looking statements.

Important factors that we think could cause our actual results to differ materially from those expressed or forecasted in the forward-looking statement are summarized below:

- the adverse effect any future pandemic, endemic or outbreak of infectious disease, and mitigation efforts to control their spread;
- the use of and demand for retail space;
- general and economic business conditions, including those affecting the ability of individuals to spend in retail shopping centers and/or the rate and other terms on which we are able to lease our properties;
- tenant bankruptcies;
- the state of the U.S. economy generally, or specifically in the Southeast, Mid-Atlantic and Northeast where our properties are geographically concentrated;
- consumer spending and confidence trends;
- availability, terms and deployment of capital;
- anticipated substantial dilution of our common stock, and steep declines in their market value, after September 21, 2023 that may result from the exercise by the holders of our Series D Cumulative Convertible Preferred Stock of their redemption rights;
- the degree and nature of our competition;
- changes in governmental regulations, accounting rules, tax rates and similar matters;
- adverse economic or real estate developments in our markets of South Carolina, Georgia, Virginia, Pennsylvania, North Carolina, Massachusetts, New Jersey, Florida, Connecticut, Kentucky, Tennessee, Alabama, Maryland, West Virginia, and Oklahoma;
- the ability and willingness of the Company's tenants and other third parties to satisfy their obligations under their respective contractual arrangements with the Company;
- the ability and willingness of the Company's tenants to renew their leases with the Company upon expiration, the Company's ability to re-lease its properties on the similar or better terms in the event of nonrenewal or in the event the Company exercises its right to replace an existing tenant, and obligations the Company may incur in connection with the replacement of an existing tenant;
- litigation risks;
- increases in the Company's financing and other costs as a result of changes in interest rates and other factors;
- The Company's ability to maintain listing on Nasdaq Capital Market and the effects of the one-for-ten reverse stock split announced on August 7, 2023 on our price per share and the trading market of our common stock;
- inability to successfully integrate the acquisition of Cedar Realty Trust, Inc.;
- changes in our ability to obtain and maintain financing;
- damage to the Company's properties from catastrophic weather and other natural events, and the physical effects of climate change;
- information technology security breaches;
- the Company's ability and willingness to maintain its qualification as a REIT;
- the ability of our operating partnership, Wheeler REIT, L.P., and each of our other partnerships and limited liability companies to be classified as partnerships or disregarded entities for federal income tax purposes;
- the impact of e-commerce on our tenants' business; and

- inability to generate sufficient cash flows due to market conditions, competition, uninsured losses, changes in tax or other applicable laws.

We caution that the foregoing list of factors is not all-inclusive. Moreover, we operate in a very competitive and rapidly changing environment. New factors emerge from time to time and it is not possible for management to predict all such factors, nor can it assess the impact of all such factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. Given these risks and uncertainties, investors should not place undue reliance on forward-looking statements as a prediction of actual results. All subsequent written and oral forward-looking statements concerning us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements above. We caution not to place undue reliance upon any forward-looking statements, which speak only as of the date made. We do not undertake or accept any obligation or undertaking to release publicly any updates or revisions to any forward-looking statement to reflect any change in our expectations or any change in events, conditions or circumstances on which any such statement is based.

## Company Overview

The Company, a Maryland corporation, is a fully integrated, self-managed commercial real estate investment trust that owns, leases and operates income-producing retail properties with a primary focus on grocery-anchored centers. In August 2022, the **REIT Company** acquired Cedar Realty Trust. As a result of that acquisition, Cedar became a subsidiary of the **REIT Company** and this Form 10-Q includes Cedar starting from the date of acquisition.

As of **June 30, 2023** **September 30, 2023**, the Company, through the Operating Partnership, owned and operated seventy-five retail shopping centers and four undeveloped properties in South Carolina, Georgia, Virginia, Pennsylvania, North Carolina, Massachusetts, New Jersey, Florida, Connecticut, Kentucky, Tennessee, Alabama, Maryland, West Virginia, and Oklahoma. This list includes the properties acquired through the Cedar Acquisition.

The Company's portfolio of properties is dependent upon regional and local economic conditions, and is geographically concentrated in the Mid-Atlantic, Southeast and Northeast, which markets represent approximately 45%, 40% and 15% respectively, of the total annualized base rent of the properties in its portfolio as of **June 30, 2023** **September 30, 2023**. The Company's geographic concentration may cause it to be more susceptible to adverse developments in those markets than if it owned a more geographically diverse portfolio. Additionally, the Company's retail shopping center properties depend on anchor stores or major tenants to attract shoppers and could be adversely affected by the loss of, or a store closure by, one or more of these tenants.

## Recent Trends and Activities

### **Series D Preferred Stock - Exchange Offer and Consent Solicitation**

On November 22, 2022, the Company commenced an exchange offer for its outstanding shares of Series D Preferred (the "Exchange Offer"). As subsequently amended, the terms of the Exchange Offer, which, as subsequently amended, provided for the exchange of up to 2,112,103 outstanding shares of Series D Preferred Stock, representing 67% of the outstanding shares of Series D Preferred Stock, for (i) 6.00% Subordinated Convertible Notes due 2028, and (ii) Common Stock, in each case to have been newly issued by the Company, and related consents (the "Consent Solicitation") from the holders Company. As of the Series D Preferred (the "Series D Preferred Holders") to certain amendments to the Company's charter that would have modified the terms of the Series D Preferred (the "Proposed Amendments").

The consummation expiration of the Exchange Offer and Consent Solicitation was subject to, and was conditional upon, on January 20, 2023, 864,391 shares of Series D Preferred Stock (representing 26.8% of the satisfaction of certain conditions, including total outstanding Series D Preferred Stock) had been validly tendered (and not validly withdrawn) in the Exchange Offer. Accordingly, the condition that the holders of at least 66 2/3% of the outstanding shares of Series D Preferred (i) Stock validly tender their Series D Preferred Stock into the Exchange Offer and do not validly withdraw such Series D Preferred, on or prior to the expiration date of the Exchange Offer, and (ii) consent to the Proposed Amendments.

As of the expiration of the Exchange Offer on January 20, 2023, 864,391 shares of Series D Preferred (representing 26.8% of the total outstanding Series D Preferred) had been validly tendered (and not validly withdrawn) in the Exchange Offer. Accordingly, the condition that the holders of at least 66 2/3% of the outstanding shares of Series D Preferred (i) validly tender their Series D Preferred into the Exchange Offer, and not validly withdraw such Series D Preferred, and (ii) consent to the Proposed Amendments, had not been satisfied and the Exchange Offer expired on January 20, 2023.

### **As a result, Series D Preferred Stock - Redemption**

After September 21, 2023, each holder of the Series D Preferred remains outstanding Stock of the Company has the right, at such holder's option, to request that the Company redeem any or all of such holder's shares of Series D Preferred Stock on a monthly basis - with no changes redemptions commencing September 22, 2023 and the first Holder Redemption Date of October 5, 2023. At September 30, 2023, the Company had received requests to its terms, redeem 172,241 shares of Series D Preferred Stock. As such, the redemption of these Series D Preferred Stock is considered certain at September 30, 2023 and \$6.4 million was reclassified from mezzanine equity to a liability, "Series D Preferred Stock redemptions" on the condensed consolidated balance sheets. This represents the \$25.00 liquidation preference plus accrued and unpaid dividends at September 30, 2023.

## **Dispositions**

Disposal Date	Property	Contract Price	Gain	Net Proceeds
July 11, 2023	Carl's Corner Outparcel - Bridgeton, New Jersey	\$ 3,000	\$ 2,204	\$ 2,759

### **Land Acquisition Acquisitions**

On February 21, 2023 the Company purchased a 2.5 acre land parcel adjacent to St. George Plaza, located in St. George, South Carolina, (the "St. George Plaza Land Parcel") for \$0.2 million.

On August 18, 2023 the Company purchased a 3.25 acre land parcel within Devine Street, located in Columbia, South Carolina, for \$4.1 million. The Devine Street Land Acquisition terminated the Company's ground lease associated with this property.

#### **Term Loan Agreement, 12 properties**

On May 5, 2023, the Company entered into a loan agreement (the "Term the Term Loan Agreement, 12 properties") properties for \$61.1 million at a fixed rate of 6.194% and interest-only payments due monthly through June 2025. Commencing in July 2025, until the maturity date of June 1, 2033, monthly principal and interest payments will be \$0.4 million. Loan proceeds were used to refinance 12 properties, including \$1.1 million in defeasance.

#### **Term Loan Agreement, 8 properties**

On May 18, 2023, the Company entered into a loan agreement (the "Term the Term Loan Agreement, 8 properties") properties for \$53.1 million at a fixed rate of 6.24% and interest-only payments due monthly through June 2028. Commencing in July 2028, until the maturity date of June 10, 2033, monthly principal and interest payments will be \$0.3 million. Loan proceeds were used to refinance 8 properties, including \$0.7 million in defeasance.

#### **Timpany Plaza Loan Agreement**

On September 12, 2023, the Company entered into the Timpany Plaza Loan Agreement for \$11.6 million at a fixed rate of 7.27% with interest-only payments due monthly for the first twelve months. Commencing on September 12, 2024, until the maturity date of September 12, 2028, monthly principal and interest payments will be made based on a 30-year amortization schedule calculated based on the principal amount as of that time. On the closing date, the Company received \$9.1 million of the \$11.6 million and the remaining \$2.5 million will be received upon certain lease-related contingencies. The Timpany Plaza Loan Agreement is collateralized by the Timpany Plaza shopping center.

#### **Convertible Notes**

Interest payments expense on the Convertible Notes were made as follows consisted of the following (in thousands, except for shares):

For the six months ended June 30,	Series B Preferred number of shares	Series D Preferred number of shares	Convertible Note interest at 7% coupon	Fair value adjustment	Paid-in-kind interest expense	For the nine months ended September 30,	Series B Preferred number of shares <sup>(1)</sup>	Series D Preferred Stock number of shares <sup>(1)</sup>	Convertible Note interest at 7% coupon	Fair value adjustment	Interest expense
2023	2023	—	160,455	\$ 1,155	\$ 851	2023	—	160,455	\$ 1,718	\$ 851	\$ 2,569
2022	2022	432,994	—	\$ 1,155	\$ 944	2022	432,994	—	\$ 1,733	\$ 944	\$ 2,677

(1) Shares issued as interest payment on Convertible Notes.

On June 8, 2023, the Company paid down \$0.6 million of the Convertible Notes through an open market purchase of 23,784 units totaling \$1.2 million. On September 11, 2023, the Company paid down \$0.9 million of the Convertible Notes through an open market purchase of 23,784 35,000 units totaling \$1.2 million resulting in \$1.9 million. As a \$0.6 million result of these transactions the Company recognized a \$1.1 million and \$1.6 million loss for the three and nine months ended September 30, 2023, respectively, which represents the fair value of the purchase over principal pay down. The loss is included in "other expense" on the condensed consolidated statements of operations.

#### **Related Party Transactions**

The Company performs property management and leasing services for Cedar, a wholly-owned subsidiary of the Company. During the three and six months ended June 30, 2023, September 30, 2023 and 2022, Cedar paid the Company \$0.0 \$0.7 million and \$0.4 \$0.1 million, respectively, for these services. During the nine months ended September 30, 2023 and 2022, Cedar paid the Company \$1.1 million and \$0.1 million, respectively, for these services. Related party amounts due to the Company from Cedar were \$8.6 million \$8.4 million and \$7.3 million as of June 30, 2023 September 30, 2023 and December 31, 2022, respectively, and have been eliminated for consolidation purposes.

On June 1, 2023 the Company subscribed for an investment in the amount of \$3.0 million for limited partnership interest interests in Stilwell Activist Investments, L.P. ("SAI"), a Delaware SAI. On September 1, 2023 the Company subscribed for an additional investment in the amount of \$3.5 million for limited partnership interests in exchange for a \$3.0 million capital contribution. The investment objective of SAI is to seek long-term capital appreciation through investing primarily in publicly-traded undervalued financial institutions, or businesses with a strong financial component, or the securities of any of them, and pursuing an activist shareholder agenda with respect to those institutions. SAI.

Stilwell Value, LLC ("Value") is the general partner of SAI. Joseph Stilwell, a member of the Company's Board of Directors, is the managing member of Value and a limited partner in funds advised by Value. Additionally, E.J. Borrack, a member of the Company's Board of Directors, serves as the General Counsel to Value and its affiliated entities, including SAI and related funds, and is a limited partner in one of the funds advised by Value. Megan Parisi, a member of the Company's Board of Directors, serves as the Director of Communications to Value and its affiliated entities, including SAI and related funds, is a non-managing member of Value and is a limited partner in one of the funds advised by Value.

The Company's subscription for SAI's limited partnership interest was approved by the disinterested directors of the Company.

A portion of SAI's underlying investments are in the Company's own equity and debt securities.

SAI records investment transactions based on trade date. Realized gains and losses from investment transactions are determined on a specific identification basis. Dividend income, net of withholding taxes, and dividend expense are recognized on the ex-dividend date, and interest income and expense are recognized on an accrual basis. Discounts and premiums to the face amount of debt securities are accreted and amortized using the effective interest rate method over the lives of the respective debt securities.

The Company may not withdraw its capital from SAI for a period of one year measured from the date of the Company's initial contribution, subject to certain exceptions.

In consideration for management, administrative and operational services, limited partners of SAI pay a management fee to an affiliate of Value each calendar quarter, in advance, equal to 0.25% (an annualized rate of 1%) of each limited partner's capital account balance on the first day of such calendar quarter. In addition, as of the last day of each specified performance period, an incentive allocation of 20% of the amount by which the "positive performance change", if any, that has been credited to the capital account of a limited partner during such period exceeds any positive balance in such limited partner's "carryforward account", is debited from the limited partner's capital account and is simultaneously credited to the capital account of Value.

The Company's SAI investment is accounted for under the equity method and measured at net asset value as a practical expedient and has not been classified within the fair value hierarchy. All gains and losses, realized and unrealized, and fees are recorded through "gains (losses) on investment securities, net" on the condensed consolidated statements of operations. As of **June 30, 2023** **September 30, 2023**, the fair value of the Company's SAI investment was **\$3.0** **\$6.6** million which includes **the \$3.0** **\$6.5** million subscription, **\$10** from subscriptions and **\$33** thousand in fees. Unrealized gains on investment securities, net of fees were **\$49** thousand and **\$41** **\$80** thousand for the three and nine months ended September 30, 2023, respectively. See Note 4 in **unrealized gains** the condensed consolidated financial statements for additional details.

#### Preferred Dividends

At **June 30, 2023** **September 30, 2023**, the Company had accumulated undeclared dividends of **\$38.8 million** **\$41.1 million** to holders of shares of our Series D Preferred Stock of which **\$2.1 million** **\$2.3 million** and **\$4.2 million** **\$6.5 million** is attributable to the three and **six** **nine** months ended **June 30, 2023** **September 30, 2023**, respectively. Commencing September 21, 2023, the Series D Preferred Stock holders are entitled to cumulative cash dividends at an annual dividend rate of 12.75% increased by 2% of the liquidation preference per annum on each subsequent anniversary thereafter, subject to a maximum annual dividend rate of 16%, including the 2% default rate.

#### New Leases and Leasing Renewals

The following table presents selected lease activity statistics for our properties:

Renewals <sup>(1)</sup> :	Three Months Ended June 30,				Six Months Ended June 30,				Three Months Ended September 30,		Nine Months Ended September 30,	
	2023 <sup>(3)</sup>		2022		2023 <sup>(3)</sup>		2022		2023		2022	
	Leases renewed with rate increase (sq feet)	Leases renewed with rate increase (sq feet)	175,492	149,860	469,218	216,208	Leases renewed with rate increase (sq feet)	Leases renewed with rate increase (sq feet)	129,041	166,594	598,259	382,802
Leases renewed with rate decrease (sq feet)	Leases renewed with rate decrease (sq feet)	—	6,161	—	11,489	(sq feet)	Leases renewed with rate decrease (sq feet)	Leases renewed with rate decrease (sq feet)	—	47,538	—	59,027
Leases renewed with no rate change (sq feet)	Leases renewed with no rate change (sq feet)	50,026	54,322	77,258	74,651	(sq feet)	Leases renewed with no rate change (sq feet)	133,119	143,060	210,377	217,711	217,711
Total leases renewed (sq feet)	Total leases renewed (sq feet)	225,518	210,343	546,476	302,348	(sq feet)	Total leases renewed (sq feet)	262,160	357,192	808,636	659,540	659,540

Leases renewed with rate increase (count)	Leases renewed with rate increase (count)	19	24	59	44	Leases renewed with rate increase (count)	32	31	91	75
Leases renewed with rate decrease (count)	Leases renewed with rate decrease (count)	—	3	—	5	Leases renewed with rate decrease (count)	—	5	—	10
Leases renewed with no rate change (count)	Leases renewed with no rate change (count)	5	6	9	18	Leases renewed with no rate change (count)	7	6	16	24
Total leases renewed (count)	Total leases renewed (count)	24	33	68	67	Total leases renewed (count)	39	42	107	109
Option exercised (count)	Option exercised (count)	7	5	16	7	Option exercised (count)	6	5	22	12
Weighted average on rate increases (per sq foot)	Weighted average on rate increases (per sq foot)	\$ 0.79	\$ 1.29	\$ 0.71	\$ 1.25	Weighted average on rate increases (per sq foot)	\$ 1.32	\$ 1.18	\$ 0.84	\$ 1.22
Weighted average on rate decreases (per sq foot)	Weighted average on rate decreases (per sq foot)	\$ —	\$ (3.75)	\$ —	\$ (3.00)	Weighted average on rate decreases (per sq foot)	\$ —	\$ (0.70)	\$ —	\$ (1.15)
Weighted average rate on all renewals (per sq foot)	Weighted average rate on all renewals (per sq foot)	\$ 0.61	\$ 0.81	\$ 0.61	\$ 0.78	Weighted average rate on all renewals (per sq foot)	\$ 0.65	\$ 0.46	\$ 0.62	\$ 0.61
Weighted average change over prior rates	Weighted average change over prior rates	7.3 %	8.8 %	6.7 %	7.7 %	Weighted average change over prior rates	7.2 %	5.5 %	6.9 %	6.6 %
<b>New Leases<sup>(1)</sup></b>	<b>New Leases<sup>(1)</sup></b>					<b>New Leases<sup>(1)</sup></b>				
<sup>(2)</sup> :	<sup>(2)</sup> :					<sup>(2)</sup> :				
New leases (sq feet)	New leases (sq feet)	52,162	29,271	143,782	98,190	New leases (sq feet)	135,537	84,874	267,319	183,064
New leases (count)	New leases (count)	16	15	28	38	New leases (count)	16	18	44	56
Weighted average rate (per sq foot)	Weighted average rate (per sq foot)	\$ 13.37	\$ 13.05	\$ 14.23	\$ 13.08	Weighted average rate (per sq foot)	\$ 10.71	\$ 11.21	\$ 12.37	\$ 11.99

(1) Lease data presented is based on average rate per square foot over the renewed or new lease term.

(2) The Company does not include ground leases entered into for the purposes of new lease sq feet and weighted average rate (per sq foot) on new leases.

(3) Includes lease data for the Cedar Portfolio.

**Three and Six Nine Months Ended June 30, 2023 September 30, 2023 Compared to the Three and Six Nine Months Ended June 30, 2022 September 30, 2022**

## Results of Operations

### Comparison of the three months ended June 30, 2023 and 2022

Results from operations for the three and nine months ended June 30, 2023 September 30, 2023 reflect the results of the Company's acquisition of Cedar Acquisition on August 22, 2022. Accordingly, our results of operations will reflect the combined operations for future quarters subsequent to the acquisition date. Therefore, our historical financial statements will not be indicative of future operating results.

### Comparison of the three months ended September 30, 2023 and 2022

The following table presents a comparison of the condensed consolidated statements of operations for the three months ended **June 30, 2023** September 30, 2023 and 2022:

PROPERTY DATA:	Three Months Ended June 30,				Three Months Ended Changes				Three Months Ended September 30,				Three Months Ended Changes						
	2023		2022		Change		%		2023		2022		Change		%				
	PROPERTY DATA:	Number of properties owned and leased at period end (1)	Number of properties owned and leased at period end (1)	75	57	18	increase	31.6 %	PROPERTY DATA:	Number of properties owned and leased at period end (1)	75	76	(1)	decrease	(1.3) %				
Number of properties owned and leased at period end (1)	Aggregate gross leasable area at period end (1)	Ending leased rate at period end (1)	92.6 %	95.7 %	(3.1) %	decrease	(3.2) %	Aggregate gross leasable area at period end (1)	8,172,535	5,391,432	2,781,103	increase	51.6 %	Ending leased rate at period end (1)	93.1 %	92.1 %	1.0 %	increase	1.1 %
Other revenues	Total Revenue	Rental revenues	\$ 24,583	\$ 15,324	\$ 9,259	increase	60.4 %	Other revenues	257	155	102	increase	65.8 %	Total Revenue	24,840	15,479	9,361	increase	60.5 %
Operating expenses:	Property operations	Property operations	8,342	4,732	3,610	increase	76.3 %	Depreciation and amortization	7,301	3,625	3,676	increase	101.4 %	Impairment of assets held for sale	—	100	(100)	decrease	(100.0) %
Corporate general & administrative	Total Operating Expenses	Corporate general & administrative	2,818	1,673	1,145	increase	68.4 %	Operating Income	6,379	5,349	1,030	increase	19.3 %	Gain on disposal of properties	18,461	10,130	8,331	increase	82.2 %
Operating Income	Interest income	Interest income	126	14	112	increase	800.0 %	Operating Income	9,287	4,584	4,703	increase	102.6 %	Operating Income	9,287	4,584	4,703	increase	102.6 %
Gain on investment securities, net	Gain on investment securities, net	Gain on investment securities, net	31	—	31	increase	100.0 %	Interest income	163	15	148	increase	986.7 %	Interest income	163	15	148	increase	986.7 %

Interest expense	Interest expense	(10,179)	(7,501)	(2,678)	decrease	(35.7) %	Interest expense	(7,469)	(6,949)	(520)	decrease	(7.5) %
Net changes in fair value of derivative liabilities	Net changes in fair value of derivative liabilities	3,030	2,085	945	increase	45.3 %	Net changes in fair value of derivative liabilities	(11,163)	(656)	(10,507)	decrease	(1,601.7) %
Other expense	Other expense	(635)	—	(635)	decrease	(100.0) %	Other expense	(2,233)	—	(2,233)	decrease	(100.0) %
<b>Net Loss Before Income Taxes</b>	<b>Net Loss Before Income Taxes</b>				an		<b>Net Loss Before Income Taxes</b>				an	
Income tax expense	Income tax expense	(46)	—	(46)	decrease	(100.0) %	Income tax expense	(2)	—	(2)	decrease	(100.0) %
<b>Net Loss</b>	<b>Net Loss</b>				a		<b>Net Loss</b>				a	
		(1,294)	(53)	(1,241)	decrease	(2,341.5) %		(11,368)	(3,006)	(8,362)	decrease	(278.2) %
Less: Net Income (Loss) attributable to noncontrolling interests												
		2,676	(1)	2,677	increase	267,700.0 %						
Less: Net Income attributable to noncontrolling interests												
<b>Net Loss</b>	<b>Net Loss</b>				a		<b>Net Loss</b>				a	
<b>Attributable to Wheeler REIT</b>	<b>Attributable to Wheeler REIT</b>	\$ (3,970)	\$ (52)	\$ (3,918)	decrease	(7,534.6) %	<b>Attributable to Wheeler REIT</b>	\$ (14,061)	\$ (4,240)	\$ (9,821)	decrease	(231.6) %

(1) Excludes the undeveloped land parcels. Includes assets held for sale.

#### Total Revenue

Total revenues were \$24.8 million \$25.2 million and \$15.5 million \$18.7 million for the three months ended June 30, 2023 September 30, 2023 and 2022, respectively, representing an increase of 60.5% 34.7%. The increase in rental revenues of \$9.3 million \$6.2 million is primarily a result of the \$7.7 million \$5.8 million increase in non-same store property revenues due to the Cedar Acquisition, \$0.3 million increase in same store revenues and a \$1.2 million \$0.7 million increase in market lease amortization.

#### Total Operating Expenses

Total operating expenses were \$18.5 million \$18.1 million and \$10.1 million \$14.1 million for the three months ended June 30, 2023 September 30, 2023 and 2022, respectively, representing an increase of 82.2% 28.2%. Property operations expense increased \$3.6 million \$2.1 million, primarily a result of the \$3.1 million \$1.4 million increase in non-same store property operating expenses expense due to the Cedar Acquisition and a \$0.5 million \$0.7 million increase in same store property operating expenses, expense.

Depreciation and amortization increased 38.0% for the three months ended September 30, 2023, as a result of the Cedar Acquisition.

Corporate general and administrative expenses were \$2.5 million and \$2.5 million for the three months ended September 30, 2023 and 2022, respectively.

#### Interest Expense

Interest expense was \$7.5 million and \$6.9 million for the three months ended September 30, 2023 and 2022, respectively, representing an increase of 7.5%. Below is a comparison of the components which make up interest expense (in thousands, unaudited):

	Three Months Ended September 30,		Three Months Ended Changes	
	2023	2022	Change	% Change
Property debt interest - excluding Cedar debt	\$ 4,353	\$ 3,715	\$ 638	17.2 %
Convertible Notes interest	563	578	(15)	(2.6)%
Defeasance paid	—	1,156	(1,156)	(100.0)%
Amortization of deferred financing costs	636	806	(170)	(21.1)%
Property debt interest - Cedar	1,917	694	1,223	100.0 %
<b>Total Interest Expense</b>	<b>\$ 7,469</b>	<b>\$ 6,949</b>	<b>\$ 520</b>	<b>7.5 %</b>

#### Net Change in Fair Value of Derivative Liabilities

The net changes in the fair value of derivative liabilities was a loss of \$11.2 million and a loss of \$0.7 million for the three months ended September 30, 2023 and 2022, respectively, which represents a non-cash adjustment from a change in the fair value that includes adjustments in valuation assumptions. See Note 8 in the condensed consolidated financial statements for additional details.

#### Other Expense

Other expense represents expenses which are non-operating in nature. Other expenses were \$2.2 million for the three months ended September 30, 2023, which is the result of \$1.1 million for the repurchases of the Company's Convertible Notes described in Note 7 in this Form 10-Q and transaction costs related to the Series D Redemptions and Reverse Stock Split for \$1.1 million. Other expenses were \$0.0 million for the three months ended September 30, 2022.

#### Comparison of the nine months ended September 30, 2023 and 2022

The following table presents a comparison of the condensed consolidated statements of operations for the nine months ended September 30, 2023 and 2022:

	Nine Months Ended September 30,		Nine Months Ended Changes		% Change
	2023	2022	Change		
<b>PROPERTY DATA:</b>					
Number of properties owned and leased at period end (1)	75	76	(1)	decrease	(1.3)%
Aggregate gross leasable area at period end (1)	8,140,236	8,183,345	(43,109)	decrease	(0.5)%
Ending leased rate at period end (1)	93.1 %	92.1 %	1.0 %	increase	1.1 %
<b>FINANCIAL DATA:</b>					
Rental revenues	\$ 74,738	\$ 49,142	\$ 25,596	increase	52.1 %
Other revenues	1,372	552	820	increase	148.6 %
<b>Total Revenue</b>	<u>76,110</u>	<u>49,694</u>	<u>26,416</u>	<u>increase</u>	<u>53.2 %</u>
<b>OPERATING EXPENSES:</b>					
Property operations	26,068	16,637	9,431	increase	56.7 %
Depreciation and amortization	21,642	12,222	9,420	increase	77.1 %
Impairment of assets held for sale	—	760	(760)	decrease	(100.0)%
Corporate general & administrative	8,364	5,434	2,930	increase	53.9 %
<b>Total Operating Expenses</b>	<u>56,074</u>	<u>35,053</u>	<u>21,021</u>	<u>increase</u>	<u>60.0 %</u>
Gain (loss) on disposal of properties	2,204	(15)	2,219	increase	14,793.3 %
<b>Operating Income</b>	<u>22,240</u>	<u>14,626</u>	<u>7,614</u>	<u>increase</u>	<u>52.1 %</u>
Interest income	336	42	294	increase	700.0 %
Gain on investment securities, net	80	—	80	increase	100.0 %
Interest expense	(24,125)	(19,079)	(5,046)	decrease	(26.4)%
Net changes in fair value of derivative liabilities	(6,281)	(2,533)	(3,748)	decrease	(148.0)%
Other expense	(5,273)	(691)	(4,582)	decrease	(663.1)%
<b>Net Loss Before Income Taxes</b>	<u>(13,023)</u>	<u>(7,635)</u>	<u>(5,388)</u>	<u>decrease</u>	<u>(70.6)%</u>

Income tax expense						
	(48)	—	(48)	decrease		(100.0)%
<b>Net Loss</b>					a	
	(13,071)	(7,635)	(5,436)	decrease		(71.2)%
Less: Net Income attributable to noncontrolling interests				an		
	8,061	1,237	6,824	increase		551.7 %
<b>Net Loss Attributable to Wheeler REIT</b>				a		
\$	(21,132)	\$ (8,872)	\$ (12,260)	decrease		(138.2)%

(1) Excludes the undeveloped land parcels. Includes assets held for sale.

### Total Revenue

Total revenues were \$76.1 million and \$49.7 million for the nine months ended September 30, 2023 and 2022, respectively, representing an increase of 53.2%. The increase in rental revenues of \$25.6 million is primarily a result of the \$21.7 million increase in non-same store property revenues due to the Cedar Acquisition, \$0.7 million increase in same store property revenues and a \$3.4 million increase in market lease amortization.

### **Total Operating Expenses**

Total operating expenses were \$56.1 million and \$35.1 million for the nine months ended September 30, 2023 and 2022, respectively, representing an increase of 60.0%. Property operations expense increased \$9.4 million, primarily a result of the \$8.1 million increase in non-same store property expense due to the Cedar Acquisition and a \$1.3 million increase in same store property expense.

Impairment of assets held for sale was \$0.0 million \$0.0 million and \$0.1 million \$0.8 million for the three nine months ended June 30, 2023 September 30, 2023 and 2022, respectively, as a result of Harbor Pointe Land Parcel impairment.

Depreciation and amortization increased 101.4% 77.1% for the three nine months ended June 30, 2023 September 30, 2023, as a result of the Cedar Acquisition.

Corporate general and administrative expenses were \$2.8 million \$8.4 million and \$1.7 million \$5.4 million for the three nine months ended June 30, 2023 September 30, 2023 and 2022, respectively, representing an increase of 68.4% 53.9%, primarily a result of the following:

- \$1.021 million increase in professional fees, fees, primarily due to the Cedar Acquisition;
- \$0.3 million increase in compensation and benefits, primarily driven by hiring more employees due to the Cedar Acquisition and payroll-related costs; and
- \$0.204 million increase in corporate administration costs.

### ***Interest Expense***

Interest expense was \$10.2 million \$24.1 million and \$7.5 million \$19.1 million for the three nine months ended June 30, 2023 September 30, 2023 and 2022, respectively, representing an increase of 35.7% 26.4%. Below is a comparison of the components which make up interest expense (in thousands, unaudited):

(1) Includes the fair value adjustment for the paid-in-kind interest.

### ***Net Change in Fair Value of Derivative Liabilities***

The net changes in the fair value of derivative liabilities was a gain loss of \$3.0 million \$6.3 million and a gain loss of \$2.1 million \$2.5 million for the three nine months ended June 30, 2023 September 30, 2023 and 2022, respectively, which represents a non-cash adjustment from a change in the fair value that includes adjustments in valuation assumptions. See Note 8 in this Form 10-Q the condensed consolidated financial statements for additional details.

#### Other Expense

Other expense represents expenses which are non-operating in nature. Other expenses were \$0.6 \$5.3 million for the three nine months ended June 30, 2023, which consisted the loss on repurchase of Convertible Notes. Other expenses were \$0.0 million for the three months ended June 30, 2022.

#### Comparison of the six months ended June 30, 2023 and 2022

Results from operations for the six months ended June 30, 2023 reflect the results of the Company's acquisition of Cedar on August 22, 2022. Accordingly, our results of operations will reflect the combined operations for future quarters subsequent to the acquisition date. Therefore, our historical financial statements will not be indicative of future operating results.

The following table presents a comparison of the condensed consolidated statements of operations for the six months ended June 30, 2023 and 2022:

	Six Months Ended June 30,		Six Months Ended Changes	
	2023	2022	Change	% Change
<b>PROPERTY DATA:</b>				
Number of properties owned and leased at period end (1)	75	57	18	an increase 31.6 %
Aggregate gross leasable area at period end (1)	8,172,535	5,391,432	2,781,103	an increase 51.6 %
Ending leased rate at period end (1)	92.6 %	95.7 %	(3.1) % decrease	(3.2) %
<b>FINANCIAL DATA:</b>				
Rental revenues	\$ 50,083	\$ 30,656	\$ 19,427	an increase 63.4 %
Other revenues	823	320	503	an increase 157.2 %
<b>Total Revenue</b>	<b>50,906</b>	<b>30,976</b>	<b>19,930</b>	<b>an increase 64.3 %</b>
<b>OPERATING EXPENSES:</b>				
Property operations	17,297	9,982	7,315	an increase 73.3 %
Depreciation and amortization	14,767	7,241	7,526	an increase 103.9 %
Impairment of assets held for sale	—	760	(760)	a decrease (100.0)%
Corporate general & administrative	5,889	2,937	2,952	an increase 100.5 %
<b>Total Operating Expenses</b>	<b>37,953</b>	<b>20,920</b>	<b>17,033</b>	<b>an increase 81.4 %</b>
Loss on disposal of properties	—	(15)	15	a decrease (100.0)%
<b>Operating Income</b>	<b>12,953</b>	<b>10,041</b>	<b>2,912</b>	<b>an increase 29.0 %</b>
Interest income	173	27	146	an increase 540.7 %
Gain on investment securities, net	31	—	31	an increase 100.0 %
Interest expense	(16,656)	(12,129)	(4,527)	a decrease (37.3)%
Net changes in fair value of derivative liabilities	4,882	(1,877)	6,759	an increase 360.1 %

Other expense	(3,040)	(691)	(2,349)	a decrease	(339.9)%
<b>Net Loss Before Income Taxes</b>	(1,657)	(4,629)	2,972	an increase	64.2 %
Income tax expense	(46)	—	(46)	a decrease	(100.0)%
<b>Net Loss</b>	(1,703)	(4,629)	2,926	an increase	63.2 %
Less: Net Income attributable to noncontrolling interests	5,368	3	5,365	an increase	178,833.3 %
<b>Net Loss Attributable to Wheeler REIT</b>	<u>\$ (7,071)</u>	<u>\$ (4,632)</u>	<u>\$ (2,439)</u>	<u>a decrease</u>	<u>(52.7)%</u>

#### Total Revenue

Total revenues were \$50.9 million and \$31.0 million for the six months ended June 30, 2023 and 2022, respectively, representing an increase of 64.3%. The increase in rental revenues of \$19.4 million is primarily a result of the \$15.9 million increase in non-same store property revenues due to the Cedar Acquisition, \$0.7 million increase in same store revenues and a \$2.7 million increase in market lease amortization.

#### Total Operating Expenses

Total operating expenses were \$38.0 million and \$20.9 million for the six months ended June 30, 2023 and 2022, respectively, representing an increase of 81.4%. Property operations increased \$7.3 million, primarily a result of the \$6.8 million increase in non-same store property operating expenses due to the Cedar Acquisition and a \$0.5 million increase in same store property operating expenses.

Impairment of assets held for sale was \$0.0 million and \$0.8 million for the six months ended June 30, 2023 and 2022, respectively, as a result of Harbor Pointe Land Parcel impairment.

Depreciation and amortization increased 103.9% for the six months ended June 30, 2023, as a result of the Cedar Acquisition.

Corporate general and administrative expenses were \$5.9 million and \$2.9 million for the six months ended June 30, 2023 and 2022, respectively, representing an increase of 100.5%, primarily a result of the following:

- \$2.1 million increase in professional fees;
- \$0.4 million increase in compensation and benefits primarily driven by hiring more employees due to the Cedar Acquisition and payroll related costs; and
- \$0.4 million increase in corporate administration costs.

#### Interest Expense

Interest expense was \$16.7 million and \$12.1 million for the six months ended June 30, 2023 and 2022, respectively, representing an increase of 37.3%. Below is a comparison of the components which make up interest expense (in thousands, unaudited):

	Six Months Ended June 30,		Six Months Ended Changes	
	2023	2022	Change	% Change
Property debt interest - excluding Cedar debt	\$ 7,496	\$ 7,224	\$ 272	3.8 %
Convertible Notes interest (1)	2,006	2,099	(93)	(4.4)%
Defeasance paid	1,758	1,458	300	20.6 %
Amortization of deferred financing costs	1,721	1,348	373	27.7 %
Property debt interest - Cedar	3,675	—	3,675	100.0 %
<b>Total Interest Expense</b>	<u>\$ 16,656</u>	<u>\$ 12,129</u>	<u>\$ 4,527</u>	<u>37.3 %</u>

(1) Includes the fair value adjustment for the paid-in-kind interest.

#### Net Change in Fair Value of Derivative Liabilities

The net changes in the fair value of derivative liabilities was a gain of \$4.9 million and a loss of \$1.9 million for the six months ended June 30, 2023 and 2022, respectively, which represents a non-cash adjustment from a change in the fair value that includes adjustments in valuation assumptions. See Note 8 in this Form 10-Q for additional details.

#### Other Expense

Other expense represents expenses which are non-operating in nature. Other expenses were \$3.0 million for the six months ended June 30, 2023 September 30, 2023, which consisted of \$2.4 million costs for an exchange offer the Exchange Offer and \$1.6 million result of the two repurchases of Convertible Notes. Additionally, other expense included transaction costs related to the Series D Redemptions and Reverse Stock Split for \$1.3 million for the Company's outstanding shares of Series D Preferred (the "Exchange Offer") and \$0.6 million loss on repurchase of Convertible Notes nine months ended September 30, 2023. Other expenses were \$0.7 million for the six nine months ended June 30, 2022 September 30, 2022, which consisted of legal settlement costs.

#### Same Store Operating Income

Net operating income ("NOI") is a widely-used non-GAAP financial measure for REITs. The Company believes that NOI is a useful measure of the Company's property operating performance. The Company defines NOI as property revenues (rental and other revenues) less property and related expenses (property operation and maintenance and real estate taxes). Because NOI excludes general and administrative expenses, depreciation and amortization, interest expense, interest income, provision for income taxes, gain or loss on sale or capital expenditures and leasing costs and impairment charges, it provides a performance measure, that when compared year over year, reflects the revenues and expenses directly associated with owning and operating commercial real estate properties and the impact to operations from trends in occupancy rates, rental rates and operating costs, providing perspective not immediately apparent from net income. The Company uses NOI to evaluate its operating performance since NOI allows the Company to evaluate the impact of factors, such as occupancy levels, lease structure, lease rates and tenant base, have on the Company's results, margins and returns. NOI should not be viewed as a measure of the Company's overall financial performance since it does not reflect general and administrative expenses, depreciation and amortization, involuntary conversion, interest expense, interest income, provision for income taxes, straight-line rents, market lease amortization, gain or loss on sale or disposition of assets, and the level of capital expenditures and leasing costs necessary to maintain the operating performance of the Company's properties. Other REITs may use different methodologies for calculating NOI, and accordingly, the Company's NOI may not be comparable to that of other REITs.

The following table is a reconciliation of same store NOI from operating income (the most directly comparable GAAP financial measure). Same stores consist only of those properties owned during all periods presented in their entirety.

Operating Income	Operating Income	Three Months Ended June 30,				Six Months Ended June 30,				Three Months Ended September 30,				Nine Months Ended September 30,			
		2023		2022		2023		2022		2023		2022		2023		2022	
		(in thousands, unaudited)								(in thousands, unaudited)							
Adjustments:	Adjustments:	\$ 6,379	\$ 5,349	\$ 12,953	\$ 10,041	\$ 9,287	\$ 4,584	\$ 22,240	\$ 14,626								
Loss on disposal of properties		—	—	—	15					(Gain) loss on disposal of properties							
(Gain) loss on disposal of properties						(2,204)	—	(2,204)	15								
Corporate general & administrative	Corporate general & administrative	2,818	1,673	5,889	2,937	2,475	2,498	8,364	5,434								
Impairment of assets held for sale	Impairment of assets held for sale	—	100	—	760	—	—	—	760								
Depreciation and amortization	Depreciation and amortization	7,301	3,625	14,767	7,241	6,875	4,981	21,642	12,222								
Straight-line rents	Straight-line rents	(373)	(156)	(719)	(233)	(285)	(314)	(1,004)	(547)								
Above (below) market lease amortization	Above (below) market lease amortization	(1,237)	(7)	(2,633)	16	(1,232)	(494)	(3,865)	(478)								
Other non-property revenue	Other non-property revenue	114	(9)	(131)	(16)	—	2	(131)	(14)								
NOI related to non-same store properties	NOI related to non-same store properties	(4,875)	(210)	(9,610)	(428)	(5,384)	(1,004)	(14,994)	(1,432)								
Same Store Property Net Operating Income	Same Store Property Net Operating Income	\$ 10,127	\$ 10,365	\$ 20,516	\$ 20,333	\$ 9,532	\$ 10,253	\$ 30,048	\$ 30,586								

Property revenues	Property revenues	\$ 15,341	\$ 15,026	\$ 30,903	\$ 30,169	Property revenues	\$ 15,384	\$ 15,382	\$ 46,287	\$ 45,551
Property expenses	Property expenses	5,214	4,661	10,387	9,836	Property expenses	5,852	5,129	16,239	14,965
<b>Same Store Property Net Operating Income</b>	<b>Same Store Property Net Operating Income</b>	<b>\$ 10,127</b>	<b>\$ 10,365</b>	<b>\$ 20,516</b>	<b>\$ 20,333</b>	<b>Same Store Property Net Operating Income</b>	<b>\$ 9,532</b>	<b>\$ 10,253</b>	<b>\$ 30,048</b>	<b>\$ 30,586</b>

Total same store property NOI was \$10.1 million \$9.5 million and \$10.4 million \$10.3 million for the three months ended June 30, 2023 September 30, 2023 and 2022, respectively, representing a decrease of 2.3% 7.0% primarily due to a 11.9 14.1 % increase in property expenses. Total same store property NOI was \$20.5 \$30.0 million and \$20.3 \$30.6 million for the six nine months ended June 30, 2023 September 30, 2023 and 2022, respectively, representing an increase decrease of 0.9% 1.8% primarily due to strong leasing activity, partially offset by increases in property expenses.

#### Funds from Operations (FFO)

We use **FFO**, funds from operations ("FFO"), a non-GAAP measure, as an alternative measure of our operating performance, specifically as it relates to results of operations and liquidity. We compute FFO in accordance with standards established by the Board of Governors of **NAREIT** **Nareit** in its March 1995 White Paper (as amended in November 1999, April 2002 and December 2018). As defined by **NAREIT**, **Nareit**, FFO represents net income (computed in accordance with GAAP), excluding gains (or losses) from sales of property, plus real estate related depreciation and amortization (excluding amortization of loan origination costs), plus impairment of real estate related long-lived assets and after adjustments for unconsolidated partnerships and joint ventures. Most industry analysts and equity REITs, including us, consider FFO to be an appropriate supplemental measure of operating performance because, by excluding gains or losses on dispositions and excluding depreciation, FFO is a helpful tool that can assist in the comparison of the operating performance of a company's real estate between periods, or as compared to different companies. Management uses FFO as a supplemental measure to conduct and evaluate our business because there are certain limitations associated with using GAAP net income alone as the primary measure of our operating performance. Historical cost accounting for real estate assets in accordance with GAAP implicitly assumes that the value of real estate assets diminishes predictably over time, while historically real estate values have risen or fallen with market conditions. Accordingly, we believe FFO provides a valuable alternative measurement tool to GAAP when presenting our operating results.

Below is a reconciliation of net loss to FFO, a non-GAAP measurement (in thousands, unaudited):

		Three Months Ended June 30, 2023								Nine Months Ended September 30, 2023								
		Three Months Ended June 30,		Six Months Ended June 30,		Three Months Ended Changes		Six Months Ended Changes		Three Months Ended September 30, 2023		Nine Months Ended September 30, 2023		Three Months Ended Changes		Nine Months Ended Changes		
		2023	2022	2023	2022	Change	% Change	Change	% Change	2023	2022	2023	2022	Change	% Change	2023	2022	
Net Loss	Net Loss	\$ (1,294)	\$ (53)	\$ (1,703)	\$ (4,629)	\$ (1,241)	(2,341.5)%	\$ 2,926	63.2 %	Net Loss	\$ (11,368)	\$ (3,006)	\$ (13,071)	\$ (7,635)	\$ (8,362)	(278.2)%	\$ (5,436)	(71.2)%
Depreciation and amortization of real estate assets	Depreciation and amortization of real estate assets	7,301	3,625	14,767	7,241	3,676	101.4 %	7,526	103.9 %	Depreciation and amortization of real estate assets	6,875	4,981	21,642	12,222	1,894	38.0 %	9,420	77.1 %
Impairment of assets held for sale	Impairment of assets held for sale	—	100	—	760	(100)	(100.0)%	(760)	(100.0)%	Impairment of assets held for sale	—	—	—	760	—	— %	(760)	(100.0)%
Loss on disposal of properties	Loss on disposal of properties	—	—	—	15	—	— %	(15)	(100.0)%	(Gain) loss on disposal of properties	(2,204)	—	(2,204)	15	(2,204)	(100.0)%	(2,219)	(14,793.3)%
FFO	FFO	\$ 6,007	\$ 3,672	\$ 13,064	\$ 3,387	\$ 2,335	63.6 %	\$ 9,677	285.7 % FFO	FFO	\$ (6,697)	\$ 1,975	\$ 6,367	\$ 5,362	\$ (8,672)	(439.1)%	\$ 1,005	18.7 %

During the three months ended June 30, 2023 September 30, 2023, FFO decreased \$8.7 million. During the nine months ended September 30, 2023, FFO increased \$2.3 million. During the six months ended June 30, 2023, FFO increased \$9.7 \$1.0 million.

We believe the computation of FFO in accordance with **NAREIT**'s **Nareit**'s definition includes certain items that are not indicative of the results provided by our operating portfolio and affect the comparability of our period-over-period performance. These items include, but are not limited to, legal settlements, non-cash share-based compensation expense, non-cash amortization on loans and acquisition costs. Therefore, in addition to FFO, management uses Adjusted FFO ("AFFO"), which we define to exclude such items. Management believes that these adjustments are appropriate in determining AFFO as they are not indicative of the operating performance of our assets. In addition, we believe that AFFO is a useful supplemental measure for the investing community to use in comparing us to other REITs as many REITs provide some form of adjusted or modified FFO. However, there can be no assurance that AFFO presented by us is comparable to the adjusted or modified FFO of other REITs.

Total AFFO is shown in the table below:

		Three Months Ended June 30,				Six Months Ended June 30,				Three Months Ended September 30,		Nine Months Ended September 30,	
		2023		2022		2023		2022		2023	2022	2023	2022
		FFO	FFO	\$ 6,007	\$ 3,672	\$ 13,064	\$ 3,387	FFO	\$ (6,697)	\$ 1,975	\$ 6,367	\$ 5,362	
Preferred Stock dividends - undeclared	Preferred Stock dividends - undeclared	(2,261)	(2,264)	(4,525)	(4,528)			Preferred Stock dividends - undeclared	(2,415)	(2,264)	(6,940)	(6,792)	
Dividends on noncontrolling interests	Dividends on noncontrolling interests							Dividends on noncontrolling interests					
preferred stock	preferred stock	(2,688)	—	(5,376)	—	preferred stock	(2,688)	(1,225)	(8,064)	(1,225)			
Preferred stock accretion adjustments	Preferred stock accretion adjustments	145	146	292	292	Preferred stock accretion adjustments	146	146	438	438			
FFO available to common stockholders and common unitholders	FFO available to common stockholders and common unitholders	1,203	1,554	3,455	(849)	FFO available to common stockholders and common unitholders	(11,654)	(1,368)	(8,199)	(2,217)			
Other non-recurring and non-cash expense	Other non-recurring and non-cash expense	2,402	1,470	5,075	2,147	Other non-recurring and non-cash expense	8	1,241	2,043	3,388			
Gain on investment securities, net	Gain on investment securities, net	(31)	—	(31)	—	Gain on investment securities, net	(49)	—	(80)	—			
Net changes in fair value of derivative	Net changes in fair value of derivative					Net changes in fair value of derivative							
Liabilities	Liabilities	(3,030)	(2,085)	(4,882)	1,877	Liabilities	11,163	656	6,281	2,533			
Straight-line rental revenue, net straight-line expense	Straight-line rental revenue, net straight-line expense	(301)	(148)	(704)	(217)	Straight-line rental revenue, net straight-line expense	(293)	(306)	(997)	(523)			
Deferred financing cost amortization	Deferred financing cost amortization	1,242	928	1,721	1,348	Deferred financing cost amortization	636	806	2,357	2,154			
Paid-in-kind interest	Paid-in-kind interest	1,428	1,521	2,006	2,099	Paid-in-kind interest	—	—	2,006	2,099			
Above (below) market lease amortization	Above (below) market lease amortization	(1,237)	(7)	(2,633)	16	Above (below) market lease amortization	(1,232)	(494)	(3,865)	(478)			
Recurring capital expenditures and tenant improvement reserves	Recurring capital expenditures and tenant improvement reserves					Recurring capital expenditures and tenant improvement reserves							
AFFO	AFFO	\$ 1,268	\$ 2,964	\$ 3,190	\$ 5,882	AFFO	\$ (1,825)	\$ 126	\$ (1,675)	\$ 6,008			

Other non-recurring and non-cash expenses are costs of the Company that we believe will not be incurred on a go forward basis. Other non-recurring non-recurring expenses of \$2.4 million \$0.0 million and \$5.1 million \$2.0 million for the three and six nine months ended June 30, 2023 September 30, 2023, respectively, were primarily a result of \$2.4 million costs related to the Exchange Offer, \$1.8 million in loan defeasance payments \$0.6 million loss on repurchase of Convertible Notes and \$0.3 million costs to demolish decommissioned space not included in the Company's gross leasable area. Other non-recurring non-recurring expenses of \$1.5 million \$1.2 million and \$2.1 million \$3.4 million for the three and six nine months ended June 30, 2022 September 30, 2022, respectively, primarily include \$1.5 million \$1.2 million and \$2.6 million in loan defeasance payments, respectively, a result of the 2022 loan refinancing activities, \$0.0 million and \$0.7 million legal settlement costs, costs, respectively and severance.

#### Liquidity and Capital Resources

At **June 30, 2023** **September 30, 2023**, our consolidated cash, cash equivalents and restricted cash totaled **\$51.1 million** **\$48.9 million** compared to consolidated cash, cash equivalents and restricted cash of **\$46.6 million** **\$54.3 million** at **June 30, 2022** **September 30, 2022**. Cash flows from operating activities, investing activities and financing activities were as follows (in thousands, unaudited):

		Six Months Ended June 30,		Nine Months Ended September 30,	
		2023	2022	2023	2022
Operating activities	Operating activities	\$ 11,507	\$ 9,951	\$ 15,032	\$ 27,954
Investing activities	Investing activities	(\$10,036)	(3,247)	(19,618)	(140,106)
Financing activities	Financing activities	(\$6,191)	(571)	(2,422)	126,035

#### ***Operating Activities***

Our cash flows from operating activities **increased \$1.6 million** **decreased \$12.9 million**. Net cash provided by operating activities, before net changes in operating assets and liabilities, was **\$10.0 million** **\$15.2 million** and **\$8.9 million** **\$12.0 million** for 2023 and 2022, respectively, respectively, an increase of **\$3.2 million**. The increase was primarily a result of the Cedar Acquisition, and an increase in same store NOI of **\$0.2 million**, partially offset by an increase in cash paid for interest expense, **other expenses** and corporate general and administrative expenses.

#### ***Investing Activities***

Our cash flows used in investing activities **increased \$6.8 million** **decreased \$120.5 million**, primarily due to the **costs related to the Cedar Acquisition in 2022 and the proceeds from the Carl's Corner Out Parcel sale**, partially offset by the **investment purchase of \$3.0 million** **\$6.5 million subscription with SAI**, increase in capital expenditures paid of **\$2.0 million** **\$9.5 million**, including the **purchase** purchases of the St. George Plaza Land Parcel and Devine Street Land Acquisition and the proceeds from the Walnut Hill Plaza property sale in 2022.

#### ***Financing Activities***

Our cash flows used in financing activities were **\$6.2 million** **\$2.4 million** for the **six** **nine** months ended **June 30, 2023** **September 30, 2023**, compared to **\$0.6 million** **cash flows** provided by financing activities of **\$126.0 million** for the comparable period in 2022.

Financing activities during the **six** **nine** months ended **June 30, 2023** **September 30, 2023** primarily consisted of:

##### ***Cash inflows:***

- **\$7.3 million** 2023 loan refinancing activities, **net**; **net**, including loan agreement for Timpany Plaza;

##### ***Cash outflows:***

- **\$5.4 million** for distributions paid on noncontrolling interests;
- **\$4.1 million** payments for deferred financing costs;
- **\$1.8 million** defeasance payments;
- **\$1.2 million** repurchase of debt securities; and
- **\$1.1 million** scheduled loan principal payments on debt.

Financing activities during the **six** **nine** months ended **June 30, 2022** **September 30, 2022** primarily consisted of:

##### ***Cash inflows:***

- **\$10.8 million** 2022 loan refinancing activities, **net**; **and**
- **\$130.0 million** loan related to the Cedar Acquisition;

##### ***Cash outflows:***

- **\$3.7 million** payments for deferred financing costs;
- **\$3.1 million** scheduled loan principal payments on debt;
- **\$3.1 million** loan principal payment related to the sale of Walnut Hill Plaza; and
- **\$1.5 million** defeasance payments.

The Company continues to endeavor to manage its debt prudently with the objective of achieving a conservative capital structure and minimizing leverage within the Company. Our debt balances, excluding unamortized debt issuance costs, consisted of the following (in thousands):

June 30, 2023	December 31, 2022	September 30, 2023	December 31, 2022
(unaudited)		(unaudited)	

Fixed-rate notes	Fixed-rate notes	Fixed-rate notes	Fixed-rate notes
Total debt	\$ 488,101	\$ 482,447	\$ 495,933
Total debt	\$ 488,101	\$ 482,447	\$ 482,447

The weighted average interest rate and term of our fixed-rate debt are 5.39% 5.42% and 8.97 8.41 years, respectively, at **June 30, 2023** **September 30, 2023**. We have no \$7.1 million of debt maturing, including principal repayments, during the twelve months ending **June 30, 2024** **September 30, 2024**. While we anticipate being able to refinance all the loans at reasonable market terms upon maturity, our inability to do so may materially impact our financial position and results of operations. See Note 7 included in **this Form 10-Q** the condensed consolidated financial statements for additional mortgage indebtedness details.

#### NASDAQ Notices

On June 26, 2023, we received a letter from the listing qualifications staff (the "Staff") of The Nasdaq Stock Market LLC ("Nasdaq") notifying the Company that it is not in compliance with the minimum bid price requirement set forth in Nasdaq Listing Rule 5550(a)(2) (the "Bid Price Rule") for continued listing standards. This rule requires listed securities to maintain a minimum bid price of \$1.00 per share, and Nasdaq Listing Rule 5810(c)(3)(A) provides that a failure to meet the minimum bid price requirement exists if the deficiency continues for a period of 30 consecutive business days.

In accordance with Nasdaq's rules, we have 180 calendar days to regain compliance. If, at any time before **On September 1, 2023**, the end Company received a letter from the Listing Qualifications Department of this first 180-day period, or through December 26, 2023, The Nasdaq Stock Market LLC notifying the Company that, based on the closing bid price of the common stock closes Company's Common Stock having been at or above least \$1.00 per share for a minimum of 10 consecutive business days, subject to the Staff's discretion to extend this required period, the Staff will provide written notification that the Company has achieved regained compliance with Nasdaq's Nasdaq Listing Rule 5550(a)(2) and the minimum bid price rule. If we do not regain compliance during the first 180-day compliance period, then the Staff may grant deficiency matter previously disclosed by the Company a second 180 calendar day period to regain compliance, subject to certain requirements. On August 7, 2023, the Company announced that its Board of Directors approved a reverse stock split of one-for-ten to be effective August 17, 2023. The Company and the Board of Directors believe the Reverse Stock Split will help the Company regain compliance with the Bid Price Rule. However, there can be no assurance that the Company will be able to regain compliance with such requirement or maintain its listing on The Nasdaq Capital Market. **June 28, 2023** was closed.

In addition, effective as of June 2, 2023, one of our directors, Michelle D. Bergman, tendered her resignation, for personal reasons, as a member of the Board of Directors, including her membership on the Audit Committee (the "Audit Committee") and Compensation Committee of the Board of Directors. The effect of this resignation caused the Audit Committee to consist of two members. On July 12, 2023, we received a letter from the Staff of Nasdaq notifying the Company that because the Audit Committee now only has had two members, the Company no longer complies with the requirement set forth in the Nasdaq Listing Rule 5605 that the Audit Committee consist of at least three members. The members. On August 31, 2023, the Board voted to elect Dennis Pollack as a director of the Company is required and to appoint a third member him to its the Audit Committee, by in each case effective as of September 5, 2023. On September 14, 2023, Nasdaq notified the earlier Company that it had regained compliance with Nasdaq Listing Rules 5605(b)(1) and 5605(c)(2), which require an audit committee of a Nasdaq-listed company to have a minimum of three members, each satisfying the Company's next annual stockholders' meeting or June 2, 2024. The Company expects to make independence requirements set forth in the appointment within applicable listing rules, and the time period required.

matter was closed.

#### Material Cash Requirements, Contractual Obligations and Commitments

Our expected material cash requirements for the twelve months ended **June 30, 2024** **September 30, 2024** and thereafter are comprised of (i) contractually obligated expenditures; (ii) other essential expenditures; and (iii) opportunistic expenditures.

The primary liquidity needs of the Company, in addition to the funding of our ongoing operations, at **June 30, 2023** **September 30, 2023** are \$1.4 million \$7.1 million in principal and regularly scheduled payments due in the twelve months ended **June 30, 2024** **September 30, 2024** as described in Note 7 in **this Form 10-Q** the condensed consolidated financial statements.

In addition to liquidity required to fund debt payments, we may incur some level of capital expenditures during the year for our existing properties that cannot be passed on to our tenants.

To meet these future liquidity needs, the Company:

- had \$28.7 million \$25.4 million in cash and cash equivalents at **June 30, 2023** **September 30, 2023**;
- had \$22.4 million \$23.4 million held in lender reserves for the purpose of tenant improvements, lease commissions, real estate taxes and insurance at **June 30, 2023** **September 30, 2023**; and
- intends to use cash generated from operations during the twelve months ended **June 30, 2024** **September 30, 2024**.

Additionally, the Company plans to undertake measures to grow its operations and increase liquidity through delivering space currently leased but not yet occupied, backfilling vacant anchor spaces, replacing tenants who are in default of their lease terms, increasing future lease revenue through tenant improvements partially funded by restricted cash, disposition of non-core assets in the ordinary course of business and refinancing properties.

Our success in executing on our strategy will dictate our liquidity needs going forward. If we are unable to execute in these areas, our ability to grow may be limited without additional capital.

#### Series D Preferred Stock

After September 21, 2023 (the "Series D Redemption Date"), the Series D Preferred Holders will have the right to cause the Company to redeem their Series D Preferred at a price of \$25.00 per share plus the amount of all accrued and unpaid dividends. This redemption price is payable by the Company, at the Company's election, in cash or shares of our common stock, \$0.01 par value per share ("Common Stock"), or a combination of cash and shares of Common Stock.

Since January 2019, Series D Preferred has been accruing unpaid dividends at a rate of 10.75% *per annum* of the \$25.00 liquidation preference per share, or at \$2.6875 per share *per annum*. Commencing September 21, 2023, the holders will be entitled to cumulative cash dividends at an annual dividend rate of the initial rate increased by 2.0% of the liquidation preference per annum on each subsequent anniversary thereafter, subject to a maximum annual dividend rate of 14.0%.

As of June 30, 2023, the outstanding Series D Preferred had an aggregate liquidation preference of approximately \$82.7 million, with aggregate accrued and unpaid dividends in the amount of approximately \$38.8 million, for a total liquidation value of \$121.5 million. Assuming dividends continue to accrue and remain unpaid on the Series D Preferred, then on the Series D Redemption Date we estimate that the aggregate liquidation preference (based on the 3,308,603 shares outstanding as of June 30, 2023) would be approximately \$82.7 million, with aggregate accrued and unpaid dividends in the amount of approximately \$41.1 million, for a total liquidation value of \$123.8 million.

As of June 30, 2023, the Series D Preferred is convertible, in whole or in part, at any time, at the option of the Series D Preferred Holders, into previously unissued Common Stock at a conversion price of \$16.96 per share of Common Stock. Based upon the closing price of our Common Stock on Aug 4, 2023 of \$0.60 per share, we believe it unlikely that Series D Preferred Holders would convert their shares of Series D Preferred into Common Stock in advance of the Series D Redemption Date, and likely that they would instead choose to exercise their redemption rights after the Series D Redemption Date.

In an effort to address the risk of a significant reduction to the value of a Series D Preferred Holder's investment in Series D Preferred and Common Stock following the Series D Redemption Date, the Company launched a modified Dutch auction tender offer in December 2020 for up to \$19.0 million (subsequently reduced to \$6.0 million) of Series D Preferred, in which 1,467,162 shares were tendered and 387,097 shares were accepted for purchase for an aggregate cost of \$6.0 million. We subsequently launched a second modified Dutch auction tender offer in April 2021 for up to \$12.0 million of our Series D Preferred, in which 103,513 shares were tendered and accepted for purchase for an aggregate cost of \$1.9 million. **Convertible Notes**

In July 2021, we raised additional capital for the Company through a rights offering pursuant to which the Common Stock holders purchased \$30.0 million in aggregate principal amount of our **Convertible Notes**. Interest on the **Convertible Notes** is payable at the Company's option in cash, Series B Preferred and/or Series D Preferred. **Preferred Stock**.

On December 31, 2021, the first interest payment date on the **Convertible Notes**, interest was paid in the form of Series D Preferred. **Preferred Stock**. On June 30, 2023, interest was paid in the form of Series D Preferred. **Preferred Stock**; which was the second instance when interest on the **Convertible Notes** was paid in the form of Series D Preferred. **Preferred Stock**. For purposes of determining the value of the Series D Preferred Stock paid as interest on the **Convertible Notes**, each share of Series D Preferred Stock was deemed to have a value equal to the product of (x) the average of the per share volume-weighted average prices of the Series D Preferred Stock for the 15 consecutive trading days ending on the third business day immediately preceding the interest payment date, and (y) 0.55.

The **Convertible Notes** could have the effect of causing, if interest is paid in the future in shares of Series D Preferred Stock, substantial dilution of the Series D Preferred Stock and reduction in the value of any Series D Preferred Stock. In addition, depending on the prices at which the ongoing monthly redemptions of Series D Preferred Stock occur, the conversion price for the **Convertible Notes** could be repeatedly adjusted downwards which would in turn cause significant pressure on the value of the Company's Common Stock.

In an effort to address the risk associated with the significant and growing financial obligation to the Series D Preferred Holders, and to provide the Series D Preferred Holders with an opportunity to receive value for their Series D Preferred Stock prior to the Series D Redemption Date, on November 22, 2022, the Company commenced an Exchange Offer and related Consent Solicitation which was unsuccessful and expired in January 2023.

#### **Series D Preferred Stock**

The consummation As of September 30, 2023, the Exchange Offer outstanding Series D Preferred Stock had an aggregate liquidation preference of approximately \$82.7 million, with aggregate accrued and Consent Solicitation was subject unpaid dividends in the amount of approximately \$41.1 million, for a total liquidation value of \$123.8 million. After September 21, 2023, each holder of Series D Preferred Stock has the right, at such holder's option, to and was conditional upon, the satisfaction of certain conditions, including the condition request that the holders Company redeem any or all of at least 66 2/3% of the outstanding such holder's shares of Series D Preferred (i) validly tender their Stock on a monthly basis.

The first monthly Holder Redemption Date occurred on October 5, 2023. The Company received fully complete and timely redemption requests from 50 Series D Preferred into the Exchange Offer, and do not validly withdraw such Series D Preferred, on or prior to the expiration date of the Exchange Offer, and (ii) consent to the Proposed Amendments. As of the expiration of the Exchange Offer on January 20, 2023, 864,391 shares of Series D Preferred (representing 26.8% of the total outstanding Series D Preferred) had been validly tendered (and not validly withdrawn) in the Exchange Offer. Accordingly, the condition that the holders of at least 66 2/3% of the outstanding Holders, collectively redeeming 172,911 shares of Series D Preferred (i) validly tender their Stock for a redemption price per share of approximately \$37.48. The Company settled the redemption price in Common Stock. The volume weighted average of the closing sales price, as reported on the Nasdaq, per share of Common Stock for the ten consecutive trading days immediately preceding, but not including, the Holder Redemption Date was approximately \$2.89. Accordingly, the Company issued 2,245,591 shares of Common Stock in settlement of an aggregate redemption price of approximately \$6.5 million.

The second monthly Holder Redemption Date occurred on November 6, 2023. The Company received fully complete and timely redemption requests from 90 Series D Preferred into the Exchange Offer, and not validly withdraw such Holders, collectively redeeming 319,762 shares of Series D Preferred and (ii) consent to Stock for a redemption price per share of approximately \$37.76. The Company settled the Proposed Amendments, had redemption price in Common Stock. The volume weighted average of the closing sales price, as reported on the Nasdaq, per share of Common Stock for the ten consecutive trading days immediately preceding, but not been satisfied, and including, the Exchange

Offer expired on January 20, 2023. As a result, Holder Redemption Date was approximately \$0.84. Accordingly, the Series D Preferred remains outstanding with no change to its terms, including its Company issued 14,355,723 shares of Common Stock in settlement of an aggregate redemption rights price of approximately \$12.1 million.

We anticipate that, in the event of the Series D Preferred Holders' continue to exercise of such their redemption rights, after the Series D Redemption Date, the Company will not have sufficient available cash to pay the aggregate redemption price. Accordingly, price in such event, we will not be able to meet shares of our redemption obligation without either liquidating assets or issuing significant additional amounts of Common Stock.

The Company does not believe it is in its interests to liquidate assets or incur indebtedness to fund cash redemptions of the Series D Preferred Stock and, accordingly, it has no intention of doing so. Therefore, the Company intends to continue to settle redemptions of Series D Preferred following the Series D Redemption Date in Common Stock.

We believe that the issuance of Common Stock to settle redemptions in Common Stock will continue to result in a substantial dilution of the outstanding Common Stock.

#### ***Inflation***

If inflation rates increase, substantially all of the Company's tenant leases contain provisions designed to partially mitigate the negative impact of inflation in the near term. Such lease provisions include clauses that require tenants to reimburse the Company for inflation-sensitive costs such as real estate taxes, insurance and many of the operating expenses it incurs. In addition, many of our leases are for terms of less than ten years, which permits us to seek increased rents upon re-rental at market rates. However, significant inflation rate increases over a prolonged period of time may have a material adverse impact on the Company's business. Conversely, deflation could lead to downward pressure on rents and other sources of income.

Interest rate increases could result in higher incremental borrowing costs for the Company and our tenants. The duration of the Company's indebtedness and our relatively low exposure to floating rate debt have mitigated the direct impact of inflation and interest rate increases, the increases. The degree and pace of these changes have had and may continue to have impacts on our business.

#### **Recent Accounting Pronouncements**

See Note 2 to the condensed consolidated financial statements beginning on page 10 of this Current Quarterly Report on Form 10-Q.

#### **Critical Accounting Policies**

In preparing the condensed consolidated financial statements, we have made estimates, assumptions and judgments that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities as of the date of the financial statements and the reported amounts of revenue and expenses during the reported periods. Actual results may differ from these estimates. A summary of our critical accounting estimates and policies is included in our 2022 Form 10-K under "Management's Discussion and Analysis of Financial Condition and Results of Operations." During the six months ended June 30, 2023 September 30, 2023, there have been no significant changes to these estimates and policies previously disclosed in our 2022 Form 10-K. For disclosure regarding recent accounting pronouncements and the anticipated impact they will have on our operations, please refer to Note 2 of the condensed consolidated financial statements included in this Quarterly Report on Form 10-Q.

#### **Available Information**

The Company's website address is [www.whlr.us](http://www.whlr.us). We make available free of charge through our website our most recent Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports as soon as reasonably practicable after we electronically file or furnish such materials to the SEC. In addition, we have posted the Charters of our Asset Liability Committee, Audit Committee, Compensation Committee, Governance and Nominating Committee, Executive Committee, Litigation Committee, Related Person Transactions Committee and Series D Redemption Facilitation Committee, as well as our Code of Business Conduct and Ethics, for Board Members, Code of Business Conduct and Ethics for Employees, Officers, Agents and Representatives, Corporate Governance Principles, and Insider Trading Policy, all under separate headings. The content of our website is not incorporated by reference into this Quarterly Report on Form 10-Q or in any other report or document we file with the SEC, and any references to our website is intended to be inactive textual references only.

#### **Item 3. Quantitative and Qualitative Disclosures About Market Risk.**

Not applicable.

#### **Item 4. Controls and Procedures.**

##### **Evaluation of Disclosure Controls and Procedures**

The management of the Company, under the supervision and with the participation of our principal executive officer and principal financial officer, has evaluated the effectiveness of our disclosure controls and procedures in ensuring that the information required to be disclosed in our filings under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, including ensuring that such information is accumulated and communicated to the Company's management, as appropriate, to allow timely decisions regarding required disclosure. Based on such evaluation, our principal executive and financial officers have concluded that such disclosure controls

and procedures were effective as of June 30, 2023 September 30, 2023 (the end of the period covered by this Form 10-Q) to provide reasonable assurance that information required to be disclosed by us in our filings under the Exchange Act is recorded, processed,

summarized, and reported within the time periods specified in the SEC's rules and forms and to provide reasonable assurance that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

#### **Changes in Internal Control Over Financial Reporting**

None.

### **PART II. OTHER INFORMATION**

#### **Item 1. Legal Proceedings.**

See Note 10, Commitments and Contingencies, to our condensed consolidated financial statements included in this **Quarterly Report on Form 10-Q**.

#### **Item 1A. Risk Factors.**

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

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

- (a) Not applicable.
- (b) Not applicable.
- (c) Not applicable.

#### **Item 3. Defaults Upon Senior Securities.**

As of **August 8, 2023** **November 7, 2023**, the Company had accumulated undeclared dividends of **\$38.8 million** **\$36.8 million** to holders of shares of our Series D Preferred Stock, of which **\$2.1 million** **\$2.3 million** and **\$4.2 million** are **\$6.5 million** were attributable to the three and **six** **nine** months ended **June 30, 2023** **September 30, 2023**, respectively.

#### **Item 4. Mine Safety Disclosures.**

Not applicable.

#### **Item 5. Other Information.**

None.

#### **Item 6. Exhibits.**

**Exhibit**

[10.1](#) [3.1](#) [Term Loan Agreement dated May 5, 2023, between Insurance Strategy Funding XXVIII, LLC and the Borrowers party thereto, Articles of Amendment of Wheeler Real Estate Investment Trust, Inc. filed with SDAT on August 17, 2023 \(Filed herewith\), as an Exhibit to Form 8-K, filed on August 17, 2023](#)

[10.2](#) [3.2](#) [Term Loan Agreement dated May 18, 2023, between Guggenheim Articles of Amendment of Wheeler Real Estate LLC and the Borrowers party thereto, Investment Trust, Inc. filed with SDAT on August 17, 2023 \(Filed as an exhibit Exhibit to Form 8-K, filed on May 19, 2023\), August 17, 2023](#)

[31.1](#) [Certification of the Chief Executive Officer of Wheeler Real Estate Investment Trust, Inc. pursuant to Rule 13a-14 of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 \(Filed herewith\).](#)

[31.2](#) [Certification of the Chief Financial Officer of Wheeler Real Estate Investment Trust, Inc. pursuant to Rule 13a-14 of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 \(Filed herewith\).](#)

[32.1](#) [Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 \(Filed herewith\).](#)

[32.2](#) [Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 \(Filed herewith\).](#)

101.INS	XBRL Instance Document (Filed herewith).
101.SCH	XBRL Taxonomy Extension Schema Document (Filed herewith).
101.CAL	XBRL Taxonomy Extension Calculation Linkbase (Filed herewith).
101.DEF	XBRL Taxonomy Extension Definition Linkbase (Filed herewith).
101.LAB	XBRL Taxonomy Extension Labels Linkbase (Filed herewith).
101.PRE	XBRL Taxonomy Extension Presentation Linkbase (Filed herewith).
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

**SIGNATURE**

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.

WHEELER REAL ESTATE INVESTMENT TRUST, INC.

By: /s/ Crystal Plum  
CRYSTAL PLUM  
Chief Financial Officer  
(Principal Financial Officer and Principal Accounting Officer)

Date: August 8, November 7, 2023

## LOAN AGREEMENT

Dated as of May 5, 2023

By and between

**WHLR-ALEX CITY MARKETPLACE LLC**, a Delaware limited liability company,  
**WHLR-SUNSHINE SHOPPING PLAZA, LLC**, a Delaware limited liability company, **WHLR-PARKWAY PLAZA, LLC**, a Delaware limited liability company,  
**WHLR-RIVERBRIDGE SHOPPING CENTER, LLC**, a Delaware limited liability company, **WHLR-HARRODSBURG MARKETPLACE LLC**, a Delaware limited liability company, **WHLR-CARDINAL PLAZA, LLC**, a Delaware limited liability company,  
**WHLR-FRANKLIN SQUARE, LLC**, a Delaware limited liability company,  
**WHLR-NASHVILLE COMMONS, LLC**, a Delaware limited liability company,  
**WHLR-FRANKLIN VILLAGE, LLC**, a Delaware limited liability company,  
**WHLR-GROVE PARK, LLC**, a Delaware limited liability company,  
**WHLR-PCSC ASSOCIATES, LLC**, a Delaware limited liability company and  
**WHLR-PIERPONT CENTER, LLC**, a Delaware limited liability company

each, as an Individual Borrower, and, jointly, severally, and individually and collectively, as the context may require, as Borrower

and

**INSURANCE STRATEGY FUNDING XXVIII, LLC**, a Delaware limited liability company  
as Lender

Property:  
Project Lightyear Portfolio

Loan Amount: \$61,100,000.00

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## **LOAN AGREEMENT**

**THIS LOAN AGREEMENT** (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Agreement**”), dated as of May 5, 2023 (the “**Execution Date**”), by and between **INSURANCE STRATEGY FUNDING XXVIII, LLC**, a Delaware limited liability company, having an address at c/o J.P. Morgan Asset Management, 277 Park Avenue, 23rd Floor, New York, New York 10172 (together with its successors and assigns, “**Lender**”) and each of **WHLR-ALEX CITY MARKETPLACE LLC**, a Delaware limited liability company, **WHLR-SUNSHINE SHOPPING PLAZA, LLC**, a Delaware limited liability company, **WHLR-PARKWAY PLAZA, LLC**, a Delaware limited liability company, **WHLR-RIVERBRIDGE SHOPPING CENTER, LLC**, a Delaware limited liability company, **WHLR-HARRODSBURG MARKETPLACE LLC**, a Delaware limited liability company, **WHLR-CARDINAL PLAZA, LLC**, a Delaware limited liability company, **WHLR-FRANKLINTON SQUARE, LLC**, a Delaware

limited liability company, **WHLR-NASHVILLE COMMONS, LLC**, a Delaware limited liability company, **WHLR-FRANKLIN VILLAGE, LLC**, a Delaware limited liability company, **WHLR-GROVE PARK, LLC**, a Delaware limited liability company, **WHLR-PCSC ASSOCIATES, LLC**, a Delaware limited liability company and **WHLR-PIERPONT CENTER, LLC**, a Delaware limited liability company, each having an address at c/o Wheeler Real Estate Company 2529 Virginia Beach Boulevard, Virginia Beach, Virginia 23452 (each, an **"Individual Borrower"** and jointly, severally, and individually and collectively, as the context may require, **"Borrower"**).

All capitalized terms used herein shall have the respective meanings set forth in Article I hereof.

**WITNESSETH:**

**WHEREAS**, Borrower desires to obtain the Loan from Lender; and

**WHEREAS**, Lender is willing to make the Loan to Borrower, subject to and in accordance with the conditions and terms of this Agreement and the other Loan Documents.

**NOW, THEREFORE**, in consideration of the covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree, represent and warrant as follows:

**ARTICLE I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION**

**Section 1.1** Definitions.

For all purposes of this Agreement, except as otherwise expressly provided:

**"Acceptable LLC"** shall mean a limited liability company formed under Delaware law which has at least one springing member, which, upon the dissolution of all of the members or the withdrawal or the disassociation of all of the members from such limited liability company, shall immediately become the sole member of such limited liability company.

**"Accrual Period"** shall mean the period commencing on the first (1<sup>st</sup>) day of a calendar month and ending on the last day of such calendar month; provided that if this Agreement is dated as of any date other than the first (1<sup>st</sup>) day of a month, the first Accrual Period shall (i) consist of only the Closing Date, if the Closing Date is the last day of a month, and (ii) otherwise commence on the Closing Date and end on the last day of the calendar month in which Closing Date occurs.

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**"Act"** shall have the meaning set forth in Section 4.21(b) hereof.

**"Affiliate"** shall mean, with respect to any Person, (i) in the case of any such Person which is a partnership or limited liability company, any general partner or managing member in such partnership or limited liability company, respectively, (ii) any other Person which is directly or indirectly Controlled by, Controls or is under common Control (as each is hereinafter defined) with such Person or one or more of the Persons referred to in the preceding clause (i), and (iii) any other Person who is a senior executive officer, director or trustee of such Person or any Person referred to in the preceding clauses (i) and (ii); provided, however, in no event shall the Lender or any of its Affiliates be an Affiliate of Borrower.

**"Affiliated Manager"** shall mean any managing agent of the Property in which Borrower, Guarantor, any SPE Component Entity (if any) or any Affiliate of such entities has, directly or indirectly, any legal, beneficial or economic interest.

**"Agreement"** shall have the meaning set forth in the Introductory paragraph.

**"ALTA"** shall mean American Land Title Association, or any successor thereto.

**"Alteration Threshold"** shall mean an amount equal to 5% of the maximum principal amount of the Loan.

**"Annual Budget"** shall have the meaning set forth in Section 4.11(c) hereof.

**"Allocated Loan Amount"** shall mean, with respect to an Individual Property, the principal amount of the Loan allocated by Lender to such Individual Property as set forth on Exhibit D attached hereto, as the same may be adjusted by Lender in accordance with the terms hereof.

**"Applicable Interest Rate"** shall mean, with respect to each Accrual Period, an interest rate per annum equal to 6.194%.

**"Application"** shall mean that certain Mortgage Loan Application dated March 6, 2023 between Lender (or an Affiliate thereof) and Borrower (or an Affiliate thereof), with respect to the Loan.

**"Approved Accounting Method"** shall mean GAAP, federal tax basis accounting (consistently applied) or such other method of accounting, consistently applied, as may be reasonably acceptable to Lender.

**"Approved Annual Budget"** shall have the meaning set forth in Section 4.11(c) hereof.

**"Assignment of Leases and Rents"** shall mean, with respect to each Individual Property, that certain first priority Assignment of Leases and Rents, dated as of the date hereof, from the applicable Individual Borrower, as assignor, to Lender, as assignee, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**"Assignment of Management Agreement"** shall mean that certain Assignment of Property Management Agreement dated as of the date hereof among Lender, Borrower and Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**"Award"** shall mean any compensation paid by any Governmental Authority in connection with a Condemnation in respect of all or any part of the Property.

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**"Bankruptcy Code"** shall mean Title 11 of the United States Code entitled "Bankruptcy", as amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, any other federal, state or foreign bankruptcy or insolvency law and any comparable foreign laws relating to bankruptcy, insolvency or creditors' rights.

**"Borrower"** shall have the meaning set forth in the Introductory paragraph hereof.

**"Borrower's Constituents"** shall mean the Persons who hold any direct or indirect interest in Borrower, irrespective of the number of tiers through which such interests are held, including without limitation the partners, members, shareholders, trustees and beneficiaries of Borrower, and each of their respective direct and indirect constituents (provided however, that unless otherwise expressly stated herein, representations and covenants herein pertaining to Borrower's Constituents do not apply with respect to Persons who both (i) hold no managerial or controlling position or interest in Borrower or in any entity that directly or indirectly Controls Borrower, and (ii) whose only direct and indirect interests in Borrower are as holders of publicly traded shares, limited partnership interests and/or limited liability company interests aggregating, together with such Person's Affiliates, less than twenty percent (20%) of the direct or indirect equity in Borrower).

**"Borrower Party"** or **"Borrower Parties"** shall mean, individually and collectively, as the context may require, Borrower and Guarantor.

**"Broker"** shall have the meaning set forth in Section 13.21 hereof.

**"Business Day"** shall mean any day of the year other than (a) Saturday, Sunday, (b) a day on which banks in the City of New York are authorized or required by law to remain closed, or (c) a day on which the New York Stock Exchange is closed.

**"Capital Expenditure Advance"** shall have the meaning set forth in Section 5.5 hereof.

**"Capital Expenditure Requisition"** shall have the meaning set forth in Section 5.5 hereof.

**"Capital Expenditure Reserve Account"** shall have the meaning set forth in Section 5.5 hereof.

**"Capital Expenditure Reserve Fund"** shall have the meaning set forth in Section 5.5 hereof.

**"Cash Management Account"** shall have the meaning set forth in Section 11.2(a) hereof.

**"Cash Management Activation Notice"** shall mean a written notice from Lender or its servicer to Clearing Bank stating that a Trigger Period has commenced and instructing Clearing Bank to transfer all available funds in the Clearing Account to the Cash Management Account in accordance with the Clearing Account Agreement.

**"Cash Management Bank"** shall have the meaning set forth in Section 11.2(a) hereof.

**"Cash Management Bank Fees"** shall have the meaning set forth in Section 11.2 hereof.

**"Cash Management Deactivation Notice"** shall mean a written notice from Lender or its servicer to Clearing Bank stating that a Trigger Period no longer exists and instructing

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Clearing Bank to transfer all available funds in the Clearing Account to an account designated by Borrower in accordance with the Clearing Account Agreement.

**"Cash Management Provisions"** shall mean the representations, covenants and other terms and conditions of this Agreement and the other Loan Documents (including, without limitation, the Clearing Account Agreement) related to, in each case, cash management and/or other related matters (including, without limitation, Article XI hereof).

**"Casualty"** shall have the meaning set forth in Section 6.2.1 hereof.

**"Casualty Consultant"** shall have the meaning set forth in Section 6.3 hereof.

**"Casualty Retainage"** shall have the meaning set forth in Section 6.3 hereof.

**"Clearing Account"** shall have the meaning set forth in Section 11.1(a) hereof.

**"Clearing Account Agreement"** shall have the meaning set forth in Section 11.1(a) hereof.

**"Clearing Bank"** shall have the meaning set forth in Section 11.1(a) hereof.

**"Closing Date"** shall mean the date of the funding of the Loan.

**"Code"** shall have the meaning set forth in Section 3.6(a) hereof.

**"Condemnation"** shall mean a temporary or permanent taking by reason of any condemnation or similar eminent domain proceeding or by grant or conveyance in lieu of condemnation or eminent domain.

**"Condemnation Proceeds"** shall have the meaning set forth in Section 6.3 hereof.

**"Control"** and the correlative terms **"controlled by"** and **"controlling"** shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of the business and affairs of the entity in question by reason of the ownership of beneficial interests, by contract or otherwise.

**"Creditors Rights Laws"** shall mean any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to its debts or debtors.

**"Debt"** shall mean the outstanding principal amount set forth in, and evidenced by, this Agreement and the Note together with all interest accrued and unpaid thereon and all other sums due to Lender in respect of the Loan under the Note, this Agreement, the Security Instrument or any other Loan Document, including, without limitation, all amounts required to be deposited into the Reserve Accounts.

**"Debt Yield"** shall mean, as of any date of calculation, a ratio conveyed as a percentage in which: (i) the numerator is Underwritten Net Operating Income of the Property for the immediately preceding twelve (12) month period and (ii) the denominator is the then outstanding principal balance of the Loan. The Debt Yield shall be calculated by Lender in good faith and shall be final absent manifest error.

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**"Default"** shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

**"Default Rate"** shall mean a per annum interest rate equal to the lesser of (i) five percent (5%) per annum above the Applicable Interest Rate and (ii) the Maximum Legal Rate.

**"Depository"** shall mean, collectively, Lender, or any servicer or financial institution that Lender may from time to time designate.

**"Environmental Condition"** shall mean (A) any presence of Hazardous Substances in violation of any applicable Governmental Regulations relating to Hazardous Substances on the Property not expressly disclosed in the Environmental Reports or (B) any disposal, escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Substance at, from or affecting the Property in violation of any Governmental Regulations.

**"Environmental Indemnity"** shall mean that certain Environmental Indemnity Agreement given by Borrower and Guarantor to Lender and dated as of the date hereof.

**"Environmental Law"** shall mean any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of other actual or threatened danger to human health or the environment. The term "Environmental Law" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. The term "Environmental Law" also includes, but is not limited to, any present and future federal, state and local laws, statutes ordinances, rules, regulations and the like, as well as common law: conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the Property; requiring notification or disclosure of releases of Hazardous Substances or other environmental condition of the Property to any Governmental Authority or other Person, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Property; and relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Property.

**"Environmental Liens"** shall have the meaning set forth in Section 4.25(a) hereof.

**"Environmental Report"** shall have the meaning set forth in Section 3.35 hereof.

**"ERISA"** shall have the meaning set forth in Section 3.6(a) hereof.

**"Event of Default"** shall have the meaning set forth in Section 8.1 hereof.

**"Excess Cash Flow"** shall have the meaning set forth in Section 11.2(b) hereof.

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**"Excess Cash Flow Account"** shall have the meaning set forth in Section 5.4 hereof.

**"Execution Date"** shall have the meaning set forth in the Introductory paragraph hereof.

**"Existing Leases"** shall have the meaning set forth in Section 3.17(a) hereof.

**"GAAP"** shall mean generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

**"General Partner"** shall mean Wheeler Real Estate Investment Trust, Inc., a Maryland corporation.

**"Governmental Authority"** shall mean any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, administrative, public or statutory instrumentality, authority, body, agency, bureau, commission, board, department or other entity (including, without limitation, the Federal Deposit Insurance Corporation, the Comptroller of the Currency or the Federal Reserve Board, any central bank or any comparable authority) or any arbitrator with authority to bind a party at law.

**"Governmental Regulations"** shall mean, collectively, the provisions of all permits and licenses and all statutes, laws (including any health or safety law governing Borrower, its business, operations, property, assets or equipment, or any Individual Property), ordinances, rules, requirements, resolutions, policy statements, orders and regulations of any Governmental Authority having jurisdiction over any Individual Borrower or any Individual Property or any part thereof and interpretations thereof now or hereafter applicable to, or bearing on, the construction, development, maintenance, use, operation, sale, financing or leasing of any Individual Property or any part thereof, or any adjoining vaults, sidewalks, streets, ways, parking areas or driveways, or the formation, existence, business or good standing of any Individual Borrower, including, without limitation, those relating to land use, subdivision, zoning, occupational health and safety, earthquake hazard reduction, if any, building and fire codes, pollution or protection of the environment, including, without limitation, laws relating to the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the ADA Accessibility Guidelines for Buildings and Facilities, the Interstate Land Sales Full Disclosure Act 15 U.S.C. Section 1701, et seq., laws relating to emissions, discharges, releases or threatened releases of Hazardous Substances into the environment (including, ambient air, surface water, groundwater, land surface or subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances.

**"Guarantor"** shall mean Wheeler REIT, L.P., a Virginia limited partnership and any successor to and/or replacement of any of the foregoing Person, in each case, pursuant to and in accordance with the applicable terms and conditions of the Loan Documents.

**"Guaranty"** shall mean that certain Guaranty executed by Guarantor and dated as of the date hereof.

**"Hazardous Substances"** shall mean all materials and substances now or hereafter subject to any Governmental Regulations that pertain to hazardous substances or hazardous materials, including, without limitation, (i) all substances which are designated pursuant to Section 311(b)(2)(A) of the Federal Water Pollution Control Act ("FWPCA"), 33 U.S.C. § 1251 et seq., (ii) any element, compound, mixture, solution, or substance which is designated pursuant to Section 102 of the Comprehensive Environmental Response, Compensation and Liability Act

(“CERCLA”), 42 U.S.C. § 9601 et seq., (iii) any hazardous waste having the characteristics which are identified under or listed pursuant to Section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., (iv) any toxic pollutant listed under Section 307(a) of FWPCA, (v) any hazardous air pollutant which is listed under Section 112 of the Clean Air Act, 42 U.S.C. § 7401 et seq., (vi) any imminently hazardous chemical substance or mixture with respect to which action has been taken pursuant to Section 7 of the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., (vii) “hazardous materials” within the meaning of the Hazardous Materials Transportation Act, 49 U.S.C. § 1802 et seq., (viii) petroleum or petroleum by-products, (ix) asbestos and any asbestos containing materials, (x) any radioactive material or substance, (xi) all toxic wastes, hazardous wastes and hazardous substances as defined by, used in, controlled by, or subject to all implementing regulations adopted and publications promulgated pursuant to the foregoing statutes, (xii) bacteria, mold or fungus, and (xiii) any other hazardous or toxic substance or pollutant identified in or regulated under any other applicable federal, state or local Governmental Regulations (including, without limitation, all applicable state, regional, county, municipal and local environmental, sanitation and health, conservation and pollution, waste disposal and control, clean air and water laws, codes, rules and regulations, to the extent applicable to the Property). Notwithstanding the foregoing, Hazardous Substances shall not include cleaning and similar supplies used in the ordinary maintenance and repair of the Property and used, stored or disposed of in compliance with all Governmental Regulations.

**“Individual Borrower”** shall have the meaning set forth in the introductory paragraph hereto.

**“Individual Property”** shall mean each individually listed parcel or parcels of real property as set forth on Exhibit D attached hereto, the individual Improvements thereon and all related personal property owned by the applicable Individual Borrower and encumbered by the applicable Security Instrument with respect thereto, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clauses of the applicable Security Instrument.

**“Individual Property Release”** shall have the meaning set forth in Section 7.2 hereof.

**“Impositions”** shall mean (i) all taxes, assessments, vault, water and sewer rents, rates, charges and assessments, levies, inspection and license fees and other governmental and quasi-governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, heretofore or hereafter assessed, levied or otherwise imposed against or upon, or which may become a Lien upon, the Property, or any portion thereof, including, without limitation, any taxes with respect to the Rents and Profits or arising in respect of the occupancy, use or possession of the Property, (ii) income taxes, franchise taxes, and other taxes owing by Borrower the non-payment of which would result in a Lien against the Property or otherwise diminish or impair the security of the Security Instrument and (iii) all taxes, charges, filing, registration, and recording fees, excises and levies imposed upon Lender by reason of or in connection with the execution, delivery and/or recording of the Loan Documents or the ownership of the Security Instrument or any Security Instrument supplemental thereto, any security instrument with respect to any equipment or any instrument of further assurance, and all corporate, stamp and other taxes required to be paid in connection with the Obligations (excluding, however, income taxes of Lender).

**“Improvements”** shall have the meaning ascribed to such term in the Security Instrument.

**“Indebtedness”** shall mean, for any Person, any indebtedness or other similar obligation for which such Person is obligated (directly or indirectly, by contract, operation of law or

otherwise), including, without limitation, (i) all indebtedness of such Person for borrowed money, for amounts drawn under a letter of credit, or for the deferred purchase price of property for which such Person or its assets is liable, (ii) all unfunded amounts under a loan agreement, letter of credit, or other credit facility for which such Person would be liable if such amounts were advanced thereunder, (iii) all amounts required to be paid by such Person by contract and/or as a guaranteed payment (including, without limitation, any such amounts required to be paid to partners and/or as a preferred or special dividend, including any mandatory redemption of shares or interests), (iv) all indebtedness incurred and/or guaranteed by such Person, directly or indirectly (including, without limitation, contractual obligations of such Person), (v) all obligations under leases that constitute capital leases for which such Person is liable, (vi) all obligations of such Person under interest rate swaps, caps, floors, collars and other interest hedge agreements, in each case whether such Person is liable contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss and (vii) any property-assessed clean energy loans or similar indebtedness, including, without limitation, if such loans or indebtedness are made or otherwise provided by any Governmental Authority and/or secured or repaid (directly or indirectly) by any taxes or similar assessments.

**"Insurance Premiums"** shall have the meaning set forth in [Section 6.1\(e\)](#) hereof.

**"Insurance Proceeds"** shall have the meaning set forth in [Section 6.3\(b\)](#) hereof.

**"KYC Triggering Transfer"** shall mean any Transfer that would result in a Person owning (i) if such Person is a U.S. citizen or U.S. entity, a 20% or greater and (ii) if such Person is not a U.S. citizen or U.S. entity, a 10% or greater, in each case, equity interest (directly or indirectly) in Borrower or Guarantor (to the extent such Person did not own such interests prior to such Transfer).

**"Late Charge"** shall have the meaning set forth in [Section 2.4](#) hereof.

**"Lease"** shall mean all leases and all other agreements for possession of all or any portion of the Property, including all of the same now or hereafter existing, and all extensions, modifications, amendments, expansions and renewals of any of the same and all Lease Guaranties.

**"Lease Guaranty"** shall mean every guarantee of any obligation under any Lease, including all modifications and amendments to such guaranties.

**"Leasing Activity"** shall have the meaning set forth in [Section 4.15\(b\)](#) hereof.

**"Leasing Guidelines"** shall have the meaning set forth in [Section 4.15\(c\)](#) hereof.

**"Leasing Status Report"** shall have the meaning set forth in [Section 4.11\(e\)](#) hereof.

**"Legal Requirements"** shall mean all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting Borrower, Guarantor or the Property or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, including, without limitation, the Americans with Disabilities Act of 1990, and all Permits, authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, at any time in force affecting Borrower, Guarantor or the Property or any part thereof, including, without limitation, any which may (i) require repairs,

modifications or alterations in or to the Property or any part thereof, or (ii) in any way limit the use and enjoyment thereof.

**"Lender"** shall have the meaning set forth in the Introductory paragraph hereof.

**"Lender-Approved Lease Form"** shall have the meaning set forth in [Section 3.17\(f\)](#) hereof.

**"Lien"** shall mean, with respect to the Property, any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or transfer of, on or affecting Borrower, the Property, any portion thereof or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic's, materialmen's and other similar liens and encumbrances.

**"LLC Agreement"** shall have the meaning set forth in Section 4.21(b) hereof.

**"Loan"** shall mean the loan made by Lender to Borrower pursuant to this Agreement.

**"Loan Documents"** shall mean, collectively, this Agreement, the Note, the Security Instrument, the Assignment of Leases and Rents, the Assignment of Management Agreement, the Guaranty and all other documents executed and/or delivered in connection with the Loan, as each of the same may be amended, restated, replaced, extended, renewed, supplemented or otherwise modified from time to time.

**"Losses"** shall mean any and all losses, damages, costs, fees, expenses, claims, suits, judgments, awards, liabilities (including but not limited to strict liabilities), obligations, debts, diminutions in value, fines, penalties, charges, amounts paid in settlement, foreseeable and unforeseeable consequential damages, litigation costs and attorneys' fees, in the case of each of the foregoing, of whatever kind or nature and whether or not incurred in connection with any judicial or administrative proceedings, actions, claims, suits, judgments or awards.

**"Management Agreement"** shall mean any management agreement entered into by and between any Individual Borrower and Manager, pursuant to which Manager is to provide management and other services with respect to all or any portion of an Individual Property, as the same may be amended, restated, replaced, extended, renewed, supplemented or otherwise modified from time to time.

**"Manager"** shall mean Wheeler Real Estate LLC, d/b/a Wheeler Real Estate Company, a Virginia limited liability company or such other entity selected as the manager of the Property in accordance with the terms of this Agreement or the other Loan Documents.

**"Material Action"** shall mean, with respect to any Person, to institute proceedings to have such Person be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against such Person or file a petition seeking, or consent to, reorganization or relief with respect to such Person under any applicable federal, state, local or foreign law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of such Person or a substantial part of its property, or take any action to consolidate or merge such Person with or into any other Person, or take any action to divide, dissolve or liquidate such Person, or make any assignment for the benefit of creditors of such Person, or sell all or substantially all of such Person's assets, or admit in writing such Person's inability to pay its debts generally as they become due, or declare or effectuate a moratorium on the payment of any obligation, or take action in furtherance of any such action.

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**"Material Adverse Effect"** shall mean a material adverse effect on (i) the Property, (ii) the business, profits, prospects, management, operations or condition (financial or otherwise) of any Individual Borrower, Guarantor or any Individual Property, (iii) the enforceability, validity, perfection or priority of the lien of this Agreement, the Note, the Security Instrument, the other Loan Documents or the Environmental Indemnity, or (iv) the ability of any Individual Borrower and/or Guarantor to perform its obligations under this Agreement, the Note, the Security Instrument, the other Loan Documents or the Environmental Indemnity.

**"Material Agreements"** shall mean each contract and agreement relating to the ownership, management, development, use, operation, leasing, maintenance, repair or improvement of the Property (other than the Management Agreement and the Leases), (i) under which there is an obligation of an Individual Borrower to pay more than \$500,000 per annum, (ii) the termination of which would materially adversely affect an Individual Property or the operation thereof, or (iii) which is not terminable by the owner of the applicable Individual Property upon thirty (30) days' or less notice without payment of a termination fee.

**"Maturity Date"** shall mean the earliest to occur of (i) the Scheduled Maturity Date and (ii) the date the Debt is accelerated and becomes due and payable pursuant to the terms of the Loan Documents.

**"Maximum Legal Rate"** shall mean the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan, whether or not an action against Borrower shall have been commenced, and if commenced, whether or not a judgment against Borrower shall have been obtained.

**"Member"** shall have the meaning set forth in Section 4.21(b) hereof.

**"Monthly Capital Expenditure Deposit"** shall have the meaning set forth in Section 5.5(a) hereof.

**"Monthly Debt Service Payment Amount"** shall mean (i) for the Monthly Payment Date occurring in July, 2023 and for each Monthly Payment Date occurring thereafter up to and including the Monthly Payment Date occurring in June, 2025, a payment equal to the amount of interest which has accrued on the Principal Amount during the preceding Accrual Period computed at the Applicable Interest Rate and (ii) for the Monthly Payment Date occurring in July, 2025 and for each Monthly Payment Date occurring thereafter, a constant monthly payment of interest and principal in an amount of \$373,980.69.

**"Monthly Operating Expense Deposit"** shall have the meaning set forth in Section 5.3(a) hereof.

**"Monthly Payment Date"** shall mean the first (1<sup>st</sup>) day of each calendar month prior to the Maturity Date commencing on July 1, 2023 and continuing through and including the Scheduled Maturity Date.

**"Net Proceeds"** shall have the meaning set forth in Section 6.3(b) hereof.

**"Net Proceeds Deficiency"** shall have the meaning set forth in Section 6.3 hereof.

**"Non-Controlling Shareholder OFAC Violation"** shall mean the occurrence of any owner of a direct or indirect legal and/or beneficial interest in Borrower or Guarantor, whose

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ownership is solely through directly or indirectly owning REIT Shares on a Recognized Stock Exchange (i) being a Prohibited Person or (ii) failing to be in full compliance with all applicable orders, rules, regulations and recommendations of OFAC.

**"Note"** shall mean that certain Promissory Note dated as of the date hereof in the principal amount of \$61,100,000.00, made by Borrower in favor of Lender, as the same may be amended, restated, replaced, extended, renewed, supplemented, severed, split, or otherwise modified from time to time.

**"O&M Program"** shall have the meaning set forth in Section 4.25(c) hereof.

**"Obligations"** shall have the meaning ascribed to such term in the Security Instrument.

**"OFAC"** shall have the meaning set forth in Section 3.7 hereof.

**"Officer's Certificate"** shall mean a certificate delivered to Lender by Borrower which is signed by Responsible Officer of Borrower.

**"Operating Expense Advance"** shall have the meaning set forth in Section 5.3(c) hereof.

**"Operating Expense Reserve Account"** shall have the meaning set forth in Section 5.3(a) hereof.

**"Operating Expense Reserve Fund"** shall have the meaning set forth in Section 5.3(a) hereof.

**"Prior Owned Property"** shall mean the real estate previously owned by WHLR-Nashville Commons, LLC, WHLR-Pierpont Center, LLC, and WHLR-Riverbridge Shopping Center, LLC, as applicable, which real estate is no longer owned by such Individual Borrower as of the closing of the Loan.

**"PACE Loan"** shall mean any assessment, bond, loan, financing, or other debt incurred pursuant to "property assessed clean energy, "special energy financing district," or similar provisions of applicable laws.

**"Permits"** shall mean all necessary certificates, licenses, permits, franchises, trade names, certificates of occupancy, consents, and other approvals (governmental and otherwise) required under applicable Legal Requirements for the operation of an Individual Property and the conduct of an Individual Borrower's business (including, without limitation, all required zoning, building code, land use, environmental, public assembly and other similar permits or approvals).

**"Permitted Encumbrances"** shall mean, collectively, (a) the Liens and security interests created by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in the Title Insurance Policy relating to any Individual Property or any part thereof, (c) Liens, if any, for taxes imposed by any Governmental Authority not yet delinquent, other than Liens securing a PACE Loan, (d) such other title and survey exceptions as Lender has approved or may approve in writing in Lender's reasonable discretion; and (e) Existing Leases and any Leases entered into after the date hereof expressly in accordance with this Agreement and any Liens being contested expressly in accordance with the terms of this Agreement or any of the other Loan Documents; provided that, none of which items (a) through (e), individually or in the aggregate, materially interferes with the value, current use or operation of the applicable Individual Property or the security intended to be provided by the Security Instrument or with the current ability of the Property to generate net cash flow sufficient to service the Loan or Borrower's ability to pay and perform the Obligations under the Loan Documents when they become due.

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**"Permitted Equipment Leases"** shall mean equipment leases or other similar instruments or agreements entered into with respect to the Personal Property; provided, that, in each case, such equipment leases or similar instruments or agreements (i) are entered into on commercially reasonable terms and conditions in the ordinary course of Borrower's business and (ii) relate to Personal Property which is (A) used in connection with the operation and maintenance of the applicable Individual Property in the ordinary course of Borrower's business and (B) readily replaceable without material interference or interruption to the operation of such Individual Property.

**"Permitted Transfer"** shall mean any of the following: (a) any transfer, directly as a result of the death of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by the decedent in question to the Person or Persons lawfully entitled thereto, (b) any transfer, directly as a result of the legal incapacity of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by such natural person to the Person or Persons lawfully entitled thereto; provided in each case the Transfer Conditions (defined herein) are satisfied, and (c) any REIT Transfer.

**"Person"** shall mean any natural person, corporation, limited partnership, general partnership, joint stock company, limited liability company, limited liability partnership, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, or any nongovernmental entity or Governmental Authority.

**"Personal Property"** shall have the meaning ascribed to such term in the Security Instrument.

**"Policies"** and **"Policy"** shall have the meaning set forth in Section 6.1(c) hereof.

**"Prepayment Date"** shall mean the actual date of prepayment of the Loan to the extent permitted by, and in accordance with, the terms of this Agreement.

**"Prepayment Notice"** shall have the meaning set forth in Section 2.6(a) hereof.

**"Prepayment Premium"** shall mean a prepayment consideration amount equal to the greater of (x) 1% of the Principal Amount and (y) the Yield Maintenance Premium.

**"Principal Amount"** shall mean as of the date of determination by Lender, the principal amount of the Loan outstanding.

**"Prohibited Person"** shall mean any person or entity:

(a) listed in the Annex to, or otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the "Executive Order");

(b) that is owned or controlled by, or acting for or on behalf of, any Person or entity that is listed to the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(c) with whom Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order;

(d) who commits, threatens or conspires to commit or supports "Terrorism" as defined in the Executive Order; or

(e) that is named as a "Specially Designated National and Blocked Person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, [www.ustreas.gov/offices/enforcement/ofac](http://www.ustreas.gov/offices/enforcement/ofac) or at any replacement website or other replacement official publication of such list; or who is an Affiliate of or affiliated with a Person or entity listed above.

**"Property"** shall mean, collectively, each Individual Property, as more particularly described in the Security Instruments.

**"Qualified Insurer"** shall have the meaning set forth in Section 6.1(c) hereof.

**"REA"** shall mean, individually or collectively (as the context requires), each reciprocal easement or similar agreement affecting the Property as more particularly described on Schedule 3.34 hereto (if any), any amendment, restatement, replacement or other modification thereof, any future reciprocal easement or similar agreement affecting the Property entered into in accordance with the applicable terms and conditions hereof and any amendment, restatement, replacement or other modification thereof.

**"REIT Transfer"** shall mean any of the following Transfers:

(i)the issuance, sale, conveyance, transfer or other disposition (each, a "**REIT Share Transfer**") of any shares of stock (the "**REIT Shares**") in the General Partner, or of any Restricted Parties which are stockholders therein, so long as at the time of the REIT Share Transfer, REIT Shares are listed on the New York Stock Exchange, NASDAQ or any other nationally recognized U.S. stock exchange (any such stock exchange, a "**Recognized Stock Exchange**"); or

(ii)the issuance, sale, conveyance, transfer or other disposition (each an "**OP Transfer**") of any limited partnership interests (the "**OP Interests**") in the Guarantor so long as (A) at the time of the OP Transfer, REIT Shares are listed on a Recognized Stock Exchange and (B) the OP Transfer does not result in any Person (excluding the General Partner), together with its Affiliates, having a 20% or greater common ownership interest in the Guarantor; or

(iii)the merger of the General Partner and Cedar Realty Trust, Inc. and/or the merger of the Guarantor and Cedar Realty Trust Partnership, L.P., so long as at the time of such merger (A) REIT Shares of the General Partner are listed on a Recognized Stock Exchange and (B) the surviving entities (other than the General Partner) continue to be Controlled by the General Partner; or

(iv)the issuance, sale, conveyance, transfer or other disposition (each a "**Borrower Interest Transfer**") of any direct membership interests in Borrower (the "**Borrower Interests**") as long as the Borrower Interest Transfer does not result in any Person (excluding the General Partner, the Guarantor and the OP), together with its Affiliates, having a 10% or greater common ownership interest in Borrower.

**"Rent Roll"** shall have the meaning set forth in Section 3.17(a) hereof.

**"Rents and Profits"** shall have the meaning ascribed to such term in the Security Instrument.

**"Replacement Tenant Event"** shall mean, with respect to a Specified Tenant Lease and Specified Tenant Space, the satisfaction of each of the following:

- (i) all of the applicable Specified Tenant Space has been leased by one or more tenants reasonably acceptable to Lender under a Lease or Leases approved by Lender, each of which is in full force and effect and each such tenant is paying full unabated rent and each such Lease qualifies to be included in calculation of Underwritten Net Operating Income; and
- (ii) all landlord leasing obligations under such Lease or Leases to be satisfied as a condition to rent commencement have been satisfied and if any landlord leasing obligations shall become payable after rent commencement, Borrower has deposited with Lender amounts sufficient to pay such unpaid landlord leasing obligations (which sums relating to any applicable new Lease shall be disbursed to Borrower (A) upon Lender's receipt of evidence reasonably satisfactory to Lender that all landlord leasing obligations that became payable after rent commencement have been paid and (B) no Event of Default existing as of the date of said funds are to be disbursed).

**"Required Repairs"** shall have the meaning set forth in Section 4.26 hereof.

**"Required Repairs Completion Date"** shall have the meaning set forth in Section 4.26 hereof.

**"ReserveAccounts"** shall mean the Cash Management Account, the Clearing Account, the Tax and Insurance Reserve Account, the Required Repairs Reserve Account, the Capital Expenditure Reserve Account, the TI/LC Reserve Account, the Excess Cash Flow Account, the Operating Expense Reserve Account and any other account established by this Agreement or the other Loan Documents.

**"Responsible Officer"** shall mean with respect to a Person, the chairman of the board, president, chief operating officer, chief financial officer, treasurer or vice president of such Person or such other similar officer of such Person reasonably acceptable to Lender.

**"Restoration"** shall mean, following the occurrence of a Casualty or a Condemnation which is of a type necessitating the repair of any Individual Property (or any portion thereof), the completion of the repair and restoration of such Individual Property (or applicable portion thereof) as nearly as possible to the condition such Individual Property (or applicable portion thereof) was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Lender.

**"Restricted Party"** shall mean Borrower, Guarantor, any SPE Component Entity, any Affiliated Manager, or any shareholder, partner, member or non-member manager, or any direct or indirect legal or beneficial owner of Borrower, Guarantor, any SPE Component Entity, any Affiliated Manager or any non-member manager.

**"Sale or Pledge"** shall mean a voluntary or involuntary sale, conveyance, assignment, transfer, encumbrance, pledge, grant of option or other transfer or disposal of a legal or beneficial interest, whether direct or indirect.

**"Satisfactory Search Results"** shall mean the results of Lender's customary credit history check, litigation, lien, bankruptcy, judgment and other similar searches with respect to the applicable transferee and its applicable affiliates, in each case, (i) revealing no matters which would have a Material Adverse Effect and (ii) yielding results which are otherwise acceptable to Lender in its reasonable discretion. Borrower shall pay all of Lender's costs, fees and expenses.

In connection with the foregoing and, notwithstanding the forgoing, no such search results shall constitute "Satisfactory Search Results" until such costs, fees and expenses are paid in full.

**"Scheduled Maturity Date"** shall mean June 1, 2033.

**"Security Deposits"** shall mean any advance deposits or any other deposits collected with respect to the Property, whether in the form of cash, letter(s) of credit or other cash equivalents (including, without limitation, such deposits made in connection with any Lease).

**"Security Instrument"** shall mean, individually or collectively, as the context may require, those certain first-priority mortgages, deeds of trust and/or deeds to secure debt, dated as of the date hereof, executed and delivered by one or more Individual Borrowers to or for the benefit of Lender as security for the Loan and encumbering one or more Individual Properties, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**"SFHA"** shall have the meaning set forth in Section 6.1(a) hereof.

**"SPE Component Entity"** shall have the meaning set forth in the definition of "Special Purpose Entity".

**"Special Member"** shall have the meaning set forth in Section 4.21(b) hereof.

**"Special Purpose Entity"** a Person, other than a natural person, which:

(A) since the date of its formation and at all times prior to, on and after the date thereof, has not and shall not:

(i) engage in any business or activity other than the ownership, operation and maintenance of the applicable Individual Property, and activities incidental thereto (it being acknowledged and agreed that each of WHLR-Nashville Commons, LLC, WHLR-Pierpont Center, LLC, and WHLR-Riverbridge Shopping Center, LLC's previous ownership prior to the Closing Date of the applicable Prior Owned Property shall not be deemed a violation of this clause);

(ii) acquire or own any assets other than (A) the applicable Individual Property, and (B) such incidental Personal Property as may be necessary for the ownership, leasing, maintenance and operation of such Individual Property (it being acknowledged and agreed that each of WHLR-Nashville Commons, LLC, WHLR-Pierpont Center, LLC, and WHLR-Riverbridge Shopping Center, LLC's previous ownership prior to the Closing Date of the applicable Prior Owned Property shall not be deemed a violation of this clause);

(iii) merge into or consolidate with any Person, or divide, dissolve, terminate, liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;

(iv) fail to observe all organizational formalities, or fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the applicable Legal Requirements of the jurisdiction of its organization or formation, or amend, modify, terminate or fail to comply with the provisions of its organizational documents (provided, that, such organizational documents may be amended or modified to the extent that, in addition to the satisfaction of the requirements related thereto set forth therein, Lender's prior written consent is first obtained);

Notwithstanding the forgoing, nothing contained in this Agreement shall be deemed to create an affirmative obligation on the part of Guarantor, any member of Borrower, or any member, director, employee or Affiliate of any of the foregoing to make loans, equity infusions or capital contributions to Borrower, and neither Guarantor, any member of Borrower, or any member, director, employee or Affiliate of any of the foregoing shall incur any recourse liability pursuant to this Agreement due to the failure of, Guarantor, any member of Borrower, or any member, director, employee or Affiliate of any of the foregoing to make such loans, equity infusions or capital contributions to Borrower.

(v) other than prior to the Closing Date in connection with the distribution of the Prior Owned Property to its current owner, own any subsidiary, or make any investment in, any Person (other than, with respect to any SPE Component Entity, in Borrower);

(vi) commingle its funds or assets with the funds or assets of any other Person;

(vii) incur any Indebtedness, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (A) the Debt (and the prior debt encumbering the Property which has been paid and satisfied in full prior to or on the Closing Date), (B) trade and operational indebtedness incurred in the ordinary course of business with trade creditors, provided such indebtedness is (1) unsecured, (2) not evidenced by a note, (3) on commercially reasonable terms and conditions, and (4) due not more than sixty (60) days past the date incurred and paid on or prior to such date, and/or (C) Permitted Equipment Leases; provided however, the aggregate amount of the indebtedness described in (B) and (C) shall not exceed at any time two percent (2%) of the outstanding principal amount of the Debt. No Indebtedness other than the Debt may be secured (senior, subordinate or *paripassu*) by an Individual Property;

(viii) fail to maintain all of its books, records, financial statements and bank accounts separate from those of any other Person (including, without limitation, any Affiliates). Borrower's assets have not and will not be listed as assets on the financial statement of any other Person; provided, however, that Borrower's assets may be included in a consolidated financial statement of its Affiliates provided that (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of Borrower and such Affiliates and to indicate that Borrower's assets and credit are not available to satisfy the debts and other obligations of such Affiliates or any other Person and (ii) such assets shall be listed on Borrower's own separate balance sheet. Borrower has maintained and will maintain its books, records, resolutions and agreements as official records;

(ix) enter into any contract or agreement with any partner, member, shareholder, principal or Affiliate, except, in each case, upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties;

(x) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xi) other than amongst the Individual Borrowers with respect to the Loan, assume or guaranty the debts of any other Person, hold itself out to be responsible for the debts of any other Person, or otherwise pledge its assets for the benefit of any other Person or hold out its credit as being available to satisfy the obligations of any other Person;

(xii) make any loans or advances to any Person;

(xiii) fail to file its own tax returns (unless prohibited by applicable Legal Requirements from doing so);

(xiv) fail to (A) hold itself out to the public and identify itself, in each case, as a legal entity separate and distinct from any other Person and not as a division or part of any other Person, (B) conduct its business solely in its own name, (C) hold its assets in its own name or (D) correct any known misunderstanding regarding its separate identity;

(xv) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations (to the extent there exists sufficient cash flow from its Individual Property to do so);

(xvi) without the prior unanimous written consent of all of its partners, shareholders or members, as applicable, the prior unanimous written consent of its board of directors or managers, as applicable, (a) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any Creditors Rights Laws, (b) seek or consent to the appointment of a receiver,

liquidator or any similar official, (c) take any action that might cause such entity to become insolvent, (d) make an assignment for the benefit of creditors or (e) take any Material Action with respect to Borrower or any SPE Component Entity;

(xvii) fail to (A) allocate shared expenses (including, without limitation, shared office space) or (B) except with respect to business conducted by Manager on behalf of Borrower expressly pursuant to the Management Agreement, use separate stationery, invoices and checks;

(xviii) fail to pay its own liabilities (including, without limitation, salaries of its own employees) from its own funds or fail to maintain a sufficient number of employees in light of its contemplated business operations (in each case to the extent there exists sufficient cash flow from its Individual Property to do so);

(xix) acquire obligations or securities of its partners, members, shareholders or other Affiliates, as applicable; or

(xx) identify its partners, members, shareholders or other Affiliates, as applicable, as a division or part of it.

(B) at all times following the Closing Date (the parties acknowledging that WHLR-PCSC Associates, LLC was initially formed in the Commonwealth of Virginia prior to converting to a Delaware limited liability company pursuant to the Certificate of Conversion filed with the Secretary of State of Delaware on March 8, 2023), if such Special Purpose Entity is a partnership or limited liability company (other than an Acceptable LLC), has each of its general partner (in the case of a partnership) and at least one of its members (in the case of a limited liability company) of such Individual Borrower, as applicable, shall be a corporation or an Acceptable LLC (each, an "**SPE Component Entity**") whose sole asset is its interest in such Special Purpose Entity, and such SPE Component Entity (i) will at all times comply with each of the representations, covenants, terms and provisions contained in sub-clauses (iii) - (vi) (inclusive) and (viii) - (xx) (inclusive) of clause A above as if such representation, warranty or covenant was made directly by such SPE Component Entity; (ii) will not engage in any business or activity other than owning an interest in such Special Purpose Entity; (iii) will not acquire or own any assets other than its partnership, membership, or other equity ownership interest in such

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Special Purpose Entity; (iv) will at all times continue to own no less than a 0.5% direct equity ownership interest in such Special Purpose Entity; (v) will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation); and (vi) will cause such Special Purpose Entity to maintain its status as a Special Purpose Entity.

**"Specified Tenant"** shall mean, as applicable, with respect to an Individual Property, (i) those Tenants at such Individual Property as of the Execution Date, set forth on Exhibit E attached hereto and incorporated herein, (ii) any other lessee of the Specified Tenant Space (or minimum of 20% thereof) and (iii) any guarantor of the applicable related Specified Tenant Lease.

**"Specified Tenant Lease"** shall mean, collectively and/or individually (as the context requires), each Lease at the Individual Property with the applicable Specified Tenant (including, without limitation, any guaranty or similar instrument furnished thereunder), as the same may have been or may hereafter be amended, restated, extended, renewed, replaced and/or otherwise modified.

**"Specified Tenant Leasing Cost Conditions"** shall mean, with respect to a Specified Tenant and Specified Tenant Lease, that (a) such Specified Tenant Lease qualifies to be included in the calculation of Underwritten Net Operating Income hereunder, (b) all landlord leasing obligations under the Specified Tenant Lease to be satisfied as a condition to rent commencement or rent re-commencement, as applicable, have been paid and (c) if any landlord leasing obligations shall become payable after rent commencement or rent re-commencement, as applicable, Borrower has deposited with Lender amounts sufficient to pay such unpaid landlord leasing obligations (which sums relating to the Specified Tenant Lease shall be disbursed to Borrower (A) upon Lender's receipt of evidence reasonably satisfactory to Lender that all landlord leasing obligations that became payable after rent commencement or rent re-commencement, as applicable, have been paid and (B) no Event of Default existing as of the date of said funds are to be disbursed).

**"Specified Tenant Space"** shall mean, with respect to any Individual Property, that portion of such Individual Property demised as of the Closing Date to the initial Specified Tenant, set forth pursuant to the initial Specified Tenant Lease. References herein to "applicable

portions" of the Specified Tenant Space (or words of similar import) shall be deemed to refer to the portion of the Specified Tenant Space demised pursuant to the applicable Specified Tenant Lease(s) entered into after the Closing Date in accordance with the applicable terms and conditions hereof.

**"Specified Tenant Trigger Event"** shall mean the occurrence of any of the following:

- (a) any bankruptcy or similar insolvency of any Specified Tenant;
- (b) any termination or cancellation of a Specified Tenant Lease (including, without limitation, rejection in any bankruptcy or similar insolvency proceeding) and/or any Specified Tenant Lease failing to otherwise be in full force and effect;
- (c) any monetary or material non-monetary default by Specified Tenant under its Specified Tenant Lease beyond any applicable notice and cure periods;
- (d) as reasonably determined by Lender, any Specified Tenant failing to be in actual, physical possession of the Specified Tenant Space, failing to be open to the public for business during customary hours and/or "going dark" in the Specified Tenant Space;

(e) any Specified Tenant giving written notice that it is terminating its Specified Tenant Lease for all or any portion of the Specified Tenant Space; or

(f) any Specified Tenant failing to provide renewal notice in writing to Borrower (renewing its lease for a minimum term of three (3) years) on or prior to the earlier to occur of (x) six (6) months prior to its then current lease expiration under the applicable Specified Tenant Lease or (y) the renewal notice period required under the applicable Specified Tenant Lease. Notwithstanding the foregoing, The Kroger Co., an Ohio corporation, as Tenant at the Individual Property located in Harrodsburg, Kentucky shall not be required to provide such renewal notice, in accordance with the terms of its Lease.

**"Specified Tenant Trigger Period"** shall mean a period commencing upon the occurrence of a Specified Tenant Trigger Event and ending upon the occurrence of the applicable Specified Tenant Trigger Termination Event. Notwithstanding the foregoing, a Specified Tenant Trigger Period shall not be deemed to expire in the event that a Specified Tenant Trigger Period then exists for any other reason.

**"Specified Tenant Trigger Termination Event"** shall mean the occurrence of any of the following as it relates to the applicable Specified Tenant Trigger Event:

- (a) if the Specified Tenant Trigger Event is caused by the events described in clause (a) of the definition of Specified Tenant Trigger Event, either (A) Specified Tenant affirming and assuming its lease in the applicable bankruptcy proceeding pursuant to a final, non-appealable order of a court of competent jurisdiction, or (B) the Replacement Tenant Event has occurred;
- (b) if the Specified Tenant Trigger Event is caused by the events described in clause (b) of the definition of Specified Tenant Trigger Event, either (A) the Specified Tenant's revocation or rescission of all termination or cancellation notices with respect to its Specified Tenant Lease and has re-affirmed its Specified Tenant Lease as being in full force and effect, or (B) the Replacement Tenant Event has occurred;
- (c) if the Specified Tenant Trigger Event is caused by the events described in clause (c) of the definition of Specified Tenant Trigger Event, either (A) Lender's receipt of evidence reasonably satisfactory to Lender that the applicable default by the applicable Specified Tenant under its Specified Tenant Lease has been cured and no other monetary or material non-monetary default exists under such Specified Tenant Lease; or (B) the Replacement Tenant Event has occurred;
- (d) if the Specified Tenant Trigger Event is caused by the events described in clause (d) of the definition of Specified Tenant Trigger Event, either (A) as reasonably determined by Lender, the applicable Specified Tenant being in actual, physical possession of

the Specified Tenant Space, open for business and not "dark" and the applicable Specified Tenant paying full unabated rent or (B) the Replacement Tenant Event has occurred;

(e) if the Specified Tenant Trigger Event is caused by the events described in clause (e) of the definition of Specified Tenant Trigger Event, either (A) the applicable Specified Tenant's revocation or rescission of all termination or cancellation notices with respect to its Specified Tenant Lease and has re-affirmed its Specified Tenant Lease as being in full force and effect, or (B) the Replacement Tenant Event has occurred; or

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(f) if the Specified Tenant Trigger Event is caused by the events described in clause (f) of the definition of Specified Tenant Trigger Event, either: (A) Lender's receipt of evidence reasonably satisfactory to Lender that the applicable Specified Tenant has renewed its Specified Tenant Lease (or has entered into an extension of such Specified Tenant Lease with Borrower on terms acceptable to Lender) for a minimum term of five (5) years and the Specified Tenant Leasing Cost Conditions have been satisfied with respect to the applicable Specified Tenant Lease, (B) Borrower leases the entire Specified Tenant Space in accordance with the terms of this Agreement for a minimum term of five (5) years (and the Leases and Tenants are acceptable to Lender), and the applicable Tenant is open for business and paying full unabated rent or (C) the Replacement Tenant Event has occurred.

**"State"** shall mean the state when the Property is located.

**"Tax and Insurance Reserve Account"** shall have the meaning set forth in Section 5.1(a) hereof.

**"Tenant"** shall mean any Person leasing, subleasing or otherwise occupying any portion of the Property under a Lease or other occupancy agreement.

**"TI/LC Advance"** shall have the meaning set forth in Section 5.7(b) hereof.

**"TI/LC Advance Requisition"** shall have the meaning set forth in Section 5.7(c) hereof.

**"TI/LC Reserve Account"** shall have the meaning set forth in Section 5.7(a) hereof.

**"TI/LC Reserve Fund"** shall have the meaning set forth in Section 5.7(a) hereof.

**"Title Insurance Policy"** shall mean an ALTA mortgagee title insurance policy or policies in the form acceptable to Lender issued with respect to the Property and insuring the lien of the Security Instrument, together with such endorsements and affirmative coverage as Lender may require.

**"Transfer"** shall have the meaning set forth in Section 7.1(b) hereof.

**"Treasury Yield"** shall mean a yield determined by Lender by reference to the most recent Federal Reserve Statistical Release H.15 (519) (or any successor or substitute publication of the Federal Reserve Board) that has become publicly available at least two (2) Business Days prior to the Prepayment Date, and shall be the most recent weekly average yield to maturity (expressed as a rate per annum) under the caption "Treasury Constant Maturities" for the year corresponding to the remaining average life of the Loan, as determined by Lender, through the Scheduled Maturity Date had the Loan not been prepaid, converted to a mortgage equivalent yield. If no such "Treasury Constant Maturities" shall exactly correspond to such remaining average life of the Loan, as determined by Lender, yields for the two most closely corresponding published "Treasury Constant Maturities" shall be used to interpolate a single yield on a straight-line basis (rounding, in the case of relevant periods, to the nearest month). The Treasury Yield shall be computed to the fifth decimal place and then rounded to the fourth decimal point.

**"Trigger Event"** shall mean the occurrence of any of the following:

(a) an Event of Default; or

(b) the Debt Yield for one calendar quarter falls below 9.25x calculated using the then Underwritten Net Operating Income; provided, however, that Borrower shall have the right

within five (5) Business Days following Borrower's receipt of written notice from Lender that such condition has occurred, to make a prepayment of the Loan in an amount necessary to achieve the applicable minimum required Debt Yield described in this clause (b) as reasonably determined by Lender, together with all accrued and unpaid interest thereon to and including the date of such prepayment, plus any applicable Prepayment Premium calculated solely with respect to the amount of such prepayment, and if Borrower timely makes such prepayment within such five (5) Business Day period as described above, then such Trigger Event pursuant to this clause (b) resulting from such failure of the Property to maintain the minimum required Debt Yield shall be deemed not to have occurred.

**"Trigger Period"** shall mean a period commencing upon the occurrence of a Trigger Event and ending upon the occurrence of the applicable Trigger Termination Event. Notwithstanding the foregoing, a Trigger Period shall not be deemed to expire in the event that a Trigger Period then exists for any other reason.

**"Trigger Termination Event"** shall mean the occurrence of any of the following as it relates to the applicable Trigger Event:

(a) if the Trigger Event is caused by the events described in clause (a) of the definition of Trigger Event, the acceptance by Lender of a cure of all then outstanding Events of Default or the waiver thereof by Lender (which (x) cure Lender is not obligated to accept and may reject or accept in its sole and absolute discretion and (y) waiver Lender is not obligated to grant and may choose to not so grant in its sole and absolute discretion); or

(b) if the Trigger Event is caused by the events described in clause (b) of the definition of Trigger Event, the Debt Yield remaining at or above 9.50x for two full calendar quarters calculated using the then Underwritten Net Operating Income.

**"TRIPRA"** shall mean the Terrorism Risk Insurance Program Reauthorization Act of 2015 (Pub. L. 114-1, 129 Stat. 3).

**"Underwritten Net Operating Income"** shall mean, in Lender's reasonable discretion:

(1) the sum of (x) the annualized amount of all fixed or base rents, any sales performance percentage rents (subject to Lender's reasonable approval, and so long as such sales performance percentage rents are not paid as a result of a co-tenancy event under the applicable Lease) and any reimbursements for operating expenses (all, if applicable) on executed Leases (either in effect as of the Closing Date or entered into after the Closing Date in accordance with the terms of the Loan Documents) with tenants currently paying rent (or if any applicable tenant is not currently paying rent but is in occupancy, (i) such tenant's free rent period is consistent with market standards for properties similar to Individual Property in the location where the Individual Property is situated, (ii) such tenant's rent commencement date is a date certain and (iii) such tenant's obligation to commence paying rent is conditioned merely on the passage of a period of time) ("In-Place Rent") and, which In-Place Rent shall be reduced by (i) a vacancy allowance equal to the greater of (A) the actual vacancies, and (B) a deemed minimum vacancy of five percent (5%), to be applied to the In-Place Rent plus the fair market base or fixed rent on the actual vacant space, as determined by Lender, and (ii) deductions in income to reflect additional tenant related adjustments, such as to exclude rental income attributable to any tenant (I) in bankruptcy that has not affirmed and assumed its Lease in the applicable bankruptcy proceeding pursuant to a final, non-appealable order of a court of competent jurisdiction, (2) in monetary default under its Lease beyond any applicable notice and cure periods, (3) that has expressed its intention (directly, constructively or otherwise) to not renew, terminate, cancel and/or reject its

applicable Lease, (4) whose tenancy at the Individual Property is month-to-month, (5) under a Lease which expires within 90 days or less of the applicable date of calculation hereunder, and (6) that is a Specified Tenant and for which a Specified Tenant Trigger Period exists due to the occurrence of a Specified Tenant Trigger Event, and (y) any other income Lender deems recurring based on trailing twelve (12) month data, minus

(2) current trailing twelve (12) month actual operating expenses, or if data for the trailing twelve (12) month actual operating expenses is unavailable, then the most recent trailing twelve (12) month actual operating expenses for which data is available, minus

(3) normalized capital expenditures equal to \$0.25 of rentable square feet at the Property per annum;

provided that such Underwritten Net Operating Income shall be further adjusted to reflect (i) the exclusion of operating expenses of a non-recurring nature, (ii) the increase of operating expenses by imminent liabilities and/or other expected operating expenses increases, as determined by Lender and (iii) management fees, whether or not actually paid, equal to the greater of (C) five percent (5%) of annual gross revenue from the Property and (D) actual management fees.

The Underwritten Net Operating Income shall be calculated by Lender in good faith and shall be final absent manifest error.

**"Work Charge"** shall have the meaning set forth in Section 4.17(a) hereof.

**"Yield Maintenance Premium"** shall mean an amount, not less than zero, equal to the amount by which the sum of the respective present values of each of the remaining scheduled payments of principal and interest (including any final payment of the Principal Amount) which would have been payable hereunder through and including the one hundred eightieth (180<sup>th</sup>) day preceding the Scheduled Maturity Date had the Loan not been prepaid exceeds the then outstanding Principal Amount of the Loan on the date immediately prior to such Prepayment Date. Present values shall be computed by Lender in accordance with its customary accounting practices using a discount rate equal to the Treasury Yield for the remaining average life of the Loan, as determined by Lender, through the one hundred eightieth (180<sup>th</sup>) day preceding the Scheduled Maturity Date had the Loan not been prepaid.

**Section 1.2 Principles of Construction.** All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. Any reference in this Agreement or in any other Loan Document or the Environmental Indemnity to any Loan Document or the Environmental Indemnity shall be deemed to mean such Loan Document or Environmental Indemnity (as applicable) as the same may hereafter be amended, modified, supplemented, extended, replaced and/or restated from time to time (and, in the case of any note or other instrument, to any instrument issued in substitution therefor). Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

## ARTICLE II. THE LOAN

### Section 1.1 The Loan.

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(a) **Loan Commitment; Disbursement to Borrower.** Except as expressly and specifically set forth herein, Lender has no obligation or other commitment to loan any funds to Borrower or otherwise make disbursements to Borrower. Borrower hereby waives any right Borrower may have to make any claim to the contrary.

(b) **Agreement to Lend and Borrow.** Subject to and upon the terms and conditions set forth herein, Lender shall make the Loan to Borrower and Borrower shall accept the Loan from Lender on the Closing Date.

(c) **Single Disbursement to Borrower.** Borrower shall receive only one disbursement hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed.

(d) **The Note.** The Loan shall be evidenced by the Note and shall be repaid in accordance with the terms of this Agreement and the Note.

### **Section 1.2 Payment Terms.**

(a) The Principal Amount shall be paid by Borrower to Lender together with interest at the Applicable Interest Rate, subject to the provisions of Section 2.5 hereof, as follows:

- (i) If this Agreement is dated as of a date other than the first (1<sup>st</sup>) day of a calendar month, a payment shall be due from Borrower to Lender on the Closing Date on account of all interest, at the Applicable Interest Rate, scheduled to accrue on the Principal Amount from and after the Closing Date through and including the last day of the current Accrual Period.
- (ii) On each Monthly Payment Date, Borrower shall make a payment to Lender in the amount of the Monthly Debt Service Payment Amount. Each payment shall be applied first to interest accrued during the Accrual Period immediately preceding the Monthly Payment Date and then to the Principal Amount. The noninterest only portion of Monthly Debt Service Payment Amount required hereunder is based upon a thirty (30) year amortization schedule.
- (iii) The remaining balance of the Principal Amount, all accrued interest, and all other portions of the Obligations remaining unpaid on the Scheduled Maturity Date shall be due and payable on the Scheduled Maturity Date (unless accelerated by Lender or prepaid in accordance with the provisions of Section 2.6 hereof, in which case the aforesaid sums described in this clause (iii) shall be payable on the Maturity Date or the Prepayment Date, as applicable).
- (iv) Interest on the Principal Amount (whether at the Applicable Interest Rate or the Default Rate) shall be calculated on the basis of a three hundred sixty (360) day year, based on twelve (12) thirty (30) day months.

(b) All payments, whether of principal, interest or otherwise, due hereunder and under any of the Loan Documents shall be paid by wire transfer of immediately available federal funds to the following account of Lender, unless otherwise directed by Lender in writing:

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ABA Number:	026 009 593
Bank Name:	Bank of America, NA
Beneficiary Account:	385015997014
Beneficiary Name	JP Morgan Investment Management Inc AAF Insurance Strategy Funding XXVIII LLC
Reference:	Project Lightyear JP121960

Any wire transfer received by Lender after 2:00 p.m. New York City time shall be deemed received on the next succeeding Business Day.

(c) Unless payments are made in the required amount in immediately available funds at the place where the Note is payable, remittances in payment of all or any part of the Obligations shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available at the place where the Note is payable (or any other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to

Borrower) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks.

**Section 1.3 Default and Acceleration.** If any payment required herein is not paid on the date when due or upon the occurrence and during the continuance of any other Event of Default, (a) the whole of the Principal Amount, (b) interest, including interest at the Default Rate, Late Charges and other sums, as provided in this Agreement or the other Loan Documents, (c) all other monies agreed or provided to be paid by Borrower in this Agreement or the other Loan Documents, (d) all sums advanced pursuant to this Agreement or the Security Instrument to protect and preserve the Property and the lien and the security interest created thereby, and (e) all sums advanced and costs and expenses incurred by Lender in connection with the administration or enforcement of the Loan Documents or the Obligations or any part thereof, any renewal, extension or change of or substitution for the Obligations or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender shall without notice become immediately due and payable at the option of Lender.

**Section 1.4 Late Charge.** In the event that any payment provided for herein (other than the payment due of the Maturity Date) shall become overdue for a period of five (5) calendar days or more, a late charge equal to the lesser of (x) five cents (.05¢) for each dollar of the amount so overdue and (y) the maximum amount permitted by applicable law (the "Late Charge") shall become immediately due to Lender as liquidated damages, and not as a penalty, and as a reasonable estimate of Lender's additional administrative expenses, the exact amount of which would be impossible to ascertain, and such sum shall, until paid, be part of the Obligations secured by the Security Instrument and the other Loan Documents. Application of the Late Charge shall not be construed as a consent by Lender to an extension of time for any payment, as a waiver of any default that may be related to such or any other overdue payment or of any other default or as a waiver of any other right or remedy of Lender hereunder, at law or in equity.

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**Section 1.5 Default Rate Applied upon Non-Payment.** In the event that any payment due hereunder is not paid in full when due or the Obligations are not paid in full on the Maturity Date, or such earlier date as the Obligations may become due hereunder, the entire Principal Amount and all of the Obligations (including, to the extent permitted by applicable law, any portion thereof which constitutes accrued and unpaid interest, but excluding any accrued but unpaid Late Charges), shall accrue interest until all payments past due hereunder are fully paid at a rate of interest equal to the Default Rate.

**Section 1.6 Prepayment.**

(a) Provided no Event of Default exists, the Loan may be prepaid, in whole, but not in part (other than in connection with (A) Borrower's exercise of the right described in clause (b) of the definition of Trigger Event and (B) an Individual Property Release in accordance with Section 7.2 hereof), upon: (i) not less than thirty (30) days' prior written notice to Lender specifying the Business Day on which prepayment is to be made, which notice shall be irrevocable once given (the "Prepayment Notice"); (ii) payment of the Principal Amount and all accrued and unpaid interest on the Principal Amount of the Loan to and including the day immediately prior to the Prepayment Date; (iii) payment of all other sums then due under this Agreement, the Note, the Security Instrument and the other Loan Documents; and (iv) if the Prepayment Date occurs prior to the one hundred eightieth (180<sup>th</sup>) day preceding the Scheduled Maturity Date, payment of the Prepayment Premium. Lender shall not be obligated to accept any prepayment of the Loan unless it is accompanied by all sums due in connection therewith. The calculation of the Prepayment Premium shall be made by Lender in accordance with this Agreement in its sole and absolute discretion and shall, absent manifest error, be final, conclusive and binding upon Borrower.

(b) Borrower hereby acknowledges that Lender would not make the Loan without full and complete assurance by Borrower of its agreement to pay the monthly payments as hereinabove provided, and Borrower's further agreement not to prepay all or any part of the Principal Amount prior to the Scheduled Maturity Date, except on the terms expressly set forth in this Agreement. In consideration of the foregoing, if, as a result of an Event of Default hereunder or under the Security Instrument or any of the other

Loan Documents, Lender shall declare the Loan due and payable, in whole or in part, in accordance with Lender's rights under this Agreement or any of the other Loan Documents, then Borrower shall pay to Lender on the date of such acceleration, in addition to all other amounts due Lender, an amount equal to the Prepayment Premium. Except as expressly set forth in this Agreement, Borrower hereby waives any rights Borrower may have to prepay the Loan without charge and agrees to pay the Prepayment Premium upon any prepayment of the Loan prior to the Scheduled Maturity Date, whether voluntary, pursuant to any such acceleration or otherwise. Borrower hereby acknowledges that if such acceleration shall result from an Event of Default, it shall be presumed, for purposes of imposing the Prepayment Premium, and conclusively deemed to be a willful and deliberate attempt by Borrower to avoid the payment of the Prepayment Premium or the limitations on prepayment herein contained and the Prepayment Premium shall constitute liquidated damages, and not a penalty, as a reasonable estimate of Lender's loss (the exact amount of which damages would be impossible to ascertain) as a consequence of the breach of Borrower's covenant not to prepay the Principal Amount and other Obligations, other than as specifically permitted herein.

(c) Any such Prepayment Premium (whether voluntary, pursuant to any acceleration or otherwise) shall constitute a portion of the Loan and the Obligations

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evidenced hereby and secured by the Security Instrument or the other Loan Documents. Nothing herein shall constitute a waiver by Lender of any right it may have to specifically enforce the terms of repayment of the Loan and the Obligations set forth herein, in the Security Instrument and in the other Loan Documents. The foregoing provisions shall be deemed to apply, without limitation, to any prepayment of the Loan prior to the Scheduled Maturity Date in connection with (i) any reinstatement of any or all of the Loan Documents under any foreclosure proceedings, (ii) any right of redemption, or (iii) the consummation of any foreclosure sale, whether or not such prepayment is made by or on behalf of Borrower or otherwise and whether or not any such prepayment is made pursuant to rights granted at law or in equity.

(d) Notwithstanding the foregoing, provided no Event of Default shall have occurred and be continuing hereunder, no Prepayment Premium shall be due in connection with any prepayment (i) resulting from the application of Net Proceeds to the Loan in accordance with the terms of Article VI hereof, or (ii) made during the last one hundred eighty (180) days prior to the Scheduled Maturity Date.

**Section 1.7 Limitation on Interest.** The agreements made by Borrower with respect to this Agreement, the Note and the other Loan Documents are expressly limited so that in no event shall the amount of interest received, charged or contracted for by Lender exceed the highest lawful amount of interest permissible under the laws applicable to the Loan. If at any time performance of any provision of this Agreement, the Note or the other Loan Documents results in the highest lawful rate of interest permissible under applicable laws being exceeded, then the amount of interest received, charged or contracted for by Lender shall automatically and without further action by any party be deemed to have been reduced to the highest lawful amount of interest then permissible under applicable laws. If Lender shall ever receive, charge or contract for, as interest, an amount which is unlawful, at Lender's election, the amount of unlawful interest shall be refunded to Borrower (if actually paid) or applied to reduce the then unpaid Principal Amount. To the fullest extent permitted by applicable laws, any amounts contracted for, charged or received under the Loan Documents included for the purpose of determining whether the Applicable Interest Rate would exceed the highest lawful rate shall be calculated by allocating and spreading such interest to and over the full stated term of the Loan.

### ARTICLE III. REPRESENTATIONS AND WARRANTIES

Each Individual Borrower represents and warrants, with respect to itself and with respect to such Individual Borrower's Individual Property as of the date hereof that:

#### Section 1.1 Organization.

(a) Borrower (i) is duly organized, validly existing and is in good standing under the laws of the state of its formation, (ii) is duly qualified to transact business and is in good standing in the State, and (iii) has all necessary licenses, authorizations, registrations, permits and/or approvals, governmental and otherwise, and full power and authority to own, operate and lease the Property and to carry on its business as presently conducted.

(b) Borrower has full power, authority and legal right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property pursuant to the terms hereof and the Security Instrument, and to keep and observe all of the terms of this

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Agreement, the Note, the Security Instrument, the other Loan Documents and the Environmental Indemnity on Borrower's part to be performed.

### **Section 1.2 Validity of Documents.**

(a) The execution, delivery and performance of this Agreement, the Note, the Security Instrument, the other Loan Documents and the Environmental Indemnity by Borrower and Guarantor and the borrowing evidenced by the Note and this Agreement (i) are within the power and authority of such parties; (ii) have been authorized by all requisite organizational action of such parties; (iii) have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a material default under any provision of law, any order or judgment of any court or Governmental Authority, any license, certificate or other approval required to operate the Property, any applicable organizational documents, or any applicable indenture, agreement or other instrument, including, without limitation, the Management Agreement; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its assets, except the lien and security interest created hereby and by the other Loan Documents; and (vi) will not require any authorization or license from, or any filing with, any Governmental Authority (except for the recordation of the Security Instrument and the Assignment of Leases and Rents in appropriate land records in the State and except for Uniform Commercial Code filings relating to the security interest created hereby).

(b) This Agreement, the Note, the Security Instrument, the other Loan Documents and the Environmental Indemnity have been duly executed and delivered by Borrower and Guarantor and constitute valid and binding obligations of Borrower which are enforceable in accordance with their terms (except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Creditors Rights Laws, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law)).

(c) This Agreement, the Note, the Security Instrument, the other Loan Documents and the Environmental Indemnity constitute the legal, valid and binding obligations of Borrower and Guarantor. The Loan Documents and the Environmental Indemnity are not subject to any right of rescission, set-off, counterclaim or defense by Borrower or Guarantor, including the defense of usury, nor would the operation of any of the terms of the Loan Documents or the Environmental Indemnity, or the exercise of any right thereunder, render the Loan Documents or the Environmental Indemnity unenforceable (except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Creditors Rights Laws, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law)). Neither Borrower nor Guarantor has asserted any right of rescission, set-off, counterclaim or defense with respect to the Loan Documents or the Environmental Indemnity.

**Section 1.3 Litigation.** Neither Borrower nor (except as previously disclosed to Lender in writing) any of Borrower's Constituents is involved in any litigation, arbitration, or other proceeding or governmental investigation pending which if determined adversely would materially adversely affect Borrower's ability to perform in accordance with the Loan Documents or the Environmental Indemnity.

**Section 1.4 Agreements.** Borrower is not in default with respect to any order or decree of any court or any order, regulation or demand of any

Governmental Authority, which default would be reasonably likely to materially and adversely affect the condition (financial or other) or operations of the Property or Borrower or Borrower's ability to perform its obligations hereunder or under the Loan Documents or the Environmental Indemnity. Borrower has complied with all requirements of all instruments and agreements affecting the Property, whether or not of record, including without limitation all covenants and agreements by and between Borrower and any governmental or regulatory agency pertaining to the development, use or operation of the Property.

**Section 1.5 Consents**. No consent, approval, authorization or order of any court or Governmental Authority is required for the execution, delivery and performance by Borrower of, or compliance by Borrower with, this Agreement or any of the other Loan Documents or the Environmental Indemnity or the consummation of the transactions contemplated hereby or thereby, other than those which have been obtained by Borrower.

**Section 1.6 ERISA**. As of the date hereof, (i) Borrower does not sponsor, is not obligated to contribute to and is not an "employee benefit plan," as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), subject to Title I of ERISA or Section 4975 of the Internal Revenue Code of 1986, as amended (the "Code"), (ii) none of the assets of Borrower constitutes "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101, (iii) Borrower is not a "governmental plan" within the meaning of Section 3(32) of ERISA, and (iv) transactions by or with Borrower are not subject to any statute, rule or regulation regulating investments of, or fiduciary obligations with respect to, "governmental plans" within the meaning of Section 3(32) of ERISA.

**Section 1.7 OFAC**. As of the date hereof, Borrower and each of its Affiliates (i) is not a Prohibited Person and (ii) is in full compliance with all applicable orders, rules, regulations and recommendations of The Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury. Borrower has performed reasonable due diligence to insure that (a) none of the funds or other assets of Borrower and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any Prohibited Person; (b) no Prohibited Person has any interest of any nature whatsoever in Borrower or Guarantor, as applicable, with the result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower or Guarantor, as applicable, have been derived from, or are the proceeds of, any unlawful activity, including money laundering, terrorism or terrorism activities, with the result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law, or may cause the Property to be subject to forfeiture or seizure.

**Section 1.8 Compliance**. The Improvements and their use comply with (and no notices of violation have been received in connection with) all laws, ordinances, orders, covenants, conditions and restrictions and other requirements relating to land and building design and construction, use and maintenance, that may now or hereafter pertain to or affect the Property or any part of the Property or the use thereof, including, without limitation, planning, zoning, subdivision, environmental, air quality, flood hazard, fire safety, handicapped facilities, building, health, fire, traffic, safety, wetlands, coastal and other governmental or regulatory rules, laws, ordinances, statutes, codes and requirements applicable to

the Property, including permits, licenses and/or certificates that may be necessary from time to time to comply with any of the these requirements.

**Section 1.9 Zoning**. Except as previously disclosed on those certain zoning reports for the Property delivered to Lender in connection with origination of the Loan, the zoning approval for the Property is not dependent upon the ownership or use of any property which is not encumbered by the Security Instrument.

**Section 1.10 Financial Information**. All financial statements, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in respect of the Property and/or in connection with the Loan (i) are true, complete and correct in all material respects as of the date of such reports, (ii) accurately represent the financial condition of the Property as of the date of such reports, and (iii) have been prepared in accordance with the Approved Accounting Method throughout the periods covered. Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and which are, individually or in the aggregate, reasonably likely to have a materially adverse effect on the Property or the operation thereof, except as referred to or reflected in the most recent financial statements of Borrower delivered to Lender. Since the date of such financial statements, there has been no material adverse change in the financial condition, operations or business of Borrower or the Property from that set forth in the financial statements.

**Section 1.11 Casualty and Condemnation**. Except as expressly approved by Lender in writing, no Casualty or damage to any part of any Individual Property that would cost more than \$50,000 to restore or replace has occurred which has not been fully restored or replaced. No part of the Property has been taken in Condemnation or other similar proceeding or transferred in lieu of Condemnation, nor has Borrower received notice of any proposed Condemnation or other similar proceeding affecting the Property. No Condemnation or other proceeding has been commenced, is pending or, to Borrower's best knowledge, is contemplated with respect to all or any portion of the Property or for the relocation of roadways providing access to the Property.

**Section 1.12 Assignment of Leases**. Pursuant to the Assignment of Leases, Borrower has assigned the Leases and the Rents and Profits to Lender. Borrower acknowledges that it is permitted to collect certain of the Rents and Profits pursuant to a revocable license as set forth in the Assignment of Leases. No Person other than Lender has any interest in or assignment of the Leases or any portion of the Rents and Profits due and payable or to become due and payable thereunder.

**Section 1.13 Insurance**. Borrower has obtained and has delivered to Lender evidence of all of the Policies, with all premiums prepaid thereunder, reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No claims have been made under any of the Policies, and no Person, including Borrower, has done, by act or omission, anything which would impair the coverage of any of the Policies.

**Section 1.14 Licenses and Permits**. All Permits and all other authorizations, permits, licenses, including, without limitation liquor licenses, if

any, and operating permits, required by any Governmental Authority for the use, occupancy and operation of the Property in the manner in which the Property is currently being used, occupied and operated have been obtained, paid for and are in full force and effect and, to the knowledge of Borrower, all Tenants have such permits and approvals as are required by any Governmental Authority for the use, occupancy and operation of the premises demised under their respective Leases.

**Section 1.15 Flood Zone**. None of the Improvements on the Property is located in an area identified by the Federal Emergency Management Agency as a special flood hazard area.

**Section 1.16 Status of Property**.

(a) The Property is served by all utilities required for the current or contemplated use thereof. All utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service. The Property is served by public water and sewer systems.

(b) All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all-weather and are physically and legally open for use by the public. The Property has either direct access to such public roads or streets or access to such public roads or streets by virtue of a perpetual easement or similar agreement inuring in favor of Borrower and any subsequent owners of the Property.

(c) The Property is free from damage caused by fire or other casualty. The Property, including, without limitation, all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects; there exists no structural or other material defects or damages in the Property, whether latent or otherwise, and Borrower has not received notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

(d) All costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the Improvements have been paid in full. There are no mechanics' or similar liens or claims which have been filed for work, labor or material (and no rights are outstanding that under applicable Legal Requirements could give rise to any such liens) affecting the Property which are or may be prior to or equal to the lien of the Security Instrument.

(e) Borrower has paid in full for, and is the owner of, all furnishings, fixtures and equipment (other than Tenants' property) used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created by this Agreement, the Note, the Security Instrument and the other Loan Documents.

(f) All liquid and solid waste disposal, septic and sewer systems located on the Property are in a good and safe condition and repair and in compliance with all Legal Requirements.

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(g) Except as specifically disclosed in a Title Insurance Policy or on the survey for an Individual Property, (1) all the Improvements lie wholly within the boundaries and building restriction lines of the Property, and (2) no improvements on adjoining properties encroach upon the Property, and no easements or other encumbrances upon the Property encroach upon any of the Improvements, so as to affect the value or marketability of the Property except those which are insured against by the Title Insurance Policy.

(h) To Borrower's knowledge after due inquiry, there are no pending or proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

(i) Except as previously disclosed to Lender in writing, Borrower has not (i) made, ordered or contracted for any construction, repairs, alterations or improvements to be made on or to the Property which have not been completed and paid for in full, (ii) ordered materials for any such construction, repairs, alterations or improvements which have not been paid for in full or (iii) attached any fixtures to the Property which have not been paid for in full. There is no such construction, repairs, alterations or improvements ongoing at the Property as of the Closing Date. There are no outstanding or disputed claims for any Work Charges and there are no outstanding liens or security interests in connection with any Work Charges.

#### Section 1.17 Leases

(a) The rent rolls attached hereto as Exhibit A (with respect to the applicable Individual Property, the “**Rent Roll**”) are true, correct and complete and there are no Leases affecting the Property except those Leases identified on the Rent Roll. Borrower has delivered to Lender true, correct and complete copies of all existing Leases, including all existing modifications and amendments, and including all existing Lease Guarantees (collectively, “**Existing Leases**”). All agreements between the landlord and Tenant or between the landlord and any guarantor pertaining to any of such Leases are set forth in writing and are included in such copies that have been so delivered.

(b) There are no defaults by Borrower under the Existing Leases. To the best knowledge of Borrower, there are no defaults by any Tenants under the Existing Leases nor by any guarantors under the existing Lease Guarantees. The Existing Leases, including the existing Lease Guarantees, are in full force and effect.

(c) To the best knowledge of Borrower, none of the Tenants now occupying 10% or more of the rentable space at the Property or having a current Lease affecting 10% or more of such rentable space is the subject of any bankruptcy, reorganization or insolvency proceeding or any other debtor-creditor proceeding.

(d) Except as otherwise set forth in the Existing Leases, no Existing Lease may be amended, terminated or canceled unilaterally by a Tenant, and no Tenant may be released from its obligations, except in the event of material Casualty or Condemnation.

(e) Except only for rent and additional rent for the current month, Borrower has not accepted any payment of rent more than one month in advance of its due date, nor any security deposit in an amount exceeding one month's rent.

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(f) Borrower has delivered to Lender a true, correct and complete copy of the standard form of Lease used at the Property as of the date hereof (the “**Lender-Approved Lease Form**”).

(g) Except as set forth on Schedule 3.17, each Individual Property is in compliance with all provisions regarding exclusivity and use in each Existing Lease.

**Section 1.18 Filing and Recording Taxes.** All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by Borrower under applicable Requirements in connection with the transfer of the Property to Borrower have been paid or are being paid simultaneously herewith. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid under applicable Requirements in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Security Instrument, have been paid or are being paid simultaneously herewith. All taxes and governmental assessments due and owing in respect of the Property have been paid, or an escrow of funds in an amount sufficient to cover such payments has been established hereunder or are insured against by the Title Insurance Policy.

**Section 1.19 Special Purpose Entity/Separateness.**

(a) Each Individual Borrower is a Special Purpose Entity; provided that prior to the date hereof, the organizational documents of each Individual Borrower did not contain the specific requirements listed in the definition of Special Purpose Entity set forth in this Agreement but rather contained similar requirements regarding the separateness of such Individual Borrower, and each such Individual Borrower prior to the date hereof complied with such similar requirements in all material respects.

(b) Each Individual Property has “single asset real estate” status as defined by Section 101(51)(B) of the Bankruptcy Code.

(c) The representations and warranties set forth in this Section 3.19 shall survive for so long as any amount remains payable to Lender under this Agreement or any other Loan Document.

**Section 1.20 Solvency.** Borrower (a) has not entered into the transaction contemplated by this Agreement or any Loan Document or the Environmental Indemnity with the actual intent to hinder, delay, or defraud any creditor and (b) has received reasonably equivalent value in exchange for its obligations under the Loan Documents and the Environmental Indemnity. Giving effect to the Loan, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted.

**Section 1.21 Organizational Chart.** The organizational chart attached as Exhibit B hereto, relating to Borrower and certain Affiliates and other parties, is true, complete and correct on and as of the date hereof and shows all Persons holding direct or indirect ownership interests in each individual Borrower. Borrower has delivered to Lender true and correct copies of all Borrower's

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organizational documents and except as expressly approved by Lender in writing, there have been no changes in Borrower's Constituents since the date that the Application was executed by Borrower.

**Section 1.22 Material Agreements.** Attached hereto as Schedule 3.22 is a list of all Material Agreements, true and complete copies of each of which have been delivered to Lender.

**Section 1.23 No Other Debt.** Borrower has not borrowed or received debt financing (other than permitted pursuant to this Agreement) that has not been heretofore repaid in full.

**Section 1.24 No Bankruptcy Filing.** Neither Borrower, nor any of Borrower's Constituents, is involved in any bankruptcy, reorganization, insolvency, dissolution or liquidation proceeding, and to the best knowledge of Borrower, no such proceeding is contemplated or threatened.

**Section 1.25 Full and Accurate Disclosure.** No information contained in this Agreement, the other Loan Documents or the Environmental Indemnity, or in any written statement furnished by or on behalf of Borrower pursuant to the terms of this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in any material respect in light of the circumstances under which they were made. There is no fact or circumstance presently known to Borrower which has not been disclosed to Lender and which materially adversely affects, or is reasonably likely to materially adversely affect, the Property, Borrower or its business, operations or condition (financial or otherwise).

**Section 1.26 Foreign Person.** Neither Borrower nor any partner, member or shareholder of Borrower is, and no legal or beneficial interest in a partner, member or shareholder of Borrower is or will be held directly or indirectly by a "foreign person" within the meaning of Sections 1445 and 7701 of the Code.

**Section 1.27 No Change in Facts or Circumstances; Disclosure.** There has been no material adverse change from the conditions shown in the Application or in the materials submitted in connection with the Application or in the credit rating or financial condition of Borrower or any of Borrower's Constituents.

**Section 1.28 Management Agreements.** Borrower has provided to Lender a true, correct and complete copy of the Management Agreements. The Management Agreements are in full force and effect and no event of default has occurred thereunder nor has any event under the Management Agreements occurred which, but for the giving of notice, or passage of time, or both would be an event of default thereunder. All fees payable to Manager have been paid in full.

**Section 1.29 Criminal Acts.** Neither Borrower nor any of Borrower's Constituents has been convicted of, or been indicted for, a felony criminal offense.

**Section 1.30 No Defaults.** Neither Borrower nor any of Borrower's Constituents is in default under any mortgage, deed of trust, note, loan or credit agreement.

**Section 1.31 Intentionally Omitted.**

**Section 1.32 Personal Property.** Borrower owns the Personal Property free from any lien, security interest, encumbrance or adverse claim, except as otherwise expressly approved by Lender in writing. The Personal Property has not been used or bought for personal, family, or household purposes, but has been bought and used solely for the purpose of carrying on Borrower's business.

**Section 1.33 O&M Program.** The O&M Program, if any, is in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder.

**Section 1.34 REA.** The REA is in full force and effect and neither Borrower nor, to Borrower's knowledge, any other party to the REA, is in default thereunder, and to the best of Borrower's knowledge, there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default thereunder. Except as set forth on Schedule 3.34, the REA has not been modified, amended or supplemented.

**Section 1.35 Environmental Representations and Warranties.** Except as otherwise disclosed by that certain Phase I environmental report (or Phase II environmental report, if required) delivered to Lender by Borrower in connection with the origination of the Loan (such report is referred to as the "**Environmental Report**"), (a) there are no Hazardous Substances or underground storage tanks in, on, or under the Property, except those that are (i) in compliance with Environmental Laws and with permits issued pursuant thereto (to the extent such permits are required under Environmental Law), (ii) de-minimis amounts necessary to operate the Property for the purposes set forth in this Agreement which will not result in an environmental condition in, on or under the Property and which are otherwise permitted under and used in compliance with Environmental Law and (iii) fully disclosed to Lender in writing pursuant the Environmental Report; (b) there are no past, present or threatened releases of Hazardous Substances in, on, under or from the Property which have not been fully remediated in accordance with Environmental Law; (c) there is no threat of any release of Hazardous Substances migrating to the Property; (d) there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Property which has not been fully remediated in accordance with Environmental Law; (e) Borrower does not know of, and has not received, any written or oral notice or other communication from any Person (including but not limited to a Governmental Authority) relating to Hazardous Substances or Remediation thereof, of possible liability of any Person pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing; and (f) Borrower has truthfully and fully disclosed to Lender, in writing, any and all information relating to environmental conditions in, on, under or from the Property that is known to Borrower and has provided to Lender all information that is contained in Borrower's files and records, including, but not limited to, any reports relating

to Hazardous Substances in, on, under or from the Property and/or to the environmental condition of the Property.

**Section 1.36 Survival of Representations.** Borrower agrees that all of the representations and warranties of Borrower set forth in this Article III and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

#### ARTICLE IV. BORROWER COVENANTS

From the date hereof and until payment and performance in full of all obligations of Borrower under this Agreement, the Security Instrument, the Note and the other Loan Documents or the earlier release of the lien of the Security Instrument (and all related obligations) in accordance with the terms of this Agreement, the Security Instrument, the Note and the other Loan Documents, each Individual Borrower, with respect to itself and with respect to such Individual Borrower's Individual Property, hereby covenants and agrees with Lender that:

**Section 1.1 Existence; Legal Requirements.**

(a) Borrower will continuously maintain (i) its existence and shall not divide, dissolve or permit its dissolution, (ii) its rights to do business in the State and (iii) its franchises and trade names, if any.

(b) Borrower shall promptly comply and shall cause the Property to comply with all Legal Requirements affecting the Property or the use thereof (which such covenant shall be deemed to (i) include Environmental Laws and (ii) require Borrower to keep all Permits in full force and effect). Borrower shall give prompt notice to Lender of the receipt by Borrower of any notice related to a violation of any Legal Requirements and of the commencement of any proceedings or investigations which relate to compliance with Legal Requirements. After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower or the Property or any alleged violation of any Legal Requirement, provided that (i) no Event of Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be permitted by and conducted in accordance with all applicable Legal Requirements; (iii) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (iv) Borrower shall promptly upon final determination thereof comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any Legal Requirement; (v) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower or the Property; and (vi) Borrower shall furnish such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security or part thereof, as necessary to cause compliance with such Legal Requirement at any time when, in the reasonable judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Property

(or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost.

**Section 1.2 Maintenance and Use of Property.** Borrower shall cause the Property to be maintained in a good and safe condition and repair. The Improvements shall not be removed, demolished or materially altered without the consent of Lender or as otherwise permitted pursuant to Section 4.20 hereof. Borrower shall perform (or shall cause to be performed) the prompt repair, replacement and/or rebuilding of any part of the Property which may be destroyed by any Casualty, or become damaged, worn or dilapidated or which may be affected by Condemnation or other proceeding of the character referred to in Section 3.11 hereof and shall complete and pay for (or cause the completion and payment for) any structure at any time in the process of construction or repair on the land constituting the Property. Borrower shall operate the Property for the same uses as the Property is currently operated and Borrower shall not, without the prior written consent of Lender, (i) change the use of the Property as a retail shopping center or (ii) initiate, join in, acquiesce in, or consent to any change in any private restrictive

covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit the nonconforming use to be discontinued or the nonconforming Improvement to be abandoned without the express written consent of Lender.

**Section 1.3 Waste**. Borrower shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security for the Loan. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Property, regardless of the depth thereof or the method of mining or extraction thereof.

**Section 1.4 Impositions**.

(a) Borrower shall pay (or cause to be paid) all Impositions now or hereafter levied or assessed or imposed against the Property or any part thereof as the same become due and payable; provided, however, during the continuance of an Event of Default, Borrower's obligation to directly pay Impositions shall be suspended for so long as such Impositions are being paid by Depository (defined below) from the Tax and Insurance Reserve Account (defined below) pursuant to Section 5.1(b) hereof. Borrower shall furnish to Lender receipts for the payment of the Impositions prior to the date the same shall become delinquent (provided, however, that Borrower is not required to furnish such receipts for payment of Impositions in the event that such Impositions are being paid by Depository from the Tax and Insurance Reserve Account pursuant to Section 5.1(b) hereof).

(b) After prior written notice to Lender, Borrower, at its own expense, may contest (or permit to be contested) by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Impositions or any other claim that can lead to a Lien against the Property, provided that (i) no Event of Default has occurred and remains uncured;

(ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be permitted by and conducted in accordance with all applicable Legal Requirements; (iii) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost; (iv) Borrower shall promptly upon final determination thereof pay the amount of any such Impositions or claim, together with all costs, interest and penalties which may be payable in connection therewith; (v) such proceeding shall suspend the collection of such contested Impositions or claim from the Property; and (vi) Borrower shall furnish such security as may be required in the proceeding, or deliver to Lender such reserve deposits as may be reasonably requested by Lender, to insure the payment of any such Impositions or claim, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, canceled or lost or there shall be any danger of the lien of the Security Instrument being primed by any related lien.

**Section 1.5 Liens and Encumbrances**. Without the prior written consent of Lender, to be exercised in Lender's sole and absolute discretion, other than the Permitted Encumbrances, Borrower shall not create, place or allow to remain any Liens on the Property. If any Liens are recorded against the Property or any part of the Property, Borrower shall obtain a discharge and release of any Liens and Encumbrances within fifteen (15) days after receipt of notice of their existence.

**Section 1.6 Litigation**. Borrower shall give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened in writing against Borrower or Guarantor which might have a Material Adverse Effect.

**Section 1.7 Access to Property**. Borrower shall permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice.

**Section 1.8 Notice of Default**. Borrower shall promptly advise Lender of any material adverse change in Borrower's and/or Guarantor's condition (financial or otherwise) or of the occurrence of any Default or Event of Default of which Borrower has knowledge.

**Section 1.9 Cooperate in Legal Proceedings**. Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which may in any way affect the rights of Lender hereunder or any rights obtained by Lender under any of the Note, the Security Instrument or the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

**Section 1.10 Performance by Borrower**. Borrower hereby acknowledges and agrees that Borrower's observance, performance and fulfillment of each and every covenant, term and provision to be observed and performed by Borrower under this Agreement, the Security Instrument, the Note and the other Loan Documents is a material inducement to Lender in making the Loan.

#### **Section 1.11 Books and Records**

(a) Borrower shall keep and maintain or will cause to be kept and maintained on a calendar year basis, in accordance with the Approved Accounting Method, proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower and all items of income and expense in connection with the operation of the Property or in connection with any services, equipment or furnishings provided in connection with the operation of the Property, whether such income or expense be realized by Borrower or by any other Person whatsoever excepting tenants unrelated to and unaffiliated with Borrower who have leased from Borrower portions of the Property for the purpose of occupying the same.

(b) Within ninety (90) days following the end of each calendar year, Borrower shall furnish Lender: (i) income statements, balance sheets and cash flow statements of each Individual Borrower and each Individual Property reviewed (or after the occurrence of an Event of Default, audited) by a certified public accountant reasonably satisfactory to Lender and stating that the same have been prepared in accordance with the Approved Accounting Method and (ii) a detailed rent roll for the Property which shall list all expiring Leases and the applicable lease expiration dates.

(c) Within thirty (30) days prior to the end of each calendar year, Borrower shall furnish to Lender detailed operating and capital budgets with respect to each Individual Property for the following year (with respect to the applicable Individual Property, the "**Annual Budget**"), which such Annual Budget shall (A) until the occurrence and continuance of a Trigger Period, be provided to Lender for informational purposes and (B) after the occurrence and during the continuance of a Trigger Period, not take effect until approved by Lender (after such approval has been given in writing, such approved budget shall be referred to herein as the "**Approved Annual Budget**"). Until such time that Lender approves a proposed Annual Budget, (1) to the extent that an Approved Annual Budget does not exist for the immediately preceding calendar year, all operating expenses of the Property for the then current calendar year shall be deemed extraordinary expenses of the Property and shall be subject to Lender's prior written approval (not to be unreasonably withheld or delayed) and (2) to the extent that an Approved Annual Budget exists for the immediately preceding calendar year, such Approved Annual Budget shall apply to the then current calendar year; provided, that such Approved Annual Budget shall be adjusted to reflect actual increases in impositions, insurance premiums and utilities expenses.

(d) Within thirty (30) days following the date that Borrower is required to file any state or federal income tax returns, Borrower shall deliver to Lender copies of such returns as filed with the applicable taxing authorities together with evidence of the payment of all federal and state income taxes required to be paid by Borrower.

(e) Within forty-five (45) days following the end of each calendar quarter, Borrower shall deliver to Lender a "Leasing Status Report", which shall include (i) to the extent such information is not contained on the most recent rent roll delivered to Lender, a list of each vacant space located in each Individual Property, which shall include the asking rent for each space, (ii) a summary of prospective tenants for each vacant space, including a discussion of lease terms and a copy of any letters of intent, if available, (iii) the status of any leased spaces that will roll over within the six (6) month period following the date of the applicable Leasing Status Report, including details with respect to whether the current tenant has given notice of whether it intends to renew its Lease or permit the termination of the same and, if applicable, the proposed renewal terms; and (iv) copies of any and all new Leases, or amendment, modification,

termination or surrender of any Leases, together with any and all side letters, licenses, letters of credit, guarantees and any other documentation executed in connection with any such Leases entered into since the delivery of the last Leasing Status Report from Borrower to Lender.

(f) Within forty-five (45) days following the end of each calendar quarter, Borrower shall deliver to Lender (i) operating statements of each Individual Property in form and substance satisfactory to Lender, and (ii) a detailed rent roll for each Individual Property (which shall list all expiring Leases and the applicable Lease expiration dates), together with a delinquency report each in substantially the same form as delivered to Lender in connection with its underwriting of the Loan or such other form as may be approved by Lender.

(g) Within ten (10) Business Days after Lender's request, Borrower shall deliver to Lender such additional financial information concerning Borrower (including state and federal tax returns), any Guarantor and/or the Property as may be reasonably requested by Lender.

(h) Upon request from Lender, Borrower shall furnish in a timely manner an accounting of all Security Deposits, including the nature and type of Security Deposit, the name and identification number of the accounts in which such Security Deposits are held (if applicable), such details regarding any Security Deposit not held in the form of cash as Lender may reasonably require, the name and address of the financial institutions in which such Security Deposits are held or have been otherwise issued by and the name of the Person to contact at such financial institution, along with any authority or release necessary for Lender to obtain information regarding such accounts or other information directly from such financial institutions.

(i) Borrower agrees that all financial data and statements described in this Section 4.11 to be delivered to Lender pursuant to this Agreement shall be (a) complete and correct and present fairly the financial condition of the applicable Person in all material respects and (b) accompanied by an Officer's Certificate, which certification shall state that such financial statements meet the requirements set forth in the first sentence of this Section 4.11. Borrower shall be deemed to warrant and represent that, as of the date of delivery of any such financial statement, there has been no material adverse change in Borrower's financial condition.

### **Section 1.12 Estoppe Certificates.**

(a) After request by Lender, Borrower shall within ten (10) days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the Applicable Interest Rate, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, claimed by Borrower, and (vi) that the Note, this Agreement, the Security Instrument and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) During the continuance of an Event of Default, Borrower shall use commercially reasonable efforts to deliver to Lender upon reasonable request, tenant estoppel certificates from commercial Tenants occupying at least 80% of the net rentable area of leasing space at the Property in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to deliver such certificates more frequently than two (2) times in any calendar year.

(c) Borrower shall pay when due to Dollar Tree Stores, Inc., a Virginia corporation ("Dollar Tree Alex City/Pierpont"), Family Dollar Stores of North Carolina, LLC, a Virginia limited liability company ("Family Dollar Franklinton") and Family Dollar Stores of Florida, LLC, a Virginia limited liability company ("Family Dollar Sunshine"), as applicable, such amounts due under the applicable Specified Tenant Lease for overpayments of CAM, taxes and insurance in the aggregate amount not to exceed \$50,697.00. Within ninety (90) days of the Closing Date, Borrower shall deliver to Lender tenant estoppel certificates from (i) Dollar Tree Alex City/Pierpont in connection with the (A) Individual Property located at Alex City Marketplace and (B) Individual Property located at Pierpont Center, (ii) Family Dollar Franklinton in connection with the Individual property located at Franklinton Square and (iii) Family Dollar Sunshine in connection with the Individual Property located at Sunshine Plaza, in each case, evidencing such payment and no other CAM refunds currently due.

(d) Within thirty (30) days of rent commencement by RTM Operating Company, LLC, a Virginia limited liability company ("Arby's") at the Individual Property located at Franklin Village in Kittanning, Pennsylvania, Borrower shall use commercially reasonable efforts to deliver to Lender a tenant estoppel certificate from Arby's in form and substance reasonably satisfactory to Lender, including but not limited to, a certification from Arby's that the certain right of first refusal described in Section 4.06 of its Specified Tenant Lease is not triggered by a foreclosure of the Property or action in lieu thereof.

(e) Within three (3) Business Days from the date hereof, Borrower shall deliver to Lender tenant estoppel certificates in form and substance identical to those unexecuted tenant estoppel certificates attached hereto as Exhibit F, duly executed by the applicable Tenants set forth therein.

#### Section 1.13 ERISA.

(a) Throughout the term of the Loan, (i) Borrower shall not sponsor and shall not contribute to and shall not be an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA or Section 4975 of the Code, (ii) none of the assets of Borrower shall constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101, (iii) Borrower shall not be a "governmental plan" within the meaning of Section 3(32) of ERISA, and (iv) transactions by or with Borrower shall not be subject to any statute, rule or regulation regulating investments of, or fiduciary obligations with respect to, "governmental plans" within the meaning of Section 3(32) of ERISA.

(b) Borrower shall not engage in any transaction which would cause any obligation, or any action taken or to be taken, hereunder or under the other Loan Documents (or the exercise by Lender of any of its rights under this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(c) Borrower shall deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that Borrower is in compliance with the covenants contained in this Section 4.13.

#### Section 1.14 OFAC.

(a) At all times throughout the term of the Loan, Borrower and all of its respective Affiliates shall (i) not be a Prohibited Person and (ii) be in full compliance with OFAC of the U.S. Department of the Treasury. Borrower shall perform reasonable due

diligence to insure that at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any Prohibited Person; (b) no Prohibited Person has any interest of any nature whatsoever in Borrower or Guarantor, as applicable, with the result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower or Guarantor, as applicable, have been derived from, or are the proceeds of, any unlawful activity, including money laundering, terrorism or terrorism activities, with the result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law, or may cause the Property to be subject to forfeiture or seizure.

(b) Borrower shall deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that Borrower is in compliance with the covenants contained in this Section 4.14.

### **Section 1.15 Leasing**

(a) Borrower will (i) perform or cause to be performed the landlord's obligations under all Leases now or hereafter affecting the whole or any part of the Property, (ii) enforce, short of termination, the performance by each tenant under its respective Lease of all of said tenant's obligations thereunder, and (iii) give Lender prompt written notice and a copy of any notice of default, event of default, termination or cancellation sent or received by Borrower with respect to any Lease.

(b) Borrower will not enter into any new lease or consent to the amendment, modification, termination or surrender of any of the Leases or consent to any assignment of any Lease or any sublease under any Lease (herein "**Leasing Activity**"), without Lender's prior written consent, except that with respect to Leases demising 15,000 rentable square feet or less of space at the Property, Borrower may engage in any Leasing Activity, without the prior written consent of Lender, provided (I) such Leasing Activity is an arms' length transaction with an unaffiliated third party and (II) such Leasing Activity complies with all of the Leasing Guidelines (as hereinafter defined).

(c) Borrower will cause each Individual Property to be in compliance with all provisions regarding exclusivity and use in each Existing Lease.

(d) For purposes hereof, the term "**Leasing Guidelines**" shall mean:

(i) all Leases shall be on the Lender-Approved Lease Form (as such Lender-Approved Lease Form may be modified to reflect reasonable and customary changes thereto which are consistent with the provisions of this Section 4.15 and the Leasing Guidelines and would not have a material adverse effect on the value or cash flow of the Property);

(ii) no Lease shall (A) be for a scheduled term (excluding renewals) of less than three (3) years or (B) provide for more than two (2) months of free rent per year of the Lease term (excluding renewals);

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(iii) no Lease shall provide for the payment of rent more than one (1) month in advance (expressly excluding the first month's rent, which may be paid upon Lease execution, and any Lease termination fees recovered in lieu of rent); and

(iv) the terms of each Lease (including, without limitation, the lease term and minimum base rent, rent concessions, free rent periods, tenant improvements allowances and leasing commissions payable in connection with such Lease) shall not substantially diverge from the prevailing market rates and terms for arms' length transactions for properties similar to the applicable Individual Property in the location where the applicable Individual Property is situated at the time such Lease is entered into.

(e) Notwithstanding anything to the contrary contained herein, Borrower shall not, with respect to Leases demising more than 15,000 rentable square feet of space at the Property, without Lender's prior written consent:

- (i) reduce the rents payable under any of the Leases regardless of whether, after such reduction, the rents payable by the tenants under such Leases would be permitted under the Leasing Guidelines;
- (ii) except in accordance with the terms of the Leasing Guidelines, amend, modify or otherwise alter any letter of credit or other security or any guaranty given in connection with any Lease, or waive, excuse, condone, discount, set off, compromise or in any manner release or discharge any such security or any guarantor under any guaranty given in connection with any Lease or from any obligation, condition and/or agreement to be kept, observed and/or performed by such guarantor;
- (iii) consent to an assignment or subletting by a tenant of its interest in any Lease if (1) such tenant (or any guarantor) is released from liability in any respect under such Lease, or (2) Borrower shall not be reasonably satisfied with the creditworthiness of the proposed assignee or subtenant, as the case may be;
- (iv) cancel, terminate or accept the surrender of any Lease; or
- (v) modify the provisions of the Lender-Approved Lease Form (A) with respect to the tenant's obligation to deliver estoppel certificates, except that Borrower may agree to changes which do not materially diminish the scope, substance or benefits to either landlord or Lender of the information required to be included in the form of tenant estoppel certificate contained in the Lender-Approved Lease Form; (B) which limit or exculpate Lender from liability for certain damages; or (C) which concern the subordination of each Lease to the Security Instrument.

#### **Section 1.16 Management Agreements.**

- (a) Borrower shall cause Manager to manage each Individual Property in accordance with the Management Agreements. Borrower shall (i) diligently perform and observe all of the terms, covenants and conditions of the Management Agreements on the part of Borrower to be performed and observed, (ii) promptly notify Lender of any notice to Borrower of any default by Borrower in the performance or observance of any of the terms, covenants or conditions of the Management Agreements on the part of Borrower to be performed and observed, and (iii) promptly deliver to Lender a copy of each

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financial statement, business plan, capital expenditures plan, report and estimate received by it under the Management Agreements. If Borrower defaults in the performance or observance of any material term, covenant or condition of the Management Agreements on the part of Borrower to be performed or observed, then, without limiting Lender's other rights or remedies under this Agreement or the other Loan Documents, the Environmental Indemnity or the Guaranty, if any, and without waiving or releasing Borrower from any of its obligations hereunder or under the Management Agreements, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act as may be appropriate to cause all the material terms, covenants and conditions of the Management Agreements on the part of Borrower to be performed or observed.

- (b) Borrower shall not surrender, terminate, cancel, modify, renew or extend the Management Agreements, or enter into any other agreement relating to the management or operation of the Property with Manager or any other Person, or consent to the assignment by the Manager of its interest under the Management Agreements, in each case without the express consent of Lender (such consent not to be unreasonably withheld). If at any time Lender consents to the appointment of a new manager, such manager and Borrower shall, as a condition of Lender's consent, execute an assignment and subordination of management agreement in the form then used by Lender.

- (c) Lender shall have the right, in its sole discretion, to require Borrower to replace the Manager upon prior notice with a Person reasonably approved by Lender upon the occurrence of any one or more of the following events: (i) at any time following the occurrence and continuance of an Event of Default and/or (ii) if Manager is in default of any material provision under the Management Agreements beyond any applicable notice and cure period or if at any time the Manager has engaged in gross negligence, fraud or willful misconduct.

### **Section 1.17 Payment for Labor and Materials.**

(a) Subject to Section 4.17(b) below, Borrower will promptly pay (or cause to be paid) when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property (any such bills and costs, a "Work Charge") and never permit to exist in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests created hereby and by the Security Instrument, except for the Permitted Encumbrances.

(b) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the validity of any Work Charge, the applicability of any Work Charge to Borrower or to the Property or any alleged non-payment of any Work Charge and defer paying the same, provided that (i) no Event of Default has occurred and is continuing; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable Legal Requirements; (iii) neither the Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (iv) Borrower shall promptly upon final determination thereof pay (or cause to be paid) any such contested Work Charge determined to be valid, applicable or unpaid; (v) such proceeding shall suspend the collection of such contested Work Charge from the

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Property or Borrower shall have paid the same (or shall have caused the same to be paid) under protest; and (vi) Borrower shall furnish (or cause to be furnished) such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure payment of such Work Charge, together with all interest and penalties payable in connection therewith. Lender may apply any such security or part thereof, as necessary to pay for such Work Charge at any time when, in the judgment of Lender, the validity, applicability or non-payment of such Work Charge is finally established or the Property (or any part thereof or interest therein) shall be in present danger of being sold, forfeited, terminated, cancelled or lost.

**Section 1.18 Debt Cancellation.** Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business.

**Section 1.19 No Joint Assessment.** Borrower shall not suffer, permit or initiate the joint assessment of the Property with (a) any other real property constituting a tax lot separate from the Property, or (b) any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to the Property.

**Section 1.20 Alterations.** Notwithstanding anything contained herein to the contrary, Lender's prior approval shall be required in connection with any alterations to any Improvements (a) that may have a Material Adverse Effect, (b) the cost of which (including any related alteration, improvement or replacement) is reasonably anticipated to exceed the Alteration Threshold or (c) that are structural in nature, which approval may be granted or withheld in Lender's sole discretion. If the total unpaid amounts incurred and to be incurred with respect to any alterations to the Improvements shall at any time exceed the Alteration Threshold, Borrower shall promptly deliver to Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents any of the following: (i) cash, (ii) U.S. Obligations, (iii) other security acceptable to Lender, or (iv) a completion bond acceptable to Lender. Such security shall be in an amount equal to the excess of the total unpaid amounts incurred and to be incurred with respect to such alterations to the Improvements over the Alteration Threshold.

### **Section 1.21 Special Purpose Entity.**

(a) From and after the date hereof, each Individual Borrower shall continue to be a Special Purpose Entity.

(b) From and after the date hereof, in the event any Individual Borrower or any SPE Component Entity is an Acceptable LLC, the limited liability company agreement of such Individual Borrower or such SPE Component Entity (as applicable) (the "LLC Agreement") shall provide that:

(i) upon the occurrence of any event that causes the last remaining member of Borrower or such SPE Component Entity (as applicable) ("Member") to cease to be the member of Borrower or such SPE Component Entity (as applicable) (other than (A) upon an assignment by Member of all of its limited liability company interest in Borrower or such SPE Component Entity (as applicable) and the admission of the transferee in accordance with the Loan

Documents and the LLC Agreement, or (B) the resignation of Member and the admission of an additional member of Borrower or such SPE Component Entity (as applicable) in accordance with the terms of the Loan Documents and the LLC Agreement), any natural person duly designated under the applicable organizational documents shall, without any action of any other Person and simultaneously with the Member ceasing to be the member of Borrower or such SPE Component Entity (as applicable) automatically be admitted to Borrower or such SPE Component Entity (as applicable) as a member with a 0% economic interest ("Special Member") and shall continue Borrower or such SPE Component Entity (as applicable) without dissolution;

(ii) Special Member may not resign from Borrower or such SPE Component Entity (as applicable) or transfer its rights as Special Member unless a successor Special Member has been admitted to Borrower or such SPE Component Entity (as applicable) as a Special Member in accordance with requirements of Delaware law;

(iii) Special Member shall automatically cease to be a member of Borrower or such SPE Component Entity (as applicable) upon the admission to Borrower or such SPE Component Entity (as applicable) of the first substitute member;

(iv) Special Member shall be a member of Borrower or such SPE Component Entity (as applicable) that has no interest in the profits, losses and capital of Borrower or such SPE Component Entity (as applicable) and has no right to receive any distributions of the assets of Borrower or such SPE Component Entity (as applicable);

(v) pursuant to the applicable provisions of the limited liability company act of the State of Delaware (the "Act"), Special Member shall not be required to make any capital contributions to Borrower or such SPE Component Entity (as applicable) and shall not receive a limited liability company interest in Borrower or such SPE Component Entity (as applicable);

(vi) Special Member, in its capacity as Special Member, may not bind Borrower or such SPE Component Entity (as applicable);

(vii) except as required by any mandatory provision of the Act, Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, Borrower or such SPE Component Entity (as applicable) including, without limitation, the merger, consolidation or conversion of Borrower or such SPE Component Entity (as applicable). In order to implement the admission to Borrower or such SPE Component Entity (as applicable) of Special Member, Special Member shall execute a counterpart to the LLC Agreement. Prior to its admission to Borrower or such SPE Component Entity (as applicable) as Special Member, Special Member shall not be a member of Borrower or such SPE Component Entity (as applicable);

(viii) upon the occurrence of any event that causes the Member to cease to be a member of Borrower or such SPE Component Entity (as applicable) to the fullest extent permitted by law, the personal representative of Member shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of Member in Borrower or such SPE Component Entity

(as applicable) agree in writing (A) to continue Borrower or such SPE Component Entity (as applicable) and (B) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of Borrower or such SPE Component Entity (as applicable) effective as of the occurrence of the event that terminated the continued membership of Member in Borrower or such SPE Component Entity (as applicable);

(ix) any action initiated by or brought against Member or Special Member under any Creditors Rights Laws shall not cause Member or Special Member to cease to be a member of Borrower or such SPE Component Entity (as applicable) and upon the occurrence of such an event, the business of Borrower or such SPE Component Entity (as applicable) shall continue without dissolution and

(x) each of Member and Special Member waives any right it might have to agree in writing to divide or dissolve Borrower or such SPE Component Entity (as applicable) upon the occurrence of any action initiated by or brought against Member or Special Member under any Creditors Rights Laws, or the occurrence of an event that causes Member or Special Member to cease to be a member of Borrower or such SPE Component Entity (as applicable).

**Section 1.22 Principal Place of Business; Chief Executive Office; Books and Records.** Borrower shall not (i) change its principal place of business or name from the address and name set forth in the introductory paragraph hereof without, in each instance, (A) giving Lender at least thirty (30) days' prior written notice thereof and (B) taking all action required by Lender for the purpose of perfecting and/or protecting the Lien and security interest of Lender created pursuant to this Agreement and the other Loan Documents or (ii) change its organizational structure without (A) obtaining the prior written consent of Lender and (B) taking all action reasonably required by Lender for the purpose of perfecting or protecting the Lien and security interest of Lender created pursuant to this Agreement and the other Loan Documents. At the request of Lender, Borrower shall execute a certificate in form reasonably satisfactory to Lender listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

**Section 1.23 Material Agreements.** Borrower shall not, without Lender's prior written consent, such consent not to be unreasonably withheld: (a) enter into any Material Agreement, (b) surrender or terminate any Material Agreement to which it is a party (unless the other party thereto is in material default and the termination of such Material Agreement would be commercially reasonable and then only if Borrower shall have provided to Lender not less than five (5) Business Days' notice of such termination and such termination would not be reasonably expected to result in a Material Adverse Change), (c) increase or consent to the increase of the amount of any fees or charges payable by Borrower under any Material Agreement, except for such increases as are expressly provided for therein, or (d) modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under any Material Agreement.

**Section 1.24 Personal Property.** Borrower will not remove the Personal Property without the prior written consent of Lender, except items of Personal Property which are consumed or worn out in ordinary usage which shall be promptly replaced by Borrower with other Personal Property of value equal to or greater than the value of the replaced Personal Property.

**Section 1.25 Environmental Covenants.**

(a) Borrower covenants and agrees that: (i) all uses and operations on or of the Property, whether by Borrower or any other Person, shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (ii) there shall be no releases of Hazardous Substances in, on, under or from the Property; (iii) except for those Hazardous Materials otherwise disclosed in the Environmental Report for the Property, there shall be no Hazardous Substances in, on, or under the Property, except those that are (A) in compliance with all Environmental Laws and with permits issued pursuant thereto (to the extent such permits are required by Environmental Law), (B) de-minimis amounts necessary to operate the Property for the purposes set forth in the Loan Agreement which will not result in an environmental condition in, on or under the Property and which are otherwise permitted under and used in compliance with Environmental Law and (C) fully disclosed to Lender in writing; (iv) Borrower shall keep the Property free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Borrower or any other Person (the "Environmental Liens"); (v) Borrower shall, at its sole cost and expense, fully and expeditiously cooperate in all activities pursuant to subsection (b) below, including but not limited to providing all relevant information and making knowledgeable persons available for interviews; (vi) Borrower shall, at its sole cost and expense, (A) comply with all reasonable written requests of Lender made in the event that Lender has reason to believe that an environmental hazard exists on the Property to reasonably effectuate Remediation of any condition (including but not limited to a release of a Hazardous Substance) in, on, under or from the Property; (B) comply with any Environmental Law; (C) comply with any directive from any Governmental Authority; and (D) take any other reasonable action necessary or appropriate for protection of human health or the environment; (vii) Borrower shall not do or allow any Tenant or other user of the Property to do any act that materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any Person (whether on or off the Property), impairs or may impair the value of the Property, is contrary to any requirement of any insurer, constitutes a public or private nuisance, constitutes waste, or violates any covenant, condition, agreement or easement applicable to the Property; and (viii) Borrower shall immediately notify Lender in writing of (A) any presence or releases or threatened releases of Hazardous Substances in, on, under, from or migrating towards the Property; (B) any non-compliance with any Environmental Laws related in any way to the Property; (C) any actual or potential Environmental Lien; (D) any required or proposed Remediation of environmental conditions relating to the Property; and (E) any written or oral notice or other communication of which Borrower becomes aware from any source whatsoever (including but not limited to a Governmental Authority) relating in any way to the release or potential release of Hazardous Substances or Remediation thereof, likely to result in liability of any Person pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Section.

(b) In the event that Lender has reason to believe that an environmental hazard exists on the Property that may, in Lender's sole reasonable discretion, endanger any Tenants or other occupants of the Property or their guests or the general public or may materially and adversely affect the value of the Property, upon reasonable notice from Lender, Borrower shall, at Borrower's expense, promptly cause an engineer or consultant satisfactory to Lender to conduct an environmental assessment or audit (the scope of which shall be determined in Lender's sole and absolute discretion) and take any samples of soil, groundwater or other water, air, or building materials or any other invasive testing requested by Lender and promptly deliver the results of any such

assessment, audit, sampling or other testing; **provided, however**, if such results are not delivered to Lender within a reasonable period or if Lender has reason to believe that an environmental hazard exists on the Property that, in Lender's sole judgment, endangers any Tenant or other occupant of the Property or their guests or the general public or may materially and adversely affect the value of the Property, upon reasonable notice to Borrower, Lender and any other Person designated by Lender, including but not limited to any receiver, any representative of a Governmental Authority, and any environmental consultant, shall have the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Lender's sole and absolute discretion) and taking samples of soil, groundwater or other water, air, or building materials, and reasonably conducting other invasive testing. Borrower shall cooperate with and provide Lender and any such Person designated by Lender with access to the Property.

(c) (i) Borrower hereby represents and warrants that attached hereto as Exhibit C are true and complete copies of the operations and maintenance plans for the Individual Properties located as Franklinton Square, Grove Park Shopping Center, Riverbridge Shopping Center and Sunshine Plaza (collectively, the "**O&M Program**"), and (ii) Borrower has as of the date hereof complied in all respects with the O&M Program. Borrower hereby covenants and agrees that, during the term of the Loan, including any extension or renewal thereof, Borrower shall comply in all respects with the terms and conditions the O&M Program.

**ARTICLE 1**

**ARTICLE 2**

**ARTICLE 3**

**ARTICLE 4**

**Section 1.1**

**Section 1.2**

**Section 1.3**

**Section 1.4**

**Section 1.5**

**Section 1.6**

**Section 1.7**

**Section 1.8**

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**Section 1.12**

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**Section 1.16**

**Section 1.17**

**Section 1.18**

**Section 1.19**

**Section 1.20**

**Section 1.21**

**Section 1.22**

**Section 1.23**

**Section 1.24**

**Section 1.25**

**Section 1.26** **Required Repairs.**

(a) Borrower shall perform the repairs at the Property as more particularly set forth on Schedule 4.26 annexed hereto (such repairs, collectively, the "**Required Repairs**"), and shall complete each of the Required Repairs and provide Lender with reasonably satisfactory evidence of the same on or before the corresponding deadline for the applicable Required Repairs set forth on Schedule 4.26 (with respect to the applicable Required Repairs, the "**Required Repairs Completion Date**").

(b) Nothing in this Section 4.26 shall (i) make Lender responsible for making or completing any Required Repairs; (ii) obligate Lender to commence or proceed with any Required Repairs; (iii) require Lender to expend funds in connection with any Required Repairs; or (iv) obligate Lender to demand from Borrower additional sums to perform or complete any Required Repairs.

**Section 1.27** **Zoning Report.** Within thirty (30) days after the Closing Date, Borrower shall furnish to Lender a final zoning report from The Planning & Zoning Resource Company in connection with the Individual Property located at 131 to 163 Nashville Commons Drive, Nashville, North Carolina (the "**NC Zoning Report**"), which NC Zoning Report (i) shall be substantially identical to the latest version of the draft zoning report which The Planning & Zoning Resource Company provided to Lender, (ii) includes, among other things, confirmation that there are no fire code violations at such Individual Property and (iii) does not reflect any other material changes from the existing draft of such report.

**Section 1.28** **Further Assurances.** Borrower will, at Borrower's sole cost and expense, (i) promptly correct any defect or error which may be discovered in the contents of this

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Agreement, the Security Instrument or any other Loan Documents or any other agreement to which Borrower is a party or in the execution, acknowledgment or recordation thereof, and (ii) promptly do, execute, acknowledge and deliver, any and all such further acts, mortgages, security deeds, conveyances, deeds of trust, security agreements, assignments, estoppel certificates, financing statements and continuations thereof, assignments of rents or leases, notices of assignment, transfers, certificates, assurances and other instruments as Lender may reasonably require from time to time in order to carry out more effectively the purposes of this Agreement, the rights or interests covered or intended to be covered hereby, to perfect and maintain said lien and security interest, and to better assure, convey, grant, protect, continue, assign, transfer and confirm unto Lender the rights granted or intended to be granted to Lender hereunder or under any other instrument executed in connection with this Agreement or which Borrower may be or become bound to confirm, convey, bargain, sell, release, warrant, transfer, mortgage, pledge, grant, assure, set over or assign to Lender in order to carry out the intention or facilitate the performance of the provisions of this Agreement; provided that the foregoing shall not increase the liability of Borrower or decrease the rights of Borrower as set forth in the Loan Documents, in either case other than in de minimis respects. Upon notice to Borrower from Lender of the loss, theft, destruction or mutilation of any Note, Borrower will execute and deliver, in lieu of such original Note, a replacement promissory note, identical in form and substance to, and dated as of the same date as, the Note so lost, stolen or mutilated. Upon the execution and delivery of the replacement Note, all references herein or in any of the other Loan Documents to the lost, stolen or mutilated Note shall be deemed references to the replacement Note.

## ARTICLE V. **RESERVE FUNDS**

**Section 1.1** **Tax and Insurance Deposits.**

(a) Amount of Deposits. During the occurrence and continuance of a Trigger Period, Borrower shall deposit with Depository, into an account in the name of Lender (the “**Tax and Insurance Reserve Account**”), monthly, one-twelfth (1/12<sup>th</sup>) of the annual premiums for insurance and one-twelfth (1/12<sup>th</sup>) of the amount of all Impositions estimated by Lender to be due for the immediately succeeding calendar year. In addition, if required by Lender during the occurrence and continuance of a Trigger Period, Borrower shall also deposit with the Depository a sum of money which, together with the aforesaid monthly installments, will be sufficient to make each of said payments of Impositions and premiums at least thirty (30) days before such payments are due. All interest earned on the funds held by the Depository, less Depository’s customary administrative charges, shall be credited to, and remain in an account with the Depository, but the amount thereof shall be credited against future deposit obligations under this Section 5.1. Lender shall bear no liability for the failure to achieve any particular rate of return or yield on funds held by the Depository. If the amount of any such payments is not ascertainable at the time any such deposit is required to be made, the deposit shall be made on the basis of Lender’s reasonable estimate thereof, and, when such amount is fixed for the then-current year, Borrower shall promptly deposit any deficiency with the Depository. Lender acknowledges and agrees that Borrower is not currently required to make the deposits pursuant to this Section 5.1, provided, however, that (i) in connection with deposits for Impositions, Lender retains the right to require Borrower to make the deposits specified herein in the future, and (ii) in connection with deposits for premiums for insurance, Lender shall not require Borrower to make such deposits provided that (A) no Trigger Period or event which with the giving of notice or lapse of time, or both, would constitute a Trigger Period hereunder or under any Loan Document shall exist and remain uncured, (B) Borrower is maintaining the required insurance hereunder pursuant to a blanket insurance Policy approved by Lender in Lender’s sole and absolute discretion, and (C) Borrower has provided Lender with

evidence reasonably satisfactory to Lender of payment in advance of the annual Insurance Premiums.

(b) Use of Deposits. All funds so deposited shall, until so applied by the Depository for the payment of Impositions or premiums for insurance, constitute additional security for the Obligations (and Borrower hereby grants to Lender a first priority security interest in such funds), and may be commingled with other funds of the Depository. If an Event of Default shall have occurred hereunder and be continuing, or if the Obligations shall be accelerated as herein provided, all funds so deposited may, at Lender’s option, be applied to the Obligations in the order determined by Lender or to cure said Event of Default or as provided in this Section 5.1.

(c) Notwithstanding the foregoing, Lender shall cause all amounts held in the Tax and Insurance Reserve Account, including interest, to be released to Borrower within ten (10) Business Days of the termination of the Trigger Period.

## **Section 1.2 Intentionally Omitted.**

### **Section 1.3 Operating Expense Reserve.**

(a) Deposit to Operating Expense Reserve Fund. On each Monthly Payment Date during the occurrence and continuance of a Trigger Period, Borrower shall deposit (or cause to be deposited) with Depository, into an account in the name of Lender, an amount sufficient to pay for operating expenses for the applicable period incurred in accordance with the Approved Annual Budget (the “**Monthly Operating Expense Deposit**”). All such amounts shall be held by Depository in an account (the “**Operating Expense Reserve Account**”) until released in accordance with the provisions of clause (b) below. Amounts deposited in the Operating Expense Reserve Account pursuant to this Section 5.3 are referred to herein as the “**Operating Expense Reserve Fund**”. Lender may reassess the amount of the Monthly Operating Expense Deposit from time to time, and may require Borrower to increase such monthly deposits upon thirty (30) days’ notice to Borrower if Lender reasonably determines that an increase is reasonably necessary to maintain the proper operation of any Individual Property. Lender acknowledges and agrees that Borrower is not currently required to make the deposits pursuant to this Section 5.3, provided, however, that Lender retains the right to require Borrower to make the deposits specified herein in the future during the existence of a Trigger Period.

(b) Release of Operating Expense Reserve Fund. Lender shall cause Depository to disburse funds from the Operating Expense Reserve Fund to Borrower promptly after satisfaction of all of the following conditions:

(i) no Default or Event of Default shall have occurred and be continuing at the time of the submission of an Operating Expense Requisition or as of the date of the disbursement of the Operating Expense Advance. Borrower's submission of an Operating Expense Requisition shall be deemed Borrower's certification that Borrower is in full compliance with the terms of this Section 5.3 and that no Default or Event of Default shall have occurred and be continuing at the time of the submission of such Operating Expense Requisition.

(ii) Lender's receipt of a certificate from an officer of Borrower certifying that the requested disbursement is for an operating expense incurred by Borrower and included in the Approved Annual Budget or otherwise approved by Lender.

Notwithstanding the foregoing, Lender shall cause all amounts held in the Operating Expense Reserve Account, including interest, to be released to Borrower within ten (10) Business Days of the termination of the Trigger Period.

(c) Disbursement of Operating Expense Advance. Lender shall make disbursements from the Operating Expense Reserve Fund (each, an "**Operating Expense Advance**") pursuant to, and in accordance with, the terms of this Section 5.3 not more than once in each calendar month upon simultaneous submission to Lender at least ten (10) days prior to the date on which Borrower desires a disbursement of an Operating Expense Advance, of a written requisition (a "**Operating Expense Requisition**") on such form or forms as may be reasonably required by Lender.

**Section 1.4 Excess Cash Flow Reserve.** During the occurrence and continuance of a Trigger Period, on each Monthly Payment Date during the term of the Loan all Excess Cash Flow shall be deposited with Depository, into an account in the name of Lender in accordance with Section 11.2(b) hereof. All such amounts shall be held by Depository in an account (the "**Excess Cash Flow Account**") until released in accordance with this Section 5.4. Lender shall cause all amounts held in the Excess Cash Flow Account, including interest, to be released to Borrower within ten (10) Business Days after the termination of the Trigger Period.

#### **Section 1.5 Capital Expenditure Reserve.**

(a) Deposit to Capital Expenditure Reserve Fund. On each Monthly Payment Date during the term of the Loan, Borrower shall deposit (or cause to be deposited) with Depository, into an account in the name of Lender, an amount equal to \$22,077.00 (the "**Capital Expenditure Reserve Deposit Amount**") until such time as the aggregate amount in the Capital Expenditure Reserve Account exceeds \$1,892,656.00 (the "**Capital Expenditure Reserve Account Cap**"); provided that at all times thereafter that the funds in the Capital Expenditure Reserve Account are less than the Capital Expenditure Reserve Account Cap, Borrower shall resume making deposits into the Capital Expenditure Reserve Account on each Monthly Payment Date in an amount equal to the Capital Expenditure Reserve Deposit Amount until the funds in the Capital Expenditure Reserve Account exceed the Capital Expenditure Reserve Account Cap. Funds in the Capital Expenditure Reserve Account shall be used to pay for or reimburse Borrower for any capital repairs, replacements and improvements necessary to keep the Property in good condition, order and repair and to prevent deterioration of the Property (a "**Capital Expenditure Advance**"). All such amounts shall be held by Depository in an account until released in accordance with the provisions of clause (b) below (the "**Capital Expenditure Reserve Account**"). Amounts deposited in the Capital Expenditure Reserve Account pursuant to this Section 5.5 are referred to herein as the "**Capital Expenditure Reserve Fund**". Lender may reassess the amount of the Monthly Capital Expenditure Deposit from time to time, and may require Borrower to increase such monthly deposits upon thirty (30) days' notice to Borrower if Lender determines that an increase is necessary to maintain the proper condition of the Property.

(b) Release of Capital Expenditure Reserve Fund. Lender shall cause Depository to disburse funds from the Capital Expenditure Reserve Fund subject to satisfaction with the conditions:

(i) no Default or Event of Default shall have occurred and be continuing at the time of the submission of a Capital Expenditure Requisition (as hereinafter defined) or as of the date of the disbursement of the Capital

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Expenditure Advance. Borrower's submission of a Capital Expenditure Requisition (as hereinafter defined) shall be deemed Borrower's certification that no Default or Event of Default shall have occurred and be continuing at the time of the submission of such Capital Expenditure Requisition.

(ii) Lender's receipt of a certificate from an officer of Borrower certifying that the requested disbursement is either to (a) reimburse Borrower for a capital expenditure already paid by Borrower or (b) pay the actual cost of a certain capital expenditure then due and payable directly to a third party vendor that is not an affiliate of Borrower, and in each of the foregoing cases, that was approved by Lender.

(iii) Borrower shall provide evidence satisfactory to Lender that all the capital expenditure work for which the Capital Expenditure Advance is being requested has been performed (1) in accordance with all Governmental Regulations, and (2) in a good and workmanlike manner.

(iv) Borrower has delivered to Lender invoices and conditional lien releases for direct payments or paid receipts and lien waivers for reimbursement to Borrower, in each case, from all contractors, subcontractors and materialmen supplying labor or materials for which the Capital Expenditure Advance is being requested; provided that, at Lender's option, if the cost of any individual capital expenditure subject to a Capital Expenditure Advance exceeds \$50,000, Lender shall have received the results of a title search for the Property indicating that the Property is free from all liens, claims and other encumbrances not previously approved by Lender.

(c) Disbursement of Capital Expenditure Advance. Lender shall disburse to Borrower each Capital Expenditure Advance pursuant to, and in accordance with, the terms of this **Section 5.5** not more than once in each calendar month upon simultaneous submission to Lender at least ten (10) days prior to the date on which Borrower desires a disbursement of a Capital Expenditure Advance, of a written requisition (a "Capital Expenditure Requisition"), certified by Borrower on such form or forms as may be required by Lender. Each Capital Expenditure Requisition shall be for not less than \$10,000, except that the final Capital Expenditure Requisition may be for less than \$10,000. Each Capital Expenditure Requisition shall be deemed a representation by Borrower that Borrower is in full compliance with the terms of this **Section 5.5**. Lender shall not be obligated to make disbursements of the Capital Expenditure Reserve Fund to reimburse Borrower for the costs of routine maintenance to the Property, replacements of inventory or for costs which are to be reimbursed from any other Reserve Accounts.

Any amount remaining in the Capital Expenditure Reserve Account after the Obligations have been satisfied in full in accordance with the Loan Documents shall be returned to Borrower.

#### **Section 1.6 TI/LC Reserve.**

(a) Deposit to TI/LC Reserve Fund. On each Monthly Payment Date during the occurrence and continuance of a Specified Tenant Trigger Event, Borrower shall deposit with Depository into an account in the name of Lender (the "TI/LC Reserve Account"), an amount equal to \$88,310.00 (the "TI/LC Reserve Account Deposit Amount") until such time as the amount in the TI/LC Reserve Account is greater than or equal to an amount reasonably calculated by Lender equal to \$20.00 per square foot of space at each Individual Property where the applicable Specified Tenant is the subject of

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a Specified Tenant Trigger Event (the "TI/LC Reserve Account Cap"); provided that if at any time more than one Individual Property has a Specified Tenant that is the subject of a Specified Tenant Event, the amount of the TI/LC Reserve Account Cap shall be not greater than \$5,000,000.

(b) Release of TI/LC Reserve Fund. During the continuance of a Specified Tenant Trigger Event, the TI/LC Reserve Fund shall be disbursed to Borrower for the purpose of new and renewal leasing costs at the Individual Property where the Specified Tenant Trigger Event is occurring and Lender shall cause Depository to disburse funds to Borrower from the TI/LC Reserve Fund (each such disbursement, a, "TI/LC Advance"), subject to satisfaction of the following conditions:

(i) no Default or Event of Default shall have occurred and be continuing at the time of the submission of an TI/LC Advance Requisition (as hereinafter defined) or as of the date of the disbursement of the TI/LC Advance. Borrower's submission of an TI/LC Advance Requisition shall be deemed Borrower's certification that no Default or Event of Default shall have occurred and be continuing at the time of the submission of such TI/LC Advance Requisition;

(ii) if the applicable TI/LC Advance is for tenant improvements, Lender's receipt of a certificate from an officer of Borrower certifying that the requested TI/LC Advance is either to (a) reimburse Borrower for the actual cost of certain tenant improvements already paid by Borrower, or (b) pay the actual cost of certain tenant improvements then due and payable directly to a third party vendor that is not an Affiliate of Borrower, and that such tenant improvements were made pursuant to the applicable provision of a Lease in place on the date hereof that was renewed during the term of the Loan, or entered into by Borrower, in each of the foregoing cases, in accordance with the terms of the Loan Documents. Borrower shall also provide to Lender (x) evidence that the applicable tenant improvements have been performed in accordance with (1) all applicable Governmental Regulations and (2) the applicable Lease, and (y) invoices and conditional lien releases for direct payments or paid receipts and lien waivers for reimbursements to Borrower, in each case, from all contractors, subcontractors and materialmen supplying labor or materials for the tenant improvements for which the TI/LC Advance is being requested; provided that, at Lender's option, if the cost of any individual tenant improvement subject to an TI/LC Advance exceeds \$50,000 or in connection with the final TI/LC Advance for any such individual tenant improvement, Lender shall have received an endorsement to the Title Insurance Policy insuring the continued priority of the lien of the applicable Security Instrument and evidence of payment of any premium payable for such endorsement; and

(iii) if the applicable TI/LC Advance is for a leasing commission, Lender's receipt of a certificate from an officer of Borrower certifying that the requested TI/LC Advance is either to (i) reimburse Borrower for the actual cost of leasing commissions already paid by Borrower, or (ii) pay the actual cost of leasing commissions then due and payable directly to a third party leasing agent that is not an Affiliate of Borrower. Such certificate shall be accompanied by the invoice from the applicable leasing agent, together with a receipt evidencing payment, if applicable. The amount and time of payment of such leasing commission, shall be (A) reasonable and customary for properties similar to the Individual Property and the portion of the Individual Property for which such

leasing commission is due, and (B) determined pursuant to an arms-length agreement between the Borrower and the applicable leasing agent.

Notwithstanding the foregoing, Lender shall cause all amounts held in the TI/LC Reserve Account, including interest, to be released to Borrower within ten (10) Business Days of the termination of the Specified Tenant Trigger Period.

(c) **Disbursement of TI/LC Advance.** Lender shall disburse to Borrower each TI/LC Advance pursuant to, and in accordance with, the terms of this **Section 5.6** not more than once in each calendar month upon simultaneous submission to Lender at least ten (10) days prior to the date on which Borrower desires a disbursement of an TI/LC Advance, of a written requisition (an "**TI/LC Advance Requisition**"), certified by Borrower on such form or forms as may be required by Lender. Each TI/LC Advance Requisition shall be for not less than \$10,000, except that the final TI/LC Advance Requisition may be for less than \$10,000. Each TI/LC Advance Requisition shall be deemed a representation by Borrower that Borrower is in full compliance with the terms of this **Section 5.6**. Lender shall not be obligated to make disbursements of the TI/LC Reserve Fund to pay for costs which are to be paid from any other Reserves.

### **Section 1.7 Reserve Funds Generally.**

(a) **Prohibition Against Further Encumbrance.** Borrower shall not, without the prior written consent of Lender, further pledge, assign or grant any security interest in any Reserve Account or permit any lien or encumbrance to attach thereto, or any levy to be made thereon or a UCC-1 financing statement, except those naming Lender as the Secured Party, to be filed with respect thereto.

(b) **Use of Deposits.** All funds so deposited into the Reserve Accounts shall, until so disbursed by the Depository as set forth in the applicable provisions, constitute additional security for the Obligations (and Borrower hereby grants to Lender a first priority security interest in such funds), and may be commingled with other funds of the Depository. Borrower shall have no right to require any Reserve Account be an interest-bearing account. If an Event of Default shall have occurred hereunder and be continuing, or if the Obligations shall be accelerated as herein provided, all funds so deposited may, at Lender's option, be applied to the Obligations in the order determined by Lender or to cure said Event of Default or as provided in **Section 5.1, Section 5.2, Section 5.3, Section 5.4, Section 5.5, Section 5.6, or Section 5.7**, respectively.

(c) **Transfer of Loan.** Upon an assignment or other transfer of Loan, the Depository shall have the right to pay over the balance of such deposits in its possession to the assignee or other successor, and the Depository shall thereupon be completely released from all liability with respect to such deposits and Borrower or the owner of the Property shall look solely to the assignee or transferee with respect thereto. This provision shall apply to every transfer of such deposits to a new assignee or transferee.

(d) **Transfer of the Property and Satisfaction of Loan.** Subject to **Article VII** hereof and so long as the Loan remains outstanding, transfer of record title to the Property shall automatically transfer to the new owner all of Borrower's beneficial interest in any funds deposited into the Reserve Accounts, subject to the rights of Lender as provided herein. Upon full payment and satisfaction of the Loan or, at Lender's option, at any prior time, the balance of amounts deposited in the Depository's possession shall be paid over to the record owner of the Property, and no other party shall have any right or claim thereto in any event.

## **ARTICLE VI.**

## **INSURANCE, CASUALTY AND CONDEMNATION**

### **Section 1.1 Insurance.**

(a) **Coverages.** Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower and the Property providing at least the coverages set forth herein:

(i) comprehensive all risk insurance on the Improvements and the Personal Property, including windstorm/named storm coverage, in each case (A) in an amount equal to 100% of the "Full Replacement Cost," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation; (B) containing either an agreed amount endorsement or a waiver of all co- insurance provisions; (C) providing for a deductible of not greater than \$25,000, except with respect to earthquake and windstorm/named storm which may provide for no deductible in excess of 5% of the total insurable value of the Property; (D) if any of the Improvements or the use of the Property shall at any time constitute a legal non-conforming structure or use, Borrower shall obtain an "Ordinance or Law Coverage" or "Enforcement" endorsement, which shall include sufficient coverage with limits as

reasonably acceptable to Lender for (1) costs to comply with building and zoning codes and ordinances, (2) demolition costs, and (3) increased costs of construction; and (E) with respect to the construction of any new Improvements, written on a so-called builder's risk completed value form on a non-reporting basis;

(ii) business income insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in Section 6.1(a)(i); (C) on an agreed value actual loss sustained basis in an amount equal to 100% of the projected gross income from the Property for a period of twelve (12) months; (D) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of six (6) months from the date that the Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; and (E) if the Borrower is required to obtain an "Ordinance or Law Coverage" or "Enforcement" endorsement pursuant to Section 6.1(a)(i)(D), coverage for the increased period of restoration. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of the gross income from the Property for the succeeding twelve (12) month period. All insurance proceeds payable to Lender pursuant to this Section 6.1(a)(ii) shall be held by Lender and shall be applied to the Obligations from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the Obligations on the respective dates of payment provided for in the Note, this Agreement and the other Loan Documents, except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iii) if any portion of the Improvements is currently or at any time in the future located in a federally designated Special Flood Hazard Area ("SFHA"), flood hazard insurance in an amount equal to (1) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood

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Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended plus (2) such greater amount as Lender shall require;

(iv) the insurance required under this Section 6.1(a)(i), (ii) and (vi) shall cover perils of terrorism insurance for Certified Acts of Terrorism (as such terms are defined in TRIPRA) in an amount equal to the Full Replacement Cost plus twelve (12) months of business income insurance consistent with the requirements of Section 6.1(a)(ii);

(v) steam boiler and machinery breakdown direct damage insurance, in an amount available to Lender, for all boilers and machinery which form a part of the Property;

(vi) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the "occurrence" form with a combined single limit (not including "umbrella" coverage in place) of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate with excess "umbrella coverage" in an amount not less than \$30,000,000; (B) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; and (4) contractual liability for all insured contracts, to the extent the same is available;

(vii) at all times during which structural construction, material repairs or alterations are being made with respect to the Improvements, owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy;

(viii) if Borrower owns or operates motor vehicles, motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits reasonably acceptable to Lender;

(ix) if Borrower has employees, workers' compensation, subject to the statutory limits of the state in which the Property is located, and employer's liability insurance with a limit of at least \$1,000,000 per accident and per disease per employee, and \$1,000,000 aggregate coverage for disease in respect of any work or operations on or about the Property, or in connection with the Property or its operation;

(x) a blanket fidelity bond or "Employee Dishonesty" coverage insuring against losses resulting from dishonest or fraudulent acts committed by personnel retained in connection with the operation of the Property (if applicable); and

(xi) such other insurance and in such amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located.

(b) **Blanket Insurance; Separate Insurance.** Borrower shall not obtain (i) any umbrella or blanket liability or casualty Policy unless, in each case, such Policy is approved in advance in writing by Lender and Lender's interest is included therein as provided in this Agreement and such Policy is issued by a Qualified Insurer (as hereinafter defined), or (ii) separate insurance concurrent in form or contributing in the event of loss with that required in Section 6.1(a) to be furnished by, or which may be reasonably required to be furnished by, Borrower. In the event Borrower obtains separate insurance or an umbrella or a blanket Policy, Borrower shall notify Lender of the same and shall cause certified copies of each Policy to be delivered as required in Section 6.1(e). Any blanket insurance Policy shall specifically allocate to the Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of Section 6.1(a).

(c) **Insurers.** All policies of insurance required under this Section 6.1 (collectively, the "**Policies**" and each, individually, a "**Policy**") shall be issued by companies having a general policy rating of "A-VIII" or better by Best Key Rating Guide and "A-" by S&P (any of such companies being referred to individually herein as a "**Qualified Insurer**") or with such other companies satisfactory to Lender, and shall be subject to the approval of Lender as to amount, content, form and expiration date; it being agreed that the approval by Lender of any insurer shall not be construed to be a representation, certification or warranty of its solvency, and no approval by Lender as to the amount, type and/or form of any insurance shall be construed to be a representation, certification or warranty of its sufficiency. Notwithstanding the foregoing, Borrower shall be permitted to maintain a portion of the coverage required hereunder with insurance companies which do not meet the foregoing requirements ("Otherwise Rated Insurers") in their current participation amounts and positions within the syndicate provided that the current AM Best rating of any such Otherwise Rated Insurer is not withdrawn or downgraded below "A-VIII" during the term of the loan. If the ratings of such Otherwise Rated Insurer is downgraded below "A-VIII" or withdrawn during the term of the loan, Borrower shall promptly replace any Otherwise Rated Insurer with an insurance company meeting the rating requirements set forth hereinabove.

(d) **Insured Parties.** All Policies provided for or contemplated by Section 6.1(a) hereof, shall name Borrower as a named insured. The insurance required under subsections (i) through (v), inclusive, of Section 6.1(a) shall name Lender, its successors and/or assigns, as mortgagee/loss payee under a Standard Mortgage Clause and a Lender's Loss Payable Endorsement or an equivalent standard form attached to, or otherwise made a part of such policy in favor of Lender. The insurance maintained under subsections (vi) through (x), inclusive, of Section 6.1(a) shall name Lender, its successors and/or assigns, as an additional insured. It is agreed that, and each property policy shall expressly state that, losses shall be payable jointly to Lender and Borrower notwithstanding (1) any act or negligence of Borrower or its agents or employees which might, absent such agreement, result in a forfeiture of all or part of such insurance payment, (2) the occupation or use of the Property or any part thereof for purposes more hazardous than permitted by the terms of such policy, (3) any foreclosure or other action or proceeding taken pursuant to this Agreement, or (4) any change in title to or ownership of the Property or any part thereof. No Policy shall be canceled without at least thirty (30) days written notice to Lender, which may be reduced to ten (10) days' written notice for non-payment of premium. The issuers thereof shall give written notice to Lender if the issuers elect not to renew prior to its expiration. Lender shall not be liable for any Insurance Premiums thereon or subject to any assessments thereunder.

(e) **Delivery of Policies.** If not previously delivered to Lender, Borrower shall deliver to Lender no later than thirty (30) days after the date hereof complete copies of the existing Policies providing the insurance coverage required under Section 6.1(a) marked "premium paid" or accompanied by evidence satisfactory to Lender of payment of the premiums due thereunder (the "**Insurance Premiums**") annually in advance. In addition, upon expiration of the Policies which Borrower is now or hereafter required to maintain hereunder, Borrower shall deliver to Lender complete copies of new or renewal Policies (also marked "premium paid" or accompanied by evidence satisfactory to Lender of payment of the Insurance Premiums due thereunder annually in advance), together with certificates of insurance therefor, setting forth, among other things, the amounts of insurance maintained, the risks covered by such insurance and the insurance company or companies which carry such insurance. If requested by Lender, Borrower shall furnish verification of the adequacy of such insurance by an independent insurance broker or appraiser acceptable to Lender. Under no circumstances shall Borrower be permitted to finance the payment of any portion of the Insurance Premiums.

(f) **Failure to Deliver Policies.** If at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right, without notice to Borrower to take such action as Lender deems necessary to protect its interest in the Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate, and all expenses incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect, together with interest at the Default Rate from the date incurred by Lender, shall be secured by the Security Instrument and payable by Borrower to Lender immediately upon Lender's demand.

(g) **Transfer of Title.** In the event of foreclosure of the Security Instrument or other transfer of title or assignment of the Property, by reason of a default hereunder, in extinguishment, in whole or in part, of the Obligations, all right, title and interest of Borrower in and to all policies of insurance required under this Section 6.1 or otherwise then in force with respect to the Property and all proceeds payable thereunder and unearned premiums thereon shall immediately vest in the purchaser or other transferee of the Property.

### **Section 1.2    Casualty and Condemnation.**

(a) **Casualty.** If any Individual Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "**Casualty**"), Borrower shall give prompt written notice of such damage to Lender and shall promptly commence and diligently prosecute the completion of the Restoration of such Individual Property pursuant to Section 6.3 hereof as nearly as possible to the condition such Individual Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.3 hereof. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower. In addition, Lender may participate in any settlement discussions with any insurance companies (and shall approve the final settlement, which approval shall not be unreasonably withheld or delayed) with respect to any Casualty in which the Net Proceeds or the costs of completing the Restoration are equal to or greater than \$250,000.00 and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

(b) **Condemnation.** Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding for the Condemnation of any Individual

Property and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Agreement and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Note. If any portion of any Individual Property is taken by a condemning authority, Borrower shall promptly commence and diligently prosecute the Restoration of such Individual Property pursuant to Section 6.3 hereof and otherwise comply with the provisions of Section 6.3 hereof. If the Individual Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

### **Section 1.3 Restoration.**

The following provisions shall apply in connection with the Restoration of the Property:

(a) If the Net Proceeds shall be less than \$250,000.00 and the costs of completing the Restoration shall be less than \$250,000.00, the Net Proceeds will be paid to Lender and disbursed by Lender to Borrower upon receipt, provided that all of the conditions set forth in Section 6.3(c) hereof are met and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence the Restoration in accordance with the terms of this Agreement.

(b) If the Net Proceeds are equal to or greater than \$250,000.00 or the costs of completing the Restoration is equal to or greater than \$250,000.00, the Net Proceeds shall be paid to Lender and Lender shall make the Net Proceeds available for the Restoration in accordance with the provisions of this Section 6.3. The term "**Net Proceeds**" for purposes of this Section 6.3 shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to Article VI as a result of such damage or destruction, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same ("**Insurance Proceeds**"), or (ii) the net amount of the Award, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same ("**Condemnation Proceeds**"), whichever the case may be.

(c) The Net Proceeds shall be made available to Borrower for Restoration provided that each of the following conditions are met:

(i) no Event of Default shall have occurred and be continuing;

(ii) (1) in the event the Net Proceeds are Insurance Proceeds, less than twenty-five percent (25%) of the total floor area of the Improvements on the Individual Property has been damaged, destroyed or rendered unusable as a result of such Casualty or (2) in the event the Net Proceeds are Condemnation Proceeds,

less than ten percent (10%) of the land constituting the Individual Property is taken, and such land is located along the perimeter or periphery of such Individual Property, and no portion of the Improvements is located on such land;

(iii) Leases demising in the aggregate a percentage amount equal to or greater than ninety percent (90%) of the total rentable space in any Individual Property which has been demised under executed and delivered Leases in effect as of the date of the occurrence of such Casualty or Condemnation, whichever the case may be, shall remain in full force and effect during and

after the completion of the Restoration, notwithstanding the occurrence of any such Casualty or Condemnation, whichever the case may be, and Borrower and/or Tenant, as applicable under the respective Lease, will make all necessary repairs and restorations thereto at their sole cost and expense.

(iv) Borrower shall commence the Restoration as soon as reasonably practicable (but in no event later than sixty (60) days after such Casualty or Condemnation, whichever the case may be, occurs; provided that Borrower applying for approvals, authorizations, certifications, licenses and permits required in connection with such Restoration shall be deemed a commencement of the Restoration) and shall diligently pursue the same to satisfactory completion;

(v) Lender shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note, which will be incurred with respect to the Property as a result of the occurrence of any such Casualty or Condemnation, whichever the case may be, will be covered out of (1) the Net Proceeds, (2) the insurance coverage referred to in Section 6.1(a)(ii) hereof, if applicable, or (3) by other funds of Borrower;

(vi) Lender shall be satisfied that the Restoration will be completed on or before the earliest to occur of (1) six (6) months prior to the Maturity Date, (2) the earliest date required for such completion under the terms of any Leases, (3) such time as may be required under all applicable Legal Requirements in order to repair and restore the Property to the condition it was in immediately prior to such Casualty or to as nearly as possible the condition it was in immediately prior to such Condemnation, as applicable, or (4) the expiration of the insurance coverage referred to in Section 6.1(a)(ii) hereof;

(vii) the Property and the use thereof after the Restoration will be in compliance with and permitted under all applicable Legal Requirements;

(viii) the Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable Legal Requirements;

(ix) such Casualty or Condemnation, as applicable, does not result in the loss of access to the Property or the Improvements;

(x) the Debt Yield for the entire Property (as determined by Lender after giving effect to the Restoration) shall be equal to or greater than 9.25%;

(xi) Borrower shall deliver, or cause to be delivered, to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing the Restoration, which budget shall be subject to Lender's approval; and

(xii) the Net Proceeds together with any cash or cash equivalent deposited by Borrower with Lender are sufficient in Lender's discretion to cover the cost of the Restoration.

(d) The Net Proceeds shall be held by Lender in an account and, until disbursed in accordance with the provisions of this Section 6.3, shall constitute additional security for the Debt and the other obligations of Borrower under this Agreement, the Security Instrument, the Note and the other Loan Documents under the Loan Documents. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property which have not either been fully bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the title company issuing the Title Insurance Policy.

(e) All plans and specifications required in connection with the Restoration shall be subject to prior review and acceptance in all respects by Lender and by an independent consulting engineer selected by Lender (the "**Casualty Consultant**"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to prior review and approval by Lender and the Casualty Consultant. All costs and expenses incurred by Lender in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(f) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, minus the Casualty Retainage. The term "Casualty Retainage" shall mean an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until the Restoration has been completed. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Section 6.3, be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 6.3 and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate governmental and quasi-governmental authorities, and Lender receives evidence satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage; provided, however, that Lender will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Lender that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by

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the title company issuing the Title Insurance Policy, and Lender receives an endorsement to the Title Insurance Policy insuring the continued priority of the lien of the Security Instrument and evidence of payment of any premium payable for such endorsement. If required by Lender, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

(g) Lender shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(h) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the opinion of Lender in consultation with the Casualty Consultant, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "**Net Proceeds Deficiency**") with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 6.3 shall constitute additional security for the Debt and the other obligations of Borrower under this Agreement, the Security Instrument, the Note and the other Loan Documents under the Loan Documents.

(i) The excess, if any, of the Net Proceeds (and the remaining balance, if any, of the Net Proceeds Deficiency) deposited with Lender after the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 6.3, and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be (x) if a Trigger Period shall be continuing, at Lender's option, deposited in the Cash Management Account to be disbursed in accordance with this Agreement or (y) provided no Trigger Period shall be continuing, promptly disbursed to Borrower.

(j) All Net Proceeds not required to be made available for the Restoration may be retained and applied by Lender toward the payment of the Debt whether or not then due and payable in such order, priority and proportions as Lender in its sole discretion shall deem proper or, at the discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes as Lender shall approve, in its discretion. If Lender shall receive and retain Net Proceeds, the lien of the Security Instrument shall be reduced only by the amount thereof received and retained by Lender and actually applied by Lender in reduction of the Debt.

(k) In the event of foreclosure of the Security Instrument, or other transfer of title to the Property in extinguishment in whole or in part of the Debt all right, title and interest of Borrower in and to the Policies that are not blanket Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Lender or other transferee in the event of such other transfer of title.

## ARTICLE VII. NO SALE OR ENCUMBRANCE

### Section 1.1 Transfers.

(a) Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its stockholders, general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the

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Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of and all other obligations of Borrower under this Agreement, the Security Instrument, the Note and the other Loan Documents. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the other obligations of Borrower under this Agreement, the Security Instrument, the Note and the other Loan Documents, Lender can recover the Debt by a sale of the Property.

(b) Without the prior written consent of Lender, and except to the extent otherwise set forth in this Section 7.1, Borrower shall not, and shall not permit any Restricted Party do any of the following (individually and collectively, a "**Transfer**"):

- (i) sell, convey, mortgage, grant, bargain, encumber, pledge, assign, grant options with respect to, or otherwise transfer or dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) the Property or any part thereof or any legal or beneficial interest therein;
- (ii) enter into any PACE Loan or
- (iii) permit a Sale or Pledge of any direct or indirect interest in Borrower; other than (A) pursuant to Leases of space in the Improvements to Tenants in accordance with the provisions of Section 4.15 and (B) Permitted Transfers.

(c) A Transfer shall include, but not be limited to, (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space Tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents and Profits; (iii) if a Restricted Party is a corporation, any merger, consolidation or a Sale or Pledge of such corporation's stock or the creation or issuance of new stock; (iv) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest, or the Sale or Pledge of limited partnership interests or any profits or proceeds relating to such limited partnership interest or the creation or issuance of new limited partnership interests; (v) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Pledge of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the Sale or Pledge of non-managing membership interests or the creation or issuance of new non-managing membership interests; (vi) if a Restricted Party is a trust or nominee trust, any merger, consolidation or Sale or Pledge of the legal or beneficial interest in a Restricted Party or the

creation or issuance of new legal or beneficial interests; (vii) any change in Control of any Individual Borrower or Guarantor, directly or indirectly.

(d) Notwithstanding the provisions of this Section 7.1, Lender's consent shall not be required in connection with one or a series of Transfers, of not more than forty-nine percent (49%) of the direct or indirect ownership interests in any Individual Borrower or Guarantor or a REIT Transfer; provided, however, in each case, each of the following conditions (collectively, the "**Transfer Conditions**") are satisfied: (i) intentionally omitted; (ii) if such Transfer is a KYC Triggering Transfer, (A) Lender shall receive not less than thirty (30) days prior written notice of such proposed Transfer and (B) Lender shall have performed searches and/or received other diligence such that Lender is in compliance with Lender's then current "know your customer" requirements

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and Lender shall have received Satisfactory Search Results, at Borrower's cost and expense, with respect to the applicable transferee; (iii) Borrower shall remake (or if such Transfer is not a KYC Triggering Transfer, Borrower shall be deemed to have automatically remade, effective as of the date of the consummation of such Transfer) the representations and warranties contained herein relating to ERISA, OFAC and Prohibited Persons (and, upon Lender's request, each Individual Borrower shall deliver to Lender an Officer's Certificate containing such updated representations effective as of the date of the consummation of the applicable Transfer); (iv) no Event of Default shall be continuing at the time of such Transfer and such Transfer shall not result in the occurrence of an Event of Default; and (v) at all times, General Partner must continue to (A) Control each of Individual Borrower, Guarantor and any Affiliated Manager and (B) own, directly or indirectly, at least a 51% legal and beneficial interest in each Individual Borrower, Guarantor and any Affiliated Manager. Upon request from Lender, Borrower shall promptly provide Lender with a revised version of the organizational chart delivered to Lender in connection with the Loan reflecting any Transfer consummated in accordance with this Section 7.1(d).

(e) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Borrower's Transfer without Lender's consent. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

**Section 1.2 Individual Property Release.** Provided that no Trigger Period or Specified Tenant Trigger Period has occurred and is continuing hereunder, and the requirements of Section 2.6 hereof have been satisfied, Borrower shall have the right to obtain the release of an Individual Property from the Lien of the Security Instrument thereon (and related Loan Documents) and the release of the applicable Individual Borrower's obligations under the Loan Documents with respect to such released Individual Property (other than those expressly stated to survive), upon the satisfaction of each of the following conditions (the "**Individual Property Release**"):

- (a) No Event of Default shall have occurred and be continuing;
- (b) Borrower shall give Lender no less than sixty (60) days prior written notice of such Individual Property Release;
- (c) The Individual Property to be released shall be conveyed in an arm's-length transaction to a third party on market terms;
- (d) Subsequent to such Individual Property Release, each remaining Individual Borrower shall continue to be a Special Purpose Entity pursuant to, and in accordance with the terms and conditions of this Agreement;
- (e) After giving effect to such Individual Property Release, the (i) Debt Yield for the remainder of the Property exclusive of the Individual Property subject to the Individual Property Release shall be greater than each of (A) the Debt Yield for the entire Property (inclusive of the Individual Property to be released) immediately prior to giving effect to such Individual Property Release and (B) 12.0%;
- (f) At the time of such Individual Property Release, Borrower shall prepay Lender a principal amount equal to one hundred twenty percent (120%) of the Allocated Loan Amount for the applicable Individual Property (the "**Allocated Principal**")

**Prepayment Amount**"), and together with Borrower's payment of such Allocated Principal Prepayment Amount, Borrower shall pay to Lender all accrued and unpaid interest on such Allocated Principal Prepayment Amount to and including the day of such Individual Property Release and all other sums then due under this Agreement, Note, the Security Instrument and the other Loan Documents with respect to such Allocated Principal Prepayment Amount and the Individual Property subject to the Individual Property Release, and any applicable Prepayment Premium calculated with respect to the Allocated Principal Prepayment Amount being prepaid, together with any applicable Breakage Costs;

(g) The Allocated Principal Prepayment Amount shall not exceed twenty-five percent (25%) of the then outstanding principal amount of the Loan immediately prior to such prepayment;

(h) Borrower shall submit to Lender, not less than ten (10) Business Days prior to the date of such Individual Property Release, a release of lien for the applicable Individual Property for execution by Lender. Such release shall be in a form reasonably satisfactory to Lender and shall contain standard provisions protecting the rights of Lender. In addition, Borrower shall provide all other documentation to Lender reasonably required in connection with such release evidencing, together with a certificate executed by an officer of Borrower certifying, that (i) the remainder of the Property not being released remains in compliance with all Governmental Regulations and Legal Requirements, and (ii) the documentation effectuating the Individual Property Release will (x) effect such release in accordance with the terms of the Loan Documents, and (y) will not impair or otherwise adversely affect the liens, security interests and other rights of Lender under the Loan Documents with respect to the remainder of the Property not being released; and

(i) On or before the date of any such Individual Property Release, Borrower shall pay Lender (i) a \$10,000 processing fee and (ii) any reasonable, out-of-pocket costs and expenses arising from such Individual Property Release (including reasonable actual attorneys' fees and expenses) and Borrower shall have paid, in connection with such release, any administrative or processing fee charged by Servicer, all recording charges, filing fees, taxes or other expenses payable in connection therewith to effect such release.

(j) Notwithstanding the foregoing, in no event shall Borrower complete an Individual Property Release with respect to more than three (3) Individual Properties during the term of the Loan.

## ARTICLE VIII. DEFUALTS

**Section 1.1 Events of Default.** The term "**Event of Default**," as used in this Agreement, shall mean the occurrence of any of the following events:

(a) if (A) any Monthly Debt Service Payment Amount or the payment due on the Maturity Date is not paid when due, (B) any deposit to any of the Reserve Accounts required hereunder or under the other Loan Documents is not paid when due or (C) any other portion of the Debt is not paid when due and such non-payment of such other portion of the Debt continues for five (5) days following notice to Borrower that the same is due and payable;

(b) if any of the Impositions are not paid when the same are due and payable except to the extent (A) sums sufficient to pay the Impositions in question had been reserved hereunder prior to the applicable due date for the Impositions in question for the

express purpose of paying the Impositions in question and Lender failed to pay the Impositions in question when required hereunder, (B) Lender's access to such sums was not restricted or constrained in any manner and (C) no Event of Default was continuing;

(c) if the Policies are not kept in full force and effect or if evidence of the same is not delivered to Lender as provided in Section 6.1 hereof;

(d) any representation or warranty made herein or in the other Loan Documents (including any certificates, schedules, and financial statements delivered in connection with any of the foregoing), or otherwise made by or on behalf of Borrower or any other Borrower Party in connection with the transactions contemplated hereunder, shall be false or misleading in any material respect when made; provided that any such false or misleading representation or warranty shall not be Event of Default under this Section 8.1(d) if (A) such false or misleading representation or warranty was unintentional due to the existence of some fact or condition that was unknown to the applicable Borrower Party at the time such false or misleading representation or warranty was made, (B) upon becoming aware of such unknown fact or condition making such representation and warranty false or misleading, the applicable Borrower Party immediately provides Lender with written notice thereof (unless Lender has already provided written notice of same to Borrower), (C) the applicable Borrower Party corrects such fact or condition making such false or misleading representation and warranty false or misleading (unless such false or misleading representation or warranty is due to the existence of a Non-Controlling Shareholder OFAC Violation, in which case Borrower shall cooperate with the applicable Governmental Authority to ensure, to the extent permitted by Governmental Regulations, that such Non-Controlling Shareholder OFAC Violation is cured in accordance with the requirements of such Governmental Authority) and provides satisfactory evidence of the same to Lender (which shall include the applicable Borrower Party remaking such representation and warranty to Lender as being true, accurate and correct as of the date thereof) on or before the date that is thirty (30) days following the date that applicable Borrower Party became aware of the applicable fact or condition (unless such false or misleading representation or warranty is due to the existence of a Non-Controlling Shareholder OFAC Violation, in which case Borrower shall provide such satisfactory evidence promptly following Borrower's cure of same), and (D) Lender suffers no actual Losses due to such unknown fact or condition or such unintentional false or misleading representation or warranty;

(e) any Transfer shall be made in violation of the terms of this Agreement or the other Loan Documents;

(f) if (i) Borrower, any SPE Component Entity or Guarantor shall commence any case, proceeding or other action (A) under any existing or future Legal Requirements of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or (ii) Borrower or any other Borrower Party shall make a general assignment for the benefit of its creditors; or (iii) there shall be commenced against Borrower or any other Borrower Party, any case, a proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment, or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (iv) there shall be commenced against Borrower or any other Borrower Party, any case, proceeding or other action seeking

issuance of a warrant of attachment, execution, distress or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (v) Borrower or any other Borrower Party or any of their affiliates shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clauses (i), (ii), (iii) or (iv) above; or (v) Borrower or any other Borrower Party shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(g) the existence of any Environmental Condition which is not fully remediated in accordance with the requirements of all applicable Governmental Regulations within thirty (30) days following the date that Borrower first acquires knowledge of such Environmental Condition; provided, however, if such remediation cannot be accomplished within such thirty (30) day period, the time for Borrower's completion of such remediation shall be extended for such additional period as may be reasonably required by Borrower for such completion, provided further that Borrower (1) shall commence such remediation within thirty (30) days following the date Borrower first acquires knowledge of such Environmental Condition and thereafter exercises its best efforts to prosecute the completion of such remediation and (ii) Borrower is diligently pursuing such remediation in accordance with the timeline established by the applicable Governmental Regulations;

(h) subject to Borrower's rights of contest set forth in Section 4.4(b) and Section 4.17(b) hereof, if the Property becomes subject to any mechanic's, materialmen's or other Lien (including without limitation, any federal tax lien but excluding any Lien for local real estate taxes and assessments not then due and payable) and such Lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) days after notice thereof to Borrower;

(i) if a default beyond applicable notice or cure period (if any) shall occur under the Management Agreement (or any successor management agreement);

(j) if the Management Agreement is modified or amended without the prior written consent of Lender or Borrower or Manager, as applicable, waives or releases any of its rights or remedies under the Management Agreement in any material respect;

(k) if the Management Agreement terminates or expires pursuant to its terms or a successor management or accounting agreement is executed by Borrower and such successor agreement is not approved by Lender;

(l) if (i) Borrower does not complete the Required Repairs by the required deadline for each Required Repair as set forth on Schedule 5.2, or (ii) fails to comply with any other provision of Section 5.2 and such failure is not cured within thirty (30) days after notice from Lender;

(m) Guarantor shall, at any time, fail to maintain (x) a net worth equal to or greater than the Minimum Net Worth and/or (v) the Minimum Liquidity Standard (each as defined in the Guaranty), as determined by Lender using commercially reasonable standards;

(n) if any representation and/or covenant herein relating to ERISA matters is breached;

(o) if any Specified Tenant delivers to Borrower or Lender written notice of its election to exercise remedies due to violation by Borrower of any use restriction in the applicable Specified Tenant Lease and Borrower fails to cure beyond any applicable notice and/or cure periods;

(p) if Borrower (i) does not complete the Required Repairs by the applicable Required Repairs Completion Date, or (ii) fails to comply with any other provision of Section 4.26 and such failure is not cured within thirty (30) days after notice from Lender;

(q) if there shall be a breach or default under any of the other Loan Documents beyond any applicable notice and/or cure periods contained in such Loan Documents, whether as to Borrower, Guarantor, Manager, the Property or any other Person (other than Lender), or if any other such event shall occur or condition shall exist, and the effect of such event or condition is to accelerate the maturity of any portion of the Obligations or to permit Lender to accelerate the maturity of all or any portion of the Obligations;

(r) if Borrower shall breach or otherwise continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (a) to (g) above, for ten (10) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty

(30) day period and providedfurther that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed ninety (90) days.

**Section 1.2 Remedies.** The provisions of Article VI of the Security Instrument are hereby incorporated by reference into this Agreement to the same extent and with the same force as if fully set forth herein.

**Section 1.3 Duration of Events of Default.** If any Event of Default occurs (irrespective of whether or not the same consists of an ongoing condition, a one-time occurrence, or otherwise), the same shall be deemed to continue at all times thereafter; provided, however, that such Event of Default shall cease to continue only if Lender shall accept, in writing, performance of the defaulted obligation or shall execute and deliver a written agreement in which Lender expressly states that such Event of Default has ceased to continue. Borrower shall have no right to cure any Event of Default, and Lender shall not be obligated under any circumstances whatsoever to accept such cure or performance or to execute and deliver any such writing except as expressly provided herein. Without limitation, this Section shall govern in any case where reference is made in the Loan Documents, the Guaranty, if any, and/or the Environmental Indemnity to (i) any "cure" (whether by use of such word or otherwise) of any Event of Default, (ii) "during an Event of Default," "the continuance of an Event of Default" or "after an Event of Default has ceased" (in each case, whether by use of such words or otherwise), or (iii) any condition or event which continues beyond the time when the same becomes an Event of Default.

## ARTICLE IX.

## PARTICIPATION AND SALE OF LOAN

**Section 1.1 Assignment by Lender.** Borrower agrees that Lender may assign, sell or transfer the Loan, its rights under this Agreement and the other Loan Documents and any servicing rights with respect to the Loan, whether in whole or in part, and/or grant participations in the Loan. In the event of any assignment of the Loan by Lender, Lender (and its partners, officers, directors, agents, attorneys, administrators, trustees, parents, subsidiaries, advisors, affiliates, beneficiaries, shareholders, representatives, servants and employees and their respective affiliates) will be deemed released of and from any obligation or liability (including, without limitation, any Losses of any Person) with respect to the Loan, this Agreement and the other Loan Documents (without any further action or agreement required) with respect to the Loan. Lender may forward to any potential assignee or transferee of any interest in the Loan or any servicing rights with respect to the Loan any and all documents and information which Lender now has or may hereafter acquire relating to the Loan and to the Borrower Parties and the Property, whether furnished by the Borrower Parties or otherwise, as Lender determines necessary or desirable. Borrower, on behalf of itself and the Borrower Parties, agrees to reasonably cooperate with Lender in connection with any transaction contemplated in this Section 9.1. Lender shall use commercially reasonable efforts to notify Borrower within ten (10) days after any such sale or assignment.

## ARTICLE X. EXCULPATION

### Section 1.1 Exculpation.

(a) Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note, this Agreement, the Security Instrument or the other Loan Documents by any action or proceeding wherein a money judgment or other judgment establishing personal liability shall be sought against Borrower or any principal, director, officer, employee, beneficiary, shareholder, partner, member, trustee, agent, or Affiliate of Borrower or any legal representatives, successors or assigns of any of the foregoing (collectively, the "**Exculpated Parties**"), except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest under the Note, this Agreement, the Security Instrument and the other Loan Documents, or in the Property, the Rents and Profits, or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as

specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Property, in the Rents and Profits and in any other collateral given to Lender, and Lender, by accepting the Note, this Agreement, the Security Instrument and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower or any of the Exculpated Parties in any such action or proceeding under or by reason of or under or in connection with the Note, this Agreement, the Security Instrument or the other Loan Documents. The provisions of this Section shall not, however, (i) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (ii) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Security Instrument; (iii) affect the validity or enforceability of or any guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder; (iv) impair the right of Lender to obtain the appointment of a receiver; (v) impair the enforcement of any assignment of leases contained in the Security

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Instrument; or (vi) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully realize the security granted by the Security Instrument or to commence any other appropriate action or proceeding in order for Lender to exercise its remedies against the Property.

(b) Nothing contained herein shall in any manner or way release, affect or impair the right of Lender to recover, and Borrower shall be fully and personally liable and subject to legal action, for any Losses incurred or suffered by Lender arising out of or in connection with the following:

- (i) fraud or intentional misrepresentation by Borrower, any SPE Component Entity, Principal or Guarantor in connection with the Loan;
- (ii) the gross negligence or willful misconduct of Borrower, any SPE Component Entity, Principal or Guarantor in connection with the Loan or the Property;
- (iii) material physical waste of the Property of Borrower, any SPE Component Entity, Principal, Guarantor or Affiliated Manager but only to the extent there exists sufficient cash flow from the Property to avoid such waste;
- (iv) the removal or disposal of any portion of the Property after an Event of Default, unless any personal property that is removed or disposed of is replaced with personal property of the same utility and the same or greater value; but only to the extent that net cash flow available to Borrower from the operations of the Property is sufficient to prevent removal or disposal;
- (v) the misappropriation, misapplication or conversion by Borrower, any SPE Component Entity, Principal or Guarantor of (A) any Insurance Proceeds paid by reason of any loss, damage or destruction to the Property, (B) any Awards received in connection with a Condemnation of all or a portion of the Property, (C) any Rents and Profits following an Event of Default, or (D) any rents paid more than one month in advance;
- (vi) failure to pay Impositions, charges for labor or materials or other charges that can create liens on any portion of the Property in accordance with the terms and provisions hereof (but only to the extent there exists sufficient cash flow from the Property to do so, provided Borrower shall have provided Lender written notice of such insufficiency of cash flow in advance of the due date for such expenses), and except in the case of Impositions to the extent that amounts sufficient to pay such Impositions have been deposited with Lender hereunder in the Tax and Insurance Reserve Account and Lender does not apply the same in payment thereof in violation of the terms and conditions of the Loan Documents);
- (vii) failure to pay Insurance Premiums, to maintain the Policies in full force and effect and/or to provide Lender evidence of the same, in each case, as expressly provided herein (but only to the extent there exists sufficient cash flow from the Property to do so, provided Borrower shall have provided Lender written notice of such insufficiency of cash flow in advance of the due date for such expenses), and except in the case of Insurance Premiums which have been deposited with Lender

hereunder in the Tax and Insurance Reserve Account and Lender does not apply the same in payment thereof in violation of the terms and conditions of the Loan Documents);

(viii) any security deposits, advance deposits or any other deposits collected with respect to the Property which are not delivered to Lender upon a foreclosure of the Property or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof;

(ix) any tax on the making and/or recording of the Security Instrument, the Note or any of the other Loan Documents or any transfer or similar taxes (whether due upon the making of the same or upon Lender's exercise of its remedies under the Loan Documents), but excluding any income, franchise or other similar taxes;

(x) Borrower fails to comply with any Cash Management Provisions or fails to appoint a new property manager upon the request of Lender or fails to comply with any limitations on instructing the property manager, each as required by and in accordance with, as applicable, the terms and provisions of, this Agreement and the other Loan Documents;

(xi) WHLR-Nashville Commons, LLC, WHLR-Pierpont Center, LLC, or WHLR-Riverbridge Shopping Center, LLC's prior ownership of the Prior Owned Property, including, but not limited to, any environmental liabilities;

(xii) if any representation, warranty, covenant or other provision contained in Section 3.19, Section 3.6, Section 4.13 or Section 4.21 is violated or breached;

(xiii) if Borrower, Guarantor or any Affiliate of Borrower or Guarantor contests, impedes, delays or opposes the exercise by Lender of any enforcement actions, remedies or other rights it has under or in connection with this Agreement or the other Loan Documents; provided that neither Borrower nor Guarantor shall be liable to the extent of any applicable loss, damage, cost, expense, liability, claim or other obligation arising solely from a defense of Borrower, Guarantor or any Affiliate of Borrower or Guarantor raised in good faith; or

(xiv) Borrower's failure to satisfy the obligations set forth in Section 4.12(e) hereof.

(c) Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents,

(i) Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Debt secured by the Security Instrument or to require that all collateral shall continue to secure all of the Debt owing to Lender in accordance with the Loan Documents, and

(ii) the Debt shall be fully recourse to Borrower:

(A) in the event of: (1) Borrower, any SPE Component Entity, or any Person that Controls Borrower ("Principal") filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (2) the filing of an involuntary petition against Borrower, any SPE Component Entity, or Principal under the

Bankruptcy Code or any other Federal or state bankruptcy or insolvency law in which Borrower, any SPE Component Entity, Principal or Guarantor colludes with, or otherwise assists such Person, or solicits or causes to be solicited petitioning creditors for any involuntary petition against Borrower, any SPE Component Entity, or Principal from any Person; (3) Borrower, any SPE Component Entity, or Principal filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (4) Borrower, any SPE Component Entity, or Principal consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower, any SPE Component Entity, or Principal or any portion of the Property; or (5) Borrower, any SPE Component Entity, or Principal making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due;

(B) if any representation, warranty, covenant or other provision contained in Section 3.19 or Section 4.21 is violated or breached and such violation or breach is cited by a court as a material factor in the substantive consolidation of Borrower with any Person; or

(C) if any representation, warranty, covenant or other provision contained in Section 7.1 hereof is violated or breached.

## ARTICLE XI. **CASH MANAGEMENT**

### **Section 1.1 Clearing Account.**

(a) Upon the first occurrence of a Trigger Period, Borrower shall establish and, thereafter during the term of the Loan, maintain an account (the "**Clearing Account**") with a local bank selected by Borrower and approved by Lender (which approval shall not be unreasonably withheld or delayed) (the "**Clearing Bank**") in trust for the benefit of Lender in accordance with an agreement among Borrower, Lender, Manager and the Clearing Bank in form and substance reasonably acceptable to Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time (the "**Clearing Account Agreement**"). The Clearing Account shall be under the sole dominion and control of Lender. Lender and its servicer shall have the sole right to make withdrawals from the Clearing Account. All costs and expenses for establishing and maintaining the Clearing Account shall be paid by Borrower.

(b) During the occurrence and continuance of a Trigger Period, Borrower shall cause all Rents and Profits to be delivered directly to the Clearing Account. Upon the first occurrence of a Trigger Period and in accordance with the Clearing Account Agreement, Borrower shall, or shall cause Manager to, deliver written instructions (which instructions can be revoked only upon the termination of the Trigger Period) to all tenants under Leases to deliver all Rents and Profits payable thereunder directly to the Clearing Account. Notwithstanding anything to the contrary contained herein or in any other Loan Documents, in the event Borrower or Manager shall receive any amounts constituting Rents and Profits during the occurrence and continuance of a Trigger Period, Borrower shall, and shall cause Manager to, deposit all such amounts received by Borrower or the property manager into the Clearing Account within one (1) Business Day after receipt thereof.

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(c) Borrower shall obtain from Clearing Bank its agreement to transfer, from and after such time as the Clearing Bank has received a Cash Management Activation Notice and until such time as the Clearing Bank has received a Cash Management Deactivation Notice, all amounts on deposit in the Clearing Account to the Cash Management Account in immediately available funds by federal wire transfer once every Business Day.

(d) Upon the occurrence and during the continuation of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any amounts then on deposit in the Clearing Account to the payment of the Obligations in any order, proportion and priority as Lender may determine in its sole and absolute discretion.

(e) The Clearing Account shall not be commingled with other monies held by Borrower or Clearing Bank.

(f) Borrower shall not further pledge, assign or grant any security interest in the Clearing Account or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

(g) Borrower shall indemnify Lender and hold Lender harmless from and against any and all Losses arising from or in any way connected with the Clearing Account and/or the Clearing Account Agreement or the performance of the obligations for which the Clearing Account was established.

### **Section 1.2 Cash Management Account**

(a) During the continuance of a Trigger Period, Lender, on Borrower's behalf, shall establish and maintain a segregated account (the "**Cash Management Account**") of (i) receiving and holding all Rents and Profits from the Property and other related income and (ii) disbursing sums on deposit therein in accordance with this Agreement. The Cash Management Account shall be held by a bank selected by Lender ("**Cash Management Bank**") for the benefit of Lender. The Cash Management Account shall be under the sole dominion and control of Lender. The Cash Management Account may be titled with such designation as Lender may require, including, without limitation, renaming and/or re-titling the Cash Management Account to reflect any assignment or transfer of the Loan or any transfer of the servicing of the Loan. Borrower hereby grants to Lender a first priority security interest in any Cash Management Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Cash Management Account, including, without limitation, authorizing Lender to file UCC-1 Financing Statements and continuations thereof. Borrower will not in any way alter or modify the Cash Management Account. Borrower agrees that at any time and from time to time, at the expense of Borrower, Borrower will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that Lender may request, in order to perfect and protect any security interest granted or purported to be granted or to enable Cash Management Bank or Lender to exercise and enforce its rights and remedies hereunder with respect to the Cash Management Account. Lender and Servicer shall have the sole right to make withdrawals from the Cash Management Account in accordance with this Agreement and the other Loan Documents. All costs and expenses for establishing and maintaining the Cash Management Account shall be paid by Borrower in accordance with this Agreement.

(b) Provided no Event of Default shall have occurred and is continuing, on each Monthly Payment Date during the continuance of a Trigger Period, Cash Management Bank shall apply all funds on deposit in the Cash Management Account in the following amounts and order of priority:

(i) First, funds sufficient to pay the next monthly deposit in the Tax and Insurance Reserve Account in accordance with the terms and conditions of Section 5.1 hereof for Impositions and insurance premiums to be disbursed to Lender to pay such monthly deposit;

(ii) Second, funds sufficient to pay the fees and expenses of Cash Management Bank and Clearing Bank then due and payable to Cash Management Bank and Clearing Bank in connection with the administration and maintaining of the Cash Management Account and Clearing Account shall be disbursed to the Cash Management Bank and Clearing Bank to pay such fees and expenses;

(iii) Third, funds sufficient to pay the Monthly Debt Service Payment Amount then due shall be disbursed to Lender to pay such Monthly Debt Service Payment Amount;

(iv) Fourth, funds sufficient to pay any interest accruing at the Default Rate, late payment charges and any other amounts then due and payable under the Loan Documents shall be disbursed to Lender to pay such interest, late payment charges and such other amounts;

(v) Fifth, funds sufficient to pay the next Monthly Operating Expense Deposit in the Operating Expense Reserve Account in accordance with the terms and conditions of Section 5.3 hereof to be held and disbursed in accordance with Section 5.3 hereof;

(vi) Sixth, funds sufficient to pay the next Monthly Capital Expenditure Deposit in the Capital Expenditure Reserve Account in accordance with the terms and conditions of Section 5.5 hereof to be held and disbursed in accordance with Section 5.5 hereof;

(vii) Seventh, if applicable, funds sufficient to pay the next monthly deposit in the TI/LC Reserve Account in accordance with the terms and conditions of Section 5.6 hereof to be held and disbursed in accordance with Section 5.6 hereof;

(viii) Eighth, the remaining amount (the "**Excess Cash Flow**") shall be deposited into the Excess Cash Flow Account and held by Lender as additional security for the Obligations until disbursed in accordance with Section 5.4 hereof.

(c) Any disbursements or disposition of funds or assets which Cash Management Bank makes pursuant to this Agreement shall be subject to Cash Management Bank's standard policies, procedures and documentation governing the type of disbursement or disposition made; provided, however, that in no circumstances will any such disbursement or disposition require Borrower's consent.

(d) All funds on deposit in the Cash Management Account following the occurrence and during the continuance of an Event of Default may be applied by Lender to the Obligations in such order and priority as Lender shall determine.

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(e) If, following the occurrence of a Trigger Event, a Trigger Termination Event shall have occurred, then (i) Lender shall notify Clearing Bank of such Trigger Termination Event and shall instruct Clearing Bank to transfer funds in the Clearing Account to or at the direction of Borrower, (ii) Cash Management Bank shall cease applying funds in accordance with, as applicable, Section 11.2(b) hereof, and (iii) Rents and Profits shall not be required to be deposited into the Clearing Account until the occurrence of any subsequent Trigger Period.

(f) If, following the occurrence of a Trigger Event, a Trigger Termination Event shall have occurred, any funds then on deposit in the Cash Management Account shall be transferred by Cash Management Bank to the Clearing Account.

(g) Borrower shall pay to Cash Management Bank and Lender and/or Cash Management Bank's and Lender's counsel on demand, from time to time, all reasonable costs and expenses (including, but not limited to, reasonable attorneys' fees and disbursements, and transfer, recording and filing fees, taxes and other charges) of, or incidental to, the creation or perfection of any lien or security interest granted or intended to be granted with respect to the Cash Management Account, the custody, care, sale, transfer, administration, collection of or realization on the Cash Management Account and the sums contained therein, or in any way relating to the enforcement, protection or preservation of the rights or remedies of Cash Management Bank and/or Lender relating to the Cash Management Account. Such fees and charges shall be paid to Cash Management Bank pursuant to Section 11.2(b)(ii) hereof and Cash Management Bank shall be entitled to charge the Cash Management Account for such fees and charges. Such fees and charges shall be customary for the services of Cash Management Bank described herein in connection with commercial mortgage loans intended for securitization and secured by properties similar to the Property. Borrower agrees to pay all Cash Management Bank's fees and charges for the maintenance and administration of the Cash Management Account and for the treasury management and other account services provided with respect to the Cash Management Account (collectively "**Cash Management Bank Fees**"), including, but not limited to, the fees for (a) funds transfer services received with respect to the Cash Management Account, (b) funds advanced to cover overdrafts in the Cash Management Account (but without Cash Management Bank being in any way obligated to make any such advances), and (c) duplicate bank statements. Cash Management Bank Fees will be paid by Cash Management Bank in

accordance with this Agreement by debiting the Cash Management Account on the Business Day that the Cash Management Bank Fees are due, without notice to Borrower. If there are not sufficient funds in the Cash Management Account to cover fully the Cash Management Bank Fees on the Business Day Cash Management Bank attempts to debit them from the Cash Management Account, such shortfall or the amount of such Cash Management Bank Fees will be paid by Borrower to Cash Management Bank, without setoff or counterclaim, within five (5) Business Days after demand from Cash Management Bank. Borrower's obligation to pay Cash Management Bank Fees accrued prior to the termination of this Agreement or the resignation or replacement of Cash Management Bank shall survive the termination of this Agreement or the resignation or replacement of Cash Management Bank.

(h) Borrower shall indemnify Lender and hold Lender harmless from and against any and all Losses arising from or in any way connected with the Cash Management Account (unless arising from the gross negligence or willful misconduct of Lender) or the performance of the obligations for which the Cash Management Account was established. Borrower shall indemnify and hold Cash Management Bank and its employees and officers harmless from and against any Losses incurred by Cash Management Bank arising from or in any way connected with the Cash Management

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Account (unless arising from the gross negligence or willful misconduct of Lender) or the performance of the obligations for which the Cash Management Account was established, except to the extent that such loss or damage results from Cash Management Bank's illegal acts, fraud, gross negligence or willful misconduct.

- (i) If invested, sums on deposit in the Cash Management Account shall be invested at the direction of Lender.
- (j) Borrower hereby agrees that Lender may maintain sub-accounts within the Cash Management Account in connection with any payments otherwise required under this Agreement, the Security Instrument, the Note and the other Loan Documents, which sub-accounts may be ledger or book entry accounts and not actual accounts. All costs and expenses for establishing and maintaining such sub-accounts shall be paid by Borrower.
- (k) Borrower hereby agrees that the Cash Management Account may be maintained as either a "securities account" (as such term is defined in Section 8-501(a) of the UCC or a "deposit account" (as such term is defined in Section 9-102(a)(29) of the UCC)). Borrower and Lender agree that the Cash Management Account shall be maintained in such a manner that Lender shall have control of the Cash Management Account that is a "securities account" (within the meaning of Section 8-106(d)(2) of the UCC) and control of the Cash Management Account that is a "deposit account" (within the meaning of Section 9-104(a) of the UCC).
- (l) The Cash Management Account and all sub-accounts within the Cash Management Account shall be deemed to be located in the State of New York for all purposes hereunder and under the UCC. The jurisdiction of the Cash Management Bank shall be deemed to be the State of New York for all purposes hereunder and the UCC.
- (m) Lender may replace Cash Management Bank from time to time with a new Cash Management Bank without any obligation to notify Borrower. Borrower hereby agrees to take, upon request by Lender, all reasonable action necessary to facilitate the transfer of the respective obligations, duties and rights of Cash Management Bank to the successor thereof selected by Lender in its sole and absolute discretion.
- (n) Borrower hereby acknowledges and agrees that any action permitted or required of Lender pursuant to the Loan Documents, including, without limitation, this Section 11.2, may be performed by Servicer and Borrower shall accept such action as if performed by Lender. Borrower further acknowledges and agrees that Lender may appoint or terminate, in its sole discretion, any entity to act as Servicer pursuant to this Agreement at any time and from time to time. Borrower shall be responsible for the payment of all actual out-of-pocket third party expenses incurred by Servicer in performing such services under this Section 11.2.

**Section 1.3 Rights on Default**. Notwithstanding anything to the contrary contained in this Agreement, the Security Instrument, the Note or the other Loan Documents, upon the occurrence and during the continuation of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any amounts then on deposit in the

Cash Management Account to the payment of the Obligations in any order, proportion and priority as Lender may determine in its sole and absolute discretion.

**Section 1.4 Payments Received Under Cash Management.** The insufficiency of funds on deposit in the Cash Management Account shall not

relieve Borrower from the obligation to make any payments, as and when due pursuant to this Agreement, the Note and the other Loan Documents, and such obligation shall be separate and independent, and not conditioned on any event or circumstance whatsoever. Notwithstanding anything to the contrary contained in this Agreement, the Security Instrument, the Note or the other Loan Documents, and provided that no Event of Default shall have occurred and remain outstanding, Borrower's obligations with respect to the payment of the Monthly Debt Service Payment Amount and amounts required to be deposited into the Reserve Accounts, if any, shall be deemed satisfied to the extent sufficient amounts are deposited in the Cash Management Account to satisfy such obligations pursuant to the terms of this Agreement on the dates each such payment is required, regardless of whether any of such amounts are so applied by Lender.

**ARTICLE XII. SERVICER**

**Section 1.1 Servicer.**

(a) At the option of Lender, the Loan may be serviced by a servicer (together with its agents, nominees or designees, are collectively referred to herein as "**Servicer**") selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to Servicer pursuant to a servicing agreement and/or other agreement providing for the servicing of one or more mortgage loans (collectively, the "**Servicing Agreement**") between Lender and Servicer. Borrower shall be responsible for (i) any reasonable set-up fees or any other initial costs and expenses relating to or arising under the Servicing Agreement in connection with the Loan and (ii) any reasonable fees and expenses of Servicer (including, without limitation, reasonable attorneys' fees and disbursements) in connection with any release of the Property, any cash management duties or activities, any prepayment, defeasance, assumption, amendment or modification of the Loan, any documents or matters requested by Borrower, or work-out of the Loan or enforcement of the Loan Documents. Without limiting the generality of the foregoing, Servicer shall be entitled to reimbursement of reasonable costs and expenses as and to the same extent (but without duplication) as Lender is entitled thereto under this Agreement and the other Loan Documents.

(b) Upon notice thereof from Lender, Servicer shall have the right to exercise all rights of Lender and enforce all obligations of Borrower and Indemnitor pursuant to the provisions of this Agreement and the other Loan Documents.

(c) Provided Borrower shall have been given notice of Servicer's address by Lender, Borrower shall deliver, or cause to be delivered, to Servicer duplicate originals of all notices and other documents and instruments which Borrower or Indemnitor may or shall be required to deliver to Lender pursuant to this Agreement and the other Loan Documents (and no delivery of such notices or other documents and instruments by Borrower or Indemnitor shall be of any force or effect unless delivered to Lender and Servicer as provided above).

**ARTICLE XIII. MISCELLANEOUS**

**Section 1.1 Successors and Assigns; Terminology.** This Agreement applies to Lender, Borrower Parties and Borrower, and their heirs, legatees, devisees, administrators, executors, successors and assigns. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

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The term "Borrower" shall include both the original Borrower and any subsequent owner or owners of any of the Property. The term "Borrower Party" and "Borrower Parties" shall include both the original Borrower Parties, if any, and any subsequent or substituted Borrower Parties. In this Agreement, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The parties acknowledge and agree that, unless the context clearly requires otherwise, each use of the term (i) "**Borrower**" shall be construed at Lender's option to mean each Individual Borrower and all Individual Borrowers collectively, (ii) "**Property**" shall be construed at Lender's option to mean each Individual Property and all Individual Properties collectively, (iii) "**Security Instrument**" shall be construed at Lender's option to mean each individual Security Instrument and all Security Instruments collectively and (iv) "**Specified Tenant**" shall mean each individual Specified Tenant and all Specified Tenants collectively.

**Section 1.2 Lender's Discretion.** Whenever pursuant to this Agreement Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender or any financial ratio is to be calculated or determined, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory or Lender's calculation or determination shall (except as is otherwise expressly herein provided) be in the sole discretion of Lender and shall be final and conclusive absent manifest error. The use of the phrase "in Lender's sole discretion", "in the sole discretion of Lender" and words of similar import, when used in this Agreement or any other Loan Document (as well as the absence thereof) with respect to a particular matter shall not be deemed in any way to limit or modify the provisions of the preceding sentence with respect to such matter.

**Section 1.3 Applicable Law; Consent to Jurisdiction.** BORROWER AND LENDER HEREBY AGREE THAT THIS AGREEMENT SHALL BE INTERPRETED, CONSTRUED, GOVERNED AND ENFORCED ACCORDING TO THE SUBSTANTIVE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ITS PRINCIPLES OF CHOICE OF LAW OR CONFLICTS OF LAW THAT WOULD DEFER TO THE SUBSTANTIVE LAW OF ANOTHER JURISDICTION, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTEREST CREATED PURSUANT TO THE SECURITY INSTRUMENT AND PURSUANT TO THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE PROPERTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OR COMMONWEALTH, AS APPLICABLE, WHERE SUCH INDIVIDUAL PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS. BORROWER HEREBY IRREVOCABLY: (A) SUBMITS IN ANY LEGAL PROCEEDING RELATING TO THIS AGREEMENT TO THE NON-EXCLUSIVE IN PERSONAM JURISDICTION OF ANY STATE OR THE UNITED STATES COURT OF COMPETENT JURISDICTION SITTING IN THE STATE OF NEW YORK, COUNTY OF NEW YORK, IN CONNECTION WITH ANY MATTER GOVERNED BY THE SUBSTANTIVE LAWS OF THE STATE OF NEW YORK LAW PURSUANT TO SECTION 5-1402 OF

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THE NEW YORK GENERAL OBLIGATIONS LAW, AND AGREES TO SUIT BEING BROUGHT IN SUCH COURTS, AS LENDER MAY ELECT; (B) WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF SUCH PROCEEDING IN ANY SUCH COURT OR THAT SUCH PROCEEDING WAS BROUGHT IN AN INCONVENIENT COURT; (C) AGREES TO SERVICE OF PROCESS IN ANY LEGAL PROCEEDING BY MAILING OF COPIES THEREOF (BY REGISTERED OR CERTIFIED MAIL, IF PRACTICABLE) POSTAGE PREPAID, OR BY TELECOPY, TO ITS ADDRESS SET FORTH ABOVE OR SUCH OTHER ADDRESS OF WHICH LENDER SHALL HAVE BEEN NOTIFIED IN WRITING; AND (D) AGREES THAT NOTHING HEREIN SHALL AFFECT LENDER'S RIGHT TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW, AND THAT LENDER SHALL HAVE THE RIGHT TO BRING ANY LEGAL

PROCEEDINGS (INCLUDING A PROCEEDING FOR THE ENFORCEMENT OF A JUDGMENT ENTERED BY ANY OF THE AFOREMENTIONED COURTS) AGAINST BORROWER IN ANY OTHER COURT OR JURISDICTION IN ACCORDANCE WITH APPLICABLE LAW.

**Section 1.4 Waiver of Jury Trial.** TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER AND LENDER EACH WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE LOAN SECURED BY THE SECURITY INSTRUMENT, OR ANY OF THE LOAN DOCUMENTS. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY BORROWER AND LENDER AND BORROWER ACKNOWLEDGES THAT NEITHER LENDER NOR ANY PERSON ACTING ON BEHALF OF LENDER HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. BORROWER FURTHER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. BORROWER FURTHER ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER PROVISION AND AS EVIDENCE OF THIS FACT HAS EXECUTED THIS AGREEMENT BELOW. BORROWER SHALL NOT SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR OTHERWISE, ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY LENDER EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY LENDER.

**Section 1.5 Modification.** No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given.

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Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

**Section 1.6 Notices.** All notices, demands and requests given or required to be given by, pursuant to, or relating to, this Agreement shall be in writing. All notices shall be deemed to have been properly given if mailed by United States registered or certified mail, with return receipt requested, postage prepaid, or by United States Express Mail or other comparable overnight courier service to the parties at its address hereinafter set forth, or to such other address as such party may hereafter specify in accordance with the provisions of this Section 13.6. Any notice shall be deemed to have been received upon receipt or refusal to accept delivery, in each case as shown on the return receipt or the receipt of United States Express Mail or such overnight commercial courier service.

If to Lender:

Insurance Strategy Funding XXVIII, LLC  
c/o J.P. Morgan Asset Management  
500 Stanton Christiana Road, Ops 2/Floor 2  
Newark, Delaware 19713  
Attention: Gregory Thornton

with a copy to

Katten Muchin Rosenman LLP  
550 S. Tryon Street, Suite 2900  
Charlotte, NC 28202-4213  
Attention: Adam L. Stoddard, Esq.

If to Borrower:

WHLR-Alex City Marketplace LLC  
WHLR-Sunshine Shopping Plaza, LLC  
WHLR-Parkway Plaza, LLC  
WHLR-Riverbridge Shopping Center, LLC  
WHLR-Harrodsburg Marketplace LLC  
WHLR-Cardinal Plaza, LLC  
WHLR-Franklin Square, LLC  
WHLR-Nashville Commons, LLC  
WHLR-Franklin Village, LLC  
WHLR-Grove Park, LLC  
WHLR-PCSC Associates, LLC  
WHLR-Pierpont Center, LLC  
c/o Wheeler Real Estate Company  
2529 Virginia Beach Boulevard  
Virginia Beach, Virginia 23452  
Attention: M. Andrew Franklin

with a copy to

Paul Law Firm, PLLC  
2003 S. Horsebarn Road, Suite 7  
Rogers, Arkansas 72758  
Attention: Dana Davis Paul

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and

Wheeler Real Estate Investment Trust, Inc.  
Suite 101  
2529 Virginia Beach Boulevard  
Virginia Beach, Virginia 23452  
Attention: Stuart A. Pleasants

**Section 1.7 Headings.** The Article and/or Section headings and the Table of Contents in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or intent of any provisions of this Agreement

**Section 1.8 Severability.** If any provision of this Agreement should be held unenforceable or void, then that provision shall be separated from the remaining provisions and shall not affect the validity of this Agreement except that if the unenforceable or void provision relates to the payment of any monetary sum, then, Lender may, at its option, declare the Debt immediately due and payable.

**Section 1.9 Preferences.** Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder. To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or

federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

**Section 1.10 Usury Savings Clause.** It is the intention of Borrower and Lender to conform strictly to all applicable usury laws now or hereinafter in force. All agreements in this Agreement and in the other Loan Documents are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement or acceleration of maturity of the Obligations, or otherwise, shall the amount paid or agreed to be paid hereunder or thereunder for the use, forbearance or detention of money, to the extent that any sums secured by the Security Instrument or by the other Loan Documents shall not be exempt from such laws, exceed the highest lawful rate permitted under applicable usury laws as now or hereinafter construed by the court having jurisdiction over such matters. If, from any circumstance whatsoever, fulfillment of any provision of the Loan Documents, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and if, from any circumstance whatsoever, Lender shall ever receive as interest an amount which would exceed the highest lawful rate, the receipt of such excess shall, at the option of Lender, be deemed a mistake and such excess shall be rebated to Borrower or, held in trust by Lender for the benefit of Borrower and shall be credited against the principal amount of the Obligations to which the same may lawfully be credited, and any portion of such excess not capable of being so credited shall be rebated to Borrower. The aggregate of all interest (whether

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designated as interest, service charges, points or otherwise) contracted for, chargeable, or receivable under the Note, this Agreement, or any other Loan Document shall under no circumstances exceed the Maximum Legal Rate upon the unpaid principal balance of the Note remaining from time to time. In the event such interest does exceed the Maximum Legal Rate, it shall be deemed a mistake and such excess shall be canceled automatically and if theretofore paid, rebated to Borrower or credited on the principal amount of the Note, or if the Note has been repaid, then such excess shall be rebated to Borrower.

**Section 1.11 Right to Deal.** In the event that ownership of the Property becomes vested in a Person other than Borrower, Lender may, without notice to Borrower, deal with such successor or successors in interest with reference to this Agreement or the Obligations in the same manner as with Borrower, without in any way vitiating or discharging Borrower's liability hereunder or for the payment of the Obligations or being deemed a consent to such vesting. It being agreed that Lender's dealing with any such successor or successors as aforesaid shall not relieve Borrower of its obligations or liabilities hereunder or under the Loan Documents (including, without limitation, the Obligations), all of which shall remain the primary obligations and liabilities of Borrower as a principal hereunder and thereunder, and not as merely a guarantor or by way of stand-by liability.

**Section 1.12 Waiver of Notice.** Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

**Section 1.13 Remedies of Borrower.** In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where, by law or under this Agreement, the other Loan Documents or the Environmental Indemnity, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedy shall be limited to commencing an action seeking injunctive relief or declaratory judgment. Any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

## Section 1.14 Expenses; Cost of Enforcement.

(a) Borrower covenants and agrees to pay its own costs and expenses and pay, or, if Borrower fails to pay, to reimburse, Lender, upon receipt of written notice from Lender, for Lender's reasonable costs and expenses (including reasonable, actual attorneys' fees and disbursements) in each case, incurred by Lender in accordance with this Agreement in connection with (i) the preparation, negotiation, execution and delivery of this Agreement, the Security Instrument, the Note and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to any legal matters arising under this Agreement, the Security Instrument, the Note and the other Loan Documents with respect to the Property); (ii) Borrower's ongoing performance of and compliance with Borrower's

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respective agreements and covenants contained in this Agreement, the Security Instrument, the Note and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (iii) Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement, the Security Instrument, the Note and the other Loan Documents on its part to be performed or complied with after the Closing Date (including, but not limited to, any out of pocket costs, fees and expenses incurred in connection with any advance hereunder); (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement, the Security Instrument, the Note and the other Loan Documents and any other documents or matters requested by Lender; (v) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (vi) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the lien in favor of Lender pursuant to this Agreement, the Security Instrument, the Note and the other Loan Documents; (vii) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the Security Instrument, the Note, the other Loan Documents, the Property, or any other security given for the Loan; (viii) servicing the Loan (including, without limitation, enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the Security Instrument, the Note and the other Loan Documents or with respect to the Property) or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings; and (ix) the preparation, negotiation, execution, delivery, review, filing, recording or administration of any documentation associated with the exercise of any of Borrower's rights hereunder and/or under the other Loan Documents regardless of whether or not any such right is consummated (including, without limitation, Borrower's rights hereunder to permit or undertake transfers in accordance with the applicable terms and conditions hereof); provided, however, that, with respect to each of subsections (i) through (ix) above, (A) none of the foregoing subsections shall be deemed to be mutually exclusive or limit any other subsection, (B) the same shall be deemed to (I) include, without limitation and in each case, any related special servicing fees, liquidation fees, modification fees, work-out fees and other similar costs or expenses payable to any Servicer, trustee and/or special servicer of the Loan (or any portion thereof and/or interest therein) and (II) exclude any requirement that Borrower directly pay the base monthly servicing fees due to any master servicer on account of the day to day, routine servicing of the Loan (provided, further, that the foregoing subsection (II) shall not be deemed to otherwise limit any fees, costs, expenses or other sums required to be paid to Lender under this Section, the other terms and conditions hereof and/or of the other Loan Documents) and (C) Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender.

(b) In the event (i) that the Security Instrument is foreclosed in whole or in part, (ii) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or any of its constituent Persons or an assignment by Borrower or any of its constituent Persons for the benefit of its creditors, or (iii) Lender exercises any of its other remedies under this Agreement, the Security Instrument, the Note and the other Loan Documents, Borrower shall be chargeable with and agrees to pay all costs of collection and defense, including attorneys' fees and costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post judgment action involved therein, together with all required service or use taxes.

**Section 1.15 Schedules and Exhibits Incorporated.** The Schedules and Exhibits annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

**Section 1.16 No Joint Venture or Partnership; No Third Party Beneficiaries.**

(a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy in common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement, the other Loan Documents and the Environmental Indemnity are solely for the benefit of Lender and Borrower, as applicable, and nothing contained in this Agreement, the other Loan Documents or the Environmental Indemnity shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

**Section 1.17 Publicity.** All news releases, press releases, publicity, advertising or similar communications by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents or to Lender or any of its Affiliates (including, but not limited to, J.P. Morgan Investment Management Inc., J.P. Morgan Asset Management, JPMorgan Chase Bank, N.A. and/or J.P. Morgan Chase & Co.) shall be subject to the prior review, revision and approval of Lender, which shall be in Lender's sole and absolute discretion; provided, however, nothing in this provision shall prohibit Borrower or its Affiliates from making any news or press releases, publicity, advertising or similar communications specifically required by applicable law.

**Section 1.18 Cross-Collateralization; Waiver of Marshalling of Assets.**

(a) Borrower acknowledges that Lender has made the Loan to Borrower upon the security of its interest in the Individual Properties and in reliance upon the aggregate of the Individual Properties taken together being of greater value as collateral security than the sum of each Individual Property taken separately. Borrower agrees that the Security Instruments are and will be cross-collateralized and cross-defaulted with each other so that (i) an Event of Default under any Security Instrument shall constitute an Event of Default under each of the other Security Instruments which secure the Note; (ii) an Event of Default under the Note or this Agreement shall constitute an Event of Default under each Security Instrument; (iii) each Security Instrument shall constitute security for the Note as if a single blanket lien were placed on all of the Individual Properties as security for the Note; and (iv) such cross-collateralization shall in no event be deemed to constitute a fraudulent conveyance.

(b) To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of each Individual Property, and shall not assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of any Individual Property for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of each Individual Property in preference to every other claimant whatsoever. In addition, Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Security Instruments, any equitable right otherwise available to Borrower which would require the separate sale of the Individual Properties or require Lender to exhaust its remedies against any Individual Property or any combination of the Individual Properties before proceeding against any other Individual Property or combination of Individual Properties; and further in the event of such foreclosure Borrower does hereby expressly consent to and authorize, at the option of Lender, the foreclosure and sale either separately or together of any combination of any of the Individual Properties.

**Section 1.19 Waiver of Offsets/Defenses/Counterclaims.** Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents or otherwise to offset any obligations to make the payments required by the Loan Documents or the Environmental Indemnity. No failure by Lender to perform any of its obligations hereunder shall be a valid defense to, or result in any offset against, any payments which Borrower is obligated to make under any of the Loan Documents or the Environmental Indemnity.

**Section 1.20 Conflict; Construction of Documents; Reliance.** In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents or the Environmental Indemnity, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and the Environmental Indemnity and that such Loan Documents and the Environmental Indemnity shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents, the Environmental Indemnity or any other agreements or instruments that govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender and its Affiliates engage in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

**Section 1.21 Brokers and Financial Advisors.** Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions

contemplated by this Agreement other than Cushman & Wakefield ("Broker"), and Borrower shall be solely responsible for payment of all commissions, finder's fees or similar amounts due and payable to Broker pursuant to the terms of their separate agreement, all of which commissions, finder's fees or similar amounts shall be paid to Broker by Borrower on the Execution Date. Borrower shall indemnify, defend and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's reasonable attorneys' fees and disbursements) in any way relating to or arising from a claim by any Person (including Broker) that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. The provisions of this Section 13.21 shall survive the expiration and termination of this Agreement and the payment of the Debt. Borrower acknowledges that Lender may have been involved in other transactions with Broker, and Borrower agrees that it shall have no rights against Lender or defenses to Borrower's obligations under the Loan Documents or the Environmental Indemnity due to any such relationship.

**Section 1.22 Prior Agreements**. This Agreement, the other Loan Documents and the Environmental Indemnity contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the loan application, are superseded by the terms of this Agreement, the other Loan Documents and the Environmental Indemnity.

**Section 1.23 Liability of Borrower**. The obligations of Borrower under this Agreement, the Security Instrument and the other Loan Documents are subject to the limitations on recourse set forth in [Section 10.1](#).

**Section 1.24 Joint and Several Liability**. If more than one Person has executed this Agreement as "Borrower" or as an "Individual Borrower," the representations, covenants, warranties and obligations of all such Persons hereunder shall be joint and several.

**Section 1.25 Counterparts**. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original and all of which together shall constitute a single agreement.

**Section 1.26 Time Of The Essence**. Time shall be of the essence with respect to all of Borrower's obligations under this Agreement, the other Loan Documents and the Environmental Indemnity.

**Section 1.27 No Merger**. In the event that Lender should become the owner of the Property, there shall be no merger of the estate created by the Security Instrument with the fee estate in the Property.

**Section 1.28 Delay Not a Waiver**. Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege under this Agreement, the Security Instrument, the Note or the other Loan Documents, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date

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of any amount payable under this Agreement, the Security Instrument, the Note or the other Loan Documents, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Security Instrument, the Note and the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

**Section 1.29 Contribution**.

(a) For purposes of this [Section 13.29](#):

(i) "**Benefited Borrower**" means any Individual Borrower (i) who has failed to pay its Allocated Loan Amount, (ii) whose Individual Property or assets have not been utilized to satisfy obligations under the Loan, or (iii) whose Individual Property or assets have been utilized to satisfy less than their Allocated Loan Amount, together with interest thereon and its proportionate share (based on its Allocated Loan Amount) of any other amounts payable under the Loan Documents.

(ii) "**Defaulting Borrower**" means an Individual Borrower who shall have failed to make a contribution payment as provided in this Agreement to an Overpaying Borrower.

(iii) "**Overpaying Borrower**" means any Individual Borrower (i) who shall pay any amount in excess of its Allocated Loan Amount together with interest thereon and its proportionate share (based on its Allocated Loan Amount) of any other amounts payable under the Loan Documents, or (ii) whose Individual Property or assets have been utilized to satisfy obligations under the Loan or otherwise for the benefit of one or more other Individual Borrowers in excess of its Allocated Loan Amount.

(iv) **"Subrogated Borrower"** means any Overpaying Borrower whose rights to a Defaulting Borrower's Individual Property are subrogated to the rights of Lender under the terms of this Agreement.

(b) Any and all of the rights of any Overpaying Borrower set forth in this Agreement are subordinate to the rights of Lender under the Loan Documents and any Overpaying Borrower is not permitted to exercise such rights until after payment in full of the Note and the indefeasible satisfaction of all obligations of the Individual Borrowers to Lender under the Loan Documents.

(c) Any Overpaying Borrower shall be entitled to contribution from any Benefited Borrower for the amounts so paid, advanced or benefited, up to such Benefited Borrower's then current Allocated Loan Amount together with interest thereon and its proportionate share of other amounts payable under the Note. Any such contribution payments shall be made by the Benefited Borrower within ten (10) days after written demand therefor.

(d) Any Overpaying Borrower shall be subrogated to the rights of Lender as against any Defaulting Borrower, including the right to receive a portion of any such Defaulting Borrower's Individual Property in an amount equal to the payment that such Overpaying Borrower made on behalf of the Defaulting Borrower.

(e) If Lender returns any payments made under the Loan Documents in connection with a bankruptcy or insolvency of an Individual Borrower, all Individual

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Borrowers shall (a) jointly and severally repay Lender all such amounts repaid, together with interest at the Default Rate, and (b) have no rights of subrogation unless and until Lender shall have received full indefeasible satisfaction of all obligations of the Individual Borrowers under the Loan Documents.

(f) Lender shall promptly release, without recourse to Lender and in accordance with the terms of this Agreement, the Individual Property to such Overpaying Borrower; provided, however, if Lender shall receive conflicting requests from multiple Overpaying Borrowers to receive such Individual Property and such requesting Overpaying Borrowers cannot agree as to the disposition of such Individual Property, Lender shall have no obligation to release such Individual Property to such requesting Overpaying Borrowers unless and until such requesting Overpaying Borrowers shall have mutually agreed as to the disposition of such Individual Property and so authorized Lender in writing. Provided Lender shall have received such written authorization, Lender shall, without recourse to Lender and in accordance with the terms of this Agreement, release the Individual Property in question to the Overpaying Borrower or Overpaying Borrowers entitled to receive such Individual Property within twenty (20) days thereafter. Prior to releasing such Individual Property, Lender shall be entitled to receive from the requesting Overpaying Borrower or Overpaying Borrowers such other assurances, indemnities and agreements as may be reasonably requested by Lender.

[NO FURTHER TEXT ON THIS PAGE]

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the date of this Agreement.

**LENDER:**

**INSURANCE STRATEGY FUNDING XXVIII, LLC,**  
a Delaware limited liability company

By: J.P. Morgan Investment Management, Inc.,  
a Delaware corporation, as SPV Agent

By: /s/ Catherine Millane

Name: Catherine Millane

Title: Vice President

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**BORROWER:**

**WHLR-ALEX CITY MARKETPLACE LLC**, a Delaware limited liability company

By: Wheeler REIT, L.P., a Virginia limited  
partnership, its Sole Member

By: Wheeler Real Estate Investment Trust, Inc.,  
a Maryland corporation, its General Partner

By: /s/ M. Andrew Franklin

Name: M. Andrew Franklin

Title: President and Chief Executive Officer

**WHLR-SUNSHINE SHOPPING PLAZA, LLC**, a Delaware limited liability company

By: Wheeler REIT, L.P., a Virginia limited  
partnership, its Sole Member

By: Wheeler Real Estate Investment Trust, Inc.,  
a Maryland corporation, its General Partner

By: /s/ M. Andrew Franklin

Name: M. Andrew Franklin

Title: President and Chief Executive Officer

**WHLR-PARKWAY PLAZA, LLC**, a Delaware limited liability company

By: Wheeler REIT, L.P., a Virginia limited  
partnership, its Sole Member

By: Wheeler Real Estate Investment Trust, Inc.,  
a Maryland corporation, its General Partner

By: /s/ M. Andrew Franklin  
Name: M. Andrew Franklin  
Title: President and Chief Executive Officer

**WHLR-RIVERBRIDGE SHOPPING CENTER, LLC, a Delaware limited liability company**

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By: Wheeler REIT, L.P., a Virginia limited  
partnership, its Sole Member

By: Wheeler Real Estate Investment Trust, Inc.,  
a Maryland corporation, its General Partner

By: /s/ M. Andrew Franklin  
Name: M. Andrew Franklin  
Title: President and Chief Executive Officer

**WHLR-HARRODSBURG MARKETPLACE LLC, a Delaware limited liability company**

By: Wheeler REIT, L.P., a Virginia limited  
partnership, its Sole Member

By: Wheeler Real Estate Investment Trust, Inc.,  
a Maryland corporation, its General Partner

By: /s/ M. Andrew Franklin  
Name: M. Andrew Franklin  
Title: President and Chief Executive Officer

**WHLR-CARDINAL PLAZA, LLC, a Delaware limited liability company**

By: Wheeler REIT, L.P., a Virginia limited  
partnership, its Sole Member

By: Wheeler Real Estate Investment Trust, Inc.,  
a Maryland corporation, its General Partner

By: /s/ M. Andrew Franklin  
Name: M. Andrew Franklin  
Title: President and Chief Executive Officer

**WHLR-FRANKLINTON SQUARE, LLC, a Delaware limited liability company**

By: Wheeler REIT, L.P., a Virginia limited  
partnership, its Sole Member

By: Wheeler Real Estate Investment Trust, Inc.,

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a Maryland corporation, its General Partner

By: /s/ M. Andrew Franklin  
Name: M. Andrew Franklin  
Title: President and Chief Executive Officer

**WHLR-NASHVILLE COMMONS, LLC, a Delaware limited liability company**

By: Wheeler REIT, L.P., a Virginia limited  
partnership, its Sole Member

By: Wheeler Real Estate Investment Trust, Inc.,  
a Maryland corporation, its General Partner

By: /s/ M. Andrew Franklin  
Name: M. Andrew Franklin  
Title: President and Chief Executive Officer

**WHLR-FRANKLIN VILLAGE, LLC, a Delaware limited liability company**

By: Wheeler REIT, L.P., a Virginia limited  
partnership, its Sole Member

By: Wheeler Real Estate Investment Trust, Inc.,  
a Maryland corporation, its General Partner

By: /s/ M. Andrew Franklin  
Name: M. Andrew Franklin  
Title: President and Chief Executive Officer

**WHLR-GROVE PARK, LLC, a Delaware limited liability company**

By: Wheeler REIT, L.P., a Virginia limited  
partnership, its Sole Member

By: Wheeler Real Estate Investment Trust, Inc.,

a Maryland corporation, its General Partner

By: /s/ M. Andrew Franklin  
Name: M. Andrew Franklin

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Title: President and Chief Executive Officer

**WHLR-PCSC ASSOCIATES, LLC**, a Delaware limited liability company

By: Wheeler REIT, L.P., a Virginia limited  
partnership, its Sole Member

By: Wheeler Real Estate Investment Trust, Inc.,  
a Maryland corporation, its General Partner

By: /s/ M. Andrew Franklin  
Name: M. Andrew Franklin  
Title: President and Chief Executive Officer

**WHLR-PIERPONT CENTER, LLC**, a Delaware limited liability company

By: Wheeler REIT, L.P., a Virginia limited  
partnership, its Sole Member

By: Wheeler Real Estate Investment Trust, Inc.,  
a Maryland corporation, its General Partner

By: /s/ M. Andrew Franklin  
Name: M. Andrew Franklin  
Title: President and Chief Executive Officer

### **SCHEDULE 3.17**

#### **EXCLUSIVE USES**

##### **1. Cardinal Plaza - Food Lion Lease Use Restrictions**

- (a) China Star (Restaurant)
- (b) Subway (Restaurant)
- (c) Lee Nails (Health Spa)

## 2. Franklinton Square – Food Lion Lease Use Restrictions

- (a) Trifoods (Hometown Café) (Restaurant)
- (b) Chen's Kitchen(Restaurant)

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(c) VC Nails and Spa (Health Spa)

(d) OneCare Behavioral Health System (Health Spa)

## 3. Nashville Commons – Food Lion Lease Use Restrictions

- (a) Hwy 55 Burger (Restaurant)
- (b) Great Wall Chinese Restaurant (Restaurant)
- (c) Top Nails (Health Spa)

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## SCHEDULE 3.22

### **MATERIAL AGREEMENTS**

1. None.

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## SCHEDULE 3.34

### **REAs**

1. Declaration of Restrictive Covenants contained in Limited Warranty deed from Riverbridge, Ltd., a Georgia limited partnership, to WH Capital, L.L.C., a Georgia limited liability company, dated September 30, 2004, recorded in Deed Book 2861, Page 297, aforesaid records.
2. Restrictive Covenants by and between Riverbridge, Ltd., a Georgia limited partnership and McDonald's USA, LLC, a Delaware limited liability company, dated October 11, 2012, filed February 11, 2013 in Deed Book 5230, Page 720, aforesaid records.

3. Declaration of Restrictions and Reciprocal Easements for Ingress, Egress, Utilities and Drainage recorded July 22, 2015 in Official Records Instrument 2015000161068, of the Public Records of Lee County, Florida by CRP TI-SUNSHINE HOPPING PLAZA, LLC, a Florida limited liability company ("Declarant").
4. Restrictive Covenants and Deed Restrictions by Stellar Investments, Inc., ("Declarant") dated December 28, 1989, recorded April 9, 1990, recorded in Deed Book 34-U, Page 271, aforesaid Records; as amended by that certain Amendment to Restrictive Covenants and Deed Restrictions by Stellar Investments, Inc., dated November 28, 1990, recorded December 3, 1990, recorded in Deed Book 36-Z, Page 145, aforesaid Records; as affected by that certain Restrictive Covenant Agreement by and between Stellar Investments, Inc., a Georgia corporation, Brunswick GA Nalley, LLC and PNP Holdings, LLC, dated November 20, 2001, filed for record November 27, 2001 at 8:19 a.m., recorded in Deed Book 861, Page 664, aforesaid Records.
5. Reciprocal Easement Agreement by and between FR Brunswick I, LLC, a Colorado limited liability company and FR Brunswick II, LLC, a Colorado limited liability company, dated as of May 6, 2015, filed for record May 19, 2015 at 11:26 a.m., recorded in Deed Book 3436, Page 413, aforesaid Records
6. Declaration of Rights, Restrictions and Easements with Subordination Attached recorded in Book 886, Page 72, Vance County Registry.
7. Access Easement and Restrictive Covenants by Cardinal Plaza, LLC and Cardinal Land, LLC dated August 20, 2003 and recorded in Book 1015 Page 366, Vance County Registry and matters shown on plat of survey recorded in Plat Book W Page 850, in aforesaid Registry.
8. Declaration of Rights, Restrictions and Easements recorded in Book 1712, Page 405, Nash County Registry.
9. Access Easement and Restrictive Covenants recorded in Book 2357 Page 194, Nash County Registry.
10. Restrictions appearing of record in Book 1107 at Page 685, Franklin County Registry.
11. Reciprocal Easement and Operating Agreement recorded May 4, 1987, in the office of the Judge of Probate of Tallapoosa County, Alabama, on Card Number 41456.

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12. Terms and conditions of the Agreements, as well as easement for ingress and egress across Parcel II as set out in that certain deed, on Card Number 43624, amended by Card Number 46508. (Building Restrictions – parcel 1).
13. Restrictions on that certain deed recorded January 17, 1989, in the office of the Judge of Probate of Tallapoosa County, Alabama, on Card Number 52472.
14. Declaration of Restrictions and grant of easement recorded October 29, 1993, in the office of the Judge of Probate of Tallapoosa County, Alabama, on Card Number 88425.
15. Declaration of Restrictions and grant of easement recorded November 2, 1993, in the office of the Judge of Probate of Tallapoosa County, Alabama, on Card Number 88536.
16. Declaration of Easements, Restrictions and Covenants by Chestnut Land Company Limited Partnership dated March 7, 1994 and recorded in Book 601, Page 975; and assigned to KPT Properties, L.P. by Assignment and Assumption of Declarant's Rights dated May 12, 1999 and recorded May 17, 1999 in Book 756, Page 147, aforesaid records.
17. Easements, terms, conditions and obligations set forth in that certain Declaration of Easements by Windsor/Aughtry Company, Inc., successor to Windsor Properties, Inc. and Aughtry-Logan, formerly doing business as Chestnut Associates dated June 1, 1990 and

recorded in Book 560, Page 1119, which access and parking easement areas are beneficial to the Fee Property and are further shown on the Survey; as affected by Partial Release from Declaration of Easements dated October 16, 1990 and recorded November 28, 1990 in Book 564, Page 951; as further affected by Release dated May 15, 1991 and recorded May 16, 1991 in Book 570, Page 51; and as further affected by Release recorded in Book 581, Page 231; and assigned to KPT Properties, L.P. by Assignment and Assumption of Declarant's Rights dated May 12, 1999 and recorded May 17, 1999 in Book 756, Page 147, aforesaid records.

18. Terms and conditions of the Detention and Drainage Agreement (Easement) between Baker/MBW Associates and Windsor/Aughtry Company, Inc., successor to Windsor Properties, Inc. and Aughtry-Logan, formerly d/b/a Chestnut Associates, a Joint Venture, now Chestnut Land Company dated October 5, 1990 and recorded October 5, 1990 in Book 563, Page 179; and amended by Amended Detention and Drainage Agreement (Easement) dated October 16, 1990 and recorded November 6, 1990 in Book 564, Page 185, aforesaid records.
19. Restrictions, easements, conditions, assessments, etc. as set forth in Declaration of Easements, Covenants and Restrictions recorded in the aforesaid Clerk's Office in Deed Book 1572, at page 181.
20. Stormwater Management/BMP Facilities Agreement with the City of Harrisonburg dated August, 2009, recorded August 26, 2009 in Deed Book 3581, page 61.
21. The following matters set forth in Deed to Laurel of Kittanning from James R. McMahon, et al., dated January 28, 2010 and recorded in Record Book 3912, page 60: Reservation of right of way for ingress, egress and regress. Reservation of water line and gas line easements. Rights of others and limitations regarding Stormwater Easement #1 and Stormwater Easement #2. Conditions regarding access easement to Wible Lane.
22. Reciprocal Easement and Use Restriction Agreement dated September 22, 1998, between Glenmark Holding Limited Liability Company, a West Virginia limited liability company, and Lowe's Home Centers, Inc., a North Carolina corporation, recorded in Deed Book 1169 at page 330, and amended and modified as follows: Amendment To Reciprocal Easement

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and Use Restriction Agreement dated May 14, 1999, recorded in Deed Book 1181 at page 181; Amendment To Reciprocal Easement and Use Restriction Agreement dated March 4, 1999, recorded in Deed Book 1176 at page 21; Variance From Restrictions of Reciprocal Easement and Use Restriction Agreement dated August 28, 2001, recorded in Deed Book 1222 at page 22; Variance From Restrictions of Reciprocal Easement and Use Restriction Agreement dated November 20, 2001, recorded in Deed Book 1224 at page 521; and a Variance From Restrictions and Amendment to Reciprocal Easement and Use Restriction Agreement dated July 17, 2002, recorded in Deed Book 1236 at page 317. We bring your attention to the provisions of Section 3.2 of the original instrument recorded in Deed Book 1169 at page 330, which provide that subject to certain limitations "each parcel shall have the benefit of nonexclusive easements in the Common Area (and the portions of the Plaza Parcels and Lowe's Parcel from time to time designated by the Owner thereof for use for vehicular and traffic for the intended purposes thereof, including driveways for vehicular (including service vehicles) and pedestrian ingress and egress, access and the right of access between the public streets adjacent to the Shopping Center and any Parcel in the Shopping Center..." subject to certain restrictions. Glenmark Centre Drive is described on Exhibit D and defined as "Service Road" and "Common Area" in the instrument. Access to the 8.95 acre and 1.67 acre parcels would be subject to the locations designated from time to time as set forth above, as shown on survey dated December 5, 2014, prepared by Republic National under Job Number 14114.

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## SCHEDULE 4.26

### Required Repairs

#### 1. Alex City Marketplace – 935 Market Place, Alexander City, AL

a. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) repair areas of cracking, heavy wear, pot holes and deterioration near the entrances and high traffic areas, between Winn Dixie and Dollar Tree.

b. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) repair active roof leak at Beauty Supply tenant space.

c. Within thirty (30) days (provided so long as Borrower is making commercially reasonable efforts during such thirty (30) day period, and Borrower diligently pursues until completion, the foregoing thirty (30) day period shall be automatically extended an additional thirty (30) days) complete re-inspection of the expired fire suppression system at Winn Dixie.

d. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) install signage meeting ADA requirements for the two parking spaces missing such signage.

#### 2. Sunshine Plaza - 1107-1177 Homestead Road North, Lehigh Acres, FL

a. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) repair linear cracking, "map" or "alligator" cracking, and pothole formation at the drive aisle along the rear of the building and at the northern section of the subject property.

b. Within thirty (30) days (provided so long as Borrower is making commercially reasonable efforts during such thirty (30) day period, and Borrower diligently pursues until completion, the foregoing thirty (30) day period shall be automatically extended an additional thirty (30) days) repair trip hazards at the west end of the Property.

c. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days), repair (i) drywall damage at the soffit adjacent to the China Star restaurant, (ii) impact damage at the CMU wall along the exterior of the building at Ace Hardware and at the drive-through at the Ice Cream Shop tenant space and (iii) damaged wood trim at the Direct Auto & Life Insurance space.

d. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower

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diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) repair staining and water damage at the rear wall adjacent to the rear entrances door at the Naples Vapor tenant space.

e. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) replace damaged ceiling tiles.

3. Parkway Plaza - 303-373 Venture Drive and 2371 Perry Land Road, Brunswick, GA

a. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) repair and stabilize cracking at the CMU wall at the northwestern corner of the building and route and repoint all open joints.

b. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) repair (i) active roof leak at the LA Nails II tenant space and (ii) stained ceiling tiles at the rear of the tenant space.

c. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) add two van accessible parking spaces.

4. Riverbridge Shopping Center - 1124 North Park Street, Carrollton, GA

a. Within hundred one fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) repair isolated areas of map and alligator cracking in the drive aisles at the front of the building.

b. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) repair active roof leaks.

5. Harrodsburg Marketplace - 844 South College Street, Harrodsburg, KY

a. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) repair cracking and pothole formation at the asphalt drive aisle on the northeastern side of the subject property near the gas station and at the drive aisle in front of the main building.

b. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be

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automatically extended an additional thirty (30) days) repair linear cracking and asphalt filled potholes on western side of Arby's building.

c. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) repair area of damaged EIFS.

d. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) repair (i) active roof leak in the Kroger space on the north side of the building near the pharmacy and (ii) related damaged finishes and remediate microbial growth.

e. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) repair damaged soffit materials at the entrances to the tenant space of main building.

**6. Cardinal Plaza - 1405-1419 East Andrews Avenue, Henderson, NC**

a. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) repair damaged exterior columns at the storefront of Unit 1413.

b. Within thirty (30) days (provided so long as Borrower is making commercially reasonable efforts during such thirty (30) day period, and Borrower diligently pursues until completion, the foregoing thirty (30) day period shall be automatically extended an additional thirty (30) days) complete inspection and receive updated inspection certificate on the fire suppression riser.

c. Within thirty (30) days (provided so long as Borrower is making commercially reasonable efforts during such thirty (30) day period, and Borrower diligently pursues until completion, the foregoing thirty (30) day period shall be automatically extended an additional thirty (30) days) complete inspection of the fire extinguishers of seven tenant spaces located at Units 1405 through 1417.

**7. Franklinton Square - 3364-3392 US Highway 1, Franklinton, NC**

a. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) repair asphalt and alligated cracking.

b. Within thirty (30) days (provided so long as Borrower is making commercially reasonable efforts during such thirty (30) day period, and Borrower diligently pursues until completion, the foregoing thirty (30) day period shall be automatically extended an additional thirty (30) days) complete inspection of the fire suppression system.

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**8. Franklin Village Shopping Center - 1 Franklin Village Mall, Kittanning, PA**

a. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) repair areas of significant wear, including the Northwest Bank and Butler Healthcare entrance drive and Advance Auto Parts. Repair potholes and deterioration at various isolated areas.

**9. Grove Park Shopping Center - 1324-1360 Grove Park Drive and 1330 & 1370 Chestnut St., Orangeburg, SC**

a. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) seal linear cracking in the drive aisles and repair the damaged pavement areas.

b. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be

automatically extended an additional thirty (30) days) replace damaged compressed wood siding by Beauty Line, Credit Central and Grove Park Pharmacy.

c. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) retain a roofing contract and complete roof leak repairs and general maintenance due to roof leaks.

10. Port Crossing - 1021 Port Republic Road, Harrisonburg, VA

a. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) repair "map" and "alligator" cracking at the rear of the building.

b. Within thirty (30) days (provided so long as Borrower is making commercially reasonable efforts during such thirty (30) day period, and Borrower diligently pursues until completion, the foregoing thirty (30) day period shall be automatically extended an additional thirty (30) days) repair and paint wood on the pedestrian bridge.

c. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) repair retaining walls.

d. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) repair roof leak in the deli kitchen/prep area.

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e. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) provide two van-accessible designated stalls.

11. Pierpont Center - 510-889 Venture Drive, Morgantown, WV

a. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) repair areas of alligator cracking, potholes and damaged asphalt curbing at rear of Books-A-Million.

b. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) repair areas of missing mortar/sealant between concrete pavers and cracked pavers in front of the Hallmark tenant space (located in the Books-A-Million).

c. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) repair damaged railings behind Price Cutter building.

d. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) trim and/or remove of tree growing directly next to south elevation of the Michaels building.

e. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) repair pylon sign at the entrance to the property on the grassy area near the structure.

f. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) repair damaged curbing at the rear of the Books-A-Million building.

g. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) (i) clean stained façade at the rear elevation of each building, (ii) repair damaged wall at the rear elevation of the Books-A-Million between the riser and electric rooms and (iii) repair areas of missing/deteriorated mortar along the front and side elevation of the Price Cutter building.

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h. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) replace door at the riser room of the Price Cutter building.

i. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) repair (i) roof leaks for the Hallmark, Michaels, Dollar Tree, Books-A-Million and Price Cutter and (ii) the roof hatch in the riser room at the Books-A-Million building.

j. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) clean and repaint exterior metal stairs at the rear of the Price Cutter building.

k. Within thirty (30) days (provided so long as Borrower is making commercially reasonable efforts during such thirty (30) day period, and Borrower diligently pursues until completion, the foregoing thirty (30) day period shall be automatically extended an additional thirty (30) days) complete inspection of the fire alarm system in the Price Cutter building and display current tag.

l. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) install "van" accessible pole signage at the head of the van accessible spaces.

m. Within one hundred fifty (150) days (provided so long as Borrower is making commercially reasonable efforts during such one hundred fifty (150) day period, and Borrower diligently pursues until completion, the foregoing one hundred fifty (150) day period shall be automatically extended an additional thirty (30) days) install pipe insulation over the piping below the sink areas at (i) Books-A-Million and (ii) Michael's.

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**EXHIBIT A**

**RENT ROLL**

(See Attached.)

JPMAM – Project Lightyear – Exhibit A to Loan Agreement

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**EXHIBIT B**

**ORGANIZATIONAL CHART**

(See Attached.)

JPMAM – Project Lightyear – Exhibit B to Loan Agreement

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**EXHIBIT C**

**O&M PROGRAM**

(See Attached.)

JPMAM – Project Lightyear – Exhibit C to Loan Agreement

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**EXHIBIT D**

**INDIVIDUAL PROPERTIES AND ALLOCATED LOAN AMOUNTS**

Individual Property	Individual Borrower	Street Address; Tax Parcel Number	Allocated Loan Amount
Alex City Marketplace	WHLR-Alex City Marketplace LLC	935 Market Place, Alexander City, AL	\$ 7,400,000
Sunshine Plaza	WHLR-Sunshine Shopping Plaza, LLC	1107-1177 Homestead Road North, Lehigh Acres, FL	\$ 7,300,000
Parkway Plaza	WHLR-Parkway Plaza, LLC	303-373 Venture Drive and 2371 Perry Land Road, Brunswick, GA	\$ 3,100,000
Riverbridge Shopping Center	WHLR-Riverbridge Shopping Center, LLC	1124 North Park Street, Carrollton, GA	\$ 4,300,000
Harrodsburg Marketplace	WHLR-Harrodsburg Marketplace LLC	844 South College Street, Harrodsburg, KY	\$ 2,700,000
Cardinal Plaza	WHLR-Cardinal Plaza, LLC	1405-1419 East Andrews Avenue, Henderson, NC	\$ 3,000,000
Franklin Square	WHLR-Franklin Square, LLC	3364-3392 US Highway 1, Franklinton, NC	\$ 3,400,000
Nashville Commons	WHLR-Nashville Commons, LLC	131-163 Nashville Commons Drive, Nashville, NC	\$ 4,100,000
Franklin Village Shopping Center	WHLR-Franklin Village, LLC	1 Franklin Village Mall, Kittanning, PA	\$ 8,300,000
Grove Park Shopping Center	WHLR-Grove Park, LLC	1324 -1360 Grove Park Drive and 1330 & 1370 Chestnut St., Orangeburg, SC	\$ 3,900,000

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Port Crossing	WHLR-PCSC Associates, LLC	1021 Port Republic Road, Harrisonburg, VA	\$ 6,200,000
Pierpont Center	WHLR-Pierpont Center, LLC	510-889 Venture Drive, Morgantown, WV	\$ 7,400,000

Ex. C-3

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## EXHIBITE

### ANCHOR GROCERY STORES

Individual Property	City, State	Anchor Tenant
Alex City Marketplace	Alexander City, AL	Winn Dixie
Cardinal Plaza	Henderson, NC	Food Lion
Franklin Village Center	Kittanning, PA	Shop 'n Save
Franklinton Square	Franklinton, NC	Food Lion
Grove Park Shopping Center	Orangeburg, SC	Food Lion
Harrodsburg Marketplace	Harrodsburg, KY	Kroger
Nashville Commons	Nashville, NC	Food Lion
Parkway Plaza	Brunswick, GA	Winn Dixie
Pierpont Centre	Morgantown, WV	Price Cutter
Port Crossing	Harrisonburg, VA	Food Lion
Riverbridge Shopping Center	Carrollton, GA	Ingles Markets
Sunshine Plaza	Lehigh Acres, FL	Fresco y Mas

Ex. C-4

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## EXHIBIT F

### FORMS OF WINN DIXIE ESTOPPELS

(See Attached.)

Ex. C-5

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Exhibit 31.1

**Wheeler Real Estate Investment Trust, Inc.  
Quarterly Certification  
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, M. Andrew Franklin, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Wheeler Real Estate Investment Trust, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

- a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
- b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
- c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
- d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: **August 8, 2023** **November 7, 2023**

/s/ M. Andrew Franklin

M. Andrew Franklin  
Chief Executive Officer and President

**Exhibit 31.2**

**Wheeler Real Estate Investment Trust, Inc.**  
**Quarterly Certification**  
**Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Crystal Plum, certify that:

- 1. I have reviewed this quarterly report on Form 10-Q of Wheeler Real Estate Investment Trust, Inc.;
- 2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

- a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: **August 8, 2023** **November 7, 2023**

**/s/ Crystal Plum**

Crystal Plum  
Chief Financial Officer

**Exhibit 32**

**Wheeler Real Estate Investment Trust, Inc.**  
**Certification Pursuant to**  
**18 U.S.C. Section 1350,**  
**as Adopted Pursuant to**  
**Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report of Wheeler Real Estate Investment Trust, Inc. (the "Company") on Form 10-Q for the three and **six** **nine** months ended **June 30, 2023** **September 30, 2023**, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, M. Andrew Franklin, Chief Executive Officer of the Company, and I, Crystal Plum, Chief Financial Officer of the Company, each certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. Information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

**August 8, November 7, 2023**

**/s/ M. Andrew Franklin**

M. Andrew Franklin  
Chief Executive Officer and President

**/s/ Crystal Plum**

Crystal Plum  
Chief Financial Officer

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