As filed with the Securities and Exchange Commission on July 8, 2021

Registration No. 333-256699

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

Amendment No. 1
to

FORM S-11

FOR REGISTRATION UNDER THE SECURITIES ACT OF 1933
OF SECURITIES OF CERTAIN REAL ESTATE COMPANIES

WHEELER REAL ESTATE INVESTMENT TRUST, INC.

(Exact name of registrant as specified in governing instruments)

2529 Virginia Beach Blvd.
Virginia Beach, Virginia 23452
(757) 627-9088
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Kaufman & Canoles, P.C.
150 W. Main Street, Suite 2100
Norfolk, VA 23510
(757) 624-3000
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:
Daniel P. Raglan, Esq.
Cadwalader, Wickersham & Taft LLP
200 Liberty Street
New York, NY 10281
(212) 504-6000

Approximate date of commencement of proposed sale to the public: As soon as practicable after this registration statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. ☒

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If delivery of the prospectus is expected to be made pursuant to Rule 434, check the following box. ☐

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

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

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. ☐

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price per Unit	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Non-transferable Rights(1)	N/A	N/A	N/A	N/A(2)
7% Senior Subordinated Convertible Notes due 2031	$ 30,000,000.00	100%(3)	$ 30,000,000.00(3)(4)	$ 3,273.00
Common Stock, par value $0.01 per share, issuable upon conversion of the 7% Convertible Notes due 2031	4,800,000	$ 4.57(5)	$ 21,936,000(5)	2,393.22
Series B Preferred Stock, issuable in lieu of cash interest payment on the 7% Senior Subordinated Convertible Notes due 2031	2,571,166	$ 14.85(6)	$ 38,181,815.10(6)	$ 4,165.64
Series D Cumulative Convertible Preferred Stock, issuable in lieu of cash interest payment on the 7% Senior Subordinated Convertible Notes due 2031	2,124,753	$ 17.97(7)	$ 38,181,811.41(7)	$ 4,165.64

Total	$ 128,299,626.51	$ 13,997.50(8)

(1) We are granting to our stockholders Rights to purchase 7% senior subordinated convertible Notes due 2031 (the "Notes"). Based on the $30,000,000 initial aggregate principal amount of Notes registered hereby, and the 9,706,994 shares of our common stock outstanding as of June 1, 2021, our common stockholders would receive one Right for each eight (8) shares of common stock if the offering of the Rights were to be made as of the date hereof.
(2) The non-transferable Rights are being issued without consideration. Pursuant to Rule 457(g), no separate registration fee is payable with respect to the Rights being offered hereby because the Rights are being registered in the same registration statement as the Notes to be offered pursuant to the Rights.
(3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act.
(4) Equals the aggregate principal amount of Notes being registered.
(5) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(c) of the Securities Act, based on the average of the high and low prices of the registrant's Common Stock on the Nasdaq Capital Market on July 6, 2021
(6) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(c) of the Securities Act, based on the average of the high and low prices of the registrant's Series B Preferred Stock on the Nasdaq Capital Market on July 6, 2021.
(7) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(c) of the Securities Act, based on the average of the high and low prices of the registrant's Series D Cumulative Convertible Preferred Stock on the Nasdaq Capital Market on July 6, 2021.
(8) Of this amount, $7,259.40 has been previously paid.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION
PRELIMINARY PROSPECTUS DATED JULY 8, 2021

PROSPECTUS

WHLR
REAL ESTATE INVESTMENT TRUST

Wheeler Real Estate Investment Trust, Inc.

Rights to Purchase
$30 Million Aggregate Principal Amount of
7.00% Senior Subordinated Convertible Notes Due 2031

We are distributing, at no charge, to holders of our common stock, $0.01 par value per share (the "Common Stock"), on a pro-rata basis, non-transferable subscription rights (the "Rights") to purchase up to $30 million in aggregate principal amount of our 7.00% senior subordinated convertible notes due 2031 (the "Notes"). We refer to the offering of the Notes through the Rights as the "Rights Offering." Only holders of our Common Stock at 5:00 p.m., New York City time, on June 1, 2021, which we refer to as the "Record Date," will be entitled to participate in the Rights Offering and receive Rights. Holders of our Common Stock as of the Record Date will receive one Right for each eight (8) shares of Common Stock owned. Each Right will entitle a holder to purchase $25.00 principal amount of Notes, provided that we will not issue any fractional Notes pursuant to the Rights Offering and exercises of Rights will be rounded down to the nearest whole increment of $25.

The Notes will bear interest at a rate of 7.00% per annum. Interest on the Notes will payable semi-annually on each of June 30 and December 31, commencing on December 31, 2021.

Interest on the Notes will be payable, at our election, in cash, in shares of our 9% Series B Preferred Stock (the "Series B Preferred Stock") based on the Fair Market Value of a share of Series B Preferred Stock (using a trailing average 15-day Volume Weighted Average Closing Price ("15-day VWAP")), less a 45% discount per share, in an amount equal to the applicable amount of interest for the interest period (rounded up to the nearest whole dollar), or in shares of our 8.75% Series D Cumulative Convertible Preferred Stock (the "Series D Preferred Stock") based on the Fair Market Value of a share of Series D Preferred Stock (using a trailing average 15-day VWAP), less a 45% discount per share, in an amount equal to the applicable amount of interest for the interest period (rounded up to the nearest whole dollar).

After January 1, 2024, we may redeem the Notes at any time (in whole or in part) at par plus accrued and unpaid interest for cash or shares of our Common Stock (using a trailing average 15-day VWAP) (less a 45% discount per share).

The Notes are convertible, in whole or in part, at any time, at the option of the holders thereof, into shares of our Common Stock at a conversion price of $6.25 per share of our Common Stock (the "Conversion Price") (4 common shares for each $25.00 of principal amount of the Notes being converted); provided, however, that if at any time after September 21, 2023 holders of the Series D Preferred Stock have required us to redeem (payable in cash or stock) in the aggregate at least 100,000 shares of Series D Preferred Stock, then the Conversion Price shall be adjusted to the lower of (i) a 45% discount to the Conversion Price or (ii) a 45% discount to the lowest price at which any holder of Series D Preferred Stock converted into our Common Stock.

Upon a change of control, the Notes shall mandatorily convert into shares of our Common Stock at the Conversion Price. The Notes will be subordinated to all of our existing and future senior obligations.

Although we have no current specific plan for the proceeds of this Rights Offering, we intend to use the net proceeds of this Rights Offering for one or more of the following: repurchases of our Series D Preferred Stock; repurchases of our Series B Preferred Stock; repayment of our outstanding indebtedness; purchases of real estate assets; or working capital.

Pursuant to the terms of this Rights Offering, the Rights may be exercised for a maximum of $30 million of subscription proceeds (the "Maximum Offering Amount"). If the Rights Offering is not fully subscribed and you fully exercise your Rights, then you may also exercise an over-subscription privilege to purchase additional principal amount of Notes that remain unsubscribed as a result of unexercised Rights, such privilege being referred to as the "Over-Subscription Privilege." The Rights will expire if they are not exercised by 5:00 p.m., New York City time, on [●], 2021, unless we extend the Rights Offering period. We may extend the Rights Offering and the period for exercising your Rights, in our sole discretion, up to an additional thirty (30) days.

You should carefully consider whether to exercise your Rights before the expiration of the Rights Offering. All exercises of Rights are irrevocable, even if the Rights Offering is extended. We are not making any recommendation regarding your exercise of the Rights.

The Rights are not transferable and will not be listed for trading on any exchange. We intend to list the Notes for trading on the Nasdaq Capital Market (the "Nasdaq") and trade under the symbol "WHLRL." Currently, there is no public market for the Notes and there can be no assurance that one will develop. The Notes are expected to trade "flat," meaning that purchasers will not pay and sellers will not receive any accrued and unpaid interest on the Notes that is not included in the trading price.

Our Common Stock is listed on the Nasdaq under the symbol "WHLR." On July 7, 2021, the last sale price of our Common Stock, as reported on the Nasdaq, was $3.42 per share.

Investing in our securities involves a high degree of risk. You should review carefully the risks and uncertainties described under the heading "*Risk Factors*" beginning on page 5 of this prospectus, and under similar headings in any amendments or supplements to this prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus is , 2021.

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ABOUT THIS PROSPECTUS

This prospectus forms part of a registration statement that we filed with the Securities and Exchange Commission ("SEC") and that includes exhibits that provide more detail of the matters discussed in this prospectus. You should read this prospectus and the related exhibits filed with the SEC, together with the additional information described under the headings "*Where You Can Find More Information*" on page 95 and "*Incorporation by Reference*" on page 96 before making your investment decision.

You should rely only on the information provided in this prospectus or in a prospectus supplement or any free writing prospectuses or amendments thereto. We have not authorized anyone else to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. You should assume that the information in this prospectus is accurate only as of the date hereof. Our business, financial condition, results of operations and prospects may have changed since that date.

We are not offering to sell or seeking offers to purchase these securities in any jurisdiction where the offer or sale is not permitted. We have not done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. Persons outside the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the securities as to distribution of the prospectus outside of the United States.

QUESTIONS AND ANSWERS ABOUT THE RIGHTS OFFERING

Q: What is the Rights Offering?

A: The Rights Offering is a distribution at no charge to holders of our Common Stock of non-transferable Rights to purchase up to $30 million in aggregate principal amount of our 7.00% senior subordinated convertible notes due 2031. Only holders of our Common Stock at 5:00 p.m., New York City time, on the Record Date will be entitled to participate in the Rights Offering and receive Rights. Such holders will receive one Right for each eight (8) shares of Common Stock owned. Each Right will entitle a holder to purchase $25.00 principal amount of Notes, provided that we will not issue any fractional Notes pursuant to the Rights Offering and exercises of Rights will be rounded down to the nearest whole increment of $25. We expect to receive gross proceeds of $30 million in the Rights Offering.

Q: What are the Rights?

A: The Rights give each holder the opportunity to purchase $25 principal amount of the Notes. We have granted to you, as a stockholder of record on the Record Date, one Right for every eight 8 shares of our Common Stock you owned at that time. Fractional Notes or cash in lieu of fractional Notes will not be issued in the Rights Offering. Instead, fractional Notes resulting from the exercise of the Right will be eliminated by rounding down to the nearest whole increment of $25.

You may exercise all or a portion of your Right or you may choose not to exercise any Rights at all. However, if you exercise less than your full Right, then you will not be entitled to purchase shares of Common Stock under your Over-Subscription Privilege.

Q: What is the Over-Subscription Privilege?

A: The Over-Subscription Privilege of each Right entitles you, if you fully exercise your Right, to subscribe for additional principal amount of Notes issuable pursuant to Rights that were not exercised by other holders. The Notes sold through the Over-Subscription Privilege will be sold at the same subscription price and, if necessary, subject to proration based on relative Common Stock ownership.

Q: Why are you doing the Rights Offering?

A: Beginning on September 21, 2023, holders of the Series D Shares will have the right to cause us to redeem their Series D Shares at a price of $25.00 per share plus the amount of all accrued but unpaid dividends. This redemption price is payable by us, at our election, in cash or shares of our Common Stock, or a combination of cash and shares of our Common Stock. Since January 2019, our Series D Shares (of which there are currently approximately 3.1 million shares outstanding) have been accruing unpaid dividends at a rate of 10.75% per annum of the $25.00 liquidation preference per Series D Share, or at $2.6875 per share per annum. As of April 16, 2021, the outstanding Series D Shares had an aggregate liquidation preference of approximately $78.6 million, with aggregate accrued and unpaid dividends in the amount of approximately $20.7 million. Furthermore, based upon the closing price of our Common Stock on July 7, 2021 of $3.42 per share, we believe it unlikely that holders of the Series D Shares would convert their shares into Common Stock at the current conversion price of $16.96 per share of Common Stock.

As such, there is a significant risk that we will not have sufficient cash to pay the aggregate redemption price, and would not be able to meet our redemption obligation without liquidating assets and/or substantial dilution of our Common Stock, which in turn would significantly reduce the value of any Common Stock paid to settle the redemption amount.

We launched a modified Dutch auction tender offer in December 2020 for up to $6 million of our Series D Preferred Stock, in which 1,467,162 shares were tendered and 387,097 shares were accepted for purchase for an aggregate cost of $6,000,000. We subsequently launched a modified Dutch auction tender offer in April 2021 for up to $12 million of our Series D Preferred Stock, in which 103,513 shares were tendered and accepted for purchase for an aggregate cost of $1,863,234. In order to raise sufficient capital to fund future repurchases of our Series D Preferred Stock, our Board has approved the Rights Offering.

While we have no current specific plan for the proceeds of this Rights Offering, in addition to future repurchases of our Series D Preferred Stock, we intend to use the net proceeds of this Rights Offering for one or more of the following: repurchases of our Series B Preferred Stock; repayment of our outstanding indebtedness; purchases of real estate assets; or working capital.

Q: What happens if I choose not to exercise my Rights?

A: You will retain your current number of shares of our Common Stock even if you do not exercise your Rights. However, if you do not exercise your Rights, then the percentage of our Common Stock that you own may decrease, in which case and your voting and other rights will be diluted compared as to holders who exercise their Rights.

Q: When will the Rights Offering expire?

A: The Rights will expire, if not exercised, at 5:00 p.m., New York City time, on [●], 2021, unless we decide to extend the Rights Offering until some later time or the Rights Offering is terminated. The subscription agent must actually receive all required documents and payments before that time and date in order for you to properly exercise your Rights. Although we will make reasonable attempts to provide this prospectus to our stockholders, the Rights Offering and all Rights will expire on the expiration date, whether or not we have been able to locate each person entitled to Rights.

Q: How do I exercise my Rights?

A: You may exercise your Rights by properly completing and signing your Rights certificate (the "Rights Certificate") if you are a record holder of our Common Stock, or by properly completing the subscription documents received from your bank or broker-dealer if your shares of Common Stock are held in street name. Your Rights Certificate, or properly completed subscription documents, as the case may be, together with full payment of the subscription price, must be received by Computershare Trust Company, N.A. ("Computershare"), the subscription agent for this Rights Offering, by 5:00 p.m., New York City time, on [●], 2021, unless delivery of the Rights Certificate is effected pursuant to the guaranteed delivery procedures described below. Computershare is the transfer agent and registrar for our Common Stock. All funds received by the subscription agent from the exercise of Rights that are not fulfilled will be returned to investors, without interest or deduction, as soon as practicable after the Rights Offering has expired and all prorating calculations and reductions contemplated by the terms of the Rights Offering have been effected.

If you use the mail, we recommend that you use insured, registered mail, return receipt requested. We will not be obligated to honor your exercise of Rights if the subscription agent receives the documents relating to your exercise after the Rights Offering expires, regardless of when you transmitted the documents.

Q: How do I exercise my Over-Subscription Privilege?

A: If, and only if, you exercise the Right, then you will also have an Over-Subscription Privilege which will allow you to subscribe for an additional principal amount of Notes issuable pursuant to Rights that were not exercised by other stockholders. The Notes sold through the Over-Subscription Privilege will be sold at the same subscription price and, if necessary, subject to proration based on relative Common Stock ownership.

Q: What form of payment must I use to pay the subscription price?

A: You must timely pay the full subscription price for the full amount of Notes you wish to acquire in the Rights Offering by delivering to the subscription agent an uncertified personal check or wire transfer of immediately available funds that clears before the expiration of the Rights Offering period. If you wish to use any other form of payment, then you must obtain the prior approval of the subscription agent and make arrangements in advance with the subscription agent for the delivery of such payment.

Q: May I transfer or sell my Rights?

A: No. The Rights are non-transferable.

Q: What should I do if I want to participate in the Rights Offering but my shares are held in the name of my broker, custodian bank or other nominee?

A: If you hold shares of our Common Stock through a broker, custodian bank or other nominee, we will ask your broker, custodian bank or other nominee to notify you of the Rights Offering. If you wish to exercise your Rights, you will need to have your broker, custodian bank or other nominee act for you. To indicate your decision, you should complete and return to your broker, custodian bank or other nominee the form entitled "Beneficial Owner Election Form." You should receive this form from your broker, custodian bank or other nominee with the other Rights Offering materials. You should contact your broker, custodian bank or other nominee if you do not receive this form, but you believe you are entitled to participate in the Rights Offering.

Q: Will I be charged a sales commission or a fee if I exercise my Rights?

A: We will not charge a brokerage commission or a fee to Rights holders for exercising their Rights. However, if you exercise your Rights through a broker, custodian bank or nominee, you will be responsible for any fees charged by your broker, custodian bank or nominee.

Q: Are there any conditions to my right to exercise my Rights?

A: Yes. We may cancel the Rights Offering, as determined by us in our discretion. There is also no minimum subscription required to complete the Rights Offering.

Q: Can our board of directors extend, cancel or amend the Rights Offering?

A: Yes. We have the option to extend the Rights Offering and the period for exercising your Rights for a period not to exceed 30 days. If we elect to extend the expiration of the Rights Offering, we will issue a press release announcing such extension no later than 9:00 a.m. New York City time, on the next business day after the most recently announced expiration of the Rights Offering. We will extend the duration of the Rights Offering as required by applicable law or regulation and may choose to extend it if we decide to give investors more time to exercise their Rights in this Rights Offering. If we elect to extend the Rights Offering for a period of more than 30 days, then holders who have subscribed for rights may cancel their subscriptions and receive a refund of all money advanced.

Our board of directors may cancel the Rights Offering, in whole or in part, at any time prior to the expiration of the Rights Offering for any reason, including if, at any time before completion of the Rights Offering, there is any judgment, order, decree, injunction, statute, law or regulation entered, enacted, amended or held to be applicable to the Rights Offering that in the sole judgment of our board of directors would or might make the Rights Offering or its completion, whether in whole or in part, illegal or otherwise restrict or prohibit completion of the Rights Offering. In the event that the Rights Offering is cancelled, we will issue a press release notifying stockholders of the cancellation and all subscription payments received by the subscription agent will be returned, without interest or penalty, as soon as practicable. However, the purchase price of any rights purchased in the open market prior to the cancellation of the Rights Offering will not be returned to such purchaser.

Q: What is the recommendation of the board of directors regarding the Rights Offering Transaction?

A: Although the Rights Offering has been approved by our board of directors, neither we nor our board of directors are making any recommendation as to whether or not you should exercise your Rights. You are urged to make your decision based on your own assessment of your best interests and the Rights Offering and after considering all of the information herein, including the "*Risk Factors*" section of this prospectus beginning on page 5. You should not view our board's approval of the Rights Offering as a recommendation or other indication that the exercise of your Rights is in your best interests. Further, certain members of our board who are eligible to participate in the Rights Offering have expressed their intent to participate.

Q: Is it risky to exercise my Rights?

A: The exercise of your Rights involves risks. Exercising your Rights means buying the Notes and should be considered as carefully as you would consider any other investment. You should carefully consider the information under the heading "*Risk Factors*" beginning on page 5 and all other information included herein before deciding to exercise your Rights.

Q: Am I required to subscribe in the Rights Offering?

A: No. If you do not exercise any Rights, the number of shares of our Common Stock you own will not change. However, if you choose not to exercise your Rights, then your ownership interest in us may be diluted to a greater extent compared to the ownership interests of holders who exercise their Rights. In addition, if you do not exercise your Right in full, you will not be entitled to participate in the Over-Subscription Privilege.

Q: After I exercise my Rights, can I change my mind and cancel my purchase?

A: No. All exercises are irrevocable.

Q: What are the U.S. federal income tax considerations of receiving or exercising my Rights?

A: You should consult your tax advisor as to the particular consequences to you of the Rights Offering. A detailed discussion of the U.S. federal income tax consequences of receiving and exercising the Rights is contained in the section entitled "*Material U.S. Federal Income Tax Considerations*" beginning on page 67.

Q: If the Rights Offering is not completed, will my subscription payment be refunded to me?

A: Yes. The subscription agent will hold all funds it receives in a segregated bank account until completion of the Rights Offering. If the Rights Offering is not completed, then all subscription payments that the subscription agent receives will be returned, without interest or deduction, as soon as practicable after the Rights Offering has expired and all prorating calculations and reductions contemplated by the terms of the Rights Offering have been effected. If you own shares of Common Stock in "street name," then it may take longer for you to receive payment because the subscription agent will return payments to the record holder of your shares of Common Stock.

Q: How much capital will the Company receive from the Rights Offering Transaction?

A: If all of the Rights (including all Over-Subscription Privileges) are exercised in full by our stockholders, then we estimate that the net proceeds to us from the Rights Offering Transaction, after deducting estimated offering expenses, will be approximately $29 million.

Q: Are we requiring a minimum overall subscription to complete the Rights Offering?

A: No. There is no minimum subscription required to complete the Rights Offering.

Q: If I exercise my Rights, when will I receive the Notes purchased in the Rights Offering?

A: We will issue the Notes in book-entry form to the record holders who purchase the Notes in the Rights Offering as soon as practicable after the expiration date of the Rights Offering and after all pro rata allocations and adjustments have been completed. We will not be able to calculate the number the Notes to be issued to each exercising holder until 5:00 P.M., New York City time, on the third business day after the expiration date of the Rights Offering, which is the latest time by which Rights Certificates may be delivered to the subscription agent under the guaranteed delivery procedures described under "*The Rights Offering—Guaranteed Delivery Procedures*" on page 40.

Q: Will the rights be listed on a stock exchange or national market?

A: No. The Rights will not be listed for trading on any stock exchange or national market and are non-transferable.

Q: How do I exercise my Rights if I live outside the United States?

A: We will not mail this prospectus or the Rights Certificates to stockholders whose addresses are outside the United States or who have an army post office or foreign post office address. The subscription agent will hold the Rights Certificates for their accounts. To exercise Rights, our foreign stockholders must notify the subscription agent and timely follow the procedures described in "*The Rights Offering—Foreign Stockholders*" on page 41.

Q: Who is the subscription agent for the Rights Offering?

A: The subscription agent is Computershare. If your shares of Common Stock are held in the name of a broker, dealer, or other nominee, then you should send your applicable subscription documents to your broker, dealer, or other nominee. If you are a record holder, then you should send your applicable subscription documents, by overnight delivery, first class mail or courier service, to:

By mail:
Computershare
c/o Corporate Actions Voluntary Offer; COY: WHLR
P.O. Box 43011
Providence, RI 02940-3011

By overnight courier:
Computershare
c/o Corporate Actions Voluntary Offer; COY: WHLR
150 Royall Street, Suite V
Canton, MA 02021

We will pay the fees and expenses of the subscription agent and have agreed to indemnify the subscription agent against certain liabilities that it may incur in connection with the Rights Offering.

You are solely responsible for timely completing delivery to the subscription agent of your subscription documents, Rights Certificate, and payment. We urge you to allow sufficient time for delivery of your subscription materials to the subscription agent.

Q: What should I do if I have other questions?

A: If you have questions or need assistance, please contact Equiniti (US) Services LLC, the information agent for the Rights Offering, at : (516) 220-8356 (brokers); (833) 503-4130 (stockholders).

PROSPECTUS SUMMARY

This summary contains basic information about us and does not contain all of the information that you should consider before investing. You should read this entire prospectus carefully, including the section entitled "Risk Factors" beginning on page 5 and our financial statements and the notes thereto incorporated by reference in this prospectus, before making an investment decision. Unless the context otherwise requires or indicates, references to the "company", "we", "our" or "us" refers to Wheeler Real Estate Investment Trust, Inc., a Maryland corporation, together with its consolidated subsidiaries, including Wheeler REIT, L.P., a Virginia limited partnership (the "Operating Partnership"), of which we are the sole general partner.

Overview

Wheeler Real Estate Investment Trust, Inc., a Maryland corporation (the "Company"), is a Maryland corporation focused on owning, leasing and operating income producing strip centers, neighborhood centers, grocery-anchored centers, community centers and free-standing retail properties. We have targeted competitively protected properties located within developed areas, commonly referred to as in-fill, that possess minimal competition risk and are surrounded by communities that have strong demographics and dynamic, diversified economies that will continue to generate jobs and future demand for commercial real estate. Our primary target markets include the Southeast and Mid-Atlantic.

Our portfolio is comprised of fifty-nine retail shopping centers and five undeveloped land parcels. Ten of these properties are located in Virginia, three are located in Florida, seven are located in North Carolina, twenty-three are located in South Carolina, twelve are located in Georgia, two are located in Kentucky, two are located in

Tennessee, one is located in New Jersey, one is located in Alabama, one is located in West Virginia, one is located in Oklahoma and one is located in Pennsylvania. The Company's portfolio had total net rentable space of approximately 5,511,881 square feet and a leased level of approximately 91.1% at March 31, 2021.

Financings, Warrants and Registration Rights Agreements

On March 12, 2021, the Company entered into a financing agreement (the "Magnetar/AY2 Financing Agreement") by and among the Company, as borrower, certain subsidiaries of the Company from time to time party thereto, as guarantors (together with the Company, the "Loan Parties"), the lenders from time to time party thereto, and Wilmington Savings Fund Society, FSB, as administrative agent and collateral agent. Odeon Capital Group LLC served as financial advisor to the Company in this transaction.

The Magnetar/AY2 Financing Agreement provides a term loan in the aggregate principal amount of $35.0 million (the "Loan"). The proceeds of the Loan: (i) were used to pay off the Company's indebtedness under that certain financing agreement dated December 22, 2020, by and among the Company, certain subsidiaries of the Company from time to time party thereto, as guarantors, the lenders from time to time party thereto, and Powerscourt Investments XXII, LP, as administrative agent and collateral agent (the "Powerscourt Financing Agreement"), (ii) shall be, or have previously been, used to fund the purchase or redemption of certain shares of the Company's 8.75% Series D Cumulative Convertible Preferred Stock (the "Series D Preferred Stock"), and (iii) shall be, or have previously been, used to pay fees and expenses in connection with the transactions contemplated by the Magnetar/AY2 Financing Agreement. Subject to the terms of the Magnetar/AY2 Financing Agreement, the Loan bears interest at a rate per annum equal to 8%.

Pursuant to the Magnetar/AY2 Financing Agreement, the Company issued warrants (the "Magnetar/AY2 Warrants") to purchase, in the aggregate, 1,061,719 shares of common stock of the Company, $0.01 par value per share (the "Common Stock"), in three tranches: warrants to purchase an aggregate of 510,204 shares at an exercise price of $3.430 per share; warrants to purchase an aggregate of 424,242 shares at an exercise price of $4.125 per share; and warrants to purchase an aggregate of 127,273 shares at an exercise price of $6.875 per share. The exercise prices and number of underlying shares of Common Stock are subject to adjustment from time to time as set forth in the Magnetar/AY2 Warrants. Each Magnetar/AY2 Warrant is exercisable at the option of its holder in whole or in part into shares of Common Stock from time to time on or after March 12, 2021 (the "Effective Date") and on or before the date that is the 60-month anniversary of the Effective Date.

Concurrently with the execution of the Powerscourt Registration Rights Agreement (as defined below), the Company issued to Powerscourt Investments XXII, LP a warrant (the "Powerscourt Warrant") to purchase 496,415 shares of Common Stock for $3.12 per share. The Powerscourt Warrant is exercisable at the option of its holder in whole or in part into shares of Common Stock from time to time on or after December 22, 2020 and before the date that is the 36-month anniversary of December 22, 2020.

In connection with the Powerscourt Financing Agreement, the Company entered into a registration rights agreement, dated as of December 22, 2020 (the "Powerscourt Registration Rights Agreement") and in connection with the Magnetar/AY2 Financing Agreement, the Company entered into a registration rights agreement with the holders from time to time of the Magnetar/AY2 Warrants, dated as of March 12, 2021 (the "Magnetar/AY2 Registration Rights Agreement"). Pursuant to the Powerscourt Registration Rights Agreement and the Magnetar/AY2 Registration Rights Agreement, the Company shall use commercially reasonable efforts to register the resale of the registrable securities. The Powerscourt Registration Rights Agreement and the Magnetar/AY2 Registration Rights Agreement contain customary terms and conditions for transactions of this type.

Pursuant to the Magnetar/AY2 Registration Rights Agreement, the lenders thereunder (the "Backstop Providers") received backstop rights to subscribe for any unsubscribed amount of Notes not fully subscribed for through the basic subscription privilege and the Over-Subscription Privilege (the "backstop rights"), which they have exercised by entering into a backstop commitment letter on July 8, 2021. See "*The Rights Offering – Backstop Commitment*" on page 41.

Additionally, during the 60 days following closing of the Rights Offering, the Company shall offer to Magnetar the right to purchase an additional amount of Notes (in an aggregate principal amount of up to 10% of the aggregate principal amount of the Notes offered in the Rights Offering).

The Rights Offering

Rights Offered	We are distributing, at no charge, to holders of our Common Stock, Rights to purchase up to $30 million in aggregate principal amount of Notes. Holders of our Common Stock will receive a fixed number of Rights based on their pro-rata ownership of Common Stock as of the Record Date set forth below.
Subscription Right	We are distributing one (1) Right for every 8 shares of our Common Stock. Each Right will entitle a holder to purchase $25 principal amount of the Notes.
Over-Subscription Privilege	If, and only if, a Common Stockholder exercised the Right, then that shareholder will also have an Over-Subscription Privilege which will allow the stockholder to subscribe for additional principal amount of Notes issuable pursuant to Rights that were not exercised by other stockholders. The Notes sold through the Over-Subscription Privilege will be sold at the same subscription price and, if necessary, subject to proration based on relative Common Stock ownership.
Record Date	5:00 p.m., New York City time, on June 1, 2021.
Expiration of the Rights Offering	5:00 p.m., New York City time, on [●], 2021, unless extended by the Company in its discretion.
Subscription Price	The Subscription Price is 100% of the principal amount of the Notes to be purchased, payable in cash. Payment must be received before the expiration of the Rights Offering.
Use of proceeds	We intend to use the net proceeds of this Rights Offering for one or more of the following: repurchases of our Series D Preferred Stock; repurchases of our Series B Preferred Stock; repayment of our outstanding indebtedness; purchases of real estate assets; or working capital.

Non-Transferability of Rights	The Rights are non-transferable.
Conditions	We may cancel the Rights Offering, as determined by us in our discretion. There is also no minimum subscription required to complete the Rights Offering.
Extension and Termination of Rights	The Company may cancel or terminate the Rights Offering at any time in its discretion. In addition, the Company may extend the period for exercising the Rights up to an additional 30 days in its discretion.
Non-Revocation	All exercises of Rights are irrevocable.
Subscription Agent	Computershare.
Information Agent	Equiniti (US) Services LLC.
Risk Factors	This investment involves a high degree of risk. See "*Risk Factors*" beginning on page 5 for a discussion of factors which you should consider carefully before making an investment decision.
Listing	The Rights will not be listed for trading on any exchange.

The Notes

Issuer	Wheeler Real Estate Investment Trust, Inc.
Notes Offered	Up to $30 million aggregate principal amount of 7% senior subordinated convertible Notes due 2031.
Maturity	The Notes will mature on December 31, 2031 (the "Maturity Date"), at which time the Notes shall be settled in cash or shares of the Company's Common Stock (based on the Fair Market Value of the Common Stock (using a 15-day VWAP)), to be determined at the Company's election.
Interest Rate	The Notes will bear interest at a rate of 7% per annum.
Interest Payment Date	Interest on the Notes will be payable semi-annually on each of June 30 and December 31, commencing on December 31, 2021.
Interest Payments	Interest on the Notes will be payable, at our election, in cash, in shares of the Company's Series B Preferred Stock based on the Fair Market Value of a share of Series B Preferred Stock (using a trailing average 15-day VWAP), less a 45% discount per share, in an amount equal to the applicable amount of interest for the interest period (rounded up to the nearest whole dollar), or in shares of the Company's Series D Preferred Stock based on the Fair Market Value of a share of Series D Preferred Stock (using a trailing average 15-day VWAP), less a 45% discount per share, in an amount equal to the applicable amount of interest for the interest period (rounded up to the nearest whole dollar). See "*Description of Notes – Payment of Interest; Interest Rights Preserved*" beginning on page 51.
Trustee, Conversion Agent, Paying Agent and Note Registrar	Wilmington Savings Fund Society, FSB.
Ranking	The senior subordinated notes will be our senior subordinated unsecured obligations and will rank junior in right of payment with all of our existing and future indebtedness that is not expressly subordinated in right of payment thereto; rank pari passu in right of payment to any of our existing and future senior subordinated indebtedness and other obligations; and be senior in right of payment to any future subordinated indebtedness and effectively junior to our and our guarantors' existing and future secured indebtedness.
Redemption at Company's Option	After January 1, 2024, the Company may redeem the Notes at any time (in whole or in part) at par plus accrued and unpaid interest for, at the Company's election, cash or the Company's Common Stock (using a 15-day VWAP) (less a 45% discount per share).
Holder Conversion	The Notes are convertible, in whole or in part, at any time, at the option of the holders thereof, into shares of the Company's Common Stock at a conversion price of $6.25 per share (the "Conversion Price") (4 common shares for each $25.00 of principal amount of the Notes being converted); provided, however, that if at any time after September 21, 2023 holders of the Series D Preferred Stock have elected to cause the Company to redeem (payable in cash or stock) at least 100,000 shares of Series D Preferred Stock in the aggregate, then the Conversion Price shall be adjusted to the lower of (i) a 45% discount to the Conversion Price and (ii) a 45% discount to the lowest price at which any holder of Series D Preferred Stock had its Series D Stock redeemed into shares of the Company's Common Stock.
Mandatory Conversion	Upon a change of control, the Notes shall mandatorily convert into shares of the Company's Common Stock at the Conversion Price.
Covenants	The Notes will not be subject to any protective covenants.
Risk Factors	This investment involves a high degree of risk. See "*Risk Factors*" beginning on page 5 for a discussion of factors which you should consider carefully before making an investment decision.
Listing	We intend to list the Notes for trading on the Nasdaq Capital Market and trade under the symbol "WHLRL."

RISK FACTORS

This section describes material risks to our businesses that currently are known to us. You should carefully consider all of the information in this prospectus and each of the risks described below, together with the other information incorporated by reference in this prospectus and other reports we file with the SEC. Any of the following risks and those incorporated by reference could materially and adversely affect our business, financial condition and results of operations and the actual outcome of matters as to which forward-looking statements are made in this prospectus. While we believe we have identified and discussed the material risks affecting our business, there may be additional risks and uncertainties that we do not currently know or that we do not currently believe to be material that may adversely affect our business, financial condition and results of operations in the future.

Risk Factor Summary

Investing in our Common Stock involves significant risks. Before you decide whether to exercise your Rights and purchase Notes or convert your Notes into our Common Stock, in addition to the other information set forth or incorporated by reference in this prospectus and any applicable prospectus supplement, you should carefully consider the risk factors in our filings with the SEC, pursuant to the Exchange Act, which are incorporated by reference herein.

- Our portfolio of properties is dependent upon regional and local economic conditions and is geographically concentrated in the Northeast, Mid-Atlantic and Southeast, which may cause us to be more susceptible to adverse developments in those markets than if we owned a more geographically diverse portfolio.
- The majority of our properties are retail shopping centers and 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.
- We may be unable to renew leases, lease vacant space or re-let space as leases expire, thereby increasing or prolonging vacancies, which could adversely affect our financial condition, results of operations, cash flow and per share trading price of our Common Stock.
- We have a limited operating history as a REIT and a publicly traded company. We have limited financing sources, and we may not be able to successfully operate as a REIT or a publicly traded company.
- Our growth depends on external sources of capital that are outside of our control and may not be available to us on commercially reasonable terms or at all, which could limit our ability, among other things, to meet our capital and operating needs or make the cash distributions to our stockholders necessary to maintain our qualification as a REIT.
- Our performance and value are subject to risks associated with real estate assets and the real estate industry, including local oversupply, reduction in demand or adverse changes in financial conditions of buyers, sellers and tenants of properties, which could decrease revenues or increase costs, which would adversely affect our financial condition, results of operations, cash flow, ability to make distributions to our stockholders and the per share trading price of our securities.
- We may incur significant costs complying with various federal, state and local laws, regulations and covenants that are applicable to our properties.
- The current outbreak of the novel coronavirus, or COVID-19, has caused severe disruptions in the U.S. and global economy and will likely have an adverse impact on our financial condition and results of operations. This impact could be materially adverse to the extent the current COVID-19 outbreak, or future pandemics, cause customers to be unable to pay their rent or reduce the demand for commercial real estate, or cause other impacts described below.
- Future sales of our Common Stock or other securities convertible into our Common Stock could cause the market value of our Common Stock to decline and could result in dilution of your shares.

- Conflicts of interest may exist or could arise in the future between the interests of our stockholders and the interests of holders of units in our Operating Partnership, which may impede business decisions that could benefit our stockholders.
- Our Board may change our investment and financing policies without stockholder approval and we may become more highly leveraged, which may increase our risk of default under our debt obligations.
- We are a holding company with no direct operations and, as such, we will rely on funds received from our Operating Partnership to pay liabilities, and the interests of our stockholders will be structurally subordinated to all liabilities and obligations of our Operating Partnership and its subsidiaries.
- Our Common Stock ranks junior to our Series A Preferred, Series B Preferred and Series D Preferred Stock with respect to dividends and amounts payable in the event of our liquidation.
- To maintain our REIT status, we may be forced to borrow funds during unfavorable market conditions, and the unavailability of such capital on favorable terms at the desired times, or at all, may cause us to curtail our investment activities and/or to dispose of assets at inopportune times, which could adversely affect our financial condition, results of operations, cash flow, ability to make distributions to our stockholders and per share trading price of our securities.

Risks Related to the Rights Offering

The Notes are structurally subordinated to all indebtedness and other liabilities of our subsidiaries, and creditors of our subsidiaries will have priority as to our subsidiaries' assets.

The Notes are not obligations of, or guaranteed by, any of our subsidiaries or any third party. As a result, our right and the rights of our creditors, including holders of the Notes, to participate in any distribution of assets of any of our subsidiaries upon its liquidation, reorganization or otherwise would be subject to the prior claims of creditors of that subsidiary. Accordingly, the Notes are structurally subordinated to all of the existing and future liabilities and obligations of our subsidiaries. As of March 31, 2021, our subsidiaries had $381 million of liabilities.

The indenture contains limited covenants, and those covenants do not restrict, among other actions, the amount of indebtedness that we or our subsidiaries may incur.

The covenants in the indenture governing the Notes are very limited. For example, the indenture does not limit: our or our subsidiaries' ability to incur additional debt or allow liens on our or their assets; restrict our ability to pay dividends; our subsidies from restricting their ability to pay dividends or make other distributions to us to make payments on our obligations; our ability to redeem or repurchase our other securities, make acquisitions or sell assets. Those transactions may adversely affect the value of the Notes and securities issued to holders of Notes, including our Common Stock, Series B Preferred Stock, and Series D Preferred Stock. As a result, the terms of the indenture do not protect you in the event of an adverse change in our financial condition or results of operations, and you should not consider the terms of the indenture to be a significant factor in evaluating whether we will be able to comply with our obligations under the Notes.

Active trading markets for the Notes, our Series B Preferred Stock, our Series D Preferred Stock or our Common Stock may not develop, and any such markets may be illiquid.

The Notes constitute a new issue of securities with no established trading market. We intend to apply to list the Notes on the NASDAQ Capital Market. While our Series B Preferred Stock, Series D Preferred Stock, and Common Stock are also listed on the NASDAQ Capital Market, such listing does not guarantee that a trading market will develop or, if a trading market does develop, that the depth or liquidity of that market will enable the holders to sell their securities easily. In addition, the liquidity of such trading markets, and the market prices quoted therefor, may be adversely affected by changes in the overall market for the type of security and by changes in our financial performance or prospects or in the prospects for companies in our industry generally. As a result, we cannot assure you that an active after-market for the Notes, our Series B Preferred Stock, our Series D Preferred Stock or our Common Stock will develop or be sustained, that holders of the Notes, our Series B Preferred Stock, our Series D Preferred Stock or our Common Stock will be able to sell their Notes, Series B Preferred Stock, Series D Preferred Stock or Common Stock or that holders of the Notes, our Series B Preferred Stock, our Series D Preferred Stock or our Common Stock will be able to sell their Notes, Series B Preferred Stock, Series D Preferred Stock or Common Stock at favorable prices.

We are subject to restrictive covenants that may limit our ability to run our business, finance our capital needs, pursue business opportunities and activities, and make cash payments on the Notes when due.

Our financing agreement contains covenants that limit our ability to take certain actions. These covenants could limit our ability to finance our future operations and capital needs and our ability to pursue business opportunities and activities that may be in our interest, including our ability to make cash payments on the Notes. If we breach any of these covenants, the lenders thereunder could declare a default under the financing agreement, in which case all of the indebtedness may then become immediately due and payable. In addition, any default under the financing agreement could lead to an acceleration of debt under another agreement pursuant to cross-acceleration or cross-default provisions. If the debt under the financing agreement is accelerated, we may not have, or be able to obtain, sufficient funds to make these accelerated payments. In addition, since all of the indebtedness is secured by substantially all of our assets, a default under the credit facility could enable the debtholder to foreclose on its security interest and attempt to seize our assets. The affirmative and negative debt covenants could materially adversely impact our ability to operate and finance our business. In addition, our default under any of these covenants could subject us to accelerated debt payments or foreclosure proceedings that could threaten our ability to continue as a going concern.

You may not be able to resell any of the Notes that you purchase pursuant to the exercise of Rights immediately upon expiration of the Rights Offering.

The Notes will be issued in book-entry form and will be represented by one or more permanent global certificates deposited with a custodian for, and registered in the name of a nominee of, DTC, or, for record holders of shares of our Common Stock not exercising their Rights through a DTC participant, the Notes will be issued in uncertificated book-entry form in the name in which you hold shares of our Common Stock or in physical form that is not deposited with DTC, records of which will be maintained by the trustee. Beneficial owners of our Common Stock whose shares are held in “street name” will have their Notes, credited to the account of their broker, dealer, custodian bank or other nominee. The Company will determine the date for the delivery of the Notes being issued in the Rights Offering following the expiration of the Rights Offering and will announce the anticipated delivery date of the Notes at a later date. Until the Notes are delivered following the expiration of the Subscription Period, you will not be able to sell the Notes that you purchase in the Rights Offering.

Because we may terminate or cancel the Rights Offering at any time, your participation in the Rights Offering is not assured.

We may terminate or cancel the Rights Offering at any time before the expiration of the Rights Offering (or any extension thereof), for any reason. If the Rights Offering is terminated or cancelled for any reason, then we will not issue you any of the Notes you may have subscribed for and we will not have any obligation with respect to the Rights except to return any payments, as soon as practicable, without interest.

We may amend the terms of the Rights Offering at any time prior to the expiration of the Rights Offering and in such case neither we nor the Subscription Agent will have any obligation to you except to return your exercise payments.

We may amend the terms of the Rights Offering at any time prior to the expiration of the Rights Offering, and we may amend or waive the terms of the Rights Offering for any reason. However, if we make any fundamental change to the terms set forth in this prospectus, we will file a post-effective amendment to the registration statement in which this prospectus is included announcing the cancellation of the Rights Offering and instituting a new offering on such revised terms and giving our stockholders the opportunity to subscribe to such new offering. In such event, all payments received by the Subscription Agent will be returned as soon as practicable, without interest, and at least contemporaneously with our filing of such post-effective amendment. The terms of the Rights Offering cannot be modified or amended after the expiration of the Rights Offering, as may be extended from time to time.

If you do not act promptly and follow the subscription instructions, then your exercise of Rights may be rejected.

Holders who desire to purchase Notes in the Rights Offering must act promptly to ensure that all required forms and payments are actually received by the expiration of the Rights Offering (or any extension thereof). If your shares are held in “street name” through a broker, dealer, custodian bank or other nominee, as the record holder, then you must act promptly to ensure that your broker, dealer, bank or other nominee acts for you and that all required forms and payments are actually received by the Subscription Agent before the expiration of the Subscription Period. We will not be responsible if your broker, dealer, bank, financial institution or other nominee fails to ensure that all required forms and payments are actually received by the Subscription Agent before the expiration of the Rights Offering. If you fail to complete and sign the Rights Certificate or the forms specified by your broker, dealer, custodian bank or other nominee, deliver an incorrect payment amount, pay by an unauthorized payment form, or otherwise fail to follow the subscription procedures that apply to your exercise of Rights in the Rights Offering, then the Subscription Agent may, depending on the circumstances, reject your subscription or accept it only to the extent of the payment received. Neither we nor the Subscription Agent undertake to contact you concerning an incomplete or incorrect subscription form or payment, nor are we under any obligation to correct such forms or payment. We have the sole discretion to determine whether a Rights exercise follows the proper procedures. You bear the risk of delivery of all documents and payments, and neither we nor the Subscription Agent has any responsibility for such documents and payments.

We are not making a recommendation as to whether you should participate in the Rights Offering.

None of our Board, officers, Subscription Agent, Transfer Agent or Trustee is making any recommendation regarding your exercise of Rights in the Rights Offering or the sale or transfer of the underlying Notes. Further, we have not authorized anyone to make any recommendation.

You will not receive interest on subscription funds, including any funds ultimately returned to you.

You will not earn any interest on your payment while it is being held by the Subscription Agent pending the closing of the Rights Offering. In addition, if we cancel the Rights Offering neither we nor the Subscription Agent will have any obligation with respect to the Rights except to return to you, without interest, any payment.

The U.S. federal income tax treatment of the receipt of the Rights is subject to uncertainty.

The U.S. federal income tax consequences of the receipt of the Rights is unclear. Although we intend to treat our distribution of Rights as a non-taxable distribution to investors, if (contrary to our intent) the distribution constituted a taxable distribution, then (1) U.S. Holders (as defined in "*Material U.S. Federal Income Tax Considerations*" beginning on page 67.) would be required to fund any resulting tax liability with cash from other sources, (2) Non-U.S. Holders (as defined in "*Material U.S. Federal Income Tax Considerations*" beginning on page 67) could be subject to U.S. federal withholding tax on the distribution, and (3) we could be liable for failing to withhold on Non-U.S. Holders. You are urged to consult your tax advisor as to the particular tax consequences to you of the receipt of Rights in the Rights Offering. See "*Material U.S. Federal Income Tax Considerations*" beginning on page 67.

There can be no assurance that the IRS or a court will agree with the characterization of the Notes as debt for U.S. federal income tax purposes.

We intend to treat the Notes as indebtedness for U.S. federal income tax purposes. However, this position is not binding on the IRS or the courts. If the IRS successfully asserted that the Notes are equity for U.S. federal income tax purposes, the U.S. federal income tax treatment of the ownership and disposition of the Notes would be materially different from the consequences described in "*Material U.S. Federal Income Tax Considerations—Federal Income Tax Considerations of the Ownership and Disposition of the Notes*" beginning on page 81 and may result in adverse consequences to holders of the Notes and to us. You are urged to consult your tax advisor as to the particular tax consequences to you if the Notes were treated as equity for U.S. federal income tax purposes.

We intend to treat the notes as contingent payment debt instruments for U.S. federal income tax purposes.

We intend to treat the Notes as contingent payment debt instruments ("CPDIs") subject to taxation under the "noncontingent bond method." Under this treatment, U.S. Holders may be required to accrue ordinary income in excess of amounts that they receive from us during one or more taxable years, and would be required to fund any resulting tax liability with cash from other sources. In addition, any gain that a U.S. holder recognizes on a taxable disposition of the Notes will be taxed as ordinary income. See "*Material U.S. Federal Income Tax Considerations—Federal Income Tax Considerations of the Ownership and Disposition of the Notes*" beginning on page 81 for a more detailed discussion. You are urged to consult your tax advisor with respect to the application of the CPDI provisions and any other applicable tax consequences to you of owning the Notes.

You may have to pay taxes if we adjust or fail to adjust the conversion price of the Notes in certain circumstances, even though you would not receive any cash.

We will adjust the conversion price of the Notes for stock splits and combinations, stock dividends, certain cash dividends and certain other events that affect our capital structure. Upon certain adjustments to (or certain failures to make adjustments to) the conversion price, you may be treated as having received a constructive distribution, in which case (1) U.S. Holders would be required to fund any resulting tax liability with cash from other sources and (2) Non-U.S. Holders could be subject to U.S. federal withholding tax. If we are required to withhold on any constructive distribution, we may withhold from any amount owed to you including, but not limited to, cash at maturity or shares of our Common Stock upon conversion. See "*Material U.S. Federal Income Tax Considerations—Federal Income Tax Considerations of the Ownership and Disposition of the Notes*" beginning on page 81 for further detail regarding the effect of certain adjustments to the conversion rate of the Notes. You are urged to consult your tax advisor regarding the possible tax consequences to you of any conversion price adjustments.

Risks Related to Our General Business Operations

Future sales of our Common Stock or other securities convertible into our Common Stock could cause the market value of our Common Stock to decline and could result in dilution of your shares.

Our Board is authorized, without approval of our Common Stockholders, to cause us to issue additional shares of our stock or to raise capital through the issuance of preferred stock, options, warrants and other rights on terms and for consideration as our Board in its sole discretion may determine.

Sales of substantial amounts of our Common Stock, or stock that is convertible into our Common Stock, could dilute your ownership and could cause the market price of our Common Stock to decrease significantly. We cannot predict the effect, if any, of future sales of our Common Stock, or the availability of our Common Stock for future sales, on the value of our Common Stock. Sales of substantial amounts of our Common Stock, or the perception that such sales could occur, may adversely affect the market price of our Common Stock.

Our portfolio of properties is dependent upon regional and local economic conditions and is geographically concentrated in the Northeast, Mid-Atlantic and Southeast, which may cause us to be more susceptible to adverse developments in those markets than if we owned a more geographically diverse portfolio.

Our properties are located in Virginia, North Carolina, South Carolina, Florida, Georgia, Kentucky, Tennessee, Alabama, New Jersey, Pennsylvania and West Virginia, which exposes us to greater economic risks than if we owned a more geographically diverse portfolio. If there is a downturn in the economy in our markets, our operations and our revenue and cash available for distribution, including cash available to pay distributions to our stockholders, could be materially adversely affected. We cannot assure you that our markets will grow or that underlying real estate fundamentals will be favorable to owners and operators of retail properties. Our operations may also be affected if competing properties are built in our markets. Moreover, submarkets within any of our markets may be dependent upon a limited number of industries. Any adverse economic or real estate developments in the Mid-Atlantic, Northeast or Southeast markets, or any decrease in demand for retail space resulting from the regulatory environment, business climate or energy or fiscal problems, could adversely impact our financial condition, results of operations, cash flow, our ability to satisfy our debt service obligations and our ability to pay distributions to our stockholders.

As of March 31, 2021, we had approximately $359 million of indebtedness outstanding, which may expose us to the risk of default under our debt obligations.

As of March 31, 2021, approximately $246 million of our total indebtedness is guaranteed by our Operating Partnership, and we may incur additional debt to finance future acquisition and development activities. Payments of principal and interest on borrowings may leave us with insufficient cash resources to operate our properties or to pay the dividends currently contemplated or necessary to maintain our REIT qualification. Our level of debt and the limitations imposed on us by our debt agreements could have significant adverse consequences, including the following:

- our cash flow may be insufficient to meet our required principal and interest payments;
- we may be unable to borrow additional funds as needed or on favorable terms, which could, among other things, adversely affect our ability to meet operational needs;
- we may be unable to refinance our indebtedness at maturity or the refinancing terms may be less favorable than the terms of our original indebtedness;

- we may be forced to dispose of one or more of our properties, possibly on unfavorable terms or in violation of certain covenants to which we may be subject;
- we may violate financial covenants in our loan documents, which would entitle the lenders to accelerate our debt obligations; and
- our default under any loan with cross default provisions could result in a default on other indebtedness.

If any one of these events were to occur, our financial condition, results of operations, cash flow and per share trading price of our securities could be adversely affected. Furthermore, foreclosures could create taxable income without accompanying cash proceeds, which could hinder our ability to meet the REIT distribution requirements imposed by the Code.

The majority of our properties are retail shopping centers and 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.

Large, regionally or nationally recognized tenants typically anchor our properties. At any time, our tenants may experience a downturn in their business that may significantly weaken their financial condition. As a result, our tenants, including our anchor and other major tenants, may fail to comply with their contractual obligations to us, seek concessions in order to continue operations or declare bankruptcy, any of which could result in the termination of such tenants' leases and the loss of rental income attributable to the terminated leases. In addition, certain of our tenants may cease operations while continuing to pay rent, which could decrease customer traffic, thereby decreasing sales for our other tenants at the applicable retail property. In addition to these potential effects of a business downturn, mergers or consolidations among large retail establishments could result in the closure of existing stores or duplicate or geographically overlapping store locations, which could include stores at our retail properties.

Loss of, or a store closure by, an anchor or major tenant could significantly reduce our occupancy level or the rent we receive from our retail properties, and we may not have the right to re-lease vacated space or we may be unable to re-lease vacated space at attractive rents or at all. Moreover, in the event of default by a major tenant or anchor store, we may experience delays and costs in enforcing our rights as landlord to recover amounts due to us under the terms of our agreements with those parties. The occurrence of any of the situations described above, particularly if it involves an anchor tenant with leases in multiple locations, could seriously harm our performance and could adversely affect the value of the applicable retail property.

Some of the leases at our retail properties contain "co-tenancy" or "go-dark" provisions, which, if triggered, may allow tenants to pay reduced rent, cease operations or terminate their leases, any of which could adversely affect our performance or the value of the applicable retail property.

Some of the leases at our retail properties contain "co-tenancy" provisions that condition a tenant's obligation to remain open, the amount of rent payable by the tenant or the tenant's obligation to continue occupancy on certain conditions, including: (i) the presence of a certain anchor tenant or tenants; (ii) the continued operation of an anchor tenant's store; and (iii) minimum occupancy levels at the applicable retail property. If a co-tenancy provision is triggered by a failure of any of these or other applicable conditions, a tenant could have the right to cease operations, to terminate its lease early or to a reduction of its rent. In periods of prolonged economic decline, there is a higher than normal risk that co-tenancy provisions will be triggered as there is a higher risk of tenants closing stores or terminating leases during these periods. In addition to these co-tenancy provisions, certain of the leases at our retail properties contain "go-dark" provisions that allow the tenant to cease operations while continuing to pay rent. This could result in decreased customer traffic at the applicable retail property, thereby decreasing sales for our other tenants at that property, which may result in our other tenants being unable to pay their minimum rents or expense recovery charges. These provisions also may result in lower rental revenue generated under the applicable leases. To the extent co-tenancy or go-dark provisions in our retail leases result in lower revenue or tenant sales or tenants' rights to terminate their leases early or to a reduction of their rent, our performance or the value of the applicable retail property could be adversely affected.

We may be unable to renew leases, lease vacant space or re-let space as leases expire, thereby increasing or prolonging vacancies, which could adversely affect our financial condition, results of operations, cash flow and per share trading price of our Common Stock.

As of March 31, 2021, leases representing approximately 4.43% of the square footage and approximately 5.85% of the annualized base rent of the properties in our portfolio are month-to-month leases or will expire through December 31, 2021, and an additional 10.63% of the square footage of the properties in our portfolio was available. We cannot assure you that leases will be renewed or that our properties will be re-let at net effective rental rates equal to or above the current average net effective rental rates or that substantial rent abatements, tenant improvements, early termination rights or below-market renewal options will not be offered to attract new tenants or retain existing tenants. If the rental rates for our properties decrease, our existing tenants do not renew their leases or we do not re-let a significant portion of our available space and space for which leases will expire, our financial condition, results of operations, cash flow ability to make distributions and per share trading price of our securities could be adversely affected.

We may be unable to identify and complete acquisitions of properties that meet our criteria, which may impede our growth and ability to pay dividends in the future.

Our business strategy involves the acquisition of income producing assets such as strip centers, neighborhood centers, grocery-anchored centers, community centers, free-standing retail properties and development properties. These activities require us to identify suitable acquisition candidates or investment opportunities that meet our criteria and are compatible with our growth strategies. We continue to evaluate the market of available properties and may attempt to acquire properties when strategic opportunities exist. However, we may be unable to acquire properties identified as potential acquisition opportunities. Our ability to acquire properties on favorable terms, or at all, may be exposed to the following significant risks:

- we may incur significant costs and divert management attention in connection with evaluating and negotiating potential acquisitions, including ones that we are subsequently unable to complete;
- even if we enter into agreements for the acquisition of properties, these agreements are subject to conditions to closing, which we may be unable to satisfy; and
- we may be unable to finance the acquisition on favorable terms or at all.

If we are unable to finance property acquisitions or acquire properties on favorable terms, or at all, our financial condition, results of operations, cash flow and per share trading price of our securities could be adversely affected. In addition, failure to identify or complete acquisitions of suitable properties could slow our growth and hinder our ability to pay dividends as expected.

We face significant competition for acquisitions of real properties, which may reduce the number of acquisition opportunities available to us and increase the costs of these acquisitions.

The current market for acquisitions continues to be extremely competitive. This competition may increase the demand for the types of properties in which we typically invest and, therefore, reduce the number of suitable acquisition opportunities available to us and increase the prices paid for such acquisition properties. We also face significant competition for attractive acquisition opportunities from an indeterminate number of investors, including publicly traded and privately held REITs, private equity investors and institutional investment funds, some of which have greater financial resources than we do, a greater ability to borrow funds to acquire properties and the ability to accept more risk than we can prudently manage, including risks with respect to the geographic proximity of investments and the payment of higher acquisition prices. This competition will increase if investments in real estate become more attractive relative to other forms of investment. Competition for investments may reduce the number of suitable investment opportunities available to us and may have the effect of increasing prices paid for such acquisition properties and/or reducing the rents we can charge and, as a result, adversely affecting our operating results.

Our future acquisitions may not yield the returns we expect, and we may otherwise be unable to operate these properties to meet our financial expectations, which could adversely affect our financial condition, results of operations, cash flow and per share trading price of our securities.

Our future acquisitions and our ability to successfully operate the properties we acquire in such acquisitions may be exposed to the following significant risks:

- even if we are able to acquire a desired property, competition from other potential acquirers may significantly increase the purchase price;
- we may acquire properties that are not accretive to our results upon acquisition, and we may not successfully manage and lease those properties to meet our expectations;
- our cash flow may be insufficient to meet our required principal and interest payments or make expected distributions;
- we may spend more than budgeted amounts to make necessary improvements or renovations to acquired properties;
- we may be unable to quickly and efficiently integrate new acquisitions, particularly acquisitions of portfolios of properties, into our existing operations, and as a result our results of operations and financial condition could be adversely affected;

- market conditions may result in higher than expected vacancy rates and lower than expected rental rates; and
- we may acquire properties subject to liabilities and without any recourse, or with only limited recourse, with respect to unknown liabilities such as liabilities for cleanup of undisclosed environmental contamination, claims by tenants, vendors or other persons dealing with the former owners of the properties, liabilities incurred in the ordinary course of business and claims for indemnification by general partners, directors, officers and others indemnified by the former owners of the properties.

If we cannot operate acquired properties to meet our financial expectations, our financial condition, results of operations, cash flow and per share trading price of our securities could be adversely affected.

We may not be able to control our operating costs or our expenses may remain constant or increase, even if our revenues do not increase, causing our results of operations to be adversely affected.

Factors that may adversely affect our ability to control operating costs include the need to pay for insurance and other operating costs, including real estate taxes, which could increase over time, the need periodically to repair, renovate and re-lease space, the cost of compliance with governmental regulation, including zoning, environmental and tax laws, the potential for liability under applicable laws, interest rate levels, principal loan amounts and the availability of financing. If our operating costs increase as a result of any of the foregoing factors, our results of operations may be adversely affected.

The expense of owning and operating a property is not necessarily reduced when circumstances such as market factors and competition cause a reduction in income from the property. As a result, if revenues decline, we may not be able to reduce our expenses accordingly. Costs associated with real estate investments, such as real estate taxes, insurance, loan payments and maintenance, generally will not be reduced even if a property is not fully occupied or other circumstances cause our revenues to decrease. If we are unable to decrease operating costs when demand for our properties decreases and our revenues decline, our financial condition, results of operations and our ability to make distributions to our stockholders may be adversely affected.

High mortgage interest rates and/or unavailability of mortgage debt may make it difficult for us to finance or refinance properties, which could reduce the number of properties we can acquire, our net income and the amount of cash distributions we can make.

If mortgage debt is unavailable at reasonable rates, we may not be able to finance the purchase of properties. If we place mortgage debt on properties, we may be unable to refinance the properties when the loans become due, or to refinance on favorable terms. If interest rates are higher when we refinance our properties, our income could be reduced. If any of these events occur, our cash flow could be reduced. This, in turn, could reduce cash available for debt payments and distributions to our stockholders and may hinder our ability to raise more capital by issuing more stock or by borrowing more money.

Mortgage debt obligations expose us to the possibility of foreclosure, which could result in the loss of our investment in a property or group of properties subject to mortgage debt.

Incurring mortgage and other secured debt obligations increases our risk of property losses because defaults on indebtedness secured by properties may result in foreclosure actions initiated by lenders and ultimately our loss of the property securing any loans for which we are in default. Any foreclosure on a mortgaged property or group of properties could adversely affect the overall value of our portfolio of properties. For tax purposes, a foreclosure on any of our properties that is subject to a nonrecourse mortgage loan would be treated as a sale of the property for a purchase price equal to the outstanding balance of the loan. If the outstanding balance of the loan exceeds our tax basis in the property, we would recognize taxable income on foreclosure, but would not receive any cash proceeds, which could hinder our ability to meet the REIT distribution requirements imposed by the Code.

Failure to hedge effectively against interest rate changes may adversely affect our financial condition, results of operations, cash flow and per share trading price of our securities.

Subject to maintaining our qualification as a REIT, we may enter into hedging transactions to protect us from the effects of interest rate fluctuations on floating rate debt. We currently do not have any hedges in place. Our hedging transactions may include entering into interest rate cap agreements or interest rate swap agreements. These agreements involve risks, such as the risk that such arrangements would not be effective in reducing our exposure to interest rate changes or that a court could rule that such an

agreement is not legally enforceable. In addition, interest rate hedging can be expensive, particularly during periods of rising and volatile interest rates. Hedging could reduce the overall returns on our investments. Failure to hedge effectively against interest rate changes could materially adversely affect our financial condition, results of operations, cash flow and per share trading price of our securities. In addition, while such agreements would be intended to lessen the impact of rising interest rates on us, they could also expose us to the risk that the other parties to the agreements would not perform, we could incur significant costs associated with the settlement of the agreements or that the underlying transactions could fail to qualify as highly-effective cash flow hedges under generally accepted accounting principles in the United States of America.

Adverse economic and geopolitical conditions and dislocations in the credit markets could have a material adverse effect on our financial condition, results of operations, cash flow, ability to make distributions to our stockholders and per share trading price of our securities.

Our business may be affected by market and economic challenges experienced by the U.S. economy or real estate industry as a whole, including the recent dislocations in the credit markets and general global economic downturn. These conditions, or similar conditions existing in the future, may adversely affect our financial condition, results of operations, cash flow and per share trading price of our securities as a result of the following potential consequences, among others:

- decreased demand for retail space, which would cause market rental rates and property values to be negatively impacted;
- reduced values of our properties may limit our ability to dispose of assets at attractive prices or to obtain debt financing secured by our properties and may reduce the availability of unsecured loans; and
- our ability to obtain financing on terms and conditions that we find acceptable, or at all, may be limited, which could reduce our ability to pursue acquisition and development opportunities and refinance existing debt, reduce our returns from our acquisition and development activities and increase our future interest expense.

In addition, any economic downturn may adversely affect the businesses of many of our tenants. As a result, we may see increases in bankruptcies of our tenants and increased defaults by tenants, and we may experience higher vacancy rates and delays in re-leasing vacant space, which could negatively impact our business and results of operations.

We are subject to risks that affect the general retail environment, such as weakness in the economy, the level of consumer spending, the adverse financial condition of large retailing companies and competition from discount and Internet retailers, any of which could adversely affect market rents for retail space and the willingness or ability of retailers to lease space in our shopping centers.

With the exception of our corporate offices, all of our improved properties are in the retail real estate market. This means that we are subject to factors that affect the retail sector generally, as well as the market for retail space. The retail environment and the market for retail space have been, and could continue to be, adversely affected by weakness in the national, regional and local economies, the level of consumer spending and consumer confidence, the adverse financial condition of some large retailing companies, the ongoing consolidation in the retail sector, the excess amount of retail space in a number of markets and increasing competition from discount retailers, outlet malls, Internet retailers and other online businesses. Increases in consumer spending via the Internet may significantly affect our retail tenants' ability to generate sales in their stores. In addition, some of our retail tenants face competition from the expanding market for digital content and hardware. New and enhanced technologies, including new digital technologies and new web services technologies, may increase competition for certain of our retail tenants.

Any of the foregoing factors could adversely affect the financial condition of our tenants and the willingness of retailers to lease space in our shopping centers. In turn, these conditions could negatively affect market rents for retail space and could materially and adversely affect our financial condition, results of operations, cash flow, the trading price of our common shares and our ability to satisfy our debt service obligations and to pay distributions to our stockholders.

We face significant competition in the leasing market, which may decrease or prevent increases of the occupancy and rental rates of our properties.

We compete with numerous developers, owners and operators of real estate, many of which own properties similar to ours in the same submarkets in which our properties are located. If our competitors offer space at rental rates below current market rates, or below the rental rates we currently charge our tenants, we may lose existing or potential tenants and we may be pressured to reduce our rental rates below those we currently charge or to offer more substantial rent abatements, tenant improvements, early termination rights or below-market renewal options in order to retain tenants when our tenants' leases expire. As a result, our financial condition, results of operations, cash flow and per share trading price of our Common Stock could be adversely affected.

We may be required to make rent or other concessions and/or significant capital expenditures to improve our properties in order to retain and attract tenants, causing our financial condition, results of operations, cash flow, ability to make distributions to our stockholders and per share trading price of our securities to be adversely affected.

To the extent adverse economic conditions continue in the real estate market and demand for retail space falls, we expect that, upon expiration of leases at our properties, we may be required to make rent or other concessions to tenants, accommodate requests for renovations, build-to-suit remodeling and other improvements or provide additional services to our tenants. As a result, we may have to make significant capital or other expenditures in order to retain tenants whose leases expire and to attract new tenants in sufficient numbers. Additionally, we may need to raise capital to make such expenditures. If we are unable to do so or capital is otherwise unavailable, we may be unable to make the required expenditures. This could result in non-renewals by tenants upon expiration of their leases, which could cause an adverse effect to our financial condition, results of operations, cash flow and per share trading price of our securities.

The actual rents we receive for the properties in our portfolio may be less than our asking rents, which could negatively impact our ability to generate cash flow growth.

As a result of various factors, including competitive pricing pressure in our submarkets, adverse conditions in the Northeast, Mid-Atlantic and Southeast real estate markets, a general economic downturn and the desirability of our properties compared to other properties in our submarkets, we may be unable to realize the asking rents across the properties in our portfolio. In addition, the degree of discrepancy between our asking rents and the actual rents we are able to obtain may vary both from property to property and among different leased spaces within a single property. If we are unable to obtain rental rates that are on average comparable to our asking rents across our portfolio, then our ability to generate cash flow growth will be negatively impacted. In addition, depending on asking rental rates at any given time as compared to expiring leases in our portfolio, from time to time rental rates for expiring leases may be higher than starting rental rates for new leases.

We have and may continue to acquire properties or portfolios of properties through tax deferred contribution transactions, which could result in stockholder dilution and limit our ability to sell such assets.

We have acquired, and in the future we may continue to acquire, properties or portfolios of properties through tax deferred contribution transactions in exchange for partnership interests in our Operating Partnership, which may result in stockholder dilution. This acquisition structure may have the effect of, among other things, reducing the amount of tax depreciation we could deduct over the tax life of the acquired properties, and may require that we agree to protect the contributors' ability to defer recognition of taxable gain through restrictions on our ability to dispose of the acquired properties and/or the allocation of partnership debt to the contributors to maintain their tax bases. These restrictions could limit our ability to sell an asset at a time, or on terms, that would be favorable absent such restrictions.

Our real estate development activities are subject to risks particular to development, such as unanticipated expenses, delays and other contingencies, any of which could adversely affect our financial condition, results of operations, cash flow and the per share trading price of our securities.

We may engage in development and redevelopment activities with respect to certain of our properties. To the extent that we do so, we will be subject to the following risks associated with such development and redevelopment activities:

- unsuccessful development or redevelopment opportunities could result in direct expenses to us;
- construction or redevelopment costs of a project may exceed original estimates, possibly making the project less profitable than originally estimated, or unprofitable;
- time required to complete the construction or redevelopment of a project or to lease up the completed project may be greater than originally anticipated, thereby adversely affecting our cash flow and liquidity;
- contractor and subcontractor disputes, strikes, labor disputes or supply disruptions;
- failure to achieve expected occupancy and/or rent levels within the projected time frame, if at all;
- delays with respect to obtaining or the inability to obtain necessary zoning, occupancy, land use and other governmental permits, and changes in zoning and land use laws;
- occupancy rates and rents of a completed project may not be sufficient to make the project profitable;
- our ability to dispose of properties developed or redeveloped with the intent to sell could be impacted by the ability of prospective buyers to obtain financing given the current state of the credit markets; and
- the availability and pricing of financing to fund our development activities on favorable terms or at all.

These risks could result in substantial unanticipated delays or expenses and, under certain circumstances, could prevent completion of development or redevelopment activities once undertaken, any of which could have an adverse effect on our financial condition, results of operations, cash flow, ability to make distributions to our stockholders and the per share trading price of our securities.

Our success depends upon our retaining and recruiting key personnel.

Our future success depends heavily upon the continued service of our key executives. We rely on their industry expertise and experience in our business operations, and in particular, their business vision, financial and accounting, management skills, and working relationship with our employees, our major stockholders, the regulatory authorities, and many of our tenants. If they became unable or unwilling to continue in their present positions, or they left our Company, we may not be able to replace them, our business may be significantly disrupted and our financial condition and results of operations may be materially adversely affected.

We may be subject to on-going or future litigation, including existing claims relating to the entities that own the properties described in this annual filing and otherwise in the ordinary course of business, which could have a material adverse effect on our financial condition, results of operations, cash flow and per share trading price of our securities.

We may be subject to on-going litigation, including existing claims relating to the entities that own the properties and operate the businesses described in this annual filing and otherwise in the ordinary course of business. Some of these claims may result in significant defense costs and potentially significant judgments against us, some of which are not, or cannot be, insured against. We generally intend to vigorously defend ourselves; however, we cannot be certain of the ultimate outcomes of currently asserted claims or of those that may arise in the future. Resolution of these types of matters against us may result in our having to pay significant fines, judgments, or settlements, which, if uninsured, or if the fines, judgments, and settlements exceed insured levels, could adversely impact our earnings and cash flows, thereby having an adverse effect on our financial condition, results of operations, cash flow and per share trading price of our Common Stock. Certain litigation or the resolution of certain litigation may affect the availability or cost of some of our insurance coverage, which could adversely impact our results of operations and cash flows, expose us to increased risks that would be uninsured, and/or adversely impact our ability to attract officers and directors.

We may not be able to rebuild our existing properties to their existing specifications if we experience a substantial or comprehensive loss of such properties.

In the event that we experience a substantial or comprehensive loss of one of our properties, we may not be able to rebuild such property to its existing specifications. Further, reconstruction or improvement of such a property would likely require significant upgrades to meet zoning and building code requirements. Environmental and legal restrictions could also restrict the rebuilding of our properties.

Potential losses may not be covered by insurance or may exceed policy limits and we could incur significant costs and lose our equity in the damaged properties.

We carry comprehensive liability insurance policies, covering all of our properties. Our insurance coverage contains policy specifications and insured limits customarily carried for similar properties and business activities. If a loss or damages are suffered at one or more of our properties, our insurer may attempt to limit or void our coverage by arguing that the loss resulted from facts or circumstances not covered by our policy. Furthermore, if we experience a loss that is uninsured or that exceeds our policy limits, we could incur significant costs and lose the capital invested in the damaged or otherwise adversely affected properties as well as the anticipated future cash flows from those properties.

We have a limited operating history as a REIT and a publicly traded company. We have limited financing sources, and we may not be able to successfully operate as a REIT or a publicly traded company.

We have a limited operating history as a REIT and a publicly traded company. We cannot assure you that the past experience of our management team will be sufficient to successfully operate our company as a REIT or a publicly traded company, including the requirements to timely meet disclosure requirements of the SEC, and comply with the Sarbanes-Oxley Act of 2002 and REIT requirements imposed by the Code. Failure to operate successfully as a public company or maintain our qualification as a REIT would have an adverse effect on our financial condition, results of operations, cash flow and per share trading price of our Common Stock.

Additionally, we have limited financing sources. If our capital resources are insufficient to support our operations, we will not be successful. You should consider our prospects in light of the risks, uncertainties and difficulties frequently encountered by companies that are, like us, in the early stages of development. To be successful in this market, we must, among other things:

- identify and acquire additional investments that further our investment strategies;
- increase awareness of our REIT within the investment products market;
- attract, integrate, motivate and retain qualified personnel to manage our day-to-day operations; and
- respond to competition for our targeted real estate properties and other investment as well as for potential investors.

We cannot guarantee that we will succeed in achieving these goals, and our failure to do so could cause you to lose all or a portion of your investment.

Our estimated cash available for distribution is insufficient to cover our anticipated annual dividends and distributions paid from sources other than our cash flow from operations will result in us having fewer funds available for the acquisition of properties, which may adversely affect our ability to fund future distributions with cash flow from operations and may adversely affect your overall return.

Our operating cash flow currently is insufficient to cover our anticipated monthly and quarterly distributions to Common Stockholders and preferred stockholders. We have paid distributions from sources other than from our cash flow from operations. Until we acquire additional properties, we will not generate sufficient cash flow from operations to pay our anticipated monthly and quarterly distributions. Moreover, our Board may change this policy, in its sole discretion, at any time.

By funding distributions from our cash on hand or borrowings we will have less funds available for acquiring properties. As a result, the return you realize on your investment may be reduced. Funding distributions from borrowings could restrict the amount we can borrow for investments, which may affect our profitability. Funding distributions with the sale of assets or the proceeds of offerings may affect our ability to generate cash flows. Funding distributions from the sale of securities could dilute your interest in us if we sell shares of our Common Stock or securities convertible or exercisable into shares of our Common Stock to third party investors. Payment of distributions from the mentioned sources could restrict our ability to generate sufficient cash flow from operations, affect our profitability and/or affect the distributions payable to you, any or all of which may have an adverse effect on your investment.

Joint venture investments could be adversely affected by our lack of sole decision-making authority, our reliance on co-venturers' financial condition and disputes between our co-venturers and us.

We may co-invest in the future with other third parties through partnerships, joint ventures or other entities, acquiring non-controlling interests in or sharing responsibility for managing the affairs of a property, partnership, joint venture or other entity. Consequently, with respect to any such arrangement we may enter into in the future, we would not be in a position to exercise sole decision-making authority regarding the property, partnership, joint venture or other entity. Investments in partnerships, joint ventures or other entities may, under certain circumstances, involve risks not present were a third party not involved, including the possibility that partners or co-venturers might become bankrupt or fail to fund their share of required capital contributions. Partners or co-venturers may have economic or other business interests or goals which are inconsistent with our business interests or goals, and may be in a position to take actions contrary to our policies or objectives, and they may have competing interests in our markets that could create conflict of interest issues. Such investments may also have the potential risk of impasses on decisions, such as a sale, because neither we nor the partner or co-venturer would have full control over the partnership or joint venture. In addition, a sale or transfer by us to a third party of our interests in the joint venture may be subject to consent rights or rights of first refusal, in favor of our joint venture partners, which would in each case restrict our ability to dispose of our interest in the joint venture. Where we are a limited partner or non-managing member in any partnership or limited liability company, if such entity takes or expects to take actions that could jeopardize our status as a REIT or require us to pay tax, we may be forced to dispose of our interest in such entity. Disputes between us and partners or co-venturers may result in litigation or arbitration that would increase our expenses and prevent our officers and/or directors from focusing their time and effort on our business. Consequently, actions by or disputes with partners or co-venturers might result in subjecting properties owned by the partnership or joint venture to additional risk. In addition, we may in certain circumstances be liable for the actions of our third-party partners or co-venturers. Our joint ventures may be subject to debt and, in the current volatile credit market, the refinancing of such debt may require equity capital calls.

Our growth depends on external sources of capital that are outside of our control and may not be available to us on commercially reasonable terms or at all, which could limit our ability, among other things, to meet our capital and operating needs or make the cash distributions to our stockholders necessary to maintain our qualification as a REIT.

In order to maintain our qualification as a REIT, we are required under the Code, among other things, to distribute annually at least 90% of our REIT taxable income, determined without regard to the dividends paid deduction and excluding any net capital gain. In addition, we will be subject to income tax at regular corporate rates to the extent that we distribute less than 100% of our REIT taxable income, including any net capital gains. Because of these distribution requirements, we may not be able to fund future capital needs, including any necessary acquisition financing, from operating cash flow. Consequently, we intend to rely on third-party sources to fund our capital needs. We may not be able to obtain such financing on favorable terms or at all and any additional debt we incur will increase our leverage and likelihood of default. Our access to third-party sources of capital depends, in part, on:

- general market conditions;
- the market's perception of our growth potential;

- our current debt levels;
- our current and expected future earnings;
- our cash flow and cash distributions; and
- the market price per share of our securities.

Recently, the capital markets have been subject to significant disruptions. If we cannot obtain capital from third-party sources, we may not be able to acquire or develop properties when strategic opportunities exist, meet the capital and operating needs of our existing properties, satisfy our debt service obligations or make the cash distributions to our stockholders necessary to maintain our qualification as a REIT.

We may not comply with the Asset Coverage Ratio contained in the terms of our Series D Preferred Stock.

The terms of our Series D Preferred Stock require us to maintain a certain level of asset coverage. More specifically, we are required to maintain an asset coverage percentage of at least 200% on the last business day of each calendar quarter. This percentage is calculated by dividing (i) our total assets plus accumulated depreciation, plus accumulated amortization minus our total liabilities and indebtedness as reported in our financial statements (exclusive of the book value of any Redeemable and Term Preferred Stock) by (ii) the aggregate liquidation preference, plus an amount equal to all accrued and unpaid dividends, of the outstanding shares of our Series D Preferred Stock and any outstanding shares of Redeemable and Term Preferred Stock. If we fail to satisfy the Asset Coverage Ratio (as defined in Note 8 to the consolidated financial statements of our 2020 Annual Report on Form 10-K), we must cure the failure during the period that expires at the close of business on the date that is 30 calendar days following the filing date of our Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as applicable, for that quarter. If we fail to cure the failure prior to the Asset Coverage Cure Date (as defined in Note 8 to the consolidated financial statements of our 2020 Annual Report on Form 10-K), the terms of our Series D Preferred Stock require us to redeem, within 90 calendar days of the Asset Coverage Cure Date, shares of Redeemable and Term Preferred Stock, which may include Series D Preferred Stock, at least equal to the lesser of (i) the minimum number of shares of Redeemable and Term Preferred Stock that will result in us having an Asset Coverage Ratio of at least 200% and (ii) the maximum number of shares of Redeemable and Term Preferred Stock that can be redeemed solely out of funds legally available for such redemption.

There can be no guarantee that we will continue to comply with the Asset Coverage Ratio in the future. To the extent we fail to satisfy the Asset Coverage Ratio and are required to redeem shares of our Series D Preferred Stock, our business and its operations may be materially and adversely impacted.

If a major tenant declares bankruptcy or experiences a downturn in its business, we may be unable to collect balances due under relevant leases.

We may experience concentration in one or more tenants across several of the properties in our portfolio. At any time, our tenants may experience a downturn in their business that may significantly weaken their financial condition. As a result, our tenants, including our anchor and other major tenants, may fail to comply with their contractual obligations to us, seek concessions in order to continue operations or declare bankruptcy, any of which could result in the termination of such tenants' leases and the loss of rental income attributable to the terminated leases. In addition, certain of our tenants may cease operations while continuing to pay rent, which could decrease customer traffic, thereby decreasing sales for our other tenants at the applicable retail property. In addition to these potential effects of a business downturn, mergers or consolidations among large retail establishments could result in the closure of existing stores or duplicate or geographically overlapping store locations, which could include stores at our retail properties.

Loss of, or a store closure by, an anchor or major tenant could significantly reduce our occupancy level or the rent we receive from our retail properties. In addition, we may not be able to re-lease vacated space at attractive rents or at all. Moreover, in the event of default by a major tenant or anchor store, we may experience delays and costs in enforcing our rights as landlord to recover amounts due to us under the terms of our agreements with those parties. The occurrence of any of the situations described above, particularly if it involves an anchor tenant with leases in multiple locations, could seriously harm our performance and could adversely affect the value of the applicable retail property.

Any of our tenants, or any guarantor of one of our tenant's lease obligations, could become subject to a bankruptcy proceeding pursuant to Title 11 of the United States Code (the "Bankruptcy Code"). If a tenant becomes a debtor under the Bankruptcy Code, federal law prohibits us from evicting such tenant based solely upon the commencement of such bankruptcy. Further, such a bankruptcy filing could prevent us from attempting to collect pre-bankruptcy debts from the bankrupt tenant or its properties or taking other debt enforcement actions, unless we receive an enabling order from the bankruptcy court. Generally, post-bankruptcy debts are required by statute to be paid currently, which would include payments on our leases that come due after the date of the bankruptcy filing. Such a bankruptcy filing also could cause a decrease, delay or cessation of current rental payments, reducing our operating cash flows and the amount of cash available for distributions to stockholders. Prior to emerging from bankruptcy, the tenant will need to decide whether to assume or reject its leases. Generally, and unless otherwise agreed to by the tenant and the lessor, if a tenant assumes a lease, all pre-bankruptcy balances and unpaid post-bankruptcy amounts owed under the lease must be paid in full. If a given lease or guaranty is not assumed, our operating cash flows and the amount of cash available for distribution to stockholders may be adversely affected. If a lease is rejected by a tenant in bankruptcy, we are entitled to general unsecured claims for damages. If a lease is rejected, we may not receive any further rent payments from the tenant, and the amount of our general unsecured claim for future rent would be capped at the rent reserved under the lease, without acceleration, for the greater of one year or 15% of the remaining term of the lease, but not greater than three years, plus rent and damages already due but unpaid. We would only receive recovery on our general unsecured claim in the event that funds or other consideration were available for distribution to general unsecured creditors, and then only in the same percentage as that realized on other general unsecured claims. We may also be unable to re-lease a terminated or rejected property or to re-lease it on comparable or more favorable terms.

Our business and the market price of our Common Stock could be negatively affected as a result of the actions of activist stockholders.

Our business, operating results or financial condition could be harmed by proxy contests because, among other things:

- Responding to proxy contests is costly and time-consuming, is a significant distraction for our board of directors, management and employees, and diverts the attention of our board of directors and senior management from the pursuit of our business strategy, which could adversely affect our results of operations and financial condition;
- Perceived uncertainties as to our future direction, our ability to execute on our strategy, or changes to the composition of our board of directors or senior management team, including our CEO, may lead to the perception of a change in the direction of our business, instability or lack of continuity which may be exploited by our competitors, and may result in the loss of potential business opportunities and make it more difficult to attract and retain qualified personnel and business partners;
- The expenses for legal and advisory fees and administrative and associated costs incurred in connection with responding to proxy contests and any related litigation may be substantial; and
- We may choose to initiate, or may become subject to, litigation as a result of the proxy contests or matters arising from the proxy contests, which would serve as a further distraction to our board of directors, management and employees and would require us to incur significant additional costs.

In addition, the market price of our securities could be subject to significant fluctuations or otherwise be adversely affected by the uncertainties described above or the outcome of the proxy contests.

The federal government's "green lease" policies may adversely affect us.

In recent years, the federal government has instituted "green lease" policies that allow a government tenant to require leadership in energy and environmental design for commercial interiors, or LEED®-CI, certification in selecting new premises or renewing leases at existing premises. In addition, the Energy Independence and Security Act of 2007 allows the General Services Administration to prefer buildings for lease that have received an "Energy Star" label. Obtaining such certifications and labels may be costly and time consuming, but our failure to do so may result in our competitive disadvantage in acquiring new or retaining existing government tenants.

Technological developments may impact customer traffic at certain tenants' stores and ultimately sales at such stores.

We may be adversely affected by developments of new technology that may cause the business of certain of our tenants to become substantially diminished or functionally obsolete, with the result that such tenants may be unable to pay rent, become insolvent, file for bankruptcy protection, close their stores or terminate their leases. Examples of the potentially adverse effects of new technology on retail businesses include, amongst other things, the advent of online movie rentals on video stores, the effect of e-books and small screen readers on book stores, and increased sales of many products online.

Substantial recent annual increases in online sales have also caused many retailers to sell products online on their websites with pick-ups at a store or warehouse or through deliveries. With special reference to our principal tenants, online grocery orders are available in some areas and may become a major factor affecting grocers in our portfolio.

Natural disasters and severe weather conditions could have an adverse impact on our cash flow and operating results.

Some of our properties could be subject to potential natural or other disasters. In addition, we may acquire properties that are located in areas that are subject to natural disasters, such as earthquakes and droughts. Properties could also be affected by increases in the frequency or severity of tornadoes, hurricanes or other storms, whether such increases are caused by global climate changes or other factors. The occurrence of natural disasters or severe weather conditions can increase investment costs to repair or replace damaged properties, increase operating costs, increase future property insurance costs, and/or negatively impact the tenant demand for lease space. If insurance is unavailable to us, or is unavailable on acceptable terms, or if our insurance is not adequate to cover business interruption or losses from such events, our earnings, liquidity and/or capital resources could be adversely affected.

We face risks relating to cybersecurity attacks, loss of confidential information and other business disruptions.

Our business is at risk from and may be impacted by cybersecurity attacks, including attempts to gain unauthorized access to our confidential data, and other electronic security breaches. Such cyber-attacks can range from individual attempts to gain unauthorized access to our information technology systems to more sophisticated security threats. While we employ a number of measures to prevent, detect and mitigate these threats, there is no guarantee such efforts will be successful in preventing a cyber-attack. A cybersecurity attack could compromise the confidential information of our employees, tenants and vendors. A successful attack could disrupt and otherwise adversely affect our business operations.

Risks Related to the Real Estate Industry

There are inherent risks associated with real estate investments and with the real estate industry, each of which could have an adverse impact on our financial performance and the value of our properties.

Real estate investments are subject to various risks and fluctuations and cycles in value and demand, many of which are beyond our control. Our financial performance and the value of our properties can be affected by many of these factors, including the following:

- adverse changes in financial conditions of buyers, sellers and tenants of our properties, including bankruptcies, financial difficulties or lease defaults by our tenants;
- the national, regional and local economy, which may be negatively impacted by concerns about increasing interest rates, inflation, deflation and government deficits, high unemployment rates, decreased consumer confidence, industry slowdowns, reduced corporate profits, liquidity concerns in our markets and other adverse business concerns;
- local real estate conditions, such as an oversupply of, or a reduction in, demand for retail space and the availability and creditworthiness of current and prospective tenants;
- vacancies or ability to rent retail space on favorable terms, including possible market pressures to offer tenants rent abatements, tenant improvements, early termination rights or below-market renewal options;
- changes in operating costs and expenses, including, without limitation, increasing labor and material costs, insurance costs, energy prices, environmental restrictions, real estate taxes and costs of compliance with laws, regulations and government policies, which we may be restricted from passing on to our tenants;
- fluctuations in interest rates, which could adversely affect our ability, or the ability of buyers and tenants of our properties, to obtain financing on favorable terms or at all;
- competition from other real estate investors with significant capital, including other real estate operating companies, publicly traded REITs and institutional investment funds;
- inability to refinance our indebtedness, which could result in a default on our obligation;
- the convenience and quality of competing retail properties;
- inability to collect rent from tenants;
- our ability to secure adequate insurance;
- our ability to secure adequate management services and to maintain our properties;
- changes in, and changes in enforcement of, laws, regulations and governmental policies, including, without limitation, health, safety, environmental, zoning and tax laws, government fiscal policies and the Americans with Disabilities Act of 1990 (the "ADA"); and
- civil unrest, acts of war, terrorist attacks and natural disasters, including earthquakes, wind damage and floods, which may result in uninsured and underinsured losses.

In addition, because the yields available from equity investments in real estate depend in large part on the amount of rental income earned, as well as property operating expenses and other costs incurred, a period of economic slowdown or recession, or declining demand for real estate, or the public perception that any of these events may occur, could result in a general decline in rents or an increased incidence of defaults among our existing leases, and, consequently, our properties, including any held by joint ventures, may fail to generate revenues sufficient to meet operating, debt service and other expenses. As a result, we may have to borrow amounts to cover fixed costs, and our financial condition, results of operations, cash flow, per share market price of our securities and ability to satisfy our principal and interest obligations and to make distributions to our stockholders may be adversely affected.

Our performance and value are subject to risks associated with real estate assets and the real estate industry, including local oversupply, reduction in demand or adverse changes in financial conditions of buyers, sellers and tenants of properties, which could decrease revenues or increase costs, which would adversely affect our financial condition, results of operations, cash flow, ability to make distributions to our stockholders and the per share trading price of our securities.

Our ability to pay expected dividends to our stockholders depends on our ability to complete future acquisitions as well as our ability to generate revenues in excess of expenses, scheduled principal payments on debt and capital expenditure requirements. Events and conditions generally applicable to owners and operators of real property that are beyond our control may decrease cash available for distribution and the value of our properties. These events include many of the risks set forth above under "*-Risks Related to Our Business and Operations,*" beginning on page 9 as well as the following:

- local oversupply or reduction in demand for retail space;
- adverse changes in financial conditions of buyers, sellers and tenants of properties;
- vacancies or our inability to rent space on favorable terms, including possible market pressures to offer tenants rent abatements, tenant improvements, early termination rights or below-market renewal options, and the need to periodically repair, renovate and re-let space;
- increased operating costs, including insurance premiums, utilities, real estate taxes and state and local taxes;
- civil unrest, acts of war, terrorist attacks and natural disasters, including earthquakes and floods, which may result in uninsured or underinsured losses;
- decreases in the underlying value of our real estate;
- changing submarket demographics; and
- changing traffic patterns.

In addition, periods of economic downturn or recession, rising interest rates or declining demand for real estate, or the public perception that any of these events may occur, could result in a general decline in rents or an increased incidence of defaults under existing leases, which would adversely affect our financial condition, results of operations, cash flow, ability to make distributions to our stockholders and per share trading price of our securities.

Illiquidity of real estate investments could significantly impede our ability to respond to adverse changes in the performance of our properties and harm our financial condition.

The real estate investments made, and to be made, by us are relatively difficult to sell quickly. As a result, our ability to promptly sell one or more properties in our portfolio in response to changing economic, financial and investment conditions is limited. Return of capital and realization of gains, if any, from an investment generally will occur upon disposition or refinancing of the underlying property. We may be unable to realize our investment objectives by sale, other disposition or refinancing at attractive prices within any given period of time or may otherwise be unable to complete any exit strategy. In particular, our ability to dispose of one or more properties within a specific time period is subject to weakness in or even the lack of an established market for a property, changes in the financial condition or prospects of prospective purchasers, changes in national or international economic conditions, and changes in laws, regulations or fiscal policies of jurisdictions in which the property is located.

In addition, the Code imposes restrictions on a REIT's ability to dispose of properties that are not applicable to other types of real estate companies. In particular, the tax laws applicable to REITs effectively require that we hold our properties for investment, rather than primarily for sale in the ordinary course of business, which may cause us to forgo or defer sales of properties that otherwise would be in our best interest. Therefore, we may not be able to vary our portfolio in response to economic or other conditions promptly or on favorable terms, which may adversely affect our financial condition, results of operations, cash flow, ability to make distributions to our stockholders and per share trading price of our securities.

Our property taxes could increase due to property tax rate changes or reassessment, which would adversely impact our cash flows.

We will be required to pay some state and local taxes on our properties. The real property taxes on our properties may increase as property tax rates change or as our properties are assessed or reassessed by taxing authorities. The amount of property taxes we pay in the future may increase substantially from what we have paid in the past. If the property taxes we pay increase, our cash flow would be adversely impacted, and our ability to pay any expected dividends to our stockholders could be adversely affected.

Our properties may contain asbestos or develop harmful mold, which could lead to liability for adverse health effects and costs of remediating the problem, which could adversely affect the value of the affected property and our ability to make distributions to our stockholders.

We are required by federal regulations with respect to our properties to identify and warn, via signs and labels, of potential hazards posed by workplace exposure to installed asbestos-containing materials ("ACMs"), and potential ACMs. We may be subject to an increased risk of personal injury lawsuits by workers and others exposed to ACMs and potential ACMs at our properties as a result of these regulations. The regulations may affect the value of any of our properties containing ACMs and potential ACMs. Federal, state and local laws and regulations also govern the removal, encapsulation, disturbance, handling and disposal of ACMs and potential ACMs when such materials are in poor condition or in the event of construction, remodeling, renovation or demolition of a property. When excessive moisture accumulates in buildings or on building materials, mold growth may occur, particularly if the moisture problem remains undiscovered or is not addressed over a period of time. Some molds may produce airborne toxins or irritants. Concern about indoor exposure to mold has been increasing because exposure to mold may cause a variety of adverse health effects and symptoms, including allergic or other reactions.

The presence of ACMs or significant mold at any of our properties could require us to undertake a costly remediation program to contain or remove the ACMs or mold from the affected property. In addition, the presence of ACMs or significant mold could expose us to claims of liability to our tenants, their or our employees, and others if property damage or health concerns arise.

Acquired properties may be located in new markets where we may face risks associated with investing in an unfamiliar market.

We may acquire properties in markets that are new to us. When we acquire properties located in new markets, we may face risks associated with a lack of market knowledge or understanding of the local economy, forging new business relationships in the area and unfamiliarity with local government and permitting procedures. We work to mitigate such risks through extensive diligence and research and associations with experienced service providers. However, there can be no guarantee that all such risks will be eliminated.

We may acquire properties with lock-out provisions, or agree to such provisions in connection with obtaining financing, which may prohibit us from selling or refinancing a property during the lock-out period.

We may acquire properties in exchange for common units of our Operating Partnership and agree to restrictions on sales or refinancing, called "lock-out" provisions, which are intended to preserve favorable tax treatment for the owners of such properties who sell them to us. In addition, we may agree to lock-out provisions in connection with obtaining financing for the acquisition of properties. Lock-out provisions could materially restrict us from selling, otherwise disposing of or refinancing properties. These restrictions could affect our ability to turn our investments into cash and thus affect cash available for distributions to our stockholders. Lock-out provisions could impair our ability to take actions during the lock-out period that would otherwise be in the best interests of our stockholders and, therefore, could adversely impact the market value of our Common Stock. In particular, lock-out provisions could preclude us from participating in major transactions that could result in a disposition of our assets or a change in control even though that disposition or change in control might be in the best interests of our stockholders.

Construction and development projects are subject to risks that materially increase the costs of completion.

In the event that we decide to develop and construct new properties or redevelop existing properties, we will be subject to risks and uncertainties associated with construction and development. These risks include, but are not limited to, risks related to obtaining all necessary zoning, land-use, building occupancy and other governmental permits and authorizations, risks related to the environmental concerns of government entities or community groups, risks related to changes in economic and market conditions between development commencement and stabilization, risks related to construction labor disruptions, adverse weather, acts of God or shortages of materials which could cause construction delays and risks related to increases in the cost of labor and materials which could cause construction costs to be greater than projected and adversely impact the amount of our development fees or our results of operations or financial condition.

As an owner of real estate, we could incur significant costs and liabilities related to environmental matters.

Under various federal, state and local laws and regulations relating to the environment, as a current or former owner or operator of real property, we may be liable for costs and damages resulting from the presence or discharge of hazardous or toxic substances, waste or petroleum products at, on, in, under or migrating from such property, including costs to investigate, clean up such contamination and liability for harm to natural resources. Such laws often impose liability without regard to whether the owner or operator knew of, or was responsible for, the presence of such contamination, and the liability may be joint and several. These liabilities could be substantial and the cost of any required remediation, removal, fines or other costs could exceed the value of the property and/or our aggregate assets. In addition, the presence of contamination or the failure to remediate contamination at our properties may expose us to third-party liability for costs of remediation and/or personal or property damage or materially adversely affect our ability to sell, lease or develop our properties or to borrow using the properties as collateral. In addition, environmental laws may create liens on contaminated sites in favor of the government for damages and costs it incurs to address such contamination. Moreover, if contamination is discovered on our properties, environmental laws may impose restrictions on the manner in which property may be used or businesses may be operated, and these restrictions may require substantial expenditures.

Additionally, we possess Phase I Environmental Site Assessments for all of the properties in our portfolio. However, the assessments are limited in scope (e.g., they do not generally include soil sampling, subsurface investigations, hazardous materials surveys or lead-based paint inspections or asbestos inspections) and may have failed to identify all environmental conditions or concerns. Furthermore, the Phase I Environmental Site Assessment reports for all of the properties in our portfolio are limited to the information available to the licensed site professional at the time of the investigation, and, as such, may not disclose all potential or existing environmental contamination liabilities at the properties in our portfolio arising after the date of such investigation. As a result, we could potentially incur material liability for these issues, which could adversely impact our financial condition, results of operations, cash flow and the per share trading price of our Common Stock. Some of the Phase I Environmental Site Assessments in our possession indicate the possibility of lead-based paint and asbestos containing materials located on and within buildings on some of our properties and polychlorinated biphenyl-containing electrical transformers located or adjacent to some of our properties. However, management believes that the potential liabilities resulting from removing these items would be immaterial.

As the owner of the buildings on our properties, we could face liability for the presence of hazardous materials (e.g., asbestos or lead) or other adverse conditions (e.g., poor indoor air quality) in our buildings. Environmental laws govern the presence, maintenance, and removal of hazardous materials in buildings, and if we do not comply with such laws, we could face fines for such noncompliance. Also, we could be liable to third parties (e.g., occupants of the buildings) for damages related to exposure to hazardous materials or adverse conditions in our buildings, and we could incur material expenses with respect to abatement or remediation of hazardous materials or other adverse conditions in our buildings. In addition, some of our tenants routinely handle and use hazardous or regulated substances and wastes as part of their operations at our properties, which are subject to regulation. Such environmental and health and safety laws and regulations could subject us or our tenants to liability resulting from these activities. Environmental liabilities could affect a tenant's ability to make rental payments to us, and changes in laws could increase the potential liability for noncompliance. This may result in significant unanticipated expenditures or may otherwise materially and adversely affect our operations, or those of our tenants, which could in turn have an adverse effect on us.

We cannot assure you that costs or liabilities incurred as a result of environmental issues will not affect our ability to make distributions to you or that such costs or other remedial measures will not have an adverse effect on our financial condition, results of operations, cash flow and per share trading price of our Common Stock. If we do incur material environmental liabilities in the future, we may face significant remediation costs, and we may find it difficult to sell any affected properties.

We may incur significant costs complying with various federal, state and local laws, regulations and covenants that are applicable to our properties.

The properties in our portfolio are subject to various covenants and federal, state and local laws and regulatory requirements, including permitting and licensing requirements. Local regulations, including municipal or local ordinances, zoning restrictions and restrictive covenants imposed by community developers may restrict our use of our properties and may require us to obtain approval from local officials or restrict our use of our properties and may require us to obtain approval from local officials of community standards organizations at any time with respect to our properties, including prior to acquiring a property or when undertaking renovations of any of our existing properties. Among other things, these restrictions may relate to fire and safety, seismic or hazardous material abatement requirements. There can be no assurance that existing laws and regulatory policies will not adversely affect us or the timing or cost of any future acquisitions or renovations, or that additional regulation will not be adopted that increase such delays or result in additional costs. Our growth strategy may be affected by our ability to obtain permits, licenses and zoning relief. Our failure to obtain such permits, licenses and zoning relief or to comply with applicable laws could have an adverse effect on our financial condition, results of operations, cash flow and per share trading price of our Common Stock.

In addition, federal and state laws and regulations, including laws such as the ADA and the Fair Housing Amendment Act of 1988 (the "FHAA"), impose further restrictions on our properties and operations. Under the ADA and the FHAA, all public accommodations must meet federal requirements related to access and use by disabled persons. Some of our properties may currently be in non-compliance with the ADA or the FHAA. If one or more of the properties in our portfolio is not in compliance with the ADA, the FHAA or any other regulatory requirements, we may be required to incur additional costs to bring the property into compliance and we might incur governmental

fines or the award of damages to private litigants. In addition, we do not know whether existing requirements will change or whether future requirements will require us to make significant unanticipated expenditures that will adversely impact our financial condition, results of operations, cash flow, ability to make distributions to our stockholders and per share trading price of our securities.

The risks associated with undeveloped land parcels and related activities could have a material adverse effect on our results of operations.

We have 5 undeveloped parcels of land. The risks inherent in owning land increase as demand or rental rates for office, retail or multifamily properties decreases. Real estate markets are uncertain, and as a result, the value of undeveloped land can fluctuate depending on prospective uses or intended developments. In addition, carrying costs, can be significant and can result in losses or reduced profitability. If there are subsequent changes in the fair value of our undeveloped land parcels that cause us to determine that the fair value of our undeveloped land parcels is less than their carrying basis reflected in our financial statements plus estimated costs to sell, we may be required to take future impairment charges which would reduce our net income and could materially and adversely affect our results of operations.

The current outbreak of the novel coronavirus, or COVID-19, has caused severe disruptions in the U.S. and global economy and will likely have an adverse impact on our financial condition and results of operations. This impact could be materially adverse to the extent the current COVID-19 outbreak, or future pandemics, cause customers to be unable to pay their rent or reduce the demand for commercial real estate, or cause other impacts described below.

In December 2019, a novel strain of coronavirus (COVID-19) was reported to have surfaced in Wuhan, China. COVID-19 has since spread to over 100 countries, including the United States. COVID-19 has also spread to every state in the United States. On March 11, 2020 the World Health Organization declared COVID-19 a pandemic, and on March 13, 2020 the United States declared a national emergency with respect to COVID-19.

The outbreak of COVID-19 in many countries, including the United States, continues to adversely impact global economic activity and has contributed to significant volatility and negative pressure in financial markets. The global impact of the outbreak has been rapidly evolving and, as cases of the virus have continued to be identified in additional countries, many countries, including the United States, have reacted by instituting quarantines and restrictions on travel.

Between March and May 2020, nearly all U.S. cities and states, including cities and states where our properties are located, have also reacted by instituting quarantines, restrictions on travel, “shelter in place” rules, restrictions on types of business that may continue to operate, and/or restrictions on types of construction projects that may continue. Beginning in early May 2020, parts of the U.S. began to ease the lockdown restrictions and allow for the reopening of businesses. The gradual reopening of retail, manufacturing, and office facilities came with required or recommended safety protocols. However, due to the continuation of new COVID-19 cases, these lockdown restrictions were reinstated in certain areas to varying degrees. Additionally, there is no assurance that the reopening of businesses, even if those businesses adhere to recommended safety protocols, will enable us or many of our customers to avoid adverse effects on our and our customers’ operations and businesses. The COVID-19 outbreak has had, and future pandemics could have, a significant adverse impact on economic and market conditions of economies around the world, including the United States, and has triggered a period of global economic slowdown or global recession.

The effects of COVID-19 or another pandemic could adversely affect us and/or our customers due to, among other factors:

- the unavailability of personnel, including executive officers and other leaders that are part of the management team and the inability to recruit, attract and retain skilled personnel-to the extent management or personnel are impacted in significant numbers by the outbreak of pandemic or epidemic disease and are not available or allowed to conduct work-business and operating results may be negatively impacted;

- difficulty accessing debt and equity capital on attractive terms, or at all-a severe disruption and instability in the global financial markets or deteriorations in credit and financing conditions may affect our and our customers’ ability to access capital necessary to fund business operations or replace or renew maturing liabilities on a timely basis, and may adversely affect the valuation of financial assets and liabilities, any of which could affect our ability to meet liquidity and capital expenditure requirements or have a material adverse effect on our business, financial condition, results of operations and cash flows;

- an inability to operate in affected areas, or delays in the supply of products or services from the vendors that are needed to operate effectively;

- customers’ inability to pay rent on their leases or our inability to re-lease space that is or becomes vacant, which inability, if extreme, could cause us to: (i) no longer be able to pay distributions at our current rates or at all in order to preserve liquidity and (ii) be unable to meet our debt obligations to lenders, which could cause us to lose title to the properties securing such debt, trigger cross-default provisions, or could cause us to be unable to meet debt covenants, which could cause us to have to sell properties or refinance debt on unattractive terms;

- an inability to ensure business continuity in the event our continuity of operations plan is not effective or improperly implemented or deployed during a disruption;

- our inability to raise capital in our ongoing public offering, if investors are reluctant to purchase our shares;

- our inability to deploy capital due to slower transaction volume which may be dilutive to stockholders; and

- our inability to satisfy redemption requests and preserve liquidity, if demand for redemptions exceeds the limits of our share redemption program or ability to fund redemptions.

Because our property investments are located in the United States, COVID-19 continues to impact our properties and operating results given its continued spread within the United States reduces occupancy, increases the cost of operation, results in limited hours or necessitates the closure of such properties. In addition, quarantines, states of emergencies and other measures taken to curb the spread of COVID-19 may negatively impact the ability of such properties to continue to obtain necessary goods and services or provide adequate staffing, which may also adversely affect our properties and operating results.

Customers and potential customers of the properties we own operate in industries that are being adversely affected by the disruption to business caused by this global outbreak. Customers or operators have been, and may in the future be, required to suspend operations at our properties for what could be an extended period of time. Although a number of our customers requested rent deferrals in the second quarter of 2020, these requests significantly decreased in the third and fourth quarters. However, as a result of COVID-19 or another future pandemic, more customers may request rent deferrals or may not pay rent in the future. This could lead to increased customer delinquencies and/or defaults under leases, a lower demand for rentable space leading to increased concessions or lower occupancy, and/or tenant improvement expenditures, or reduced rental rates to maintain occupancies. Our operations could be materially negatively affected if the economic downturn is prolonged, which could adversely affect our operating results, ability to pay our distributions, our ability to repay or refinance our debt, and the value of our shares.

Although multiple vaccines have been approved for use, there is uncertainty as to when a sufficient portion of the population will be vaccinated such that restrictions and safety protocols can be relaxed. The rapid development and fluidity of this situation precludes any prediction as to the ultimate impact of COVID-19. The full extent of the impact and effects of COVID-19 on our future financial performance, as a whole, and, specifically, on our real estate property holdings are uncertain at this time. The impact will depend on future developments, including, among other factors, the duration of the outbreak, vaccine distribution, travel advisories and restrictions, the recovery time of the disrupted supply chains, the consequential staff shortages, and production delays, and the uncertainty with respect to the duration of the global economic slowdown. COVID-19 and the current financial, economic and capital markets environment, and future developments in these and other areas present uncertainty and risk with respect to our performance, financial condition, results of operations, cash flows, and value of our shares.

Risks Related to Our Organization Structure

Conflicts of interest may exist or could arise in the future between the interests of our stockholders and the interests of holders of units in our Operating Partnership, which may impede business decisions that could benefit our stockholders.

Conflicts of interest may exist or could arise in the future as a result of the relationships between us and our affiliates, on the one hand, and our Operating Partnership or any partner thereof, on the other. Our directors and officers have duties to our company under Maryland law in connection with their management of our company. At the same time, we, as the general partner of our Operating Partnership, have fiduciary duties and obligations to our Operating Partnership and its limited partners under Virginia law and the partnership agreement of our Operating Partnership (the "Partnership Agreement") in connection with the management of our Operating Partnership. Our fiduciary duties and obligations as the general partner of our Operating Partnership may come into conflict with the duties of our directors and officers to our company.

Under Virginia law, a general partner of a Virginia limited partnership has fiduciary duties of loyalty and care to the partnership and its partners and must discharge its duties and exercise its rights as general partner under the Partnership Agreement or Virginia law consistently with the obligation of good faith and fair dealing. The Partnership Agreement provides that, in the event of a conflict between the interests of our Operating Partnership or any partner, on the one hand, and the separate interests of our company or our stockholders, on the other hand, we, in our capacity as the general partner of our Operating Partnership, are under no obligation not to give priority to the separate interests of our company or our stockholders, and that any action or failure to act on our part or on the part of our directors that gives priority to the separate interests of our company or our stockholders that does not result in a violation of the contract rights of the limited partners of the Operating Partnership under its Partnership Agreement does not violate the duty of loyalty that we, in our capacity as the general partner of our Operating Partnership, owe to the Operating Partnership and its partners.

Additionally, the Partnership Agreement provides that we will not be liable to the Operating Partnership or any partner for monetary damages for losses sustained, liabilities incurred or benefits not derived by the Operating Partnership or any limited partner, except for liability for our intentional harm or gross negligence. Our Operating Partnership must indemnify us, our directors and officers, officers of our Operating Partnership and our designees from and against any and all claims that relate to the operations of our Operating Partnership, unless (1) an act or omission of the person was material to the matter giving rise to the action and either was committed in bad faith or was the result of active and deliberate dishonesty, (2) the person actually received an improper personal benefit in violation or breach of the Partnership Agreement or (3) in the case of a criminal proceeding, the indemnified person had reasonable cause to believe that the act or omission was unlawful. Our Operating Partnership must also pay or reimburse the reasonable expenses of any such person upon its receipt of a written affirmation of the person's good faith belief that the standard of conduct necessary for indemnification has been met and a written undertaking to repay any amounts paid or advanced if it is ultimately determined that the person did not meet the standard of conduct for indemnification. Our Operating Partnership will not indemnify or advance funds to any person with respect to any action initiated by the person seeking indemnification without our approval (except for any proceeding brought to enforce such person's right to indemnification under the Partnership Agreement) or if the person is found to be liable to our Operating Partnership on any portion of any claim in the action.

Our Board may change our investment and financing policies without stockholder approval and we may become more highly leveraged, which may increase our risk of default under our debt obligations.

Our investment and financing policies are exclusively determined by our Board. Accordingly, our stockholders do not control these policies. Further, while our Board will review our ratio of debt to total capital on a quarterly basis, with the goal of maintaining a reasonable rate consistent with our expected ratio of debt to total market capitalization going forward, our charter and bylaws do not limit the amount or percentage of indebtedness, funded or otherwise, that we may incur. Our Board may alter or eliminate our current policy on borrowing at any time without stockholder approval. If this policy changed, we could become more highly leveraged, which could result in an increase in our debt service. Higher leverage also increases the risk of default on our obligations. In addition, a change in our investment policies, including the manner in which we allocate our resources across our portfolio or the types of assets in which we seek to invest, may increase our exposure to interest rate risk, real estate market fluctuations and liquidity risk. Changes to our policies with regard to the foregoing could adversely affect our financial condition, results of operations, cash flow and per share trading price of our Common Stock.

Our rights and the rights of our stockholders to take action against our directors and officers are limited.

As permitted by Maryland law, our charter eliminates the liability of our directors and officers to us and our stockholders for money damages, except for liability resulting from:

- actual receipt of an improper benefit or profit in money, property or services; or
- a final judgment based upon a finding of active and deliberate dishonesty by the director or officer that was material to the cause of action adjudicated.

As a result, we and our stockholders may have more limited rights against our directors and officers than might otherwise exist. Accordingly, in the event that actions taken in good faith by any of our directors or officers impede the performance of our company, your ability to recover damages from such director or officer will be limited.

We are a holding company with no direct operations and, as such, we will rely on funds received from our Operating Partnership to pay liabilities, and the interests of our stockholders will be structurally subordinated to all liabilities and obligations of our Operating Partnership and its subsidiaries.

We are a holding company and will conduct substantially all of our operations through our Operating Partnership. We do not have, apart from an interest in our Operating Partnership, any independent operations. As a result, we will rely on distributions from our Operating Partnership to pay any dividends we might declare on shares of our Common Stock. We will also rely on distributions from our Operating Partnership to meet any of our obligations, including any tax liability on taxable income allocated to us from our Operating Partnership. In addition, because we are a holding company, your claims as stockholders will be structurally subordinated to all existing and future liabilities and obligations (whether or not for borrowed money) of our Operating Partnership and its subsidiaries. Therefore, in the event of our bankruptcy, liquidation or reorganization, our assets and those of our Operating Partnership and its subsidiaries will be available to satisfy the claims of our stockholders only after all of our and our Operating Partnership's and our other subsidiaries' liabilities and obligations have been paid in full.

We suspended dividend payments with respect to our Common Stock, Series A Preferred, Series B Preferred and Series D Preferred Stock.

In March 2018, our Board suspended the payment of dividends on our Common Stock. Our Board also suspended the quarterly dividends on shares of our Series A Preferred, Series B Preferred and Series D Preferred Stock, beginning with the three months ended December 31, 2018. Dividends were suspended to retain cash flow to pay operating expenses and reduce debt. Additionally, as the Company has failed to pay cash dividends on the outstanding Series D Preferred Stock, the annual dividend rate on the Series D Preferred Stock has increased to 10.75%; commencing on the first day after the first missed quarterly payment, January 1, 2019 and will continue until such time as the Company has paid all accumulated and unpaid dividends on the Series D Preferred Stock in full. See Note 8, Equity and Mezzanine Equity, to our consolidated financial statements included in our 2020 Annual Report on Form 10-K. As a result of the dividend suspension on the Series A Preferred, Series B Preferred and Series D Preferred Stock, no dividends may be declared or paid on the Common Stock until all accumulated accrued and unpaid dividends on the Preferred Stocks have been declared and paid in full. At this time, we can provide no certainty as to when or if dividends will be reinstated.

Our Common Stock ranks junior to our Series A Preferred, Series B Preferred and Series D Preferred Stock with respect to dividends and amounts payable in the event of our liquidation.

Our Common Stock ranks junior to our Series A Preferred, Series B Preferred and Series D Preferred Stock with respect to the payment of dividends and amounts payable in the event of our liquidation, dissolution or winding-up. This means that, unless accumulated accrued dividends have been paid or set aside for payment on all outstanding shares of our Series A Preferred, Series B Preferred and Series D Preferred Stock for all past dividend periods, no dividends may be declared or paid, or set aside for payment on, our Common Stock. Likewise, in the event of our voluntary or involuntary liquidation, dissolution or winding-up, no distribution of our assets may be made to holders of our Common Stock until we have paid to holders of our Series A Preferred, Series B Preferred and Series D Preferred Stock the applicable liquidation preference plus all accumulated accrued and unpaid dividends. As a result, the value of your investment in our Common Stock may suffer if sufficient funds are not available to first satisfy our obligations to the holders of our Series A Preferred, Series B Preferred and Series D Preferred Stock in the event of our liquidation.

We shall from time to time attempt to repurchase shares of our Series B Preferred and our Series D Preferred Stock. However, there are no assurances that those attempts to repurchase will be successful and holders may not be prepared to sell at prices which we offer.

We shall, from time to time, attempt to buy back shares of our Series B Preferred Stock and our Series D Preferred Stock. However, there are no assurances that the price we offer for those repurchases will be prices at which those holders will be prepared to sell. For example, our last tender offer for Series D Preferred Stock was undersubscribed. We launched a modified Dutch tender offer in April 2021 for up to $12 million of our Series D Preferred Stock, in which 103,513 shares were tendered and accepted for purchase for an aggregate cost of $1,863,234. If we are not able to purchase the shares at prices we deem appropriate, then we shall not purchase the shares.

Our Operating Partnership may issue additional partnership units to third parties without the consent of our stockholders, which would reduce our ownership percentage in our Operating Partnership and would have a dilutive effect on the amount of distributions made to us by our Operating Partnership and, therefore, the amount of distributions we can make to our stockholders.

As of March 31, 2021, we own 98.54% of the outstanding common units of our Operating Partnership, and we may, in connection with our acquisition of properties or otherwise, issue additional partnership units to third parties. Such issuances would reduce our ownership percentage in our Operating Partnership and affect the amount of distributions made to us by our Operating Partnership and, therefore, the amount of distributions we can make to our stockholders. Because you will not directly own partnership units, you will not have any voting rights with respect to any such issuances or other partnership level activities of our Operating Partnership.

Loss of exclusion from regulation pursuant to the Investment Company Act of 1940 would adversely affect us.

We conduct our operations so that our company and each of its subsidiaries are exempt from registration as an investment company under the Investment Company Act of 1940, or the Investment Company Act. Under Section 3(a)(1)(A) of the Investment Company Act, a company is an "investment company" if it is, or holds itself out as being, engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities. Under Section 3(a)(1)(C) of the Investment Company Act, a company is deemed to be an "investment company" if it is engaged, or proposes to engage, in the business of investing, reinvesting, owning, holding or trading in securities and owns or proposes to acquire "investment securities" having a value exceeding 40% of the value of its total assets (exclusive of government securities and cash items) on an unconsolidated basis, or the 40% test.

We conduct our operations so that our company and most, if not all, of our subsidiaries will comply with the 40% test. We will continuously monitor our holdings on an ongoing basis to determine the compliance of our company and each subsidiary with this test. In addition, we believe that neither our company nor any of our subsidiaries will be considered investment companies under Section 3(a)(1)(A) of the Investment Company Act because they will not engage primarily, or propose to engage primarily, or hold themselves out as being engaged primarily in the business of investing, reinvesting or trading in securities. Rather, our company and its subsidiaries are primarily engaged in non-investment company businesses related to real estate. Our business will be materially and adversely affected if we fail to qualify for this exclusion from regulation pursuant to the Investment Company Act.

Risks Related to Our Status as a REIT

Failure to qualify as a REIT would have significant adverse consequences to us and the value of our Common Stock.

We have elected to be taxed, and we conduct operations so as to qualify, as a REIT for U.S. federal income tax purposes. We have not requested, and do not plan to request, a ruling from the IRS that we qualify as a REIT, and the statements in this annual filing are not binding on the IRS or any court. Therefore, we cannot assure you that we qualify as a REIT, or that we will remain qualified as such in the future. If we fail to qualify as a REIT in any tax year, we will face adverse tax consequences that would substantially reduce the funds available for distribution to our stockholders for each of the years involved because:

- we would not be allowed a deduction for distributions to stockholders in computing our taxable income and would be subject to U.S. federal income tax at regular corporate rates;
- we also could be subject to the federal alternative minimum tax for taxable years beginning before January 1, 2018 and, possibly, increased state and local taxes; and
- unless we are entitled to relief under applicable statutory provisions, we could not elect to be taxed as a REIT for the four taxable years following the year during which we were disqualified.

Any such corporate tax liability could be substantial and would reduce our cash available for, among other things, our operations and distributions to stockholders. In addition, if we fail to qualify as a REIT, we will not be required to make distributions to our stockholders. As a result of all these factors, our failure to qualify as a REIT also could impair our ability to expand our business and raise capital, and could materially and adversely affect the value of our Common Stock.

Qualification as a REIT involves the application of highly technical and complex Code provisions for which there are only limited judicial and administrative interpretations. The complexity of these provisions and of the applicable Treasury regulations that have been promulgated under the Code, or the Treasury Regulations, is greater in the case of a REIT that, like us, holds its assets through a partnership. The determination of various factual matters and circumstances not entirely within our control may affect our ability to qualify as a REIT. To qualify as a REIT, we must satisfy a number of requirements, including requirements regarding the ownership of our stock, requirements regarding the composition of our assets and a requirement that at least 95% of our gross income in any year must be derived from qualifying sources, such as "rents from real property." Also, we must make distributions to stockholders aggregating annually at least 90% of our REIT taxable income, excluding net capital gains. Because payments on the Notes can be made with shares of our Common Stock, we will not be able to deduct interest paid or accrued on the Notes for U.S. federal income tax purposes, including for purposes of calculating our REIT taxable income. In addition, legislation, new regulations, administrative interpretations or court decisions may materially adversely affect our investors, our ability to qualify as a REIT for U.S. federal income tax purposes or the desirability of an investment in a REIT relative to other investments.

Even if we continue to qualify as a REIT for U.S. federal income tax purposes, we may be subject to some federal, state and local income, property and excise taxes on our income or property and, in certain cases, a 100% penalty tax, in the event we sell property as a dealer. In addition, our taxable REIT subsidiaries will be subject to tax as regular corporations in the jurisdictions they operate.

If our Operating Partnership fails to continue to qualify as a partnership for U.S. federal income tax purposes, we would cease to qualify as a REIT and suffer other adverse consequences.

We believe that our Operating Partnership will continue to be treated as a partnership for U.S. federal income tax purposes. As a partnership, our Operating Partnership will not be subject to U.S. federal income tax on its income. Instead, each of its partners, including us, will be allocated, and may be required to pay tax with respect to, its share of our Operating Partnership's income. We cannot assure you, however, that the IRS will not challenge the status of our Operating Partnership or any other subsidiary partnership in which we own an interest as a partnership for U.S. federal income tax purposes, or that a court would not sustain such a challenge. If the IRS were successful in treating our Operating Partnership or any such other subsidiary partnership as an entity taxable as a corporation for U.S. federal income tax purposes, we would fail to meet the gross income tests and certain of the asset tests applicable to REITs and, accordingly, we would likely cease to continue to qualify as a REIT. Also, the failure of our Operating Partnership or any subsidiary partnerships to continue to qualify as a partnership could cause it to become subject to federal and state corporate income tax, which would significantly reduce the amount of cash available for debt service and for distribution to its partners, including us.

To maintain our REIT status, we may be forced to borrow funds during unfavorable market conditions, and the unavailability of such capital on favorable terms at the desired times, or at all, may cause us to curtail our investment activities and/or to dispose of assets at inopportune times, which could adversely affect our financial condition, results of operations, cash flow, ability to make distributions to our stockholders and per share trading price of our securities.

To continue to qualify as a REIT, we generally must distribute to our stockholders at least 90% of our REIT taxable income each year, excluding net capital gains, and we will be subject to regular corporate income taxes to the extent that we distribute less than 100% of our REIT taxable income each year. In addition, we will be subject to a 4% nondeductible excise tax on the amount, if any, by which distributions paid by us in any calendar year are less than the sum of 85% of our ordinary income, 95% of our capital gain net income and 100% of our undistributed income from prior years. To maintain our REIT status and avoid paying income and excise taxes, we may need to borrow funds to meet the REIT distribution requirements even if the then- prevailing market conditions are not favorable for these borrowings. These borrowing needs could result from, among other things, differences in timing between the actual receipt of cash and inclusion of income for U.S. federal income tax purposes, or the effect of non-deductible capital expenditures, the creation of reserves or required debt or amortization payments. These sources, however, may not be available on favorable terms or at all. Our access to third-party sources of capital depends on a number of factors, including the market's perception of our growth potential, our current debt levels, the market price of our Common Stock, and our current and potential future earnings. We cannot assure you that we will have access to such capital on favorable terms at the desired times, or at all, which may cause us to curtail our investment activities and/or to dispose of assets at inopportune times, and could adversely affect our financial condition, results of operations, cash flow, ability to make distributions to our stockholders and per share trading price of our securities.

We may in the future choose to pay dividends in our securities, in which case you may be required to pay tax in excess of the cash you receive.

We may distribute taxable dividends that are payable in our securities. Taxable stockholders receiving such dividends will be required to include the full amount of the dividend as ordinary income to the extent of our current and accumulated earnings and profits for U.S. federal income tax purposes. As a result, a U.S. Holder may be required to pay tax with respect to such dividends in excess of the cash received (if any). If a U.S. Holder sells the stock it receives as a dividend to pay this tax, the sales proceeds may be less than the amount included in income with respect to the dividend, depending on the market price of our stock at the time of the sale. For more information on the tax consequences of distributions with respect to our securities, see "*Material U.S. Federal Income Tax Considerations*" beginning on page 67. Furthermore, with respect to Non-U.S. Holders, we may be required to withhold U.S. tax with respect to such dividends, including in respect of all or a portion of such dividend that is payable in stock. In addition, if a significant number of our stockholders determine to sell shares of our stock to pay taxes owed with respect to dividends, such sales may have an adverse effect on the trading price of our securities.

Dividends payable by REITs do not qualify for the reduced tax rates available for some dividends.

Dividends payable by REITs generally are not qualified dividend income. However, for taxable years beginning before 2026, a non-corporate taxpayer generally may deduct 20% of ordinary REIT dividends that are not "capital gain dividends" or "qualified dividend income."

The tax imposed on REITs engaging in "prohibited transactions" may limit our ability to engage in transactions that would be treated as sales for U.S. federal income tax purposes.

A REIT's net income from prohibited transactions is subject to a 100% excise tax. In general, prohibited transactions are sales or other dispositions of property, other than foreclosure property, held primarily for sale to customers in the ordinary course of business. Although we do not intend to hold any properties that would be characterized as held for sale to customers in the ordinary course of our business, unless a sale or disposition qualifies under certain statutory safe harbors, such characterization is a factual determination and no guarantee can be given that the IRS would agree with our characterization of our properties or that we will always be able to make use of the available safe harbors.

Complying with REIT requirements may affect our profitability and may force us to liquidate or forgo otherwise attractive investments.

To qualify as a REIT, we must continually satisfy tests concerning, among other things, the nature and diversification of our assets, the sources of our income and the amounts we distribute to our stockholders. We may be required to liquidate or forgo otherwise attractive investments to satisfy the asset and income tests or to qualify under certain statutory relief provisions. We also may be required to make distributions to stockholders at disadvantageous times or when we do not have funds readily available for distribution. As a result, having to comply with the distribution requirement could cause us to: (1) sell assets in adverse market conditions; (2) borrow on unfavorable terms; or (3) distribute amounts that would otherwise be invested in future acquisitions, capital expenditures or repayment of debt. Accordingly, satisfying the REIT requirements could have an adverse effect on our business results, profitability and ability to execute our business plan. Moreover, if we are compelled to liquidate our investments to meet any of these asset, income or distribution tests, or to repay obligations to our lenders, we may be unable to comply with one or more of the requirements applicable to REITs or may be

subject to a 100% tax on any resulting gain if such sales constitute prohibited transactions.

Ownership limitations in our charter may impair the ability of holders to convert Notes into shares of our capital stock.

Our charter contains restrictions on the ownership and transfer of shares of our capital stock that are intended to assist us in continuing to qualify as a REIT. The relevant sections of our charter provide that, subject to certain exceptions, no person or entity may actually or beneficially own, or be deemed to own by virtue of the applicable constructive ownership provisions of the Code, more than 9.8% (in value or in number of shares, whichever is more restrictive) of the aggregate of the outstanding shares of our capital stock, or 9.8% in value of the aggregate of the outstanding shares of all classes and series of our stock, in each case excluding any shares of our capital stock that are not treated as outstanding for federal income tax purposes (the "Ownership Limits"). A person or entity that would have acquired beneficial or constructive ownership of our stock but for the application of the Ownership Limits or any of the other restrictions on ownership and transfer of our stock discussed below is referred to as a "prohibited owner."

A holder of Notes may not exercise the conversion feature of the Notes to the extent that such holder would be treated as violating the Ownership Limits as a result of such exercise. If any delivery of shares of our capital stock to a holder upon conversion of the Notes is not made, in whole or in part, as a result of the limitations described above, our obligation to make such delivery shall not be extinguished and we shall deliver such shares as promptly as practicable after any such converting holder gives notice to us that such delivery would not result in it violating the Ownership Limits.

See "*Description of Capital Stock—Restrictions on Ownership and Transfer*" beginning on page 59 for discussion regarding the Ownership Limitation.

Legislative or other actions affecting REITs could have a negative effect on us, including our ability to qualify as a REIT or the U.S. federal income tax consequences of such qualification.

At any time, the U.S. federal income tax laws governing REITs or the administrative interpretations of those laws may be amended, possibly with retroactive effect. We cannot predict when or if any new U.S. federal income tax law, regulation or administrative interpretation, or any amendment to any existing U.S. federal income tax law, regulation or administrative interpretation, will be adopted, promulgated or become effective. We and our stockholders could be adversely affected by any such change in the U.S. federal income tax laws, regulations or administrative interpretations.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

Throughout this prospectus, we make forward-looking statements that are subject to risks and uncertainties. Forward-looking statements are generally identifiable by use of forward-looking terminology such as "may," "will," "should," "potential," "intend," "expect," "anticipate," "estimate," "approximately," "believe," "could," "project," "predict," or other similar words or expressions. Additionally, statements regarding the following subjects are forward-looking by their nature:

This prospectus of Wheeler Real Estate Investment Trust, Inc. (the "Company" or "our Company") contains forward-looking statements, including discussion and analysis of our financial condition, anticipated capital expenditures required to complete projects, amounts of anticipated cash distributions to our stockholders in the future and other matters. 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. Forward-looking statements are typically identified by the use of terms such as "may," "will," "should," "potential," "predicts," "anticipates," "expects," "intends," "plans," "believes," "seeks," "estimates," or the negative of such terms and variations of these words and similar expressions. 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.

Forward-looking statements that were true at the time made may ultimately prove to be incorrect or false. You are cautioned to not place undue reliance on forward-looking statements, which reflect our management's view only as of the date of this Form 10-K. We undertake no obligation to update or revise forward-looking statements to reflect changed assumptions, the occurrence of unanticipated events or changes to future operating results. Factors that could cause actual results to differ materially from any forward-looking statements made in this prospectus include:

- our business and investment strategy;
- our projected operating results;
- actions and initiatives of the U.S. government and changes to U.S. government policies and the execution and impact of these actions, initiatives and policies;
- the state of the U.S. economy generally and in specific geographic areas;
- negative impacts from continued spread of COVID-19, including on the U.S. or global economy or on our business, financial position or results of operations;
- tenant bankruptcies;
- economic trends and economic recoveries;
- our ability to obtain and maintain financing arrangements;
- financing and advance rates for our target assets;
- our expected leverage;
- availability of investment opportunities in real estate-related investments;
- changes in the values of our assets;
- our ability to make distributions to our stockholders in the future;
- our expected investments and investment decisions;

- our ability to renew leases at amounts and terms comparable to existing lease arrangements;

- our ability to proceed with potential development opportunities for us and third-parties;
- our ability to maintain our qualification as a real estate investment trust ("REIT");
- our ability to maintain our exemption from registration under the Investment Company Act of 1940, as amended (the "Investment Company Act");
- impact of and changes in governmental regulations, tax law and rates, accounting guidance and similar matters, including changes to laws governing REITs;
- availability of qualified personnel and management team;
- the ability of our operating partnership, Wheeler REIT, L.P. (the "Operating Partnership") and each of our other partnerships and limited liability companies to be classified as partnerships or disregarded entities for federal income tax purposes;
- our ability to amend our charter to increase or decrease the aggregate number of authorized shares of stock and to change the terms of our preferred stock, without par value ("Preferred Stock");
- our competition;
- market trends in our industry, interest rates, real estate values or the general economy;
- uncertainties related to the national economy, the real estate industry in general and in our specific markets;
- adverse economic or real estate developments in Virginia, Florida, Georgia, Alabama, South Carolina, North Carolina, Oklahoma, Kentucky, Tennessee, West Virginia, New Jersey and Pennsylvania;
- increases in interest rates and operating costs;
- litigation risks;
- lease-up risks;
- inability to generate sufficient cash flows due to market conditions, competition, uninsured losses, changes in tax or other applicable laws; and
- the need to fund tenant improvements or other capital expenditures out of operating cash flow.

Forward-looking statements should be read in light of these factors.

USE OF PROCEEDS

We estimate that the aggregate gross proceeds from the Rights Offering will be approximately $30 million. Although we have no current specific plan for the proceeds of this Rights Offering, we intend to use the net proceeds of this Rights Offering for one or more of the following: repurchases of our Series D Preferred Stock; repurchases of our Series B Preferred Stock; repayment of our outstanding indebtedness; purchases of real estate assets; or working capital.

THE RIGHTS OFFERING

We are distributing, at no charge, to holders of our Common Stock, Rights to purchase up to $30 million in aggregate principal amount of Notes. You will receive a fixed number of Rights based on your pro-rata ownership of Common Stock as of the Record Date set forth below.

Rights

Each Right will entitle a holder to purchase $25.00 in principal amount of Notes. We have granted to you, as a stockholder of record as of 5:00 p.m., New York City time, on June 1, 2021, (the "Record Date"), one right for each 8 shares of our Common Stock you owned at that time. You may exercise the Rights for Notes in a minimum denomination of $25.00 and integral multiples thereof subject to the Rights, or you may choose not to exercise any Rights.

In order to properly exercise your Rights, you must deliver to the Subscription Agent the subscription payment and a properly completed Rights Certificate, or if you hold your Rights through a broker, dealer, custodian bank or other nominee, which we generally refer to as a "nominee," you should complete and return to your nominee the form entitled "Beneficial Owner Election" or such other appropriate documents as are provided by your nominee related to your Rights before the expiration of the Rights Offering.

If you hold your shares in the name of a nominee who uses the services of DTC, DTC will issue a number of Rights to your nominee equal to the number of Rights you are entitled to receive as the beneficial owner of common shares. See "*The Rights Offering—Method of Exercising Rights—Subscription By Beneficial Owners*" on page 37.

Over-Subscription Privilege

If, and only if, you exercise your Right in full, then you will also have an Over-Subscription Privilege which will allow you to subscribe for an additional principal amount of Notes issuable pursuant to Rights that were not exercised by other stockholders. The Notes sold through the Over-Subscription Privilege will be sold at the same subscription price and, if necessary, subject to proration based on relative Common Stock ownership.

Proration

All subscriptions pursuant to the Over-Subscription Privilege will be subject to proration based on relative Common Stock ownership to ensure that the aggregate proceeds raised in the Rights Offering do not exceed the Maximum Offering Amount, which is the total amount that the Company intends to raise. In the event that the number of subscriptions pursuant to the Over-Subscription Privilege exceeds the Maximum Offering Amount, each subscriber exercising the Over-Subscription Privilege will receive

a pro-rata portion of the Notes issued based on relative Common Stock ownership. Any fractional Notes to which persons exercising their Over-Subscription Privilege would otherwise be entitled pursuant to such allocation shall be rounded down to the nearest increment of $25.

No Fractional Rights

We will not issue fractional Rights or cash in lieu of Notes in less than the minimum denomination of $25.00.

Method of Exercising Rights

The exercise of Rights is irrevocable and may not be cancelled or modified, even if the Rights Offering is extended by us in our discretion. You may exercise your Rights as follows:

Subscription by Registered Stockholders

Holders of record of Rights may exercise Rights by properly completing and executing the Rights Certificate together with any required signature guarantees and forwarding it, together with full subscription payment, to the Subscription Agent at the address set forth below under "*Subscription Agent*," on page 38 before the expiration of the Rights Offering. Notes underlying Rights may be purchased and/or titled in the name of certain qualified designees of the holder of record of the Rights (*e.g*., an immediate family member, trust or tax-planning vehicle of the holder of record; a corporate affiliate of the holder of record; or a charitable institution).

Subscription by Beneficial Owners

If you are a beneficial owner of shares of our Common Stock that are registered in the name of a nominee, or if you hold our Common Stock certificates and would prefer to have an institution conduct the transaction relating to the Rights on your behalf, you should instruct your nominee to exercise your Rights and deliver all subscription documents and payment on your behalf before 5:00 p.m., New York City time, on [●], 2021, which is the expiration of the Rights Offering. Your Rights will not be considered exercised unless the Subscription Agent receives from you or your broker, as the case may be, all of the required subscription documents and your full subscription payment for your subscription prior to 5:00 p.m., New York City time, on [●], 2021.

Subscription by DTC Participants

If your Rights are held of record through DTC, the exercise of your Rights may be made through the facilities of DTC. In this case, you may exercise your Rights by instructing DTC (directly or through your broker) to transfer (1) your Rights from your account to the account of the Subscription Agent, together with certification by DTC (on your behalf) as to the aggregate number of Rights you are exercising and principal amount of Notes you are subscribing for under your Rights, and (2) your full subscription payment for your subscription.

Payment Method

Payments must be made in full in U.S. currency by:

- check or bank draft payable to Computershare, drawn upon a U.S. bank; or
- wire transfer of immediately available funds to accounts maintained by the Subscription Agent.

Payment received after the expiration of the Rights Offering will not be honored, and the Subscription Agent will return your payment to you, without interest, as soon as practicable. The Subscription Agent will be deemed to receive payment upon:

- clearance of any uncertified check deposited by the Subscription Agent;
- receipt by the Subscription Agent of any certified check bank draft drawn upon a U.S. bank; or
- receipt of collected funds in the Subscription Agent's account.

If you elect to exercise your Rights or Over-Subscription Privilege, we urge you to consider using a certified check or wire transfer of funds to ensure that the Subscription Agent receives your funds before the expiration of the Rights Offering. If you send an uncertified check, payment will not be deemed to have been received by the Subscription Agent until the check has cleared, but if you send a certified check bank draft drawn upon a U.S. bank or wire or transfer funds directly to the Subscription Agent's account, payment will be deemed to have been received by the Subscription Agent immediately upon receipt of such instruments or wire or transfer.

Any personal check used to pay for Notes must clear the appropriate financial institutions prior to the expiration of the Rights Offering. The clearinghouse may require five or more business days. Accordingly, holders of Rights that wish to pay the Subscription Price by means of an uncertified personal check are urged to make payment sufficiently in advance of the expiration of the Rights Offering to ensure such payment is received and clears by such date.

You should read the instruction letter accompanying the Rights Certificate carefully and strictly follow it. DO NOT SEND RIGHTS CERTIFICATES OR PAYMENTS TO THE COMPANY. Except as described below under "*Guaranteed Delivery Procedures*" on page 40, we will not consider your subscription received until the Subscription Agent has received delivery of a properly completed and duly executed Rights Certificate and payment of the full subscription amount. The risk of delivery of all documents and payments is borne by you or your nominee, not by the Subscription Agent or us.

The method of delivery of Rights Certificates and payment of the subscription amount to the Subscription Agent will be at the risk of the holders of Rights. If sent by mail, we recommend that you send those certificates and payments by overnight courier or by registered mail, properly insured, with return receipt requested, and that a sufficient number of days be allowed to ensure delivery to the Subscription Agent and clearance of payment before the expiration of the Rights Offering.

Unless a Rights Certificate provides that the Notes are to be delivered to the record holder of such Rights or such certificate is submitted for the account of a bank or a broker, signatures on such Rights Certificate must be guaranteed by an "eligible guarantor institution," as such term is defined in Rule 17Ad-15 of the Exchange Act, subject to any standards and procedures adopted by the Subscription Agent. See "*Medallion Guarantee May Be Required*" beginning on page 39.

Missing or Incomplete Subscription Information

If you do not indicate the number of Rights being exercised, or the Subscription Agent does not receive the full subscription payment for the number of Rights that you indicate are being exercised, then you will be deemed to have exercised the maximum number of Rights that may be exercised with the aggregate subscription payment you delivered to the Subscription Agent. If we do not apply your full subscription payment to your purchase of Notes, any excess subscription payment received by the Subscription Agent will be returned, without interest, as soon as practicable.

Expiration Date and Extensions

The subscription period, during which you may exercise your Rights, expires at 5:00 p.m., New York City time, on [●], 2021. which is the expiration of the Rights Offering. If you do not exercise your Rights before that time, your Rights will expire and will no longer be exercisable. We will not be required to issue Notes to you if the Subscription Agent receives your Rights Certificate or your subscription payment after that time, regardless of when the Rights Certificate and subscription payment were sent, unless you send the documents in compliance with the guaranteed delivery procedures described below. The period for exercising your Rights may be extended by us in our discretion up to an additional thirty (30) days. We may extend the expiration date of the Rights Offering by giving oral or written notice to the Subscription Agent on or before the scheduled expiration date. If we elect to extend the expiration of the Rights Offering, we will issue a press release announcing such extension no later than 9:00 a.m., New York City time, on the next business day after the most recently announced expiration of the Rights Offering. We will extend the duration of the Rights Offering as required by applicable law or regulation and may choose to extend it if we decide to give investors more time to exercise their Rights in this Rights Offering.

Withdrawal and Termination

We may cancel or terminate the Rights Offering, as determined by us in our discretion.

Subscription Agent

The Subscription Agent for this offering is Computershare. The address to which subscription documents and subscription payments (other than wire transfers) should be delivered is:

By mail:
Computershare
c/o Corporate Actions Voluntary Offer; COY: WHLR
P.O. Box 43011
Providence, RI 02940-3011

By overnight courier:
Computershare
c/o Corporate Actions Voluntary Offer; COY: WHLR
150 Royall Street, Suite V
Canton, MA 02021

Information Agent

The Information Agent for this offering is Equiniti (US) Services LLC. Additional questions about the Rights Offering should be directed to the information agent for the Rights Offering as follows:

(516) 220-8356 (brokers); (833) 503-4130 (stockholders)

If you deliver subscription documents or subscription payments in a manner different than that described in this prospectus, then we may not honor the exercise of your Rights.

You should direct any questions or requests for assistance concerning the method of subscribing for the Notes or for additional copies of this prospectus to the Subscription Agent, Computershare, at (800) 546-5141 (within USA, US territories & Canada) or (781) 575-2765 (outside USA, US territories & Canada).

Fees and Expenses

We will pay all fees charged by the Subscription Agent. You are responsible for paying any other commissions, fees, taxes or other expenses incurred in connection with the exercise of the Rights.

Medallion Guarantee May Be Required

Your signature on each Rights Certificate must be guaranteed by an eligible institution, such as a member firm of a registered national securities exchange or a member of the Financial Industry Regulatory Authority, Inc., or a commercial bank or trust company having an office or correspondent in the United States, subject to standards and procedures adopted by the Subscription Agent, unless:

- your Rights Certificate provides that as record holder of those Rights your DTC account will be credited upon exercise of the Rights; or
- you are an eligible institution.

You can obtain a signature guarantee from a financial institution—such as a commercial bank, savings bank, credit union or broker dealer—that participates in one of the Medallion signature guarantee programs. The three Medallion signature guarantee programs are the following:

- Securities Transfer Agents Medallion Program (STAMP), whose participants include more than 7,000 U.S. and Canadian financial institutions;
- Stock Exchanges Medallion Program (SEMP), whose participants include the regional stock exchange member firms and clearing and trust companies; or
- NYSE/American Medallion Signature Program (MSP) whose participants include NYSE member firms.

If a financial institution is not a member of a recognized Medallion signature guarantee program, it would not be able to provide signature guarantees. Also, if you are not a customer of a participating financial institution, it is likely the financial institution will not guarantee your signature. Therefore, the best source of a Medallion Guarantee would be a bank, savings and loan association, brokerage firm or credit union with which you do business. The participating financial institution will use a Medallion imprint or stamp to guarantee the signature, indicating that the financial institution is a member of a Medallion signature guarantee program and is an acceptable signature guarantor.

Notice to Nominees

If you are a nominee holder that holds shares of our Common Stock for the account of others on the Record Date, you should notify the beneficial owners of the shares for whom you are the nominee of the Rights Offering as soon as possible to learn their intentions with respect to exercising their Rights. You should obtain instructions from the

beneficial owner, as set forth in the instructions we have provided to you for your distribution to beneficial owners. If the beneficial owner so instructs, you should complete the appropriate Rights Certificate and submit it to the Subscription Agent with the proper subscription payment. If you hold shares of our Common Stock for the account(s) of more than one beneficial owner, you may exercise the number of Rights to which all beneficial owners in the aggregate otherwise would have been entitled had they been direct holders of our Common Stock on the Record Date, provided that you, as a nominee record holder, make a proper showing to the Subscription Agent by submitting the form entitled "Nominee Holder Certification," which is provided with your Rights Offering materials. If you did not receive this form, you should contact the Subscription Agent to request a copy.

Beneficial Owners

If you are a beneficial owner of shares of our Common Stock or will receive your Rights through a nominee, we will ask your nominee to notify you of the Rights Offering. If you wish to exercise your Rights, you will need to have your nominee act for you. If you hold certificates representing our Common Stock directly and would prefer to have your broker, custodian bank or other nominee act for you, you should contact your nominee and request it to effect the transactions for you. To indicate your decision with respect to your Rights, you should complete and return to your nominee the form entitled "Beneficial Owner Election." You should receive this form from your nominee with the other Rights Offering materials. If you wish to obtain a separate Rights Certificate, you should contact your nominee as soon as possible and request that a separate Rights Certificate be issued to you. You should contact your nominee if you do not receive this form, but you believe you are entitled to participate in the Rights Offering. We are not responsible if you do not receive the form from your nominee or if you receive it without sufficient time to respond.

Guaranteed Delivery Procedures

If you wish to exercise Rights, but you do not have sufficient time to deliver the Rights Certificate evidencing your Rights to the Subscription Agent before the expiration of the Rights Offering, you may exercise your Rights by the following guaranteed delivery procedures:

- deliver to the Subscription Agent before the expiration of the Rights Offering the subscription payment for each share you elected to purchase pursuant to the exercise of Rights in the manner set forth above under "*The Rights Offering—Payment Method*" beginning on page 37;
- deliver to the Subscription Agent before the expiration of the Rights Offering the form entitled "Notice of Guaranteed Delivery"; and
- deliver the properly completed Rights Certificate evidencing your Rights being exercised and the form entitled "Nominee Holder Certification," if applicable, with any required signatures guaranteed, to the Subscription Agent within three (3) business days following the date you submit your Notice of Guaranteed Delivery.

Your Notice of Guaranteed Delivery must be delivered in substantially the same form provided when distributed to you with your Rights Certificate. Your Notice of Guaranteed Delivery must include a signature guarantee from an eligible institution, acceptable to the Subscription Agent. A form of that guarantee is included with the Notice of Guaranteed Delivery.

In your Notice of Guaranteed Delivery, you must provide:

- your name;
- the number of Rights represented by your Rights Certificate and the principal amount of Notes for which you are subscribing under your Rights; and
- your guarantee that you will deliver to the Subscription Agent a Rights Certificate evidencing the Rights you are exercising within three (3) business days following the date the Subscription Agent receives your Notice of Guaranteed Delivery.

You may deliver your Notice of Guaranteed Delivery to the Subscription Agent in the same manner as your Rights Certificate at the address set forth under "*Subscription Agent*" on page 38.

The Subscription Agent will send you additional copies of the form of Notice of Guaranteed Delivery if you need them. You should call the Subscription Agent at (800) 546-5141 (within USA, US territories & Canada) or (781) 575-2765 (outside USA, US territories & Canada) to request additional copies of the form of Notice of Guaranteed Delivery.

Transferability of Rights

The Rights granted to you are non-transferable and, therefore, you may not sell, transfer or assign your Rights to anyone. The Rights will not be listed for trading on any stock exchange or market.

Validity of Subscriptions

We will resolve all questions regarding the validity and form of the exercise of your Rights, including time of receipt and eligibility to participate in the Rights Offering. In resolving all such questions, we will review the relevant facts, if necessary, consult with our legal advisors, and we may request input from the relevant parties. Our determination will be final and binding. Once made, subscriptions and directions are irrevocable, even if you later learn information that you consider to be unfavorable to the exercise of your Rights and even if the Rights Offering is extended. We will not accept any alternative, conditional or contingent subscriptions or directions. We reserve the absolute right to reject any subscriptions or directions not properly submitted or the acceptance of which would be unlawful. You must resolve any irregularities in connection with your subscriptions before the subscription period expires, unless waived by us in our sole discretion. Neither we nor the Subscription Agent will be under any duty to notify you or your representative of defects in your subscriptions. A subscription will be considered accepted, subject to our right to withdraw or terminate the Rights Offering, only when a properly completed and duly executed Rights Certificate and any other required documents and the full subscription payment have been received by the Subscription Agent. Our interpretations of the terms and conditions of the Rights Offering will be final and binding.

Escrow Arrangements; Return of Funds

The Subscription Agent will hold funds received in payment for Notes in a segregated account pending completion of the Rights Offering. The Subscription Agent will hold this money in escrow until the Rights Offering is completed or is withdrawn and canceled. If the Rights Offering is canceled for any reason, all subscription payments received by the Subscription Agent will be returned, without interest, as soon as practicable. All funds relating to exercises of the Over-Subscription Privilege which are not accepted by the Company (due to proration or otherwise) will be returned, without interest, as soon as practicable.

Stockholder Rights

You will have no right to revoke your subscriptions after you deliver your completed Rights Certificate, the full subscription payment and any other required documents to the Subscription Agent.

Foreign Stockholders

We will not mail this prospectus or Rights Certificates to stockholders with addresses that are outside the United States. The Subscription Agent will hold these Rights Certificates for their account. To exercise Rights, our foreign stockholders must notify the Subscription Agent prior to 11:00 a.m., New York City time, at least three business days before the expiration of the Rights Offering and demonstrate to the satisfaction of the Subscription Agent that the exercise of such Rights does not violate the laws of the jurisdiction of such stockholder.

No Revocation or Change

Once you submit the form of Rights Certificate to exercise any Rights, you are not allowed to revoke or change the exercise or request a refund of monies paid. All exercises of Rights are irrevocable, even if you later learn information that you consider to be unfavorable to the exercise of your Rights and even if the Rights Offering is extended. You should not exercise your Rights unless you are certain that you wish to purchase Notes.

Regulatory Limitation

We will not be required to issue to you any Notes pursuant to the Rights Offering if, in our opinion, you are required to obtain prior clearance or approval from any state or federal regulatory authorities to own or control such Notes and if, at the time the Rights Offering expires, you have not obtained such clearance or approval.

U.S. Federal Income Tax Treatment of the Rights Distribution

The U.S. federal income tax consequences of the receipt of the Rights is unclear. Although we intend to treat our distribution of Rights as a non-taxable distribution to investors, if (contrary to our intent) the distribution constituted a taxable distribution, then (1) U.S. Holders (as defined in "*Material U.S. Federal Income Tax Considerations*" beginning on page 67) would be required to fund any resulting tax liability with cash from other sources, (2) Non-U.S. Holders (as defined in "*Material U.S. Federal Income Tax Considerations*" beginning on page 67) could be subject to U.S. federal withholding tax on the distribution, and (3) we could be liable for failing to withhold on Non-U.S. Holders. You are urged to consult your tax advisor as to the particular tax consequences to you of the receipt of Rights in the Rights Offering. See "*Material U.S. Federal Income Tax Considerations*" beginning on page 67.

No Recommendation to Holders of Rights

We are making no recommendation regarding your exercise of the Rights. You are urged to make your decision based on your own assessment of our business and the Rights Offering. Please see "*Risk Factors*" beginning on page 5 for a discussion of some of the risks involved in investing in our Common Stock through the Rights Offering and in investing further in the Company.

Waiver

The Company expressly reserves the right, subject to applicable law, to extend the Rights Offering and amend, modify or waive at any time, or from time to time, the terms of the Rights Offering in any respect, including waiver of any conditions.

Backstop Rights

The Backstop Providers have agreed to exercise their backstop rights in the Rights Offering. Accordingly, the Backstop Providers will subscribe for any unsubscribed amount of Notes not fully subscribed for through the basic subscription privilege and the Over-Subscription Privilege.

POLICIES AND OBJECTIVES WITH RESPECT TO CERTAIN ACTIVITIES

The following is a discussion of our policies with respect to certain activities, including financing matters and conflicts of interest. These policies may be amended or revised from time to time at the discretion of the Board, without a vote of our stockholders. Any change to any of these policies by the Board, however, would be made only after a review and analysis of that change, in light of then-existing business and other circumstances, and then only if, in the exercise of its business judgment, the Board believes that it is advisable to do so in our and our stockholders' best interests.

Disposition Policy

We will evaluate our asset portfolio on a regular basis to determine if it continues to satisfy our investment criteria. Subject to certain restrictions applicable to REITs, we may sell investments opportunistically and use the proceeds of any such sale for debt reduction or additional acquisitions. We will utilize several criteria to determine the long-term potential of our investments. Investments will be identified for sale based upon management's forecast of the strength of the related cash flows as well as their value to our overall portfolio. Our decision to sell an investment often will be predicated upon the projected cash flow, strength of the franchise, property condition and related costs to renovate the property, strength of market demand, probability of increased valuation and geographic profile of the property. We may also acquire and sell other retail-related assets opportunistically based upon management's forecast and review of the performance of our overall portfolio and management's assessment of changing conditions in the investment and capital markets. If we sell a property, held for sale to customers in the ordinary course of business, our gain from the sale will be subject to a 100% penalty tax.

Financing Policies

We utilize debt to increase equity returns, acquire properties and payoff existing near-term maturities. When evaluating our future level of indebtedness and making decisions regarding the incurrence of indebtedness, the Board considers a number of factors, including:

- our leverage levels across the portfolio;
- the purchase price of our investments to be acquired with debt financing;
- impact on financial covenants;
- cost of debt;

- loan maturity schedule;
- the estimated market value of our investments upon refinancing; and
- the ability of particular investments, and our Company as a whole, to generate cash flow to cover expected debt service.

We may incur debt in the form of purchase money obligations to the sellers of properties, publicly or privately placed debt instruments, or financing from banks, institutional investors, or other lenders. Any such indebtedness may be secured or unsecured by mortgages or other interests in our properties. This indebtedness may be recourse, non-recourse, or cross-collateralized. If recourse, such recourse may include our general assets or be limited to the particular investment to which the indebtedness relates. In addition, we may invest in properties or loans subject to existing loans secured by mortgages or similar liens on the properties, or we may refinance properties acquired on a leveraged basis.

We may use the proceeds from any borrowings for working capital, consistent with industry practice, to:

- finance the origination or purchase of debt investments; or
- finance acquisitions, expand, redevelop or improve existing properties, or develop new properties or other uses.

In addition, if we do not have sufficient cash available, we may need to borrow to meet taxable income distribution requirements under the Code. No assurances can be given that we will obtain additional financings or, if we do, what the amount and terms will be. Our failure to obtain future financing under favorable terms could adversely impact our ability to execute our business strategy. In addition, we may selectively pursue debt financing on our individual properties and debt investments.

Equity Capital Policies

Our Board has the authority, without further stockholder approval, to issue additional authorized Common Stock and Preferred Stock or otherwise raise capital, including through the issuance of senior securities, in any manner and on the terms and for the consideration it deems appropriate. Existing stockholders will have no preemptive right to additional shares issued in any offering, and any offering might cause a dilution of investment. See "*Description of Capital Stock*" beginning on page 58. We may in the future issue Common Stock in connection with acquisitions. We also may issue units of partnership interest in our operating partnership in connection with acquisitions of property.

We may, under certain circumstances, purchase Common Stock in the open market or in private transactions with our stockholders, if those purchases are approved by the Board.

Conflict of Interest Policy

We take conflicts of interest seriously and aim to ensure that transactions involving conflicts or potential conflicts are thoroughly examined and only approved by independent board members.

Our Code of Business Conduct and Ethics requires that our directors and all of our employees deal with the Company on an arms-length basis in any related party transaction. All transactions between the Company and any of our directors, named executive officers or other vice presidents, or between the Company and any entity in which any of our directors, named executive officers or other vice presidents is an officer or director or has an ownership interest, must be approved by the Nominating and Corporate Governance Committee.

In addition, our directors also are subject to provisions of Maryland law that address transactions between Maryland corporations and our directors or other entities in which our directors have a material financial interest. Such transactions may be voidable under Maryland law, unless certain safe harbors are met. Our Charter contains a requirement, consistent with one such safe harbor, that any transaction or agreement involving us, any of our wholly owned subsidiaries or our operating partnership and a director or officer or an affiliate or associate of any director or officer requires the approval of a majority of disinterested directors.

Reporting Policies

Generally speaking, we will make available to our stockholders certified annual financial statements and annual reports. We are subject to the information reporting requirements of the Exchange Act. Pursuant to these requirements, we will file periodic reports, proxy statements and other information, including audited financial statements, with the SEC.

OUR COMPANY

Overview

Wheeler Real Estate Investment Trust, Inc. (the "Company") is a Maryland corporation formed on June 23, 2011. The Trust serves as the general partner of Wheeler REIT, L.P. (the "Operating Partnership"), which was formed as a Virginia limited partnership on April 5, 2012. Substantially, all of our assets are held by, and all of our operations are conducted through, our Operating Partnership. The Company is a fully-integrated, self-managed commercial real estate investment company that owns, leases and operates income-producing retail properties with a primary focus on grocery-anchored centers.

Our corporate office is located at 2529 Virginia Beach Boulevard, Virginia Beach, Virginia 23452. Our telephone number is (757) 627-9088. Our registrar and stock transfer agent is Computershare Trust Company, N.A. and may be contacted at 250 Royall Street, Canton, MA 02021 or their website, www.computershare.com.

Impact of COVID-19

The United States of America has been subject to significant economic disruption caused by the onset of the novel coronavirus ("COVID-19"). Nearly every industry has been impacted directly or indirectly, and the U.S. retail market has come under severe pressure due to numerous factors, including preventative measures taken by local, state and federal authorities to alleviate the public health crisis such as mandatory business closures, quarantines, restrictions on travel and "shelter-in-place" or "stay-at-home" orders at the state and local levels. While many of these restrictions were lifted or relaxed throughout the year there is uncertainty surrounding future restrictions. The Company remained operational for the entire year. Additional information regarding the impact of COVID-19 on our business can be found under the section titled "Impact of COVID-19" included within Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations," of the Company's 2020 Annual Report on Form

10-K.

Portfolio

Our portfolio contains retail properties in secondary and tertiary markets, with a particular emphasis on grocery-anchored retail centers. Our properties are in communities that have stable demographics and have historically exhibited favorable trends, such as strong population and income growth. We generally lease our properties to national and regional retailers that offer consumer goods and generate regular consumer traffic. We believe our tenants carry goods that are less impacted by fluctuations in the broader U.S. economy and consumers' disposable income, generating more predictable property level cash flows.

The Company's portfolio of properties is dependent upon regional and local economic conditions. As of March 31, 2021, we own a portfolio consisting of sixty-four properties, including fifty-nine retail shopping centers, totaling 5,511,881 total leasable square feet which is 91.1% leased (our "operating portfolio"), and five undeveloped land parcels totaling approximately 62 acres. The properties are geographically located in the Southeast, Mid-Atlantic and Northeast, which markets represented approximately 61%, 35% and 4%, respectively, of the total annualized base rent of the properties in its portfolio as of March 31, 2021.

No tenant represents greater than 10% of the Company's annualized base rent or 10% of gross leasable square footage. The top 10 tenants account for 25.55% or $12.11 million of annualized base rent and 29.41% or 1.62 million of gross leasable square footage at March 31, 2021.

Management Team and People

We have 36 full-time employees. Our management team has experience and capabilities across the real estate sector with experience in all aspects of the commercial real estate industry, specifically in our target/existing markets.

Andrew Franklin, age 40, has served as our interim Chief Executive Officer (the "CEO) since July 2021. In addition, Mr. Franklin serves as our Chief Operating Officer and has over twenty-two years of commercial real estate experience and joined the Company in 2014. Mr. Franklin is responsible for overseeing the property management, lease administration and leasing divisions of our portfolio of commercial assets. Prior to joining us, Mr. Franklin was a partner with Broad Reach Retail Partners, LLC where he ran the day-to-day operations, managed the leasing team as well as oversaw the asset, property and construction management of the portfolio with assets totaling $50 million. Mr. Franklin is a graduate of the University of Maryland, with a Bachelor of Science degree in Finance.

Crystal Plum, age 39, has served as Chief Financial Officer since February 2020 and first joined the Company in 2016. Prior to her appointment as CFO, Ms. Plum most recently served as the Vice President of Financial Reporting and Corporate Accounting for the Company. Prior to that time, she served as Manager at Dixon Hughes Goodman LLP from September 2014 to August 2016 and as Supervisor at Dixon Hughes Goodman LLP from 2008 to September 2014. Ms. Plum has experience reviewing and performing audits, reviews, compilations and tax engagements for a diverse group of clients, as well as banking experience. Ms. Plum is a certified public accountant and has a Bachelor of Science degree in Accounting and Finance from Old Dominion University.

Business Objectives and Investment Strategy

Our primary business objective is to provide attractive risk-adjusted returns to our stockholders. We intend to achieve this objective utilizing the following investment strategies:

● ***Focus on necessity-based retail.*** Own and operate retail properties that serve the essential day-to-day shopping needs of the surrounding communities. These necessity-based centers attract high levels of daily traffic resulting in cross-selling of goods and services from our tenants. The majority of our tenants provide non-cyclical consumer goods and services that are less impacted by fluctuations in the economy. We believe these centers that provide essential goods and services such as groceries results in a stable, lower-risk portfolio of retail investment properties.

● ***Focus on secondary and tertiary markets with strong demographics and demand.*** Our properties are in markets that have strong demographics such as population density, population growth, tenant sales trends and growth in household income. We seek to identify new tenants and renew leases with existing tenants in these locations that support the need for necessity-based retail and limited new supply.

● ***Increase operating income through leasing strategies and expense management.*** We employ intensive lease management strategies to optimize occupancy. Management has strong expertise in acquiring and managing under-performing properties and increasing operating income through more effective leasing strategies and expense management. Our leases generally require the tenant to reimburse us for a substantial portion of the expenses incurred in operating, maintaining, repairing, and managing the shopping center and the common areas, along with the associated insurance costs and real estate taxes. In many cases the tenant is either fully or partially responsible for all maintenance of the property, thereby limiting our financial exposure towards maintaining the center and increasing our net income. We refer to this arrangement as a "triple net lease."

● ***Selectively utilize our capital to improve retail properties.*** We intend to make capital investments where the return on such capital is accretive to our stockholders. We allocate capital to value-added improvements of retail properties to increase rents, extend long-term leases with anchor tenants and increase occupancy. We selectively allocate capital to revenue enhancing projects that we believe will improve the market position of a given property.

● ***Recycling and sensible management of capital structure.*** We intend to sell non-income producing land parcels utilizing sales proceeds to deleverage the balance sheet. In addition, we intend to monetize assets to redeploy the capital to further deleverage and strengthen the balance sheet. In 2020, we sold 2 properties for a total of $4.51 million net proceeds which were used to reduce outstanding indebtedness. Additional properties have been slated for disposition based upon management's periodic review of our portfolio, and the determination by our Board.

Governmental Regulations Affecting Our Properties

We and our properties are subject to a variety of federal, state and local environmental, health, safety and similar laws. The application of these laws to a specific property that we own depends on a variety of property-specific circumstances, including the current and former uses of the property, the building materials used at the property and the physical layout of the property. Neither existing environmental, health, safety and similar laws nor the costs of our compliance with these laws has had a material adverse effect on our financial condition or results of operations, and management does not believe they will in the future. In addition, we have not incurred, and do not expect to incur, any material costs or liabilities due to environmental contamination at properties we currently own or have owned in the past. However, we cannot predict the impact of new or changed laws or regulations on properties we currently own or may acquire in the future. We have no current plans for substantial capital expenditures with respect to compliance with environmental, health, safety and similar laws and we carry environmental insurance which covers a number of environmental risks for most of our properties.

Competition

Numerous commercial developers and real estate companies compete with us with respect to the leasing of properties. Some of these competitors may possess greater capital resources than we do, although we do not believe that any single competitor or group of competitors in any of the primary markets where our properties are located are dominant in that market. This competition may interfere with our ability to attract and retain tenants, leading to increased vacancy rates and/or reduced rents and adversely affect our ability to minimize operating expenses.

Retailers at our properties also face increasing competition from online retailers, outlet stores, discount shopping clubs, superstores, and other forms of sales and marketing of goods and services, such as direct mail. This competition could contribute to lease defaults and insolvency of tenants.

Company Website Access and SEC Filings

We are subject to the information reporting requirements of the Exchange Act. Pursuant to those requirements, we are required to file annual and periodic reports, proxy statements and other information, including audited consolidated financial statements, with the SEC which can be found at http://www.sec.gov.

Additionally, we make available free of charge through our website http://www.whlr.us our most recent Annual Report on Form 10-K, including our audited consolidated financial statements, 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 Audit Committee, Compensation Committee, and Nominating and Corporate Governance Committee, as well as our Code of Business Conduct and Ethics for Employees, officers, Agents and Representatives, Code of Business Conduct and Ethics for Members of the Board of Directors, Corporate Governance Principles, including guidelines on director independence, and Insider Trading Policy, all under separate headings. The content of our website is not incorporated by reference into this registration statement on Form S-11 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.

DISTRIBUTION POLICY

In March 2018, the Board suspended the payment of dividends on our Common Stock. The Board also suspended the quarterly dividends on shares of our Series A Preferred, Series B Preferred and Series D Preferred Stock, beginning with the three months ended December 31, 2018. Dividends were suspended to retain cash flow to pay operating expenses and reduce debt. Additionally, as the Company has failed to pay cash dividends on the outstanding Series D Preferred Stock, the annual dividend rate on the Series D Preferred Stock has increased to 10.75%; commencing on the first day after the first missed quarterly payment, January 1, 2019 and will continue until such time as the Company has paid all accumulated and unpaid dividends on the Series D Preferred Stock in full. As a result of the dividend suspension on the Series A Preferred, Series B Preferred and Series D Preferred Stock, no dividends may be declared or paid on the Common Stock until all accumulated accrued and unpaid dividends on the Preferred Stocks have been declared and paid in full. At this time, we can provide no certainty as to when or if dividends will be reinstated. However, we intend to make all required dividend distributions, if any, that will enable us to maintain our REIT status and to eliminate or minimize our obligation to pay income and excise taxes.

DESCRIPTION OF SUBSCRIPTION RIGHTS

The Subscription Rights

We are distributing to the record holders of our Common Stock as of the Record Date non-transferable Rights to purchase the Notes. The subscription price of 100% of the principal amount of the Notes to be purchased was determined by our board of directors after a review of recent historical trading prices of our Common Stock. The Rights will entitle the holders of our Common Stock to purchase Notes for an aggregate purchase price of $30 million.

Each holder of record of our Common Stock will receive one (1) Right for every eight (8) shares of our Common Stock owned by such holder at the as of the Record Date. Each Right will entitle the holder to a basic subscription privilege and an Over-Subscription Privilege.

Basic Subscription Privilege

With your basic subscription privilege, each Right will entitle you to purchase $25.00 principal amount of the Notes. We will distribute one (1) Right for every eight (8) shares of our Common Stock, prior to the expiration of the Rights Offering. You may exercise all or a portion of your basic subscription privilege. However, if you exercise less than your full basic subscription privilege you will not be entitled to purchase shares pursuant to your Over-Subscription Privilege.

We will deliver certificates representing the Notes purchased with the basic subscription privilege as soon as practicable after the Rights Offering has expired.

Over-Subscription Privilege

If, and only if, you exercise the basic subscription privilege, then you will also have an Over-Subscription Privilege which will allow you to subscribe for an additional principal amount of Notes issuable pursuant to Rights that were not exercised by other stockholders. The Notes sold through the Over-Subscription Privilege will be sold at the same subscription price and, if necessary, subject to proration based on relative Common Stock ownership.

In order to properly exercise your Over-Subscription Privilege, you must deliver the subscription payment related to your Over-Subscription Privilege prior to the expiration of the Rights Offering. Because we will not know the total number of unsubscribed Notes prior to the expiration of the Rights Offering, if you wish to maximize the number of Notes you purchase pursuant to your Over-Subscription Privilege, you will need to deliver payment in an amount equal to the aggregate Subscription Price for the maximum number of Notes available to you, assuming that no stockholder other than you has purchased any Notes pursuant to their Right and Over-Subscription Privilege.

We can provide no assurances that you will actually be entitled to purchase the number of Notes issuable upon the exercise of your Over-Subscription Privilege in full at the expiration of the Rights Offering. We will not be able to satisfy your exercise of the Over-Subscription Privilege if all of our stockholders exercise their Rights in full.

- To the extent the aggregate subscription price of the maximum number of unsubscribed Notes available to you pursuant to the Over-Subscription Privilege is less than the amount you actually paid in connection with the exercise of the Over-Subscription Privilege, you will be allocated only the number of unsubscribed Notes available to you, and any excess subscription payments received by the subscription agent will be returned, without interest, as soon as practicable.

- To the extent the stockholders properly exercise their Over-Subscription Privileges for an aggregate amount of Notes that is less than the number of the unsubscribed Notes, you will be allocated the number of unsubscribed Notes for which you actually paid in connection with the Over-Subscription Privilege.

We will deliver certificates representing the Notes purchased with the Over-Subscription Privilege as soon as practicable after the expiration of the Rights Offering.

DESCRIPTION OF NOTES

We are offering an aggregate of $30 million of our 7.00% Senior Subordinated Convertible Notes due 2031, which we refer to as the "Notes." The following description is a summary of the material provisions of the Notes and the Indenture. It does not restate the Indenture in its entirety. We urge you to read carefully the Indenture because it, and not this description, defines your rights as a holder of the Notes. The Indenture will be subject to the provisions of the Trust Indenture Act (as defined below). Copies of the Indenture are available as set forth under "—Where You Can Find More Information" on page 95. Certain defined terms used in this description but not defined below may have the meanings assigned to them in the Indenture. The registered holder of a Note will be treated as the owner of it for all purposes. Only registered holders will have rights under the Indenture. In this section, references to the "Company", "we", "our" or "us" refers to Wheeler Real Estate Investment Trust, Inc., a Maryland corporation.

The Notes will be issued under an indenture (the "Indenture") between the Company and Wilmington Savings Fund Society, FSB, as trustee (the "Trustee"). The terms of the Notes will include those expressly set forth in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (the "Trust Indenture Act").

The following description is a summary of the material provisions of the Notes and the Indenture and does not purport to be complete. This summary is subject to and is qualified by reference to all the provisions of the Notes and the Indenture, including the definitions of certain terms used in the Indenture. We urge you to read the Indenture because it, and not this description, defines your rights as a holder of the Notes.

General

The Notes:

- are unsecured general subordinated obligations of the Company;
- bear interest at a rate of 7.00% per annum payable at the Company's option in cash, Series B Preferred Stock and/or Series D Preferred Stock;
- mature on December 31, 2031;
- will be issued in denominations of $25.00 and integral multiples thereof;
- are subordinated in right of payment to any existing and future secured or unsecured senior debt of the Company;
- will mandatorily convert at maturity and be payable: (a) in cash; (b) in shares of Common Stock; or (c) in any combination of (a) or (b). Each share of Common Stock shall be deemed to have a value equal to the product of (x) the average VWAPs for the Common Stock for the 15 consecutive Trading Days ending on the third Business Day preceding the Maturity Date and (y) 0.55;
- will mandatorily convert upon a Change of Control at which time each Note shall convert into shares of Common Stock equal to: (i) the principal amount of each Note divided by (ii) the product of (x) the average VWAPs for the Common Stock for the 15 consecutive Trading Days ending on the third Business Day immediately preceding the date of such Change of Control and (y) 0.55;
- are redeemable in whole or from time to time in part at the Company's option, after January 1, 2024, at a Redemption Price equal to 100% of the principal amount thereof plus accrued and unpaid interest for cash or shares of the Company's Common Stock, or any combination thereof. For purposes of determining the value of Common Stock paid as all or part of the Redemption Price, each share of Common Stock shall be deemed to have a value equal to the product of (x) the average VWAPs for the Common Stock for the 15 consecutive Trading Days ending on the third Business Day immediately preceding the relevant Redemption Date and (y) 0.55; and
- will be convertible at the option of the holders into shares of Common Stock at a Conversion Price of $6.25 per share of Common Stock (4 common shares for each $25.00 of principal amount of the Notes being converted).

We intend to list the Notes for trading on the Nasdaq and trade under the symbol "WHLRL." Currently, there is no public market for the Notes and there can be no assurance that one will develop.

The Indenture governing the Notes will provide for customary Events of Default. In the case of an event of default arising from specified events of bankruptcy or insolvency, all outstanding Notes will become due and payable immediately without further action or notice. If any other Event of Default under the Indenture governing the Notes occurs or is continuing, the Trustee or the holders of a minimum threshold amount in aggregate principal amount of the then outstanding Notes may declare all the Notes to be due and payable immediately.

Trustee, Paying Agent and Registrar

Wilmington Savings Fund Society, FSB, is the Trustee. Initially, the Trustee will act as Conversion Agent, Paying Agent and Note Registrar. The Company may change the Conversion Agent, Paying Agent or Note Registrar upon written notice thereto. The Company, any subsidiary or any affiliate of any of them may act as Conversion Agent, Paying Agent, Note Registrar or co-registrar. The Trustee also acts as the administration agent under the Magnetar credit agreement, under which if the Company is in default under the indenture securities, the Trustee will resign and the Company will appoint a successor Trustee.

Registration, Registration of Transfer and Exchange

The Company shall cause to be kept at the corporate trust office of the Trustee a register (the register maintained in such office and in any other office or agency designated in the Indenture being herein sometimes referred to as the "Note Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. The Trustee is initially appointed as security registrar (the Trustee in such capacity, together with any successor of the Trustee in such capacity, the "Note Registrar") for the purpose of registering Notes and transfers of Notes as herein provided. The Trustee is also initially appointed to act as the Paying Agent and the Conversion Agent.

Upon surrender for registration of transfer of any Note at the office or agency of the Company designated in the Indenture, the Company shall execute, and the Trustee

shall, upon receipt of a Company Order, authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denomination or denominations of a like aggregate principal amount. The Trustee shall not be required to register transfers of Notes or to exchange Notes for a period of 15 days before selection of any Notes to be redeemed. The Trustee shall not be required to exchange or register transfers of any Notes called or being called for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part. The Trustee shall not be required to register the transfer of or to exchange a Note between a record date and the next succeeding interest payment date.

Furthermore, any holder of a global Note shall, by acceptance of such global Note, agree that transfers of beneficial interests in such global Note may be effected only through a book-entry system maintained by the holder of such global Note (or its agent), and that ownership of a beneficial interest in the Note shall be required to be reflected in a book entry.

All Notes issued upon any registration of transfer or exchange of Notes shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under the Indenture, as the Notes surrendered upon such registration of transfer or exchange.

Every Note presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Note Registrar) be duly endorsed, or be accompanied by a written instrument of transfer, in form satisfactory to the Company and the Note Registrar, duly executed by the holder thereof or such holder's attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange or redemption of Notes, but the Company may require payment of a sum sufficient to cover any taxes, fees or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Notes, other than certain exchanges not involving any transfer.

Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Company may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Company shall be affected by notice to the contrary.

Each holder of a Note agrees to indemnify the Company and the Trustee against any liability that may result from the transfer, exchange or assignment of such holder's Note by such holder in violation of any provision of the Indenture and/or applicable United States federal or state securities laws.

Neither the Trustee nor any Agent of the Trustee shall have any responsibility for any actions taken or not taken by the Depository.

Payment of Interest; Interest Rights Preserved

Interest on any Note which is payable, and is punctually paid or duly provided for, on any interest payment date shall be paid at the office or agency of the Company maintained for such purpose The interest payable on any interest payment date may be paid: (a) in cash; (b) in shares of Series B Preferred Stock; (c) in shares of Series D Preferred Stock; or (d) in any combination of (a), (b), and/or (c). For purposes of determining the value of Series B Preferred Stock or Series D Preferred Stock paid as interest on the Notes, each share of Series B Preferred Stock or Series D Preferred Stock, as the case may be, shall be deemed have a value equal to the product of (x) the average of the VWAPs for the Series B Preferred Stock or the Series D Preferred Stock, as the case may be, for the 15 consecutive Trading Days ending on the third Business Day immediately preceding the relevant interest payment date, and (y) 0.55.

Interest

Interest on the Notes will be payable semi-annually on each of June 30 and December 31, commencing on December 31, 2021, to holders of record at the close of business on 5:00 p.m., New York City time, on the June 1 and December 1 preceding the applicable interest payment date (the "Regular Record Date"), with all interest payments being interest at a rate of 7.00% per annum. On each Regular Record Date, the Company shall instruct the Subscription Agent, with a copy to the Trustee, whether the interest paid on the next interest payment date should be in the form of (a), (b), (c), or (d) above and, if (d), the percentage of such interest to be paid in cash, Series B Preferred Stock and/or Series D Preferred Stock.

Interest will accrue on the Notes from and including the date on which the Notes are first issued or from, and including, the last date in respect of which interest has been paid or provided for, as the case may be, to, but excluding, the next interest payment date or maturity date, as the case may be. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

Ranking; Subordination

The obligations of the Company under the Indenture will be subordinate and junior in right of payment to all of our existing and future senior indebtedness (whether secured or unsecured), will rank *pari passu* with any existing or future *pari passu* senior subordinated debt of the Company and will rank senior to any existing or future subordinated indebtedness of the Company. The indenture will not restrict us in any way now or in the future from incurring senior debt or indebtedness that would be *pari passu* with or subordinate to the Notes.

The Indenture will not limit the aggregate amount of senior indebtedness that may be issued by the Company. Upon any payment or distribution of assets to creditors in case of the Company's liquidation, dissolution, winding up, reorganization, assignment for the benefit of creditors or any bankruptcy, insolvency, or similar proceedings, all holders of our senior indebtedness will be entitled to receive payment in full of all amounts due before the holders of the Notes will be entitled to receive any payment of principal or interest on their Notes.

The Notes will rank senior to all of the Company's equity securities, including any preferred stock subsequently created.

Redemption or Repurchase of Notes

Optional Redemption

After January 1, 2024, the Company may redeem the Notes, in whole or from time to time in part, at the Company's option at a redemption price equal to 100% of the principal amount thereof plus accrued and unpaid interest as of the Redemption Date (the "Redemption Price"). The Redemption Price may be paid: (a) in cash; (b) in shares of Common Stock; or (c) in any combination of (a) and (b). For purposes of determining the value of Common Stock paid as all or part of the Redemption Price, each share of Common Stock shall be deemed to have a value equal to the product of (x) the average VWAPs for the Common Stock for the 15 consecutive Trading Days ending on the third Business Day immediately preceding the relevant Redemption Date and (y) 0.55.

Mandatory Conversion in the case of a Change of Control

Upon a Change of Control, each Note shall mandatorily convert into shares of Common Stock equal to: (i) the principal amount of each Note divided by (ii) the product of (x) the average VWAPs for the Common Stock for the 15 consecutive Trading Days ending on the third Business Day immediately preceding the date of such Change of

Control and (y) 0.55.

Mandatory Conversion on the Maturity Date or Redemption

In the case of mandatory conversion at the Maturity Date, in lieu of paying the principal of the Note exclusively in cash, the Company may elect to pay such principal: (a) in cash; (b) in shares of Common Stock; or (c) in any combination of (a) or (b). To the extent principal is paid in shares of Common Stock each share of Common Stock shall be deemed to have a value equal to the product of (x) the average VWAPs for the Common Stock for the 15 consecutive Trading Days ending on the third Business Day preceding the Maturity Date and (y) 0.55.

Optional Conversion by Holders

The Notes are convertible, in whole or in part, at any time, at the option of the holders thereof, into shares of Common Stock at a conversion price of $6.25 per share of Common Stock (the "Conversion Price") (4 common shares for each $25.00 of principal amount of the Notes being converted (the "Conversion Rate")); provided, however, that if at any time after September 21, 2023 holders of Series D Preferred Stock have required the Company to redeem (payable in cash or stock) in the aggregate at least 100,000 shares of Series D Preferred Stock, then the Conversion Price shall be adjusted to the lower of (i) 55% of the Conversion Price or (ii) a 45% discount to the lowest price at which any Series D Preferred Stock was converted by a holder thereof into the Company's Common Stock. The Conversion Rate is also subject to customary anti-dilution adjustments set forth in the Indenture.

Events of Default

The following are examples of possible Events of Default:

(a) the Company's failure to pay in cash or in shares of the Company's Common Stock at the Company's election the principal of or premium, if any, on any Note when due whether at Maturity, on a Redemption Date, on a Change of Control Conversion Date with respect to a Change of Control or otherwise;

(b) the Company's failure to pay in cash, shares of Series B Preferred Stock and/or Series D Preferred Stock an installment of interest on any Note when due, if the failure continues for 30 days after the date when due;

(c) the Company's failure to timely provide notice with respect to any conversion or redemption of the Notes or failure to timely provide shares of Common Stock upon conversion of the Notes;

(d) the Company's failure to comply with any other term, covenant or agreement contained in the Notes or the Indenture, if the failure is not cured within 60 days after notice to the Company by the Trustee or to the Trustee and the Company by holders of at least 25% in aggregate principal amount of the applicable Notes then outstanding, in accordance with the Indenture;

(e) [Reserved];

(f) [Reserved];

(g) the Company or any of its significant subsidiaries, pursuant to or within the meaning of the United States Bankruptcy Code: (A) commences a voluntary case; (B) consents to the entry of an order for relief against it in an involuntary case; (C) consents to the appointment of a custodian of it or for all or substantially all of its property; (D) makes a general assignment for the benefit of its creditors, or (E) admits in writing that it is generally not paying its debts (other than debts which are the subject of a bona fide dispute) as they become due; and

(h) a court of competent jurisdiction enters an order or decree under any bankruptcy code that remains unstayed and in effect for 60 days and: (A) is for relief against the Company or any of its significant subsidiaries in an involuntary case; (B) appoints a custodian of the Company or any of its significant subsidiaries or for all or substantially all of the property of the Company or any of its significant subsidiaries; or (C) orders the liquidation of the Company or any of its Significant Subsidiaries.

Acceleration of Maturity; Rescission and Annulment

If an Event of Default, other than an Event of Default specified in Section 5.01(g) or 5.01(h) of the Indenture, occurs and is continuing, either the Trustee, by notice to the Company, or the holders of at least 25% in aggregate principal amount of the Notes Outstanding, by notice to the Company and the Trustee, may declare the principal of, (and premium, if any) accrued and unpaid interest on, all the then outstanding Notes to be immediately due and payable in cash. In the case of an Event of Default specified in the Indenture, as described in (g) or (h) above occurs and is continuing, then the principal amount of, and accrued and unpaid interest on, all the Notes shall automatically become and be immediately due and payable in cash without any declaration or other act on the part of the Trustee or any holder.

At any time after a declaration of acceleration has been made, the holders of a majority in aggregate principal amount of the Notes outstanding, by written notice to the Trustee, may rescind and annul such declaration and its consequences if

(a) the rescission would not conflict with any order or decree;

(b) all Events of Default, other than the non-payment of accelerated principal of (or premium, if any, on) or interest, have been cured or waived; and

(c) all amounts due to the Trustee are paid.

The Trustee is not obligated to exercise any of its rights or powers at the request or demand of the holders, unless the holders have offered to the Trustee security or indemnity that is satisfactory to the Trustee against the costs, expenses and liabilities that the Trustee may incur to comply with the request or demand. Subject to applicable law and the Trustee's rights to indemnification, the holders of a majority in aggregate principal amount of the outstanding Notes will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or the Indenture or, if the Trustee, being advised by counsel, determines that the action or proceeding so directed may not lawfully be taken or if the Trustee in good faith shall determine that the action or proceeding so directed would involve the Trustee in personal liability or expense for which it is not adequately indemnified, or that the Trustee determines is unduly prejudicial to the rights of any other holder (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such holders).

Supplements and Amendments to Indenture

Supplemental Indentures without the Consent of Holders

Without notice to or the consent of any holder, the Company may, with the consent of the Trustee, at any time and from time to time, amend or supplement the Indenture or the Notes, in form satisfactory to the Trustee, for any of the following purposes to:

(a) evidence the assumption of its obligations under the Indenture and the Notes by a successor upon its consolidation or merger or the sale, transfer, lease, conveyance or other disposition of all of or substantially all of its property or assets in accordance with the Indenture;

(b) make adjustments in accordance with the Indenture to the right to convert the Notes upon certain reclassifications in its Common Stock and certain consolidations, mergers, and binding share exchanges involving the Company and upon the sale, transfer, lease, conveyance or other disposition of all or substantially all of its property or assets;

(c) add guarantees with respect to, or secure its obligations in respect of, the Notes;

(d) add to its covenants for the benefit of the holders or to surrender any right or power conferred upon the Company;

(e) cure any ambiguity, defect, omission or inconsistency in the Indenture;

(f) comply with the requirements of the Commission in order to effect or maintain the qualification of the Indenture under the Trust Indenture Act as in effect on the date on which the Indenture is qualified thereunder;

(g) to pay interest in accordance with the terms of the Indenture;

(h) make any change that does not adversely affect the rights of any holder, subject to the provisions of the Indenture;

(i) provide for the appointment of a successor Trustee, Note Registrar, Paying Agent, or Conversion Agent;

(j) comply with the rules of any applicable securities depositary in a manner that does not adversely affect the rights of any holder; or

(k) to conform the provisions of the Indenture or the Notes to the "Description of Notes" section of the Prospectus beginning on page 49 to the extent that such provision was intended (as evidenced by an Officers' Certificate of the Company) to be a verbatim recitation of a provision of the Indenture or the Notes.

Supplemental Indenture with Consent of Holders

With the written consent of the holders of at least a majority in aggregate principal amount of the outstanding Notes delivered to the Company and the Trustee (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, the Notes), the Company and the Trustee may amend or supplement the Indenture or the Notes for the purpose of adding any provisions hereto or thereto, changing in any manner or eliminating any of the provisions hereunder or thereunder or of modifying in any manner the rights of the holders hereunder or thereunder and any existing default or Event of Default or compliance with any provision of the Indenture or the Notes may be waived with the consent of the holders of not less than a majority in aggregate principal amount of the outstanding Notes, other than Notes beneficially owned by the Company or its affiliates; provided, however, that no such amendment, supplement or waiver shall, without the consent of the holder of each outstanding Note affected thereby (with respect to any Notes held by a nonconsenting holder):

(a) change the stated maturity of the principal of, or the payment date of any installment of interest on, or any additional amounts with respect to, any Note;

(b) reduce the principal amount of, or any premium or interest on, any Note;

(c) change the manner, consideration or currency of payment of principal of, or any premium or interest on, any Note;

(d) impair the right to institute a suit for the enforcement of any payment on, or with respect to, or of the conversion of, any Note;

(e) modify, in a manner adverse to the holders, the provisions of the Indenture relating to the Redemption Price or the Company's obligation to pay the Redemption Price when due;

(f) modify the ranking provisions of the Indenture, relative to other indebtedness of the Company in a manner adverse to the holders;

(g) reduce the percentage in aggregate principal amount of outstanding Notes whose holders must consent to a modification or amendment of the Indenture or the Notes;

(h) reduce the percentage in aggregate principal amount of outstanding Notes whose holders must consent to a waiver of compliance with any provision of the Indenture or the Notes or a waiver of any Default or Event of Default; or

(i) modify the provisions of the Indenture with respect to modification and waiver (including waiver of a Default or Event of Default), except to increase the percentage required for modification or waiver or to provide for the consent of each affected Holder.

It shall not be necessary for any act of holders descried in the paragraph above to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such act shall approve the substance thereof.

Calculations

The Company is responsible for all calculations under the Indenture and the Notes, including the determination of Conversion Rate, and the VWAPs of the Common Stock.

The Company shall make all such calculations in good faith. In the absence of manifest error, such calculations shall be final and binding on all holders. The Company shall provide a copy of such calculations to the Trustee and the Conversion Agent, as required hereunder, and, the Trustee and the Conversion Agent shall be entitled to conclusively rely on the accuracy of any such calculation without independent verification.

The Trustee shall have no duty to determine when an adjustment to the conversion rate should be made, how it should be made or what such adjustment should be, but may accept as conclusive evidence of that fact or the correctness of any such adjustment, and shall be protected in relying upon an officers' certificate. The Trustee shall not be under any responsibility to perform any calculations under the Indenture. The Trustee makes no representation as to the validity or value of any securities or assets issued upon conversion of the Notes, and the Trustee shall not be responsible for the Company's failure to comply with any provision of Article 14 of the Indenture. The Conversion Agent shall have the same protection under Section 14.04 of the Indenture as the Trustee.

No Personal Liability of Directors, Officers, Employees or Stockholders

No director, officer, employee, incorporator or stockholders, as such, of the Company shall have any liability for any obligations of the Company under the Notes or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creations. Each holder by accepting a Note waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Notes. Such waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the Commission that such a waiver is against public policy.

Governing Law

The Indenture and the Notes will be governed by, and construed in accordance with, the laws of the State of New York.

Certain Definitions

"Agent" means any Paying Agent, Authenticating Agent, Conversion Agent and Note Registrar under the Indenture.

"Business Day" means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in The City of New York or the place of payment are authorized or obligated by law or executive order to close.

"Change of Control" means the occurrence of any of the following:

(a) any Person or group (as that term is used in Section 13(d) of the Exchange Act, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan and the rules and regulations thereunder) shall have acquired beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of a percentage (based on voting power, in the event different classes of stock shall have different voting powers) of the voting stock of the Company equal to at least fifty percent (50%); or

(b) the Company consolidates with, or merges into or with any Person (other than a consolidation or merger in which the Company is the continuing or surviving entity).

"Change of Control Conversion Date" means the date of the mandatory conversion of the Notes upon a Change of Control, as determined by the Company, which date shall be no earlier than 20 days and no later than 35 days from the date notice thereof is sent to holders.

"Commission" means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of the Indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"Common Stock" means the common stock, without par value, of the Company.

"Company" means Wheeler Real Estate Investment Trust, Inc., a Maryland Corporation, until a successor Person shall have become such pursuant to the applicable provisions of the Indenture, and thereafter "company" shall mean such successor Person.

"Company Request" or "Company Order" means a written request or order signed in the name of the Company by any one of its Chairman, President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Secretary, or any Vice President and delivered to the Trustee.

"Conversion Agent" means any office or agency (including the Company acting as Conversion Agent) where the Notes may be presented for conversion.

"Corporate Trust Office" means the designated corporate trust office of the Trustee, at which at any particular time its corporate trust business shall be administered, which office at the date of execution of the Indenture is located at 500 Delaware, Wilmington, DE 19801, except that with respect to presentation of Notes for payment or for registration of transfer or exchange, such term shall mean any office or agency of the Trustee at which, at any particular time, its corporate agency business shall be conducted.

"Depository" means The Depository Trust Company, its nominees and successors.

"Global Notes" means one or more permanent global Notes in definitive, fully registered form.

"Market Disruption Event" means, for the purposes of determining amounts due upon conversion (a) a failure by the primary U.S. national or regional securities exchange or market on which the Common Stock, Series B Preferred Stock, and Series D Preferred Stock is listed or admitted for trading to open for trading during its regular trading session or (b) the occurrence or existence prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for the Common Stock, Series B Preferred Stock, and Series D Preferred Stock for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in the Common Stock, Series B Preferred Stock, and Series D Preferred Stock or in any options contracts or futures contracts relating to the Common Stock, Series B Preferred Stock, and Series D Preferred Stock.

"Nasdaq" has the meaning specified in the definition of "Trading Day".

"Series B Preferred Stock" means Series B Preferred Stock, without par value, of the Company.

"Series D Preferred Stock" means Series D Cumulative Convertible Preferred Stock, without par value, of the Company.

"Trading Day" means a day on which: (1) there is no Market Disruption Event; and (2) trading in shares of the Common Stock, Series B Preferred Stock, and Series D Preferred Stock generally occurs on the Nasdaq Capital Market ("Nasdaq") or, if shares of the Common Stock, Series B Preferred Stock, and Series D Preferred Stock are not then listed on Nasdaq, on the principal other U.S. national or regional securities exchange on which shares of the Common Stock, Series B Preferred Stock, and Series D Preferred Stock are then listed or, if shares the Common Stock, Series B Preferred Stock, and Series D Preferred Stock are not then listed on a U.S. national or regional securities exchange, on the principal other market on which shares of the Common Stock, Series B Preferred Stock, and Series D Preferred Stock are then listed or admitted for trading. If shares of the Common Stock, Series B Preferred Stock, and Series D Preferred Stock are not so listed or traded, "Trading Day" means a "Business Day."

"Trust Indenture Act" or "TIA" means the Trust Indenture Act of 1939 as amended and in force on the date as of which the Indenture was executed, except as provided for in the Indenture.

"VWAP" means, for each of the 15 consecutive Trading Days immediately prior to the date of determination, the per share volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page "WHLR <equity> AQR" (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of the Common Stock, Series B Preferred Stock, and Series D Preferred Stock on such Trading Day determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the Company). "VWAP" shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

DESCRIPTION OF CAPITAL STOCK

The following is a brief description of the material terms of our securities that may be offered under this prospectus. This description does not purport to be complete and is subject in all respects to applicable Maryland law and to the provisions of our charter and bylaws, which are filed as exhibits to the registration statement of which this prospectus is a part, copies of which are on file with the SEC as described under "*How to Obtain Additional Information*" on page 95.

General

Our charter, as amended, provides that we may issue a maximum of 18,750,000 shares of Common Stock, and 15,000,000 shares of preferred stock, without par value per share. Our charter authorizes the Board, with the approval of a majority of the entire Board and without any action by our stockholders, to amend our charter to increase or decrease the aggregate number of authorized shares of stock or the number of authorized shares of any class or series of our stock and classify any unissued shares of preferred stock. As of June 1, 2021, 9,706,738 shares of our Common Stock, 562 shares of our Series A Preferred Stock, 1,875,748 shares of our Series B Preferred Stock and 3,142,196 shares of our Series D Preferred Stock were issued and outstanding. Under Maryland law, stockholders generally are not personally liable for our debts or obligations solely as a result of their status as stockholders.

As of March 31, 2021, there were outstanding (i) 221,565 units of our Operating Partnership, with each unit exchangeable for one share of our Common Stock, or, at our option, the cash value of one share of our Common Stock. As of March 31, 2021, (i) there were outstanding 1,558,134 warrants that are exercisable for 1,558,134 shares of our Common Stock that may be issued upon exercise of a warrant at varying excise prices ranging from $3.12 to $6.875, solely at the discretion of the holder of each warrant and (ii) other than those described in the previous sentence, there are no outstanding warrants or rights of any other kind in respect of our Common Stock.

Common Stock

The following description of the Common Stock sets forth the general terms and provisions of the Common Stock to which any prospectus supplement may relate, including a prospectus supplement providing that Common Stock will be issuable upon conversion of debt securities or preferred stock or upon the exercise of Common Stock warrants. The statements below describing the Common Stock are in all respects subject to and qualified in their entirety by reference to the applicable provisions of our charter and bylaws. Subject to the preferential rights of any other class or series of stock and to the provisions of our charter regarding the restrictions on ownership and transfer of our stock, holders of shares of our Common Stock are entitled to receive dividends and other distributions on such shares if, as and when authorized by the Board out of assets legally available therefore and declared by us and to share ratably in the assets of our company legally available for distribution to our stockholders in the event of our liquidation, dissolution or winding up after payment or establishment of reserves for all known debts and liabilities of our company.

Unless full cumulative dividends equal to the full amount of all accumulated, accrued and unpaid dividends on the Series A Preferred Stock, Series B Preferred Stock and Series D Preferred Stock have been, or are concurrently therewith, declared and paid or declared and set apart for payment for all past dividend periods, no dividends shall be declared and paid or declared and set apart for payment and no other distribution of cash or other property may be declared and made, directly or indirectly, by us with respect to any shares of Common Stock.

Subject to the provisions of our charter regarding the restrictions on ownership and transfer of our stock and except as may otherwise be specified in the terms of any class or series of our Common Stock, each outstanding share of our Common Stock entitles the holder to one vote on all matters submitted to a vote of stockholders, including the election of directors, and, except as provided with respect to any other class or series of stock, the holders of shares of Common Stock will possess the exclusive voting power. There is no cumulative voting in the election of our directors. Directors are elected by a plurality of all of the votes cast in the election of directors.

Holders of shares of our Common Stock have no preference, conversion, exchange, sinking fund or redemption rights and have no preemptive rights to subscribe for any securities of our company. Our charter provides that our stockholders generally have no appraisal rights unless our Board determines prospectively that appraisal rights will apply to one or more transactions in which holders of our Common Stock would otherwise be entitled to exercise appraisal rights. Subject to the provisions of our charter regarding the restrictions on ownership and transfer of our stock, holders of our Common Stock will have equal dividend, liquidation and other rights. Under Maryland general corporate law (the "MGCL"), a Maryland corporation generally cannot dissolve, amend its charter, merge, consolidate, sell all or substantially all of its assets or engage in a statutory share exchange unless declared advisable by its board of directors and approved by the affirmative vote of stockholders entitled to cast at least two-thirds of all of the votes entitled to be cast on the matter unless a lesser percentage (but not less than a majority of all of the votes entitled to be cast on the matter) is set forth in the corporation's charter. Our charter provides for approval of any of these matters by the affirmative vote of stockholders entitled to cast a majority of the votes entitled to be cast on such matters, except that the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast generally in the election of directors is required to remove a director and the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast on such matter is required to amend the provisions of our charter relating to the removal of directors or specifying that our stockholders may act without a meeting only by unanimous consent, or to amend the vote required to amend such provisions.

Maryland law also permits a Maryland corporation to transfer all or substantially all of its assets without the approval of the stockholders of the corporation to an entity if

all of the equity interests of the entity are owned, directly or indirectly, by the corporation. Because our operating assets may be held by our Operating Partnership or its subsidiaries, these subsidiaries may be able to merge or transfer all or substantially all of their assets without the approval of our stockholders.

Our charter authorizes our Board to reclassify any unissued shares of our Common Stock into other classes or series of stock, to establish the designation and number of shares of each class or series and to set, subject to the provisions of our charter relating to the restrictions on ownership and transfer of our stock, the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of each such class or series.

On July 7, 2021, the closing price of our Common Stock reported on the Nasdaq Stock Market was $3.42 per share.

Power to Increase or Decrease Authorized Shares of Common Stock and Issue Additional Shares of Common and Preferred Stock

We believe that the power of our Board to amend our charter to increase or decrease the aggregate number of authorized shares of stock, to authorize us to issue additional authorized but unissued shares of our Common Stock or preferred stock and to classify or reclassify unissued shares of our Common Stock or preferred stock and thereafter to authorize us to issue such classified or reclassified shares of stock will provide us with increased flexibility in structuring possible future financings and acquisitions and in meeting other needs that might arise. The additional classes or series, as well as the additional authorized shares of Common Stock, will be available for issuance without further action by our stockholders, unless such action is required by applicable law or the rules of any stock exchange or automated quotation system on which our securities may be listed or traded. Although our Board does not currently intend to do so, it could authorize us to issue a class or series of stock that could, depending upon the terms of the particular class or series, delay, defer or prevent a transaction or a change of control of our company that might involve a premium price for holders of our Common Stock or that our common stockholders otherwise believe to be in their best interests.

Restrictions on Ownership and Transfer

For us to qualify as a REIT under the U.S. Internal Revenue Code of 1986, as amended (the "Code"), our stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months (other than the first year for which an election to be a REIT has been made) or during a proportionate part of a shorter taxable year. Also, not more than 50% of the value of the outstanding shares of stock (after taking into account options to acquire shares of stock) may be owned, directly, indirectly or through application of attribution rules by five or fewer individuals (as defined in the Code to include certain entities such as private foundations) at any time during the last half of a taxable year (other than the first year for which an election to be a REIT has been made).

Our charter contains restrictions on the ownership and transfer of our stock that are intended to assist us in complying with these requirements and continuing to qualify as a REIT. The Ownership Limits in our charter provide that, subject to the exceptions described below, no person or entity may actually or beneficially own, or be deemed to own by virtue of the applicable constructive ownership provisions of the Code, more than 9.8% (in value or in number of shares, whichever is more restrictive) of the aggregate of the outstanding shares of our capital stock, or 9.8% in value of the aggregate of the outstanding shares of all classes and series of our stock, in each case excluding any shares of our capital stock that are not treated as outstanding for federal income tax purposes. A person or entity that would have acquired beneficial or constructive ownership of our stock but for the application of the Ownership Limits or any of the other restrictions on ownership and transfer of our stock discussed below is referred to as a "prohibited owner."

The constructive ownership rules under the Code are complex and may cause stock owned actually or constructively by a group of related individuals and/or entities to be owned constructively by one individual or entity. As a result, the acquisition of less than 9.8% of our capital stock (or the acquisition of an interest in an entity that owns, beneficially or constructively, our capital stock) by an individual or entity could, nevertheless, cause that individual or entity, or another individual or entity, to own constructively in excess of 9.8% of our outstanding capital stock and thereby violate the applicable ownership limit.

Our Board, in its sole and absolute discretion, prospectively or retroactively, may exempt a person from either or both of the Ownership Limits if doing so would not result in us being "closely held" within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or otherwise failing to qualify as a REIT and our Board determines that:

- such waiver will not cause or allow five or fewer individuals to actually or beneficially own more than 49% in value of the aggregate of the outstanding shares of all classes and series of our stock; and
- subject to certain exceptions, the person does not and will not own, beneficially or constructively, an interest in a tenant of ours (or a tenant of any entity owned in whole or in part by us) that would cause us to constructively own more than a 9.8% interest (as set forth in Section 856(d)(2)(B) of the Code) in such tenant.

As a condition of the exception, our Board may require (i) an opinion of counsel or an IRS ruling, in either case in form and substance satisfactory to our Board, in its sole and absolute discretion, to determine or ensure our status as a REIT and (ii) such representations and undertakings from the person requesting the exception as are reasonably necessary to make the determinations described above. Our Board may impose such conditions or restrictions as it deems appropriate in connection with such an exception.

In connection with a waiver of an Ownership Limit or at any other time, our Board may, in its sole and absolute discretion, increase or decrease one or both of the Ownership Limits for one or more persons, except that a decreased ownership limit will not be effective for any person whose actual, beneficial or constructive ownership of our stock exceeds the decreased ownership limit at the time of the decrease until the person's actual, beneficial or constructive ownership of our stock equals or falls below the decreased ownership limit, although any further acquisition of our stock will violate the decreased Ownership Limit. Our Board may not increase or decrease any Ownership Limit if, among other limitations, the new ownership limit would allow five or fewer persons to actually or beneficially own more than 49% in value of our outstanding stock or could otherwise cause us to fail to qualify as a REIT.

On March 13, 2020, the Board, pursuant to the terms of the Company's charter, created an Excepted Holder Limit of 11.8% for the following stockholders of the Company: (i) Daniel Khoshaba and (ii) Stilwell Value Partners VII, L.P., Stilwell Activist Fund, L.P., Stilwell Activist Investments, L.P., Stilwell Value LLC, and Joseph Stilwell (collectively, the "Stilwell Group"). On August 4, 2020, the Board increased the Excepted Holder Limit for each of Mr. Khoshaba and the Stilwell Group from 11.8% to 14.0%.

Our charter further prohibits:

- any person from beneficially or constructively owning shares of our stock that could result in us being "closely held" under Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or otherwise cause us to fail to qualify as a REIT (including, but not limited to, actual, beneficial or constructive ownership of shares of our stock that could result in us constructively owning an interest in a tenant that is described in Section 856(d)(2)(B) of the Code, if the income we derive from such tenant taking into account our other income that would not qualify under the gross income requirements of Section 856(c) of the Code, would cause us to fail to satisfy any the gross income requirements imposed on REITs); and

- any person from transferring shares of our stock if such transfer would result in shares of our stock being beneficially owned by fewer than 100 persons (determined without reference to any rules of attribution).

Any person who acquires or attempts or intends to acquire actual, beneficial or constructive ownership of shares of our stock that will or may violate the Ownership Limits or any of the other restrictions on ownership and transfer of our stock described above must give written notice immediately to us or, in the case of a proposed or attempted transaction, provide us at least 15 days' prior written notice, and provide us with such other information as we may request in order to determine the effect of such transfer on our status as a REIT.

A holder of Notes may not exercise the conversion feature of the Notes to the extent that such holder exercise would be treated as violating the Ownership Limits as a result of such exercise. If any delivery of shares of our capital stock owed to a holder upon conversion of the Notes is not made, in whole or in part, as a result of the limitations described above, our obligation to make such delivery shall not be extinguished and we shall deliver such shares as promptly as practicable after any such converting holder gives notice to us that such delivery would not result in it violating the Ownership Limits.

The Ownership Limits and other restrictions on ownership and transfer of our stock described above will not apply if our Board determines that it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT or that compliance is no longer required for us to qualify as a REIT.

Pursuant to our charter, if any purported transfer of our stock or any other event would otherwise result in any person violating the Ownership Limits or such other limit established by our Board, or could result in us being "closely held" within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or otherwise failing to qualify as a REIT, then that number of shares causing the violation (rounded up to the nearest whole share) will be automatically transferred to, and held by, a trust for the exclusive benefit of one or more charitable organizations selected by us. The prohibited owner will have no rights in shares of our stock held by the trustee. The automatic transfer will be effective as of the close of business on the business day prior to the date of the violative transfer or other event that results in the transfer to the trust. Any dividend or other distribution paid to the prohibited owner, prior to our discovery that the shares had been automatically transferred to a trust as described above, must be repaid to the trustee upon demand. If the transfer to the trust as described above is not automatically effective, for any reason, to prevent violation of the applicable restriction on ownership and transfer of our stock, then that transfer of the number of shares that otherwise would cause any person to violate the above restrictions will be void. If any transfer of our stock would result in shares of our stock being beneficially owned by fewer than 100 persons (determined without reference to any rules of attribution), then any such purported transfer will be void and of no force or effect and the intended transferee will acquire no rights in the shares.

Shares of our stock transferred to the trustee are deemed offered for sale to us, or our designee, at a price per share equal to the lesser of (1) the price per share in the transaction that resulted in the transfer of the shares to the trust (or, in the event of a gift, devise or other such transaction, the last reported sale price on the Nasdaq Capital Market on the day of the transfer or other event that resulted in the transfer of such shares to the trust) and (2) the last reported sale price on the Nasdaq Capital Market on the date we accept, or our designee accepts, such offer. We must reduce the amount payable to the prohibited owner by the amount of dividends and distributions paid to the prohibited owner and owed by the prohibited owner to the trustee and pay the amount of such reduction to the trustee for the benefit of the charitable beneficiary. We have the right to accept such offer until the trustee has sold the shares of our stock held in the trust. Upon a sale to us, the interest of the charitable beneficiary in the shares sold terminates and the trustee must distribute the net proceeds of the sale to the prohibited owner and any dividends or other distributions held by the trustee with respect to such stock will be paid to the charitable beneficiary.

If we do not buy the shares, the trustee must, within 20 days of receiving notice from us of the transfer of shares to the trust, sell the shares to a person or persons designated by the trustee who could own the shares, without violating the Ownership Limits or other restrictions on ownership and transfer of our stock. Upon such sale, the trustee must distribute to the prohibited owner an amount equal to the lesser of (1) the price paid by the prohibited owner for the shares (or, if the prohibited owner did not give value in connection with the transfer or other event that resulted in the transfer to the trust (e.g., a gift, devise or other such transaction), the last reported sale price on the Nasdaq Stock Market on the day of the transfer or other event that resulted in the transfer of such shares to the trust) and (2) the sales proceeds (net of commissions and other expenses of sale) received by the trustee for the shares. The trustee will reduce the amount payable to the prohibited owner by the amount of dividends and other distributions paid to the prohibited owner and owed by the prohibited owner to the trustee. Any net sales proceeds in excess of the amount payable to the prohibited owner will be immediately paid to the charitable beneficiary, together with any dividends or other distributions thereon. In addition, if prior to discovery by us that shares of our stock have been transferred to the trustee, such shares of stock are sold by a prohibited owner, then such shares shall be deemed to have been sold on behalf of the trust and, to the extent that the prohibited owner received an amount for or in respect of such shares that exceeds the amount that such prohibited owner was entitled to receive, such excess amount shall be paid to the trustee upon demand.

The trustee will be designated by us and will be unaffiliated with us and with any prohibited owner. Prior to the sale of any shares by the trust, the trustee will receive, in trust for the charitable beneficiary, all dividends and other distributions paid by us with respect to such shares, and may exercise all voting rights with respect to such shares for the exclusive benefit of the charitable beneficiary.

Subject to Maryland law, effective as of the date that the shares have been transferred to the trust, the trustee may, at the trustee's sole discretion:

- rescind as void any vote cast by a prohibited owner prior to our discovery that the shares have been transferred to the trust; and
- recast the vote in accordance with the desires of the trustee acting for the benefit of the beneficiary of the trust.

However, if we have already taken irreversible corporate action, then the trustee may not rescind and recast the vote.

If our Board or a committee thereof determines in good faith that a proposed transfer or other event has taken place that violates the restrictions on ownership and transfer of our stock set forth in our charter, our Board or such committee may take such action as it deems advisable in its sole discretion to refuse to give effect to or to prevent such transfer, including, but not limited to, causing us to redeem shares of stock, refusing to give effect to the transfer on our books or instituting proceedings to enjoin the transfer.

Every owner of 5% or more (or such lower percentage as required by the Code or the U.S. Treasury regulations promulgated thereunder) of the outstanding shares of our stock, within 30 days after the end of each taxable year, must give written notice to us stating the name and address of such owner, the number of shares of each class and series of our stock that the owner beneficially owns and a description of the manner in which the shares are held. Each such owner also must provide us with any additional information that we request in order to determine the effect, if any, of the person's actual or beneficial ownership on our status as a REIT and to ensure compliance with the Ownership Limits. In addition, any person that is an actual owner, beneficial owner or constructive owner of shares of our stock and any person (including the stockholder of record) who is holding shares of our stock for an actual owner, beneficial owner or constructive owner must, on request, disclose to us such information as we may request in good faith in order to determine our status as a REIT and comply with requirements of any taxing authority or governmental authority or to determine such compliance.

Any certificates representing shares of our stock will bear a legend referring to the restrictions on ownership and transfer of our stock described above.

These restrictions on ownership and transfer could delay, defer or prevent a transaction or a change of control of our company that might involve a premium price for our capital stock that our stockholders believe to be in their best interest.

Business Combinations

Under the MGCL, certain "business combinations" (including a merger, consolidation, share exchange or, in certain circumstances specified under the statute, an asset transfer or issuance or reclassification of equity securities) between a Maryland corporation and any interested stockholder, or an affiliate of such an interested stockholder, are prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. Maryland law defines an interested stockholder as:

- any person who beneficially owns, directly or indirectly, 10% or more of the voting power of the corporation's outstanding voting stock; or
- an affiliate or associate of the corporation who, at any time within the two-year period prior to the date in question, was the beneficial owner of 10% or more of the voting power of the then outstanding voting stock of the corporation. A person is not an interested stockholder under the statute if the board of directors approved in advance the transaction by which the person otherwise would have become an interested stockholder. In approving a transaction, however, a board of directors may provide that its approval is subject to compliance, at or after the time of the approval, with any terms and conditions determined by it.

A person is not an interested stockholder under the statute if the board of directors approved in advance the transaction by which the person otherwise would have become an interested stockholder. In approving a transaction, however, a board of directors may provide that its approval is subject to compliance, at or after the time of the approval, with any terms and conditions determined by it.

After such five-year period, any such business combination must be recommended by the board of directors of the corporation and approved by the affirmative vote of at least:

- 80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation; and
- two-thirds of the votes entitled to be cast by holders of voting stock of the corporation other than shares held by the interested stockholder with whom (or with whose affiliate) the business combination is to be effected or held by an affiliate or associate of the interested stockholder.

These supermajority approval requirements do not apply if, among other conditions, the corporation's stockholders receive a minimum price (as defined in the MGCL) for their shares and the consideration is received in cash or in the same form as previously paid by the interested stockholder for its shares.

These provisions of the MGCL do not apply, however, to business combinations that are approved or exempted by a corporation's board of directors prior to the time that the interested stockholder becomes an interested stockholder. Our board of directors has, by board resolution, elected to opt out of the business combination provisions of the MGCL. However, we cannot assure you that our board of directors will not opt to be subject to such business combination provisions in the future. Notwithstanding the foregoing, an alteration or repeal of this resolution will not have any effect on any business combinations that have been consummated or upon any agreements existing at the time of such modification or repeal.

Control Share Acquisitions

The MGCL provides that holders of "control shares" of a Maryland corporation acquired in a "control share acquisition" have no voting rights with respect to any control shares except to the extent approved by the affirmative vote of at least two-thirds of the votes entitled to be cast in the election of directors, generally, excluding shares of stock in a corporation in respect of which any of the following persons is entitled to exercise or direct the exercise of the voting power of such shares in the election of directors:

(1) the person who made or proposes to make a control share acquisition, (2) an officer of the corporation or (3) an employee of the corporation who is also a director of the corporation. "Control shares" are voting shares of stock that, if aggregated with all other such shares of stock previously acquired by the acquirer or in respect of which the acquirer is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquirer to exercise voting power in electing directors within one of the following ranges of voting power:

- one-tenth or more but less than one-third;
- one-third or more but less than a majority; or
- a majority or more of all voting power.

Control shares do not include shares that the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval. A "control share acquisition" means the acquisition, directly or indirectly, of ownership of, or the power to direct the exercise of voting power with respect to, issued and outstanding control shares, subject to certain exceptions.

A person who has made or proposes to make a control share acquisition, upon satisfaction of certain conditions (including an undertaking to pay expenses and making an "acquiring person statement" as described in the MGCL), may compel the corporation to call a special meeting of stockholders to be held within 50 days of demand to consider the voting rights of the control shares. If no request for a special meeting is made, the corporation may itself present the question at any stockholders meeting.

If voting rights of control shares are not approved at the meeting or if the acquiring person does not deliver an "acquiring person statement" as required by the statute, then, subject to certain conditions and limitations, the corporation may redeem any or all of the control shares (except those for which voting rights have previously been approved) for fair value determined, without regard to the absence of voting rights for the control shares, as of the date of the last control share acquisition by the acquirer or of any meeting of stockholders at which the voting rights of such shares are considered and not approved. If voting rights for control shares are approved at a stockholders meeting and the acquirer becomes entitled to vote a majority of the shares entitled to vote, all other stockholders may exercise appraisal rights. The fair value of the shares as determined for purposes of such appraisal rights may not be less than the highest price per share paid by the acquirer in the control share acquisition.

The control share acquisition statute does not apply to: (1) shares acquired in a merger, consolidation or share exchange if the corporation is a party to the transaction or (2) acquisitions approved or exempted by the charter or bylaws of the corporation.

Our bylaws contain a provision exempting from the control share acquisition statute any and all acquisitions by any person of shares of our stock. We cannot provide you any assurance, however, that our board of directors will not amend or eliminate this provision at any time in the future.

Subtitle 8

Subtitle 8 of Title 3 of the MGCL permits a Maryland corporation with a class of equity securities registered under the Exchange Act and at least three independent directors to elect to be subject, by provision in its charter or bylaws or a resolution of its board of directors and notwithstanding any contrary provision in the charter or bylaws, to any or all of the following five provisions:

- a classified board;
- a two-thirds vote requirement for removing a director;
- a requirement that the number of directors be fixed only by vote of the directors;
- a requirement that a vacancy on the board be filled only by the remaining directors and for the remainder of the full term of the class of directors in which the vacancy occurred; or
- a majority requirement for the calling of a special meeting of stockholders.

Our charter provides that, at such time as we become eligible to make a Subtitle 8 election and except as may be provided by our Board in setting the terms of any class or series of stock, we elect to be subject to the provisions of Subtitle 8 relating to the filling of vacancies on our Board. Through provisions in our charter and bylaws unrelated to Subtitle 8, we currently (1) require a two-thirds vote for the removal of any director from the board, which removal will be allowed only for cause, (2) vest in the board the exclusive power to fix the number of directorships, subject to limitations set forth in our charter and bylaws and (3) require, unless called by the chairman of our Board, our president, our chief executive officer or our Board, the request of stockholders entitled to cast not less than a majority of all votes entitled to be cast on a matter at such meeting to call a special meeting to consider and vote on any matter that may properly be considered at a meeting of stockholders. We have not elected to create a classified board. In the future, our Board may elect, without stockholder approval, to create a classified board or elect to be subject to one or more of the other provisions of Subtitle 8.

Transfer Agent and Registrar

The transfer agent and registrar for our (a) shares of Common Stock, (b) Series A Preferred Stock, (c) Series B Preferred Stock, (d) Series D Preferred Stock, and (e) publically traded warrants is Computershare Trust Company, N.A. 250 Royall Street, Canton, Massachusetts 02021.

PLAN OF DISTRIBUTION

As soon as practicable after the Record Date for the Rights Offering, we will distribute the Rights and Rights Certificates to individuals who owned shares of our Common Stock at 5:00 p.m., New York City time, on June 1, 2021. If you wish to exercise your Rights and purchase Notes, you should complete the Rights Certificate and return it with payment (other than wire transfers) for the shares to the Subscription Agent, Registrar and Transfer Agent, at the following address:

By mail:

Computershare
c/o Corporate Actions Voluntary Offer; COY: WHLR
P.O. Box 43011
Providence, RI 02940-3011

By overnight courier:

Computershare
c/o Corporate Actions Voluntary Offer; COY: WHLR
150 Royall Street, Suite V
Canton, MA 02021

Additional questions about the Rights Offering should be directed to the information agent for the Rights Offering as follows:

(516) 220-8356 (brokers); (833) 503-4130 (stockholders)

See "*The Rights Offering—Method of Exercising Rights*" on page 36. If you have any questions, you should contact the Subscription Agent, Computershare, at (800) 546-5141 (within USA, US territories & Canada) or (781) 575-2765 (outside USA, US territories & Canada).

Other than as described herein, we do not know of any existing agreements between or among any stockholder, broker, dealer, underwriter or agent relating to the sale or distribution of the Notes or the underlying Common Stock.

Computershare is acting as the Subscription Agent, Registrar and Transfer Agent for this Rights Offering. We will pay all customary fees and expenses of the Subscription Agent related to this Rights Offering and have also agreed to indemnify the Subscription Agent from liabilities that it may incur in connection with this Rights Offering. We estimate that our total expenses in connection with this Rights Offering will be approximately $945,259.40.

MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following is a summary of the material U.S. federal income tax consequences related to (i) the receipt and exercise of the Rights pursuant to the Rights Offering, (ii) the ownership and disposition of Notes acquired pursuant to an exercise of the Rights, and (iii) the ownership and disposition of shares of our Common Stock received as payments on, or upon conversion of, the Notes. This discussion applies only to holders that hold the Rights, the Notes, or shares or our Common Stock, as applicable, as capital assets for U.S. federal income tax purposes.

This discussion does not describe all of the tax consequences that may be relevant to you in light of your particular circumstances, including the alternative minimum tax, the Medicare tax on certain investment income, the tax consequences to accrual-method taxpayers who are required under Section 451(b) of Code to recognize income for U.S.

federal income tax purposes no later than when such income is taken into account in applicable financial statements and the different consequences that may apply if you are subject to special rules that apply to certain types of investors, such as:

- banks, financial institutions or financial services entities;
- subchapter S corporations;
- governments or agencies or instrumentalities thereof;
- regulated investment companies and REITs;
- U.S. expatriates or former long-term residents of the United States;
- insurance companies;
- broker-dealers;
- taxpayers subject to mark-to-market tax accounting rules;
- tax-exempt organizations (except to the limited extent discussed in "*— Federal Income Tax Considerations to Tax-Exempt Holders of the Ownership and Disposition of our Common Stock*" on page 87);
- passive foreign investment companies or controlled foreign corporations;
- persons who are not citizens or residents of the United States (except to the limited extent discussed below);
- persons holding our securities as part of a "straddle," hedge, integrated transaction or similar transaction;
- investors that have a principal place of business or "tax home" outside the United States;
- investors whose functional currency is not the United States dollar; and
- persons who receive our securities through the exercise of employee stock options or otherwise as compensation.

This discussion also does not consider the tax treatment of entities or arrangements treated as partnerships or other pass-through entities for U.S. federal income tax purposes or persons who hold our Common Stock through such entities or arrangements. If a partnership (or other entity or arrangement treated as a partnership for U.S. federal income tax purposes) is the beneficial owner of our Common Stock, the U.S. federal income tax treatment of a partner in the partnership generally will depend on the status of the partner and the activities of the partner and the partnership. If you are a partner of a partnership holding our Common Stock, we urge you to consult your tax advisor.

When we use the term "U.S. Holder," we mean a beneficial owner of shares of our Common Stock, Rights or Notes, as applicable who, for U.S. federal income tax purposes, is:

- an individual who is a citizen or resident of the United States;
- a corporation, including an entity treated as a corporation for federal income tax purposes, created or organized in or under the laws of the United States or of any state thereof or the District of Columbia;
- an estate the income of which is subject to federal income taxation regardless of its source; or
- a trust if (1) a U.S. court is able to exercise primary supervision over the administration of such trust and one or more U.S. persons have the authority to control all substantial decisions of the trust or (2) it has a valid election in place to be treated as a U.S. person.

When we use the term "Non-U.S. Holder," we mean a beneficial owner of shares of our Common Stock, Rights or Notes, as applicable who, for U.S. federal income tax purposes, is neither a U.S. Holder nor a partnership or other pass-through entity for U.S. federal income tax purposes.

This discussion is based on the Code, administrative pronouncements, judicial decisions and final, temporary and proposed Treasury regulations as of the date hereof, changes to any of which subsequent to the date of this prospectus may affect the tax consequences described herein. This discussion does not address any aspect of state, local or non-U.S. taxation, or any U.S. federal taxes other than income taxes (such as gift and estate taxes).

We have not sought, and do not expect to seek, a ruling from the IRS as to any U.S. federal income tax consequence described herein. The IRS may disagree with the discussion herein, and its determination may be upheld by a court. Moreover, there can be no assurance that future legislation, regulations, administrative rulings or court decisions will not adversely affect the accuracy of the statements in this discussion.

We urge you to consult your own tax advisor regarding the specific tax consequences to you of receiving Rights pursuant to the Rights Offering, owning and disposing of Notes acquired pursuant to an exercise of the Rights, and owning and disposing of shares of our Common Stock received as payment on, or upon conversion of, the Notes, and of our election to be taxed as a REIT. Specifically, we urge you to consult your own tax advisor regarding the federal, state, local, foreign, and other tax consequences of such ownership and election and regarding potential changes in applicable tax laws.

Taxation of Our Company

General

The Company has elected to be taxed as a REIT under Sections 856 through 860 of the Code commencing with its taxable year ended December 31, 2012. The Company believes that it has been organized and has operated in a manner that has allowed it to qualify for taxation as a REIT under the Code commencing with its taxable year ended December 31, 2012, and the Company intends to conduct operations as to qualify as a REIT in the future.

Provided we continue to qualify for taxation as a REIT, we generally will not be required to pay U.S. federal corporate income taxes on our REIT taxable income that is currently distributed to our stockholders. This treatment substantially eliminates the "double taxation" that ordinarily results from investment in a "C" corporation. A "C" corporation is a corporation that generally is required to pay tax at the corporate level. Double taxation means taxation once at the corporate level when income is earned and

once again at the stockholder level when the income is distributed. We will, however, be required to pay U.S. federal income tax as follows:

- First, we will be required to pay tax at regular corporate rates on taxable income, including net capital gain, that we do not distribute to our stockholders during, or within a specified time period after, the calendar year in which the income is earned.
- Second, if we have (1) net income from the sale or other disposition of "foreclosure property" held primarily for sale to customers in the ordinary course of business or (2) other nonqualifying income from foreclosure property, we will be required to pay tax at the highest corporate rate on this income. To the extent that income from foreclosure property is otherwise qualifying income for purposes of the 75% gross income test described under "—*Income Tests*" on page 72, this tax is not applicable.
- Third, if we fail to satisfy the 75% gross income test or the 95% gross income test, each as described under "—*Income Tests*" on page 72 and nonetheless continue to qualify as a REIT because we meet other requirements, we will pay a 100% tax on (1) the gross income attributable to the greater of the amount by which we fail the 75% and 95% gross income tests, multiplied by (2) a fraction intended to reflect our profitability.

- Fourth, we will be required to pay a 100% tax on any net income from prohibited transactions. Prohibited transactions are, in general, sales or other taxable dispositions of property, other than foreclosure property, held primarily for sale to customers in the ordinary course of business.
- Fifth, if we fail to satisfy any of the asset tests (other than a de minimis failure of the 5% asset test, the 10% value test, or the 10% vote test), as described under "—*Asset Tests*" on page 74, due to reasonable cause and not due to willful neglect, and we nonetheless maintain our REIT qualification because of specified cure provisions, we will be required to pay a tax equal to the greater of $50,000 and the highest corporate tax rate multiplied by the net income generated by the nonqualifying assets that caused us to fail such test.
- Sixth, if we fail to satisfy any provision of the Code that would result in our failure to qualify as a REIT (other than a violation of the gross income tests or certain violations of the asset tests, as described below) and the violation is due to reasonable cause and not due to willful neglect, we may retain our REIT qualification but we will be required to pay a penalty of $50,000 for each such failure.
- Seventh, we will be required to pay a 4% excise tax to the extent we fail to distribute during each calendar year at least the sum of (1) 85% of our ordinary income for the year, (2) 95% of our capital gain net income for the year, and (3) any undistributed taxable income from prior periods.
- Eighth, if we acquire any asset from a corporation that is or has been a C corporation in a transaction in which our basis in the asset is determined by reference to the C corporation's basis in the asset, and we subsequently recognize gain on the disposition of the asset during the five-year period beginning on the date on which we acquired the asset, then we will be required to pay tax at the highest regular corporate tax rate on this gain to the extent of the excess of (1) the fair market value of the asset over (2) our adjusted basis in the asset, in each case determined as of the date on which we acquired the asset. The results described in this paragraph with respect to the recognition of gain assume that the C corporation will refrain from making an election to receive different treatment under applicable Treasury Regulations on its tax return for the year in which we acquire the asset from the C corporation.
- Ninth, any subsidiaries that are C corporations, including our Taxable REIT Subsidiaries ("TRSs"), such as Wheeler Real Estate LLC ("Wheeler Real Estate"), Wheeler Interests LLC ("Wheeler Interests") and Wheeler Development LLC ("Wheeler Development"), generally will be required to pay federal corporate income tax on their earnings.
- Tenth, we will incur a 100% excise tax on certain transactions with a TRS that are not conducted on an arm's-length basis and we will incur such 100% excise tax if it is determined we have been undercharged for certain services provided by a TRS.
- Eleventh, we may elect to retain and pay income tax on our net capital gain. In that case, a stockholder would include its proportionate share of our undistributed net capital gain (to the extent we make a timely designation of such gain to the stockholder) in its income, would be deemed to have paid the tax that we paid on such gain, and would be allowed a credit for its proportionate share of the tax deemed to have been paid, and an adjustment would be made to increase the basis of the stockholder in our Common Stock.

Requirements for Qualification as a REIT. The Code defines a REIT as a corporation, trust or association:

(1) that is managed by one or more trustees or directors;

(2) that issues transferable shares or transferable certificates to evidence its beneficial ownership;

(3) that would be taxable as a domestic corporation, but for Sections 856 through 860 of the Code;

(4) that is not a financial institution or an insurance company within the meaning of certain provisions of the Code;

(5) that is beneficially owned by 100 or more persons;

(6) not more than 50% in value of the outstanding stock of which is owned, directly or indirectly, by five or fewer individuals, including certain specified entities, during the last half of each taxable year;

(7) that meets other tests, described below, regarding the nature of its income and assets and the amount of its distributions; and

(8) that makes an election to be taxable as a REIT for the current taxable year, or has made this election for a previous year, which election has not been revoked or terminated and satisfied all relevant filing and other administrative requirements established by the IRS that must be met to maintain qualification as a REIT.

The Code provides that conditions (1) to (4), inclusive, must be met during the entire taxable year and that condition (5) must be met during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months. Conditions (5) and (6) do not apply until after the first taxable year for which an election is made to be taxed as a REIT. For purposes of condition (6), the term "individual" includes a supplemental unemployment compensation benefit plan, a private foundation or a portion of a trust permanently set aside or used exclusively for charitable purposes, but generally does not include a qualified pension plan or profit sharing trust.

To monitor compliance with the stock ownership requirements, we generally are required to maintain records regarding the actual ownership of our stock. To do so, we must demand written statements each year from the record holders of significant percentages of our stock pursuant to which the record holders must disclose the actual owners of the stock (*i.e.*, the persons required to include our dividends in their gross income). We must maintain a list of those persons failing or refusing to comply with this demand as a part of our records. We could be subject to monetary penalties if we fail to comply with these record-keeping requirements. If you fail or refuse to comply with the demands, you will be required by Treasury Regulations to submit a statement with your tax return disclosing your actual ownership of our stock and other information.

The Company believes that it has been organized, has operated and has issued sufficient shares of Common Stock and preferred stock with sufficient diversity of ownership to allow the Company to satisfy conditions (1) through (8), inclusive, during the relevant time periods. In addition, our charter provides for restrictions regarding ownership and transfer of our shares that are intended to assist us in continuing to satisfy the share ownership requirements described in (5) and (6) above. A description of the share ownership and transfer restrictions relating to our stock is contained in the discussion in this prospectus under the heading "*Description of Capital Stock—Restrictions on Ownership and Transfer*" beginning on page 59. These restrictions, however, may not ensure that we will, in all cases, be able to satisfy the share ownership requirements described in (5) and (6) above. If we fail to satisfy these share ownership requirements, except as provided in the next sentence, our status as a REIT will terminate. If, however, we comply with the rules contained in applicable Treasury Regulations that require us to ascertain the actual ownership of our shares and we do not know, or would not have known through the exercise of reasonable diligence, that we failed to meet the requirement described in condition (6) above, we will be treated as having met this requirement. See "*—Failure to Qualify*" on page 77.

In addition, we may not maintain our status as a REIT unless our taxable year is the calendar year. We have used and intend to continue to use a calendar taxable year.

Ownership of Interests in Partnerships, Limited Liability Companies and Qualified REIT Subsidiaries In the case of a REIT that is a partner in a partnership or a member in a limited liability company treated as a partnership for U.S. federal income tax purposes, Treasury Regulations provide that the REIT will be deemed to own its proportionate share of the assets of the partnership or limited liability company, as the case may be, based on its interest in partnership capital, subject to special rules relating to the 10% value test described below. Also, the REIT will be deemed to be entitled to its proportionate share of the income of that entity. The assets and gross income of the partnership or limited liability company retain the same character in the hands of the REIT for purposes of Section 856 of the Code, including satisfying the gross income tests and the asset tests.

Thus, our pro rata share of the assets and items of income of our Operating Partnership, including our Operating Partnership's share of these items of any partnership or limited liability company treated as a partnership or disregarded entity for U.S. federal income tax purposes in which it owns an interest, is treated as our assets and items of income for purposes of applying the requirements described in this discussion, including the gross income and asset tests described below. A brief summary of the rules governing the U.S. federal income taxation of partnerships and limited liability companies is set forth below in "*—Tax Aspects of Our Operating Partnership, the Subsidiary Partnerships and the Limited Liability Companies*" beginning on page 77.

We control our Operating Partnership and its subsidiary partnerships and subsidiary limited liability companies and intend to continue to operate them in a manner consistent with the requirements for our qualification as a REIT. If we become a limited partner or non-managing member in any partnership or limited liability company and such entity takes or expects to take actions that could jeopardize our status as a REIT or require us to pay tax, we may be forced to dispose of our interest in such entity. In addition, it is possible that a partnership or limited liability company could take an action which could cause us to fail a gross income or asset test, and that we would not become aware of such action in time to dispose of our interest in the partnership or limited liability company or take other corrective action on a timely basis. In that case, we could fail to qualify as a REIT unless we were entitled to relief, as described below.

We may from time to time own and operate certain properties through subsidiaries that we intend to be treated as "qualified REIT subsidiaries" under the Code. A corporation will qualify as our qualified REIT subsidiary if we own 100% of the corporation's outstanding stock and do not elect with the subsidiary to treat it as a TRS, as described below. A qualified REIT subsidiary is not treated as a separate corporation, and all assets, liabilities and items of income, gain, loss, deduction and credit of a qualified REIT subsidiary are treated as assets, liabilities and items of income, gain, loss, deduction and credit of the parent REIT for all purposes under the Code, including all REIT qualification tests. Thus, in applying the federal tax requirements described in this discussion, any qualified REIT subsidiaries we own are ignored, and all assets, liabilities and items of income, gain, loss, deduction and credit of such corporations are treated as our assets, liabilities and items of income, gain, loss, deduction and credit. A qualified REIT subsidiary is not subject to U.S. federal income tax, and our ownership of the stock of a qualified REIT subsidiary will not violate the restrictions on ownership of securities, as described under "*—Asset Tests*" on page 74.

Ownership of Interests in TRSs. We have three TRSs, Wheeler Real Estate, Wheeler Interests and Wheeler Development. Wheeler Real Estate is a real estate leasing, management and administration firm. Wheeler Interests is an acquisition and asset management firm. Wheeler Development is a development company that specializes in ground-up development, redevelopment of mature centers, phase two developments for existing centers and build-to-suit projects for selecting tenants. We may acquire securities in additional TRSs in the future. A TRS is a corporation other than a REIT or qualified REIT subsidiary in which a REIT directly or indirectly holds stock, and that has made a joint election with such REIT to be treated as a TRS. If a TRS owns more than 35% of the total voting power or value of the outstanding securities of another corporation, such other corporation will also be treated as a TRS. Other than some activities relating to lodging and health care facilities as more fully described under "*—Income Tests*" beginning on page 72, a TRS may generally engage in any business, including the provision of customary or noncustomary services to tenants of its parent REIT. A TRS is subject to U.S. federal, state and local income tax as a regular C corporation. In addition, a TRS may be prevented from deducting interest on debt funded directly or indirectly by its parent REIT if certain tests regarding the TRS's debt to equity ratio and interest expense are not satisfied. A REIT's ownership of securities of a TRS is not subject to the 5% asset test, the 10% value test, or the 10% vote test as described below. See "*—Asset Tests*" on page 74. Overall, no more than 20% (25% for taxable years ending on or before December 31, 2017) of the value of a REIT's assets may consist of stock or securities of one or more TRSs. Further, a 100% excise tax may apply to transactions between a TRS and its parent REIT or the REIT's tenants whose terms are not on an arm's-length basis.

Income Tests

We must satisfy two gross income requirements annually to maintain our qualification as a REIT. First, in each taxable year we must derive directly or indirectly at least 75% of our gross income (excluding cancellation of indebtedness income and gross income from prohibited transactions, certain hedging transactions, and certain foreign currency gains) from investments relating to real property or mortgages on real property, including "rents from real property" and, in certain circumstances, interest, or certain types of temporary investments. Second, in each taxable year we must derive at least 95% of our gross income (excluding cancellation of indebtedness income and gross income from prohibited transactions, certain hedging transactions, and certain foreign currency gains) from the real property investments described above or dividends, interest and gain from the sale or disposition of stock or securities, or any combination of the foregoing. For these purposes, the term "interest" generally does not include any amount received or accrued, directly or indirectly, if the determination of all or some of the amount depends in any way on the income or profits of any person. However, an amount received or accrued generally will not be excluded from the term "interest" solely by reason of being based on a fixed percentage or percentages of receipts or sales.

Although a debt instrument issued by a "publicly offered REIT" (*i.e.*, a REIT that is required to file annual and periodic reports with the SEC under the 1934 Act) is treated as a "real estate asset" for the Asset Tests, the interest income and gain from the sale of such a debt instrument is not treated as qualifying income for the 75% gross income test

unless the debt instrument is secured by real property or an interest in real property.

Rents we receive from a tenant will qualify as "rents from real property" for the purpose of satisfying the gross income requirements for a REIT described above only if all of the following conditions are met:

- The amount of rent is not based in any way on the income or profits of any person. However, an amount we receive or accrue generally will not be excluded from the term "rents from real property" solely because it is based on a fixed percentage or percentages of receipts or sales. Although some of our leases provide for payment of rent based in part on a fixed percentage of gross receipts, none of our leases provide for rent that is based on the income or profits of any person;

- Neither we nor an actual or constructive owner of 10% or more of our stock actually or constructively owns 10% or more of the interests in the assets or net profits of a non-corporate tenant, or, if the tenant is a corporation, 10% or more of the voting power or value of all classes of stock of the tenant. Rents we receive from such a tenant that is a TRS of ours, however, will not be excluded from the definition of "rents from real property" as a result of this condition if (1) at least 90% of the space at the property to which the rents relate is leased to third parties, and the rents paid by the taxable REIT subsidiary are substantially comparable to rents paid by our other tenants for comparable space, or (2) the property to which the rents relate is a qualified lodging facility or qualified health care property and such property is operated on behalf of the TRS by a person who is an eligible independent contractor and certain other requirements are met, as described below. Whether rents paid by a TRS are substantially comparable to rents paid by other tenants is determined at the time the lease with the TRS is entered into, extended, and modified, if such modification increases the rents due under such lease.

  Notwithstanding the foregoing, however, if a lease with a "controlled taxable REIT subsidiary" is modified and such modification results in an increase in the rents payable by such TRS, any such increase will not qualify as "rents from real property." For purposes of this rule, a "controlled taxable REIT subsidiary" is a TRS in which the parent REIT owns stock possessing more than 50% of the voting power or more than 50% of the total value of the outstanding stock of such TRS;

- Rent attributable to personal property, leased in connection with a lease of real property, is not greater than 15% of the total rent received under the lease. If this condition is not met, then the portion of the rent attributable to personal property will not qualify as "rents from real property," nor will such personal property qualify as a "real estate asset" for purposes of the REIT asset tests described below. To the extent that rent attributable to personal property, leased in connection with a lease of real property, exceeds 15% of the total rent received under the lease, we may transfer a portion of such personal property to a taxable REIT subsidiary;

- For any obligation held by us that is secured by a mortgage on both real and personal property, the fair market value of personal property securing such obligation is not greater than 15% of the total fair market value of all property securing such obligation. If this condition is not met, then the portion of the rent attributable to personal property may not qualify as "rents from real property" and such obligation will not qualify as a "real estate asset" for purposes of the REIT asset tests described below. To the extent we hold an obligation for which the security consists of personal property the fair market value of which exceeds 15% of the total fair market value of all property securing such obligation, we may transfer such obligation to a taxable REIT subsidiary; and

- We generally must not operate or manage our real property or furnish or render noncustomary services to our tenants, other than through an independent contractor who is adequately compensated and from whom we do not revenue. We may own up to 100% of the stock of a TRS that may provide customary and noncustomary services directly to our tenants without tainting our rental income from the leased property. Any amounts we receive from a TRS with respect to the TRS's provision of noncustomary services will, however, be nonqualifying income under the 75% gross income test and, except to the extent received through the payment of dividends, the 95% gross income test. We need not provide services through an independent contractor or a TRS, but may instead provide the services directly to our tenants if the services are "usually or customarily rendered" in connection with the rental of space for occupancy only and are not otherwise considered "rendered to the occupant" of the property. In addition, we may provide a minimal amount of services not described in prior sentence to the tenants of a property, other than through an independent contractor or a TRS, as long as our income from the services (valued at not less than 150% of our direct cost of performing such services) does not exceed 1% of our income from the related property. If the total amount of impermissible tenant service income from a property does not exceed 1% of our total income from the property, the services will not cause the rent paid by tenants of that property to fail to qualify as rents from real property, but the impermissible tenant service income will not qualify as rents from real property.

We generally do not intend, and as a general partner of our Operating Partnership, do not intend to permit our Operating Partnership, to take actions we believe will cause us to fail to satisfy the rental conditions described above.

From time to time, we may enter into hedging transactions with respect to one or more of our assets or liabilities. Our hedging activities may include entering into interest rate swaps, caps, and floors, options to purchase these items, and futures and forward contracts. Income from a hedging transaction, including gain from the sale or disposition of such a transaction, that is clearly identified as a hedging transaction as specified in the Code will not constitute gross income and thus will be exempt from the 75% and 95% gross income tests. The term "hedging transaction," as used above, generally means any transaction we enter into in the normal course of our business primarily (1) to manage risk of interest rate changes or fluctuations with respect to borrowings made or to be made by us to acquire or carry real estate assets, (2) to manage risk of currency fluctuations with respect to an item of qualifying income under the 75% or 95% gross income test, or (3) to "offset" a transaction described in (1) or (2) if a portion of the hedged indebtedness is extinguished or the related property is disposed of. To the extent that we do not properly identify such transactions as hedges or we hedge with other types of financial instruments, the income from those transactions is not likely to be treated as qualifying income for purposes of the gross income tests. We intend to structure any hedging transactions in a manner that does not jeopardize our status as a REIT.

To the extent our TRSs pay dividends, we generally will derive our allocable share of such dividend income through our interest in our Operating Partnership. Such dividend income will qualify under the 95%, but not the 75%, gross income test.

We will monitor the amount of the dividend and other income from our TRSs and will take actions intended to keep this income, and any other nonqualifying income, within the limitations of the gross income tests. Although we expect these actions will be sufficient to prevent a violation of the gross income tests, we cannot guarantee that such actions will in all cases prevent such a violation.

If we fail to satisfy one or both of the 75% or 95% gross income tests for any taxable year, we may nevertheless qualify as a REIT for the year if we are entitled to relief under certain provisions of the Code. We generally may make use of the relief provisions if:

- following our identification of the failure to meet the 75% or 95% gross income tests for any taxable year, we file a schedule with the IRS setting forth each item of our gross income for purposes of the 75% or 95% gross income tests for such taxable year in accordance with Treasury Regulations; and

- our failure to meet these tests was due to reasonable cause and not due to willful neglect.

It is not possible, however, to predict whether in all circumstances we would be entitled to the benefit of these relief provisions. For example, if we fail to satisfy the gross income tests because nonqualifying income that we intentionally accrue or receive exceeds the limits on nonqualifying income, the IRS could conclude that our failure to satisfy the tests was not due to reasonable cause. If these relief provisions do not apply to a particular set of circumstances, we will not qualify as a REIT. As discussed in "*—Taxation of Our Company—General*" on page 68, even if these relief provisions apply, and we retain our status as a REIT, a tax would be imposed with respect to our nonqualifying income. We may not always be able to comply with the gross income tests for REIT qualification despite periodic monitoring of our income.

Prohibited Transaction Income. Any gain that we realize on the sale of property held as inventory or otherwise held primarily for sale to customers in the ordinary course of business, including our share of any such gain realized by our Operating Partnership, either directly or through its subsidiary partnerships and limited liability companies, will be treated as income from a prohibited transaction that is subject to a 100% penalty tax, unless certain safe harbor exceptions apply. This prohibited transaction income will be disregarded for purposes of the gross income tests. Under existing law, whether property is held as inventory or primarily for sale to customers in the ordinary course of a trade or business is a question of fact that depends on all the facts and circumstances surrounding the particular transaction. Our Operating Partnership intends to hold its properties for investment with a view to long-term appreciation, to engage in the business of acquiring, developing and owning its properties and to make occasional sales of the properties as are consistent with our Operating Partnership's investment objectives. We do not intend to enter into any sales that are prohibited transactions. However, the IRS may successfully contend that some or all of the sales made by our Operating Partnership or its subsidiary partnerships or limited liability companies are prohibited transactions. We would be required to pay the 100% penalty tax on our allocable share of the gains resulting from any such sales.

Asset Tests. At the close of each calendar quarter of our taxable year, we must also satisfy several tests relating to the nature and diversification of our assets.

First, at least 75% of the value of our total assets must be represented by real estate assets, cash, cash items and government securities. For purposes of this test, the term "real estate assets" generally means real property (including interests in real property, interests in mortgages on real property, and personal property to the extent such personal property is leased in connection with real property and rents attributable to such personal property are treated as "rents from real property" as discussed above), debt instruments issued by "publicly offered REITs," and shares (or transferable certificates of beneficial interest) in other REITs, as well as any stock or debt instrument attributable to the investment of the proceeds of a stock offering or a public offering of debt with a term of at least five years, but only for the one-year period beginning on the date the REIT receives such proceeds.

Second, not more than 25% of the value of our total assets may be represented by securities, other than those securities includable in the 75% asset test.

Third, not more than 25% of the value of our total assets may include certain debt issued by publicly traded REITs.

Fourth, of the investments included in the 25% asset class, and except for investments in other REITs, any qualified REIT subsidiaries and TRSs, the value of any one issuer's securities may not exceed 5% of the value of our total assets (the "5% asset test"), we may not own more than 10%, by value, of any one issuer's outstanding securities (the "10% value test") and we may not own more than 10% of the voting power of any one issuer (the "10% vote test"). Certain types of securities we may own are disregarded as securities solely for purposes of the 10% value test, including, but not limited to, "straight debt," securities issued by a partnership that itself would satisfy the 75% income test if it were a REIT, any loan to an individual or an estate, any obligation to pay rents from real property and any security issued by a REIT. In addition, solely for purposes of the 10% value test, the determination of our interest in the assets of a partnership or limited liability company in which we own an interest will be based on our proportionate interest in any securities issued by the partnership or limited liability company, excluding for this purpose certain securities described in the Code.

Fifth, not more than 20% (25% for taxable years ending on or before December 31, 2017) of the value of our total assets may be represented by the securities of one or more TRSs. Our Operating Partnership currently owns three TRSs, and we may acquire securities in other TRSs in the future. So long as each of these companies qualifies as a TRS, we will not be subject to the 5% asset test, the 10% value test, or the 10% vote test with respect to our ownership of their securities. We intend that the aggregate value of our TRSs will not exceed 20% of the aggregate value of our gross assets.

The Company believes that its assets have allowed the Company to comply with the foregoing asset tests and intends to monitor compliance on an ongoing basis. However, independent appraisals have not been obtained to support the Company's conclusions as to the value of its assets. Moreover, values of some assets may not be susceptible to a precise determination, and values are subject to change in the future. Accordingly, there can be no assurance that the IRS will not disagree with the Company's determinations of value. If the IRS were to disagree with our determination of the value of certain of our assets, we could fail one or more of the foregoing asset tests, which could cause us to fail to qualify as a REIT unless we satisfied one of the cure provisions described below.

If we fail to satisfy an asset test because we acquire nonqualifying securities or other property during a quarter, we may cure this failure by disposing of sufficient nonqualifying assets within 30 days after the close of that quarter. The Company believes that it has maintained and intends to maintain adequate records of the value of our assets to ensure compliance with the asset tests. If the Company fails to cure any noncompliance with the asset tests within the 30-day cure period, the Company would cease to qualify as a REIT unless the Company is eligible for certain relief provisions discussed below.

Certain relief provisions may be available to us if we discover a failure to satisfy the asset tests described above after the 30-day cure period. Under these provisions, we will be deemed to have met the 5% asset test, the 10% value test, and the 10% vote test if the value of our nonqualifying assets (1) does not exceed the lesser of (a) 1% of the total value of our assets at the end of the applicable quarter or (b) $10,000,000, and (2) we dispose of the nonqualifying assets or otherwise satisfy such tests within (a) six months after the last day of the quarter in which the failure to satisfy the asset tests is discovered or (b) the period of time prescribed by Treasury Regulations to be issued. For violations of any of the asset tests due to reasonable cause and not due to willful neglect and that are, in the case of the 5% asset test, the 10% value test, and the 10% vote test, in excess of the de minimis exception described above, we may avoid disqualification as a REIT after the 30-day cure period by taking steps including (1) the disposition of sufficient nonqualifying assets, or the taking of other actions, which allow us to meet the asset tests within (a) six months after the last day of the quarter in which the failure to satisfy the asset tests is discovered or (b) the period of time prescribed by Treasury Regulations to be issued, (2) paying a tax equal to the greater of (a) $50,000 or (b) the highest corporate tax rate multiplied by the net income generated by the nonqualifying assets, and (3) disclosing certain information to the IRS.

Although the Company believes it has satisfied the asset tests described above and plans to take steps to ensure that it satisfies such tests at the close of each calendar quarter, there can be no assurance that the Company will always be successful, or will not require a reduction in the Operating Partnership's overall interest in an issuer (including in the Company's TRSs). If the Company fails to cure any noncompliance with the asset tests in a timely manner, and the relief provisions described above are not available, the Company would cease to qualify as a REIT.

Annual Distribution Requirements

To maintain our qualification as a REIT, we are required to distribute dividends, other than capital gain dividends, to our stockholders in an amount at least equal to the sum of:

- 90% of our "REIT taxable income"; and
- 90% of our after-tax net income, if any, from foreclosure property; minus

- the excess of the sum of certain items of non-cash income over 5% of our "REIT taxable income."

For these purposes, our "REIT taxable income" is computed without regard to the dividends paid deduction and our net capital gain. In addition, for purposes of this test, non-cash income means income attributable to leveled stepped rents, original issue discount, cancellation of indebtedness, or a like-kind exchange that is later determined to be taxable.

In addition, if we dispose of any asset we acquired from a corporation which is or has been a C corporation in a transaction in which our basis in the asset is determined by reference to the basis of the asset in the hands of that C corporation, within the five-year period following our acquisition of such asset, we would be required to distribute at least 90% of the after-tax gain, if any, we recognized on the disposition of the asset, to the extent that gain does not exceed the excess of (a) the fair market value of the asset over (b) our adjusted basis in the asset, in each case, on the date we acquired the asset.

We generally must pay, or be treated as paying, the distributions described above in the taxable year to which they relate. At our election, a distribution will be treated as paid in a taxable year if it is declared before we timely file our tax return for such year and paid on or before the first regular dividend payment after such declaration, provided such payment is made during the 12-month period following the close of such year. These distributions are treated as received by our stockholders in the year in which paid. This is so even though these distributions relate to the prior year for purposes of the 90% distribution requirement.

For distributions prior to January 1, 2015 to be taken into account for purposes of our distribution requirement, the amount distributed must not have been preferential—i.e., every stockholder of the class of stock to which a distribution is made must have been treated the same as every other stockholder of that class, and no class of stock may have been treated other than according to its dividend rights as a class. However, for taxable years beginning after December 31, 2014, the preferential dividend rule no longer applies to "publicly offered REITs." Thus, so long as we qualify as a "publicly offered REIT," the preferential dividend rule will not apply to our 2015 and subsequent taxable years.

To the extent that we do not distribute all of our net capital gain, or distribute at least 90%, but less than 100%, of our "REIT taxable income," as adjusted, we will be required to pay tax on the undistributed amount at regular corporate tax rates. We believe that we will make timely distributions sufficient to satisfy these annual distribution requirements and to minimize our corporate tax obligations. In this regard, the limited partnership agreement of our Operating Partnership, or the Partnership Agreement, authorizes us, as general partner of our Operating Partnership, to take such steps as may be necessary to cause our Operating Partnership to distribute to its partners an amount sufficient to permit us to meet these distribution requirements and to minimize our corporate tax obligation.

Under some circumstances, we may be able to rectify an inadvertent failure to meet the 90% distribution requirement for a year by paying "deficiency dividends" to our stockholders in a later year, which may be included in our deduction for dividends paid for the earlier year. Thus, we may be able to avoid being taxed on amounts distributed as deficiency dividends, subject to the 4% excise tax described below. However, we will be required to pay interest to the IRS based upon the amount of any deduction claimed for deficiency dividends.

Furthermore, we will be required to pay a 4% excise tax to the extent we fail to distribute during each calendar year at least the sum of 85% of our ordinary income for such year, 95% of our capital gain net income for the year and any undistributed taxable income from prior periods. Any ordinary income and net capital gain on which this excise tax is imposed for any year is treated as an amount distributed during that year for purposes of calculating such tax. For purposes of the 90% distribution requirement and excise tax described above, dividends declared during the last three months of the taxable year, payable to stockholders of record on a specified date during such period and paid during January of the following year, will be treated as paid by us and received by our stockholders on December 31 of the year in which they are declared.

Like-Kind Exchanges

We may dispose of properties in transactions intended to qualify as like-kind exchanges under the Code. Such like-kind exchanges are intended to result in the deferral of gain for U.S. federal income tax purposes. The failure of any such transaction to qualify as a like-kind exchange could require us to pay U.S. federal income tax, possibly including the 100% prohibited transaction tax, depending on the facts and circumstances surrounding the particular transaction. Moreover, the Biden Administration has proposed to end the deferral of gain recognized in like-kind exchanges in excess of $500,000 in any taxable year. The proposal, if enacted, could limit or restrict our ability to engage in like-kind exchanges.

Failure to Qualify

If we discover a violation of a provision of the Code that would result in our failure to qualify as a REIT, certain specified cure provisions may be available to us. Except with respect to violations of the gross income tests and asset tests (for which the cure provisions are described above), and provided the violation is due to reasonable cause and not due to willful neglect, these cure provisions generally impose a $50,000 penalty for each violation in lieu of a loss of REIT status. If we fail to satisfy the requirements for taxation as a REIT in any taxable year, and the relief provisions do not apply, we will be required to pay tax, including any applicable alternative minimum tax, on our taxable income at regular corporate rates. Distributions to stockholders in any year in which we fail to qualify as a REIT will not be deductible by us, and we will not be required to distribute any amounts to our stockholders. As a result, we anticipate that our failure to qualify as a REIT would reduce the cash available for distribution by us to our stockholders. In addition, if we fail to qualify as a REIT, all distributions to stockholders will be taxable as regular corporate dividends to the extent of our current and accumulated earnings and profits. In such event, corporate distributees may be eligible for the dividends-received deduction. In addition, non-corporate stockholders, including individuals, may be eligible for the preferential tax rates on qualified dividend income. Unless entitled to relief under specific statutory provisions, we will also be ineligible to elect to be treated as a REIT for the four taxable years following the year for which we lost our qualification. It is not possible to state whether in all circumstances we would be entitled to this statutory relief.

Tax Aspects of Our Operating Partnership, the Subsidiary Partnerships and the Limited Liability Companies

General. All of our investments will be held indirectly through our Operating Partnership. In addition, our Operating Partnership may hold certain of its investments indirectly through subsidiary partnerships and limited liability companies which we expect will be treated as partnerships or disregarded entities for U.S. federal income tax purposes. In general, entities that are classified as partnerships or disregarded entities for U.S. federal income tax purposes are "pass-through" entities that are not required to pay U.S. federal income tax. Rather, partners or members of such entities are allocated their shares of the items of income, gain, loss, deduction and credit of the partnership or limited liability company, and are potentially required to pay tax on this income, without regard to whether they receive a distribution from the partnership or limited liability company. For taxable years beginning after December 31, 2017, however, the tax liability for adjustments to a partnership's tax returns made as a result of an audit by the IRS will be imposed on the partnership itself in certain circumstances absent an election to the contrary, if permitted under the circumstances.

We will include in our income our share of these partnership and limited liability company items for purposes of the various gross income tests, the computation of our REIT taxable income, and the REIT distribution requirements. Moreover, for purposes of the asset tests (other than the 10% value test), we will include our pro rata share of assets held by our Operating Partnership, including its share of its subsidiary partnerships and limited liability companies, based on our capital interests in each such entity. See

"*—Taxation of Our Company*" on page 68.

Entity Classification. Our interests in our Operating Partnership and any subsidiary partnerships and limited liability companies involve special tax considerations, including the possibility that the IRS might challenge the status of these entities as partnerships (or disregarded entities). For example, an entity that would otherwise be classified as a partnership for U.S. federal income tax purposes may nonetheless be taxable as a corporation if it is a "publicly traded partnership" and certain other requirements are met. A partnership or limited liability company would be treated as a publicly traded partnership if its interests are traded on an established securities market or are readily tradable on a secondary market or a substantial equivalent thereof, within the meaning of applicable Treasury Regulations. Interests in a partnership are not treated as readily tradable on a secondary market, or the substantial equivalent thereof, if all interests in the partnership were issued in one or more transactions that were not required to be registered under the Securities Act, and the partnership does not have more than 100 partners at any time during the taxable year of the partnership, taking into account certain ownership attribution and anti-avoidance rules (the "100 Partner Safe Harbor"). Our Operating Partnership may not qualify for the 100 Partner Safe Harbor. In the event that the 100 Partner Safe Harbor or certain other safe harbor provisions of applicable Treasury Regulations are not available, our Operating Partnership could be classified as a publicly traded partnership.

If our Operating Partnership does not qualify for the 100 Partner Safe Harbor, interests in our Operating Partnership may nonetheless be viewed as not readily tradable on a secondary market or the substantial equivalent thereof if the sum of the percentage interests in capital or profits of our Operating Partnership transferred during any taxable year of our Operating Partnership does not exceed 2% of the total interests in our Operating Partnership's capital or profits, subject to certain exceptions. For purpose of this 2% trading restriction, our interests in our Operating Partnership are excluded from the determination of the percentage interests in capital or profits of our Operating Partnership. In addition, this 2% trading restriction does not apply to transfers by a limited partner in one or more transactions during any 30-day period representing in the aggregate more than 2% of the total interests in our Operating Partnership's capital or profits. We, as general partner of our Operating Partnership, have the authority to take any steps we determine necessary or appropriate to prevent any trading of interests in our Operating Partnership that would cause our Operating Partnership to become a publicly traded partnership, including any steps necessary to ensure compliance with this 2% trading restriction.

We believe our Operating Partnership and each of our other partnerships and limited liability companies will be classified as partnerships or disregarded entities for U.S. federal income tax purposes, and we do not anticipate that our Operating Partnership or any subsidiary partnership or limited liability company will be treated as a publicly traded partnership that is taxable as a corporation.

If our Operating Partnership or any of our other partnerships or limited liability companies were to be treated as a publicly traded partnership, it would be taxable as a corporation unless it qualified for the statutory "90% qualifying income exception." Under that exception, a publicly traded partnership is not subject to corporate-level tax if 90% or more of its gross income consists of dividends, interest, "rents from real property" (as that term is defined for purposes of the rules applicable to REITs, with certain modifications), gain from the sale or other disposition of real property, and certain other types of qualifying income. However, if any such entity did not qualify for this exception or was otherwise taxable as a corporation, it would be required to pay an entity-level tax on its income. In this situation, the character of our assets and items of gross income would change and could prevent us from satisfying the REIT asset tests and possibly the REIT income tests. See "*—Taxation of Our Company—Asset Tests" beginning on page 74 and "—Income Tests*" beginning on page 72. This, in turn, could prevent us from qualifying as a REIT. See "*—Failure to Qualify*" beginning on page 77 for a discussion of the effect of our failure to meet these tests. In addition, a change in the tax status of our Operating Partnership or a subsidiary partnership or limited liability company might be treated as a taxable event. If so, we might incur a tax liability without any related cash payment.

Allocations of Income, Gain, Loss and Deduction. The Partnership Agreement generally provides that allocations of net income to holders of common units generally will be made proportionately to all such holders in respect of such units. Certain limited partners will have the opportunity to guarantee debt of our Operating Partnership, either directly or indirectly through an agreement to make capital contributions to our Operating Partnership under limited circumstances. As a result of these guaranties or contribution agreements, and notwithstanding the foregoing discussion of allocations of income and loss of our Operating Partnership to holders of units, such limited partners could under limited circumstances be allocated a disproportionate amount of net loss upon a liquidation of our Operating Partnership, which net loss would have otherwise been allocable to us. If an allocation of partnership income or loss does not comply with the requirements of Section 704(b) of the Code and the Treasury Regulations thereunder, the item subject to the allocation will be reallocated in accordance with the partners' interests in the partnership. This reallocation will be determined by taking into account all of the facts and circumstances relating to the economic arrangement of the partners with respect to such item. Our Operating Partnership's allocations of taxable income and loss are intended to comply with the requirements of Section 704(b) of the Code and the Treasury Regulations thereunder.

Tax Allocations With Respect to the Properties. Under Section 704(c) of the Code, income, gain, loss and deduction attributable to appreciated or depreciated property that is contributed to a partnership in exchange for an interest in the partnership, must be allocated in a manner so that the contributing partner is charged with the unrealized gain or benefits from the unrealized loss associated with the property at the time of the contribution. The amount of the unrealized gain or unrealized loss generally is equal to the difference between the fair market value or book value and the adjusted tax basis of the contributed property at the time of contribution, as adjusted from time to time. These allocations are solely for U.S. federal income tax purposes and do not affect the book capital accounts or other economic or legal arrangements among the partners.

Our Operating Partnership may, from time to time, acquire interests in property in exchange for interests in our Operating Partnership. In that case, the tax basis of these property interests generally carries over to the Operating Partnership, notwithstanding their different book (*i.e.*, fair market) value (this difference is referred to as a book-tax difference). The Partnership Agreement requires that income and loss allocations with respect to these properties be made in a manner consistent with Section 704(c) of the Code. Treasury Regulations issued under Section 704(c) of the Code provide partnerships with a choice of several methods of accounting for book-tax differences. Depending on the method we choose in connection with any particular contribution, the carryover basis of each of the contributed interests in the properties in the hands of our Operating Partnership (1) could cause us to be allocated lower amounts of depreciation deductions for tax purposes than would be allocated to us if any of the contributed properties were to have a tax basis equal to its respective fair market value at the time of the contribution and (2) could cause us to be allocated taxable gain in the event of a sale of such contributed interests or properties in excess of the economic or book income allocated to us as a result of such sale, with a corresponding benefit to the other partners in our Operating Partnership. An allocation described in clause (2) above might cause us or the other partners to recognize taxable income in excess of cash proceeds in the event of a sale or other disposition of property, which might adversely affect our ability to comply with the REIT distribution requirements. See "*—General—Requirements for Qualification as a REIT*" beginning on page 69 and "*—Annual Distribution Requirements*" beginning on page 75.

Partnership Audit Rules. In certain situations, a partnership itself must pay any "imputed underpayments," consisting of delinquent taxes, interest and penalties deemed to arise out of an audit of the partnership, unless certain alternative methods are available and the partnership elects to utilize them.

Federal Income Tax Considerations of the Receipt, Expiration, and Exercise of the Rights

Federal Income Tax Considerations to U.S. Holders of the Receipt, Expiration, and Exercise of the Rights

Receipt of the Rights

Neither the Code nor the Treasury regulations promulgated thereunder clearly address the characterization of rights to acquire convertible notes (such as the Rights). Because we believe that substantially all of the value of the Rights is attributable to the right to convert the Notes into shares of common stock, we intend to treat the distribution of the Rights as a non-taxable distribution of stock rights under Section 305(a) of the Code. Under this treatment, U.S. Holders will not be subject to U.S. federal income taxation on their receipt of the Rights.

However, there can be no assurance that the IRS will agree with our intended treatment. If the IRS were to successfully assert that the distribution of Rights is instead a taxable distribution of property to which Section 301 of the Code applies, each U.S. Holder would be treated as having received a distribution with respect to its shares of our Common Stock in an amount equal to the fair market value of the Rights received by such holder on the date of the distribution. This distribution generally would be taxed as dividend income to the extent of your ratable share of our current and accumulated earnings and profits. The amount of any distribution in excess of our earnings and profits would be applied to reduce, but not below zero, your tax basis in the shares of our Common Stock, and any excess (determined on a share-by-share basis) generally would be taxable to you as capital gain and would be long-term capital gain if your holding period with respect to your shares of our Common Stock is more than one year as of the date of distribution. As long as we qualify as a REIT, amounts treated as dividends will not be eligible for the dividends-received deduction in the case of U.S. Holders that are corporations, or to the preferential rates for qualified dividend income applicable to individuals. See the discussion under the heading "*—Federal Income Tax Considerations of the Ownership and Disposition of our Common Stock—Federal Income Tax Considerations for U.S. Holders of the Ownership and Disposition of our Common Stock*" beginning on page 85 for further discussion regarding the treatment of taxable distributions. Your tax basis in the Rights received would be equal to their fair market value on the date of the distribution and your holding period for the Rights would begin on the day after receipt. If the Rights subsequently lapsed without being exercised, you would recognize a capital loss equal to your tax basis in the Rights. The deductibility of capital losses is subject to limitations.

The remainder of the discussion under *"—Federal Income Tax Considerations to U.S. Holders of the Receipt, Expiration, and Exercise of the Rights*" beginning on page 79 assumes that the distribution of the Rights is a non-taxable distribution of stock rights under Section 305(a) of the Code.

Basis and Holding Period of the Rights

If the fair market value of the Rights on the date of distribution is 15% or more of the fair market value on such date of the shares of our Common Stock with respect to which the Rights are distributed, upon exercise of the Rights, a U.S. Holder's basis in its shares of our Common Stock will be allocated between such shares and the Rights in proportion to the fair market values of each on the date of distribution of the Rights. If the fair market value of the Rights on the date of distribution is less than 15% of the fair market value of the shares of our Common Stock with respect to which the Rights are distributed on the date of distribution, a U.S. Holder's basis in the Rights distributed to it will be zero unless the holder irrevocably elects, on its U.S. federal income tax return for the taxable year in which the Rights are received, to allocate part of its basis in shares of our Common Stock to such Rights in the same manner as described above. A U.S. Holder's holding period in respect of the Rights it receives will include the holder's holding period in shares of our Common Stock with respect to which the Rights were distributed.

Expiration of the Rights

If a U.S. Holder does not exercise its Rights before the end of the exercise period, it generally will recognize no gain or loss for U.S. federal income tax purposes. Any basis that was allocated to the Rights as described above will be attributed back to the U.S. Holder's shares of our Common Stock. If a U.S. Holder disposes of some of the shares of our Common Stock with respect to which the Rights were distributed after the U.S. Holder's receipt of the Rights but before the expiration of the Rights, the U.S. Holder should consult its tax advisor regarding the determination of its basis in the remaining shares of our Common Stock.

Exercise of the Rights

U.S. Holders of Rights will not recognize any gain or loss upon the exercise of the Rights. A U.S. Holder's aggregate basis in the Notes acquired upon exercise of the Rights will equal the sum of the holder's basis in the Rights exercised and the amount paid upon exercise of such Rights. A U.S. Holder's holding period in respect of Notes acquired upon the exercise of Rights will begin on the date the Rights are exercised.

Federal Income Tax Considerations to Non-U.S. Holders of the Receipt, Expiration, and Exercise of the Rights

Neither the Code nor the Treasury regulations promulgated thereunder clearly address the characterization of rights to acquire convertible notes (such as the Rights). Because we believe that substantially all of the value of the Rights is attributable to the right to convert the Notes into shares of common stock, we intend to treat the distribution of the Rights as a non-taxable distribution of stock rights under Section 305(a) of the Code. Under this treatment, Non-U.S. Holders will not be subject to U.S. federal income taxation on their receipt of the Rights.

However, there can be no assurance that the IRS will agree with our intended treatment. If the IRS were to successfully assert that the distribution of Rights is a taxable distribution of property to which Section 301 of the Code applies, a Non-U.S. Holder would be subject to a tax at a rate of 30% on the fair market value of the Rights received by such holder on the date of the distribution to the extent of such holder's share of our current and accumulated earnings and profits, unless (i) the Non-U.S. Holder is eligible for an exemption or a reduced tax rate under an applicable income tax treaty (and provides appropriate certifications to that effect) or (ii) the amount treated as a taxable dividend is effectively connected with such Non-U.S. Holder's conduct of a trade or business within the United States for U.S. federal income tax purposes. Non-U.S. Holders would be subject to U.S. federal income tax in the same manner as U.S. Holders in respect of effectively connected dividends (unless an applicable income tax treaty provides otherwise). In addition, corporate non-U.S. holders may be subject to a branch profits tax on their effectively connected earnings and profits attributable to such dividends at a rate of 30% (or such lower rate as may be specified in an applicable income tax treaty). See the discussion under the heading "*—Federal Income Tax Considerations of the Ownership and Disposition of our Common Stock —Federal Income Tax Considerations to Non-U.S. Holders of the Ownership and Disposition of our Common Stock*" beginning on page 87 for further discussion regarding the treatment of taxable distributions.

Federal Income Tax Considerations of the Ownership and Disposition of the Notes

Tax Classification of the Notes

We intend to treat the Notes as indebtedness for U.S. federal income tax purposes. However, this position is not binding on the IRS or the courts. If the IRS successfully asserted that the Notes are equity for U.S. federal income tax purposes, the U.S. federal income tax treatment of the ownership and disposition of the Notes would be materially different from the consequences described herein.

The remainder of this discussion assumes that the Notes are treated as indebtedness for U.S. federal income tax purposes.

Federal Income Tax Considerations to U.S. Holders of the Ownership, Disposition, and Conversion of the Notes

We intend to treat the Notes as CPDIs subject to taxation under the "noncontingent bond method." Under the noncontingent bond method, for each accrual period, U.S. Holders of the Notes accrue original issue discount ("OID") equal to the product of (1) the "comparable yield" (adjusted for the length of the accrual period) and (2) the "adjusted issue price" of the Notes at the beginning of the accrual period. This amount is ratably allocated to each day in the accrual period and is includible as ordinary interest income by a U.S. Holder for each day in the accrual period on which the U.S. Holder holds the Notes, whether or not the amount of any payment is fixed or determinable in the taxable year. Thus, the noncontingent bond method may result in recognition of income prior to the receipt of cash.

The "comparable yield" is the yield at which we could issue a fixed-rate debt instrument with terms similar to those of the Notes, including the level of subordination, term, timing of payments and general market conditions, but excluding any adjustments for the riskiness of the contingencies or the liquidity of the Notes.

The adjusted issue price of a Note at the beginning of each accrual period is generally equal to the issue price of the Note plus the amount of OID previously includible in the gross income of the U.S. Holder less any noncontingent payment and the projected amount of any contingent payment contained in the projected payment schedule (as described below) previously made on the Note.

In addition to the determination of a comparable yield, the noncontingent bond method requires the construction of a projected payment schedule. The projected payment schedule includes all noncontingent payments and projected amounts for each contingent payment to be made under the Notes that are adjusted to produce the comparable yield. Holders can obtain the projected payment schedule of the Notes by contacting Crystal Plum, Chief Financial Officer, at 757-627-9088. The projected payment schedule remains fixed throughout the term of the Notes. A U.S. Holder of the Notes is required to use our projected payment schedule to determine its interest accruals and adjustments, unless the U.S. Holder determines that our projected payment schedule is unreasonable, in which case the U.S. Holder must disclose its own projected payment schedule in connection with its federal income tax return and the reason(s) why it is not using our projected payment schedule.

Neither the comparable yield nor the projected payment schedule constitutes a representation by us regarding the actual amount(s) that we will pay on a Note.

If the actual amounts of contingent payments are different from the amounts reflected in the projected payment schedule, a U.S. Holder is required to make adjustments in its accruals under the noncontingent bond method described above when those amounts are paid. Adjustments arising from contingent payments that are greater than the assumed amounts of those payments are referred to as "positive adjustments"; adjustments arising from contingent payments that are less than the assumed amounts are referred to as "negative adjustments." Positive and negative adjustments are netted for each taxable year with respect to each Note. Any net positive adjustment for a taxable year is treated as additional OID of the U.S. Holder. Any net negative adjustment reduces any OID on the Note for the taxable year that would otherwise accrue. Any excess is then treated as a current-year ordinary loss to the U.S. Holder to the extent of OID accrued in prior years. The balance, if any, is treated as a negative adjustment in subsequent taxable years. Finally, to the extent that it has not previously been taken into account, an excess negative adjustment reduces the amount realized upon a sale, exchange, redemption or other taxable disposition of the Note.

In general, a U.S. Holder's adjusted basis in the Notes will equal the amount paid by that U.S. Holder for the Notes, increased by the amount of interest previously accrued by such U.S. Holder with respect to the Notes (in accordance with the comparable yield for the Notes), reduced by the amount of any noncontingent payments and the projected amount of any contingent payments previously made.

Gain on the sale, exchange, redemption or other taxable disposition of the Notes generally is treated as ordinary income. Loss, on the other hand, is treated as ordinary only to the extent of the U.S. Holder's prior net OID inclusions (i.e., reduced by the total net negative adjustments previously allowed to the U.S. Holder as an ordinary loss) and capital to the extent in excess thereof. A noncorporate U.S. Holder would generally be able to use such ordinary loss to offset income only in the taxable year in which such holder recognizes the ordinary loss and would generally not be able to carry such ordinary loss forward or back to offset income in other taxable years. The deductibility of a capital loss realized on the sale, exchange or other taxable disposition of a Note is subject to limitations.

Conversion of Notes into Shares of Our Common Stock

U.S. Holders will not recognize any income, gain or loss on the conversion of the Notes for shares of our Common Stock, except to the extent of cash received in lieu of a fractional share of our Common Stock. The amount of gain or loss on the receipt of cash in lieu of a fractional share of our Common Stock will be equal to the difference between the amount of such cash and the portion of the U.S. Holder's tax basis in the Note that is allocable to the fractional share. A U.S. holder's tax basis in the shares of our Common Stock received upon a conversion will equal the adjusted tax basis of the Note that was converted, reduced by the portion of the tax basis that is allocable to any fractional share. A U.S. Holder's holding period in such shares of our Common Stock will include the period during which the U.S. Holder held the Notes.

Constructive Distributions

The conversion rate of the Notes will be adjusted in certain circumstances. Under Section 305(c) of the Code, adjustments (or failures to make adjustments) that have the effect of increasing a U.S. Holder's proportionate interest in our assets or earnings may, in some circumstances, result in a deemed distribution, even in the absence of an actual corresponding cash distribution. Adjustments to the conversion rate made pursuant to a bona fide reasonable adjustment formula that has the effect of preventing the dilution of the interest of the holders of the Notes, however, will generally not be considered to result in a deemed distribution. Certain of the possible conversion rate adjustments provided in the Notes (including, without limitation, adjustments in respect of taxable dividends to holders of shares of our Common Stock may not qualify as being pursuant to a bona fide reasonable adjustment formula. In addition, in the event that a dividend is paid on shares of our Common Stock in cash or property, such dividend would likely result in a constructive distribution equal to the difference between the fair market value of the increase in the accreted principal amount (taking into account the fact that such principal amount is convertible into shares of common stock) over the OID included in income with respect to such interest payment period. Any deemed distributions will be taxable as a dividend, return of capital, or capital gain in accordance with the earnings and profits rules under the Code. See the discussion under the heading "*—Federal Income Tax Considerations of the Ownership and Disposition of our Common Stock—Federal Income Tax Considerations for U.S. Holders of the Ownership and Disposition of our Common Stock*" beginning on page 85 for further discussion regarding the treatment of taxable distributions.

Federal Income Tax Considerations to Non-U.S. Holders of the Ownership, Disposition, and Conversion of the Notes

Taxation of Interest and OID

Subject to the discussion under "*—FATCA Withholding Taxes*" on page 91, payments on the Notes to a Non-U.S. Holder should not be subject to withholding tax provided that:

- the payments are not effectively connected with such Non-U.S. Holder's conduct of a trade or business in the United States;

- such Non-U.S. Holder does not actually (or constructively) own 10% or more of the total combined voting power of all classes of our voting stock within the meaning of the Code and applicable United States Treasury regulations;

- such Non-U.S. Holder is not a controlled foreign corporation that is related to us through stock ownership;

- such Non-U.S. Holder is not a bank whose receipt of interest (including OID) on the Notes is described in Section 881(c)(3)(A) of the Code; and

- either (a) such Non-U.S. Holder provides its name and address on an IRS Form W-8BEN or W-8BEN-E (or other applicable form), and certify, under penalties of perjury, that it is not a United States person or (b) such Non-U.S. Holder holds the Notes through certain foreign intermediaries and satisfies the certification requirements of applicable United States Treasury regulations.

Special certification rules apply to Non-U.S. Holders that are pass-through entities rather than corporations or individuals.

If a Non-U.S. Holder cannot satisfy the requirements described above, or if payments of interest (including amounts treated as OID pursuant to the CPDI rules described in "*—Federal Income Tax Considerations to U.S. Holders of the Ownership, Disposition, and Conversion of the Notes*" beginning on page 81) are otherwise subject to U.S. federal withholding tax, payments of interest (including OID) made to such Non-U.S. Holder will be subject to the 30% U.S. federal withholding tax, unless such holder provides us with a properly executed:

- IRS Form W-8BEN or W-8BEN-E (or other applicable form) claiming an exemption from or reduction in withholding under an applicable income tax treaty; or

- IRS Form W-8ECI (or other applicable form) stating that interest paid on the Notes is not subject to withholding tax because it is effectively connected with the Non-U.S. Holder's conduct of a trade or business in the United States.

If a Non-U.S. Holder is engaged in a trade or business in the United States and interest (including amounts treated as OID pursuant to the CPDI rules described in "*—Federal Income Tax Considerations to U.S. Holders of the Ownership, Disposition, and Conversion of the Notes*" beginning on page 81) on the Notes is effectively connected with the conduct of that trade or business, then such Non-U.S. Holder will be subject to U.S. federal income tax on such interest (including OID) on a net income basis (although such holder will be exempt from the 30% U.S. federal withholding tax, provided the certification requirements discussed above are satisfied) in the same manner as if such Non-U.S. Holder were a U.S. Holder (unless an applicable income tax treaty applies otherwise). In addition, if a Non-U.S. Holder is a foreign corporation, such holder may be subject to a branch profits tax equal to 30% (or lower applicable income tax treaty rate) of earnings and profits for the taxable year, subject to adjustments, that are effectively connected with such Non-U.S. Holder's conduct of a trade or business in the United States.

To the extent that a Non-U.S. Holder is subject to U.S. federal withholding tax, we (or an applicable withholding agent) may recoup or set-off the applicable U.S. federal withholding tax that we are required to pay on such holder's behalf against any amounts owed to such holder.

Constructive Distributions

The conversion rate of the Notes will be adjusted in certain circumstances. See "*—Federal Income Tax Considerations to U.S. Holders of the Ownership, Disposition, and Conversion of the Notes—Constructive Distributions*" beginning on page 83. Any deemed distribution will be subject to the rules described in "*Federal Income Tax Considerations of the Ownership and Disposition of our Common Stock—Federal Income Tax Considerations to Non-U.S. Holders of the Ownership and Disposition of our Common Stock*" beginning on page 87.

Because such deemed distributions will not give rise to any cash from which any applicable federal withholding tax can be satisfied, the indenture provides that we may set off any withholding tax that we are required to collect with respect to any such deemed distribution against cash payments of interest or from shares of our Common Stock or cash payments for fractional shares otherwise deliverable to a holder. Any deemed distributions will be taxable as a dividend, return of capital, or capital gain in accordance with the earnings and profits rules under the Code. See the discussion under the heading "*—Federal Income Tax Considerations of the Ownership and Disposition of our Common Stock—Federal Income Tax Considerations for U.S. Holders of the Ownership and Disposition of our Common Stock*" beginning on page 85 for further discussion regarding the treatment of taxable distributions. Non-U.S. Holders should consult their tax advisors as to whether it can obtain a refund for all or a portion of such withholding tax.

Federal Income Tax Considerations of the Ownership and Disposition of our Common Stock

Federal Income Tax Considerations to U.S. Holders of the Ownership and Disposition of our Common Stock

Distributions Generally Distributions out of our current or accumulated earnings and profits will be treated as dividends and, other than with respect to capital gain dividends and certain amounts which have previously been subject to corporate level tax discussed below, will be taxable to our taxable U.S. Holders as ordinary income when actually or constructively received. See "*—Tax Rates*" beginning on page 86. For purposes of determining whether a distribution is made out of our current or accumulated earnings and profits, our earnings and profits will be allocated first to our preferred stock dividends and then to our Common Stock dividends. As long as we qualify as a REIT, these distributions will not be eligible for the dividends-received deduction in the case of U.S. Holders that are corporations or, except to the extent provided in "*—Tax Rates*" beginning on page 86, the preferential rates on qualified dividend income applicable to non-corporate U.S. Holders, including individuals.

To the extent that we make distributions on our Common Stock in excess of our current and accumulated earnings and profits, these distributions will be treated first as a tax-free return of capital to a U.S. Holder. This treatment will reduce the U.S. Holder's adjusted tax basis in such shares of stock by the amount of the distribution, but not below zero. Distributions in excess of our current and accumulated earnings and profits and in excess of a U.S. Holder's adjusted tax basis in its shares will be taxable as capital gain. Such gain will be taxable as long-term capital gain if the U.S. Holder's holding period for the shares exceeds one year. Dividends we declare in October, November, or December of any year and which are payable to stockholders of record as of a specified date in any of these months, and that are actually paid in January of the following year, will be treated as both paid by us and received by the stockholder on December 31 of the first year. U.S. Holders may not include in their own income tax returns any of our net operating losses or capital losses.

Certain stock dividends, including dividends partially paid in our stock and partially paid in cash, will be taxable to the recipient U.S. Holder to the same extent as if paid in cash.

Capital Gain Dividends Dividends that we properly designate as capital gain dividends will be taxable to our U.S. Holders as a gain from the sale or disposition of a capital asset held for more than one year, to the extent that such gain does not exceed our actual net capital gain for the taxable year. U.S. Holders that are corporations may, however,

be required to treat up to 20% of certain capital gain dividends as ordinary income.

Retention of Net Capital Gains We may elect to retain, rather than distribute as a capital gain dividend, all or a portion of our net capital gains. If we make this election, we would pay tax on our retained net capital gains. In addition, to the extent we so elect, our earnings and profits (determined for U.S. federal income tax purposes) would be adjusted accordingly, and a U.S. Holder generally would:

- include its pro rata share of our undistributed net capital gains in computing its long-term capital gains in its return for its taxable year in which the last day of our taxable year falls, subject to certain limitations as to the amount that is includable;
- be deemed to have paid its share of the capital gains tax imposed on us on the designated amounts included in the U.S. Holder's income as long-term capital gain;
- receive a credit or refund for the amount of tax deemed paid by it;
- increase the adjusted basis of its stock by the difference between the amount of includable gains and the tax deemed to have been paid by it; and
- in the case of a U.S. Holder that is a corporation, appropriately adjust its earnings and profits for the retained capital gains in accordance with Treasury Regulations to be promulgated by the IRS.

Passive Activity Losses and Investment Interest Limitations Distributions we make and gain arising from the sale or exchange by a U.S. Holder of our shares will not be treated as passive activity income. As a result, U.S. Holders generally will not be able to apply any "passive losses" against this income or gain. A U.S. Holder may elect to treat capital gain dividends, capital gains from the disposition of our stock and income designated as qualified dividend income, described in "*—Tax Rates*" beginning on page 86, as investment income for purposes of computing the investment interest limitation, but in such case, the stockholder will be taxed at ordinary income rates on such amount. Other distributions made by us, to the extent they do not constitute a return of capital, generally will be treated as investment income for purposes of computing the investment interest limitation.

Dispositions of our Common Stock If a U.S. Holder sells or disposes of shares of our Common Stock, it will recognize gain or loss for U.S. federal income tax purposes in an amount equal to the difference between the amount of cash and the fair market value of any property received on the sale or other disposition and the holder's adjusted basis in the shares. This gain or loss, except as provided below, will be a long-term capital gain or loss if the U.S. Holder's holding period for such Common Stock exceeds one year. However, if a U.S. Holder recognizes a loss upon the sale or other disposition of Common Stock that it has held for six months or less, after applying certain holding period rules, the loss recognized will be treated as a long-term capital loss to the extent the U.S. Holder received distributions from us which were required to be treated as long-term capital gains. All or a portion of any loss that a U.S. Holder realizes upon a taxable disposition of our Common Stock may be disallowed if the U.S. Holder purchases the same type of stock within 30 days before or after the disposition.

Tax Rates The maximum tax rate for non-corporate taxpayers for (1) long-term capital gains, including certain "capital gain dividends," is 20% (although depending on the characteristics of the assets which produced these gains and on designations which we may make, certain capital gain dividends may be taxed at a 25% rate) and (2) "qualified dividend income" is 20%. However, dividends payable by REITs are not eligible for the 20% tax rate on qualified dividend income, except to the extent that certain holding requirements have been met and the REIT's dividends are attributable to dividends received from taxable corporations (such as its TRSs) or to income that was subject to tax at the corporate/REIT level (for example, if it distributed taxable income that it retained and paid tax on in the prior taxable year) or to dividends properly designated by the REIT as "capital gain dividends." For taxable years beginning before 2026, individual stockholders are generally allowed to deduct 20% of the aggregate amount of ordinary dividends distributed by us, subject to certain complex limitations, which would reduce the maximum marginal effective tax rate for individuals on the receipt of such ordinary dividends to 29.6%. The Biden Administration has proposed to increase the maximum long-term capital gains tax rate for certain non-corporate taxpayers.

Medicare Tax on Unearned Income Certain U.S. Holders that are individuals, estates or trusts will be required to pay an additional 3.8% Medicare tax on, among other things, dividends on and capital gains from the sale or other disposition of our Common Stock. U.S. Holders should consult their tax advisors regarding the effect, if any, of this Medicare tax on their ownership and disposition of our Common Stock.

Federal Income Tax Considerations to Tax-Exempt Holders of the Ownership and Disposition of our Common Stock

Tax-exempt entities, including qualified employee pension and profit sharing trusts and individual retirement accounts, are generally exempt from U.S. federal income taxation. They are subject, however, to taxation on their unrelated business taxable income ("UBTI"). While many investments in real estate generate UBTI, the IRS has issued a ruling that dividend distributions from a REIT to an exempt employee pension trust do not constitute UBTI. This income or gain will be UBTI, however, if a tax-exempt stockholder holds our Common Stock as "debt-financed property" within the meaning of the Code. Generally, "debt-financed property" is property the acquisition or holding of which was financed through a borrowing by the tax-exempt stockholder.

For tax-exempt stockholders that are social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts, or qualified group legal services plans exempt from U.S. federal income taxation under Sections 501(c)(7), (c)(9), (c)(17) or (c)(20) of the Code, respectively, income from an investment in our Common Stock will constitute UBTI unless the organization is able to properly claim a deduction for amounts set aside or placed in reserve for specific purposes so as to offset the income generated by its investment in our shares. These prospective investors should consult their tax advisors concerning these "set aside" and reserve requirements.

Notwithstanding the above, however, a portion of the dividends paid by a "pension-held REIT" may be treated as unrelated business taxable income as to certain trusts that hold more than 10%, by value, of our stock. A REIT will not be a "pension-held REIT" if it is able to satisfy the "not closely held" requirement without relying on the "look-through" exception with respect to certain trusts or if such REIT is not "predominantly held" by "qualified trusts." As a result of restrictions on ownership and transfer of our stock contained in our charter, we do not expect to be classified as a "pension-held REIT," and as a result, the tax treatment described above should be inapplicable to our stockholders. However, because our stock will be publicly traded, we cannot guarantee that this will always be the case.

Federal Income Tax Considerations to Non-U.S. Holders of the Ownership and Disposition of our Common Stock

The following discussion addresses the rules governing U.S. federal income taxation of the ownership and disposition of our Common Stock by Non-U.S. Holders. These rules are complex, and no attempt is made herein to provide more than a brief summary of such rules. Accordingly, the discussion does not address all aspects of U.S. federal income taxation and does not address state, local or non-U.S. tax consequences that may be relevant to a Non-U.S. Holder in light of its particular circumstances. We urge non-U.S. Holders to consult their tax advisors to determine the impact of federal, state, local and non-U.S. income tax laws on the ownership and disposition of shares of our Common Stock, including any reporting requirements.

Distributions Generally Distributions (including any taxable stock dividends) that are neither attributable to gains from sales or exchanges by us of "United States real property interests" (as defined below) nor designated by us as capital gain dividends (except as described below) will be treated as dividends of ordinary income to the extent that they are made out of our current or accumulated earnings and profits. Such distributions ordinarily will be subject to withholding of U.S. federal income tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty, unless the distributions are treated as effectively connected with the conduct by the non-U.S. Holder of a U.S. trade or business (or, if required by an applicable income tax treaty, attributable to a permanent establishment that the non-U.S. Holder maintains in the United States). Under certain treaties, however, lower withholding rates generally applicable to dividends do not apply to dividends from a REIT. Certain certification and disclosure requirements must be satisfied for a non-U.S. Holder to be exempt from withholding under the effectively connected income exemption or to claim a lower withholding tax rate under an applicable tax treaty. Dividends that are treated as effectively connected with a U.S. trade or business (or, if required by an applicable income tax treaty, attributable to a permanent establishment that the non-U.S. Holder maintains in the United States) generally will not be subject to withholding but will be subject to U.S. federal income tax on a net basis at graduated rates, in the same manner as dividends paid to U.S. Holders. Any such dividends received by a non-U.S. Holder that is a corporation may also be subject to the 30% branch profits tax, unless reduced or eliminated be specified by an applicable income tax treaty.

Except as otherwise provided below, we expect to withhold U.S. federal income tax at the rate of 30% on any distributions made to a non-U.S. Holder unless:

(1) a lower treaty rate applies and the non-U.S. Holder files with us an IRS Form W-8BEN or W-8BEN-E evidencing eligibility for that reduced treaty rate; or

(2) the non-U.S. Holder files an IRS Form W-8ECI with us claiming that the distribution is income effectively connected with the non-U.S. Holder's trade or business.

Distributions in excess of our current and accumulated earnings and profits will not be taxable to a non-U.S. Holder to the extent that such distributions do not exceed the adjusted basis of the stockholder's Common Stock, but rather will reduce the adjusted basis of such stock. To the extent that such distributions exceed the non-U.S. Holder's adjusted basis in such Common Stock, they will give rise to gain from the sale or exchange of such Common Stock, the tax treatment of which is described below. For withholding purposes, we expect to treat all distributions as made out of our current or accumulated earnings and profits. However, amounts withheld may be refundable if it is subsequently determined that the distribution was, in fact, in excess of our current and accumulated earnings and profits, provided that certain conditions are met.

Capital Gain Dividends and Distributions Attributable to a Sale or Exchange of U.S. Real Property Interests Distributions to a non-U.S. Holder that we properly designate as capital gain dividends, other than those arising from the disposition of a "United States real property interest" (as defined below), generally should not be subject to U.S. federal income taxation, unless:

(1) the investment in our stock is treated as effectively connected with the non-U.S. Holder's U.S. trade or business, in which case the non-U.S. Holder will be subject to the same treatment as U.S. Holders with respect to such gain, except that a non-U.S. Holder that is a non-U.S. corporation may also be subject to a branch profits tax of up to 30%, as discussed above; or

(2) the non-U.S. Holder is a nonresident alien individual who is present in the United States for 183 days or more during the taxable year and certain other conditions are met, in which case the nonresident alien individual will be subject to a 30% tax on the individual's capital gains.

Pursuant to the Foreign Investment in Real Property Tax Act, or FIRPTA, distributions to a non-U.S. Holder that are attributable to gain from sales or exchanges by us of "United States real property interests," or USRPI, whether or not designated as capital gain dividends, will cause the non-U.S. Holder to be treated as recognizing such gain as income effectively connected with a U.S. trade or business. Non-U.S. Holders would generally be taxed at the same rates applicable to U.S. Holders, subject to any applicable alternative minimum tax. We also generally will be required to withhold and to remit to the IRS a percentage, equal to the highest marginal tax rate applicable to corporations (currently 21%), of any distribution to non-U.S. Holders that is designated as (or, if higher, that could have been designated as) a capital gain dividend. A non-U.S. Holder may receive a credit against its U.S. federal income tax liability for the amount withheld. However, any distribution with respect to any class of stock that is "regularly traded" on an established securities market located in the United States is not subject to FIRPTA, and therefore, not subject to the withholding tax described above, if the non-U.S. Holder did not own more than 10% of such class of stock at any time during the one-year period ending on the date of the distribution. We believe our Common Stock is and anticipate that it will continue to be "regularly traded" on an established securities market in the United States. In addition, any distribution to a non-U.S. Holder that is a "qualified shareholder" or "qualified foreign pension fund" that holds REIT stock directly or indirectly (through one or more partnerships), as discussed below, is not subject to FIRPTA. Instead, such distributions generally will be treated as ordinary dividend distributions and subject to withholding in the manner described above with respect to ordinary dividends.

A "qualified shareholder" is a foreign person that (1) either is eligible for the benefits of a comprehensive income tax treaty which includes an exchange of information program and whose principal class of interests is listed and regularly traded on one or more recognized stock exchanges (as defined in such comprehensive income tax treaty), or is a foreign partnership that is created or organized under foreign law as a limited partnership in a jurisdiction that has an agreement for the exchange of information with respect to taxes with the United States and has a class of limited partnership units representing greater than 50% of the value of all the partnership units that is regularly traded on the NYSE or Nasdaq markets, (2) is a "qualified collective investment vehicle" (defined below), and (3) maintains records on the identity of each person who, at any time during the foreign person's taxable year, is the direct owner of 5% or more of the class of interests or units (as applicable) described in (1), above. A "qualified collective investment vehicle" is a foreign person that (1) would be eligible for a reduced rate of withholding under the comprehensive income tax treaty described above, even if such entity holds more than 10% of the stock of such REIT, (2) is publicly traded, is treated as a partnership under the Code, is a withholding foreign partnership, and would be treated as a "United States real property holding corporation," or USRPHC, if it were a domestic corporation, or (3) is designated as such by the Secretary of the Treasury and is either (a) fiscally transparent within the meaning of Section 894 of the Code, or (b) required to include dividends in its gross income, but is entitled to a deduction for distributions to its investors.

While a "qualified shareholder" will not be subject to FIRPTA withholding on REIT distributions, certain investors of a "qualified shareholder" (i.e., non-U.S. persons who hold interests in the "qualified shareholder" (other than interests solely as a creditor), and hold more than 10% of the stock of such REIT (whether or not by reason of the investor's ownership in the "qualified shareholder")) may be subject to FIRPTA withholding.

A "qualified foreign pension fund" includes any trust, corporation, or other organization or arrangement: (1) which is created or organized under the law of a country other than the United States, (2) which is established to provide retirement or pension benefits to participants or beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, (3) which does not have a single participant or beneficiary with a right to more than 5% of its assets or income, (4) which is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in the country in which it is established or operates, and (5) with respect to which, under the laws of the country in which it is established or operates, contributions to such trust, corporation, organization or arrangement that would otherwise be subject to tax under such laws are deductible or excluded from gross income of such entity or taxed at a reduced rate, or taxation of any investment income of such trust, corporation, organization, or arrangement is deferred or such income is taxed at a reduced rate.

Retention of Net Capital Gains Although the law is not clear on the matter, it appears that amounts designated by us as retained net capital gains in respect of the stock held

by stockholders generally should be treated with respect to non-U.S. Holders in the same manner as actual distributions of capital gain dividends. Under that approach, the non-U.S. Holders would be able to offset as a credit against their U.S. federal income tax liability resulting from their proportionate share of the tax paid by us on such retained net capital gains and to receive from the IRS a refund to the extent their proportionate share of such tax paid by us exceeds their actual U.S. federal income tax liability. If we were to designate any portion of our net capital gain as retained net capital gain, a non-U.S. Holder should consult its tax advisor regarding the taxation of such retained net capital gain.

Sale of Common Stock Gain recognized by a non-U.S. Holder upon the sale, exchange or other taxable disposition of our Common Stock generally will not be subject to U.S. federal income taxation unless such stock constitutes a USRPI. In general, stock of a domestic corporation that constitutes a "U.S. real property holding corporation," or USRPHC, will constitute a USRPI. We expect that we will be a USRPHC. Our Common Stock will not, however, constitute a USRPI so long as we are a "domestically controlled qualified investment entity." A "domestically controlled qualified investment entity" includes a REIT in which at all times during a specified testing period less than 50% in value of its stock is held directly or indirectly by non-U.S. Holders. We believe, but cannot guarantee, that we are a "domestically controlled qualified investment entity." Because our Common Stock is publicly traded, no assurance can be given that we will continue to be a "domestically controlled qualified investment entity."

Notwithstanding the foregoing, a non-U.S. Holder generally will incur tax on gain not subject to FIRPTA if (1) the gain is effectively connected with the non-U.S. Holder's U.S. trade or business, in which case the non-U.S. Holder will be subject to the same treatment as U.S. Holder with respect to such gain, or (2) the non-U.S. Holder is a nonresident alien individual who was present in the U.S. for 183 days or more during the taxable year and has a "tax home" in the United States, in which case the non-U.S. Holder will incur a 30% tax on the non-U.S. Holder's capital gains.

In addition, even if we are a domestically controlled qualified investment entity, upon disposition of our Common Stock (subject to the 10% exception applicable to "regularly traded" stock and exceptions for "qualified shareholders" and "qualified foreign pension funds" described herein), a non-U.S. Holder may be treated as having gain from the sale or other taxable disposition of a USRPI if (1) the non-U.S. Holder disposes of our Common Stock within a 30-day period preceding the ex-dividend date of a distribution, any portion of which, but for the disposition, would have been treated as gain from the sale or exchange of a USRPI and (2) acquires, or enters into a contract or option to acquire, or is deemed to acquire, other shares of that stock during the 61-day period beginning with the first day of the 30-day period described in clause (1).

Even if we do not qualify as a "domestically controlled qualified investment entity" at the time a non-U.S. Holder sells our Common Stock, gain arising from the sale or other taxable disposition by a non-U.S. Holder of our Common Stock would not be subject to U.S. federal income taxation under FIRPTA as a sale of a USRPI if:

- our Common Stock is "regularly traded," as defined by applicable Treasury Regulations, on an established securities market, such as Nasdaq; and
- such non-U.S. Holder owned, actually and constructively, 10% or less of our Common Stock throughout the five-year period ending on the date of the sale or exchange.

In addition, a sale of our stock by a "qualified shareholder" or a "qualified foreign pension fund" who holds such stock directly or indirectly (through one or more partnerships) will not be subject to U.S. federal income tax under FIRPTA. As with distributions, however, certain investors of a "qualified shareholder" (i.e., non-U.S. persons who hold interests in the "qualified shareholder" (other than interests solely as a creditor), and hold more than 10% of the stock of such REIT (whether or not by reason of the investor's ownership in the "qualified shareholder")) may be subject to FIRPTA withholding on a sale of our stock.

If gain on the sale, exchange or other taxable disposition of our Common Stock were subject to taxation under FIRPTA, the non-U.S. Holder would be subject to regular U.S. federal income tax with respect to such gain in the same manner as a taxable U.S. Holder. In addition, if the sale, exchange or other taxable disposition of our Common Stock were subject to taxation under FIRPTA, and if shares of our Common Stock were not "regularly traded" on an established securities market, the purchaser of our Common Stock would generally be required to withhold and remit to the IRS 15% of the purchase price. If amounts so withheld on a sale, exchange, or other taxable disposition of our Common Stock exceeds the non-U.S. Holder's substantive tax liability resulting from such disposition, such excess may be refunded or credited against the non-U.S. Holder's U.S. federal income tax liability, provided that the required information is provided to the IRS on a timely basis. However, amounts withheld on any sale, exchange, or other taxable disposition of stock may not satisfy a non-U.S. Holder's entire tax liability under FIRPTA, and such non-U.S. Holder remains liable for the timely payment of any remaining tax liability. As noted above, we believe our Common Stock is "regularly traded" on an established securities market.

Information Reporting and Backup Withholding

Interest (including amounts treated as OID pursuant to the CPDI rules described in "*—Federal Income Tax Considerations to U.S. Holders of the Ownership, Disposition, and Conversion of the Notes*" beginning on page 81) on the Notes, dividends (including constructive dividends) with respect to shares of our Common Stock, and proceeds from the sale, exchange or redemption of the Notes or shares of our Common Stock may be subject to information reporting to the IRS and possible U.S. backup withholding. Backup withholding will not apply, however, to payments made to a U.S. Holder who furnishes a correct taxpayer identification number and makes other required certifications, or who is otherwise exempt from backup withholding and establishes such exempt status. Payments made to a Non-U.S. Holder generally will not be subject to backup withholding if the Non-U.S. Holder provides certification of its foreign status, under penalties of perjury, on a duly executed applicable IRS Form W-8 or by otherwise establishing an exemption.

Backup withholding is not an additional tax. Amounts withheld under the backup withholding rules may be credited against a holder's U.S. federal income tax liability, and a holder generally may obtain a refund of any excess amounts withheld by timely filing the appropriate claim for refund with the IRS and furnishing any required information.

All holders should consult their tax advisors regarding the application of information reporting and backup withholding to them.

FATCA Withholding Taxes

Sections 1471 through 1474 of the Code and the Treasury Regulations and administrative guidance promulgated thereunder (commonly referred to as the "Foreign Account Tax Compliance Act" or "FATCA") generally impose withholding of 30% in certain circumstances on payments of interest (including amounts treated as OID pursuant to the CPDI rules described in "*—Federal Income Tax Considerations to U.S. Holders of the Ownership, Disposition, and Conversion of the Notes*" beginning on page 81), dividends (including constructive dividends) and, subject to the proposed Treasury Regulations discussed below, proceeds from sales or other disposition of our securities paid to "foreign financial institutions" (which is broadly defined for this purpose and includes investment vehicles) and certain other non-U.S. entities unless various U.S. information reporting and due diligence requirements (relating to ownership by U.S. persons of interests in or accounts with those entities) have been satisfied or an exemption applies (typically certified as to by the delivery of a properly completed IRS Form W-8BEN-E). If FATCA withholding is imposed, a beneficial owner that is not a foreign financial institution will be entitled to a refund of any amounts withheld by filing a U.S. federal income tax return (which may entail significant administrative burden). Foreign financial institutions located in jurisdictions that have an intergovernmental agreement with the United States governing FATCA may be subject to different rules. Similarly, interest, dividends and, subject to the proposed Treasury Regulations discussed below, proceeds from sales or other disposition in respect of our securities held by an investor that is a non-financial

non-U.S. entity that does not qualify under certain exceptions generally will be subject to withholding at a rate of 30%, unless such entity either (i) certifies to us or the applicable withholding agent that such entity does not have any "substantial United States owners" or (ii) provides certain information regarding the entity's "substantial United States owners," which will in turn be provided to the U.S. Department of the Treasury. The U.S. Department of the Treasury has proposed regulations that eliminate the federal withholding tax of 30% applicable to the gross proceeds of a sale or other disposition of our securities. Withholding agents may rely on the proposed Treasury Regulations until final regulations are issued. Prospective investors should consult their tax advisors regarding the possible effects of FATCA on their investment in our securities.

Legislative or Other Actions Affecting REITs

The present U.S. federal income tax treatment of REITs may be modified, possibly with retroactive effect, by legislative, judicial or administrative action at any time. The REIT rules are constantly under review by persons involved in the legislative process and by the IRS and the U.S. Treasury Department, which may result in statutory changes as well as revisions to regulations and interpretations. Additionally, several of the tax considerations described herein are currently under review and are subject to change. Prospective investors are urged to consult with their own tax advisors regarding the effect of potential changes to the federal tax laws on an investment in our Common Stock. You should consult with your tax advisor regarding the effect of the Tax Cuts and Jobs Act with respect to your particular circumstances.

Other Tax Consequences

State, local and non-U.S. income tax laws may differ substantially from the corresponding U.S. federal income tax laws, and this discussion does not purport to describe any aspect of the tax laws of any state, local or non-U.S. jurisdiction. You should consult your tax advisor regarding the effect of state, local and non-U.S. tax laws with respect to our tax treatment as a REIT and on an investment in our Common Stock.

THE TAX DISCUSSION SET FORTH ABOVE IS FOR GENERAL INFORMATION ONLY AND SHOULD NOT BE CONSIDERED TO DESCRIBE FULLY THE TAX CONSEQUENCES OF AN INVESTMENT IN THE COMPANY. INVESTORS ARE STRONGLY URGED TO CONSULT, AND MUST RELY ON, THEIR OWN TAX ADVISORS WITH RESPECT TO THE TAX CONSEQUENCES OF HOLDING STOCK IN THE COMPANY, INCLUDING WITHOUT LIMITATION THE EFFECT OF U.S. FEDERAL TAXES (INCLUDING TAXES OTHER THAN INCOME TAXES) AND STATE, LOCAL AND FOREIGN TAX CONSIDERATIONS, AS WELL AS THE POTENTIAL CONSEQUENCES OF ANY CHANGES THERETO MADE BY FUTURE LEGISLATIVE, ADMINISTRATIVE OR JUDICIAL DEVELOPMENTS (WHICH MAY HAVE RETROACTIVE EFFECT).

LEGAL MATTERS

The validity of the Rights, Common Stock, Series B Preferred Stock and Series D Preferred Stock and certain other matters will be passed upon for us by Gordon Feinblatt LLC. The validity of the Notes issuable upon exercise of the Rights will be passed upon for us by Cadwalader, Wickersham & Taft LLP. Certain tax matters will be passed upon for us by Williams Mullen.

EXPERTS

The historical consolidated financial statements of our Company as of December 31, 2020 and 2019 and for each of the two years in the period ended December 31, 2020 incorporated by reference in this prospectus and in the registration statement have been so incorporated in reliance on the report of Cherry Bekaert LLP, an independent registered public accounting firm, incorporated herein by reference, given on the authority of such firm as experts on auditing and accounting.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC under the Exchange Act.

We will provide to each person, including any beneficial owner, to whom our prospectus is delivered, upon request, a copy of any or all of the information that we have incorporated by reference into our prospectus but not delivered with our prospectus. To receive a free copy of any of the documents incorporated by reference in our prospectus, other than exhibits, unless they are specifically incorporated by reference in those documents, call or write us at:

Wheeler Real Estate Investment Trust, Inc.
2529 Virginia Beach Blvd.
Virginia Beach, Virginia 23452
(757) 627-9088

Our website at *www.whlr.us* contains additional information about us. Our website and the information contained therein or connected thereto do not constitute a part of this prospectus supplement, the accompanying prospectus or any supplement thereto.

We have filed with the SEC a registration statement on Form S-11 with respect to the securities offered hereby, of which this prospectus is a part under the Securities Act. This prospectus does not contain all of the information set forth in the registration statement, portions of which have been omitted as permitted by the rules and regulations of the SEC. Statements contained in this prospectus as to the content of any contract or other document incorporated by reference in the registration statement are necessarily summaries of such contract or other document, with each such statement being qualified in all respects by such contract or other document as incorporated by reference in the registration statement. For further information regarding our company and the securities offered by this prospectus, reference is made by this prospectus to the registration statement and the schedules and exhibits incorporated therein by reference.

The registration statement and the schedules and exhibits forming a part of the registration statement filed by us with the SEC can be inspected and copies obtained from the SEC at Room 1580, 100 F Street, N.E., Washington, D.C. 20549. Copies of such material can be obtained from the Public Reference Section of the Securities and Exchange Commission, Room 1580, 100 F Street, N.E., Washington, D.C. 20549, at prescribed rates. You may obtain information on the operation of the public reference room by calling the SEC at 1-800- SEC-0330. In addition, the SEC maintains a website that contains reports, proxies and information statements and other information regarding our company and other registrants that have been filed electronically with the SEC. The address of such site is *http://www.sec.gov*.

INCORPORATION BY REFERENCE

We are incorporating certain information about us that we have filed with the SEC by reference in this prospectus, which means that we are disclosing important information to you by referring you to those documents. We are also incorporating by reference in this prospectus information that we file with the SEC after the filing of this registration statement and prior to the effectiveness of this registration statement. Additionally, all documents that we subsequently file pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to termination of this offering shall be deemed to be incorporated by reference into this prospectus. The information we incorporate by reference is an important part of this prospectus, and later information that we file with the SEC automatically will update and supersede the information we have included in or incorporated by reference into this prospectus.

We incorporate by reference the following documents we have filed, or may file, with the SEC:

- Annual Report on Form 10-K for the fiscal year ended December 31, 2020, filed on March 18, 2021;
- Quarterly Report on Form 10-Q for the three months ended March 31, 2021, filed on May 6, 2021;
- Current Reports on Form 8-K and/or amended Current Reports on Form 8-K filed on April 2, 2021, April 19, 2021, July 6, 2021, and July 8, 2021; and
- The description of our Common Stock contained in our Form 8-A, filed on October 23, 2012, as amended on October 24, 2012.

We are not, however, incorporating by reference any documents or portions thereof, whether specifically listed above or filed in the future, that are furnished to, but not deemed "filed" with, the SEC, any information furnished pursuant to Item 2.02 or Item 7.01 of Form 8-K (or corresponding information furnished under Item 9.01 or included as an exhibit to Form 8-K).

The section entitled "*Where You Can Find More Information*" on page 95 describes how you can obtain or access any documents or information that we have incorporated by reference herein. The information relating to us contained in this prospectus supplement and the accompanying prospectus does not purport to be comprehensive and should be read together with the information contained in the documents incorporated or deemed to be incorporated by reference in this prospectus supplement and the accompanying prospectus.

Upon written or oral request, we will provide, free of charge, to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the reports or documents that are incorporated by reference into this prospectus supplement and the accompanying prospectus. Such written or oral requests should be made to:

Wheeler Real Estate Investment Trust, Inc.
2529 Virginia Beach Blvd.
Virginia Beach, Virginia 23452
(757) 627-9088

In addition, such reports and documents may be found on our website at*www.whlr.us*.

Wheeler Real Estate Investment Trust, Inc.

Rights to Purchase
$30 Million Aggregate Principal Amount of
7.00% Senior Subordinated Convertible Notes Due 2031

PROSPECTUS
, 2021

PART II

Information Not Required In Prospectus

Item 31. Other Expenses of Issuance and Distribution.

The following is a statement of estimated expenses in connection with the offering described in this registration statement. All expenses incurred with respect to the registration of the Common Stock will be borne by us. All amounts are estimates except the SEC registration fee.

Securities and Exchange Commission Registration Fee	$	13,997.50
Legal Fees and Expenses	$	600,000
Accounting Fees and Expenses	$	8,000
Miscellaneous Expenses	$	125,000
Total Expenses	$	746,997.50

Item 32. Sales to Special Parties.

Not applicable.

Item 33. Recent Sales of Unregistered Securities.

Not applicable.

Item 34. Indemnification of Directors and Officers.

Maryland law permits a Maryland corporation to include in its charter a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages except for liability resulting from (a) actual receipt of an improper benefit or profit in money, property or services or (b) active and deliberate dishonesty that is established by a final judgment and is material to the cause of action. Our charter contains a provision which eliminates our directors' and officers' liability to the maximum extent permitted by Maryland law.

Maryland law requires a Maryland corporation (unless its charter provides otherwise, which our charter does not) to indemnify a director or officer who has been successful in the defense of any proceeding to which he or she is made or threatened to be made a party by reason of his or her service in that capacity. Maryland law permits a Maryland corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made or threatened to be made a party by reason of their service in those or other capacities unless it is established that: (a) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty; (b) the director or officer actually received an improper personal benefit in money, property or services; or (c) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. However, under Maryland law, a Maryland corporation may not indemnify for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses. In addition, Maryland law permits a Maryland corporation to advance reasonable expenses to a director or officer upon the corporation's receipt of (a) a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation and (b) a written undertaking by him or her or on his or her behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the standard of conduct was not met.

Our charter authorizes us, to the maximum extent permitted by Maryland law, to obligate ourselves and our bylaws obligate us, to indemnify any present or former director or officer or any individual who, while a director or officer of our company and at our request, serves or has served as a director, officer, partner, trustee, member or manager of another corporation, real estate investment trust, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise and who is made or threatened to be made a party to the proceeding by reason of his or her service in that capacity from and against any claim or liability to which that individual may become subject or which that individual may incur by reason of his or her service in any of the foregoing capacities and to pay or reimburse his or her reasonable expenses in advance of final disposition of a proceeding. Our charter and bylaws also permit us to indemnify and advance expenses to any individual who served a predecessor of our company in any of the capacities described above and any employees or agents of our company or a predecessor of our company. Furthermore, our officers and directors are indemnified against specified liabilities by the underwriters, and the underwriters are indemnified against certain liabilities by us, under the placement agreement relating to this offering. See "*Plan of Distribution*" beginning on page 66.

We intend to enter into indemnification agreements with each of our executive officers and directors whereby we indemnify such executive officers and directors to the fullest extent permitted by Maryland law against all expenses and liabilities, subject to limited exceptions. These indemnification agreements also provide that upon an application for indemnity by an executive officer or director to a court of appropriate jurisdiction, such court may order us to indemnify such executive officer or director.

In addition, our directors and officers are indemnified for specified liabilities and expenses pursuant to the Partnership Agreement of Wheeler REIT, L.P., the partnership of which we serve as sole general partner.

Item 35. Treatment of Proceeds from Stock Being Registered.

None.

Item 36. Financial Statements and Exhibits.

(a) Financial Statements. The financial statements set forth in the documents that are incorporated by reference as part of the prospectus included in this registration statement are set forth in the section of the prospectus entitled "*Incorporation by Reference*" on page 96.

(b) Exhibits. The list of exhibits filed with or incorporated by reference in this registration statement is set forth in the Exhibit Index below.

Item 37. Undertakings.

(i) The undersigned registrant hereby undertakes:

(A) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(1) To include any prospectus required by section 10(a)(3) of the Securities Act.

(2) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "*Calculation of Registration Fee*" table in the effective registration statement.

(3) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

(B) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(C) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(D) That, for the purpose of determining liability under the Securities Act to any purchaser, each prospectus filed pursuant to Rule 424(b) as part of the registration statement relating to the offering, other than a registration statement relying on Rule 430B or other than a prospectus filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. *Provided*, *however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(E) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities, in a primary offering of securities pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(1) any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(2) any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(3) the portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(4) any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(ii) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions and otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

EXHIBIT INDEX

Exhibit No.	Description of Document
3.1	Articles of Amendment and Restatement of the Registrant (Filed as exhibit to Form 8-K, filed on August 8, 2016).
3.2	Articles of Supplementary of the Registrant dated September 16, 2016 (Filed as exhibit to Form 8-K, filed on September 20, 2016).
3.3	Articles of Supplementary of the Registrant dated December 1, 2016 (Filed as exhibit to Form 8-K, filed on December 5, 2016).
3.4	Articles of Amendment and Restatement, effective March 31, 2017 (Filed as exhibit to Form 8-K, filed on April 3, 2017).
3.5	Articles of Amendment and Restatement, effective March 31, 2017 (Filed as exhibit to Form 8-K, filed on April 3, 2017).
3.6	Articles of Amendment of Wheeler Real Estate Investment Trust, Inc. (Filed as exhibit to Form 8-K, filed on May 29, 2020).
3.7	Articles of Supplementary of the Registrant, dated July 8, 2021 (Filed as an exhibit to Form 8-K, filed on July 8, 2021).

3.8	Amended and Restated Bylaws of Registrant (Filed as exhibit to Form S-11/A (Registration No. 333-177262) previously filed on February 14, 2012 pursuant to the Securities Act of 1933).
3.9	Bylaws of Wheeler Real Estate Investment Trust, Inc., as amended (Filed as exhibit to Form 8-K, filed on May 29, 2020).
3.10	Certificate of Correction of Articles Supplementary (Filed as exhibit to Form 8-K, filed on May 4, 2018).
3.11	Amended and Restated Agreement of Limited Partnership of Wheeler REIT, L.P. (Filed as exhibit to Form S-11 (Registration No. 333-198245) previously filed on August 20, 2014 pursuant to the Securities Act of 1933).
3.12	Amendment to the Amended and Restated Agreement of Limited Partnership of Wheeler REIT, L.P. Designation of Series A Convertible Preferred Units (Filed as exhibit to Form 8-K, filed on April 15, 2015).
3.13	Amendment to the Amended and Restated Agreement of Limited Partnership of Wheeler REIT, L.P. Amended Designation of Series B Convertible Preferred Units (Filed as exhibit to Form 8-K, filed on July 15, 2016).
3.14	Amendment to the Amended and Restated Agreement of Limited Partnership of Wheeler REIT, L.P. Designation of Series D Cumulative Convertible Preferred Units (Filed as exhibit to Form 8-K, filed on September 20, 2016).
3.15	Amendment to the Amended and Restated Agreement of Limited Partnership of Wheeler REIT, L.P. Amended Designation of Additional Series D Cumulative Convertible Preferred Units (Filed as exhibit to Form 8-K, filed on December 5, 2016).
3.16	Amendment to the Amended and Restated Agreement of Limited Partnership of Wheeler REIT, L.P. (Filed as exhibit to Form 8-K, filed on September 5, 2019).
3.17	Amendment to the Amended and Restated Agreement of Limited Partnership of Wheeler REIT, L.P., dated December 22, 2020 (Filed as an exhibit to Form 8-K, filed on December 23, 2020).

3.18	Amendment to the Amended and Restated Agreement of Limited Partnership of Wheeler REIT, L.P, dated March 12, 2021 (Filed as an exhibit to Form 8-K, filed on March 12, 2021).
4.1	Form of Certificate of Common Stock of Registrant (Filed as exhibit to Form 8-K, filed on April 3, 2017).
4.2	Form of Certificate of Series B Preferred Stock of Registrant (Filed as exhibit to Form S-11/A (Registration No. 333-194831) previously filed on April 23, 2014 pursuant to the Securities Act of 1933).
4.3	Form of Certificate of Series D Preferred Stock of the Registrant (Filed as exhibit to Form 8-K, filed on September 20, 2016).
4.4	Description of Securities (Filed as exhibit to From 10-K, filed on March 18, 2021).
4.5	Form of Indenture.*
4.6	Form of Note (included in Exhibit 4.5).*
4.7	Form of Rights Certificate.*
4.8	Subscription Agent Agreement, dated June 18, 2021, by and between Wheeler Real Estate Investment Trust, Inc., Computershare Trust Company, N.A. and Computershare Inc.*
5.1	Opinion of Gordon Feinblatt LLC as to the legality of certain securities being registered.*
5.2	Opinion of Cadwalader, Wickersham & Taft LLP as to the legality of the Notes being registered.*
8.1	Opinion of Williams Mullen as to certain tax matters.*
10.1	Wheeler Real Estate Investment Trust, Inc. 2015 Long-Term Incentive Plan (Filed as exhibit to Form 8-K, filed on June 8, 2015).
10.2	Wheeler Real Estate Investment Trust, Inc. 2016 Long-Term Incentive Plan (Filed as exhibit to Form 8-K, filed on June 16, 2016).
10.3	Stock Appreciation Rights Agreement, dated August 4, 2020, between Wheeler Real Estate Investment Trust, Inc. and Daniel Khoshaba (Filed as exhibit to Form 8-K, filed on August 5, 2020).
10.4	Employment Agreement with David Kelly (Filed as exhibit to Form 8-K, filed on February 20, 2018).
10.5	Employment Agreement with Matthew Reddy (Filed as exhibit to Form 8-K, filed on February 20, 2018).
10.6	Employment Agreement with M. Andrew Franklin (Filed as exhibit to Form 8-K, filed on February 20, 2018).
10.7	Employment Agreement with Crystal Plum (Filed as exhibit to Form 8-K, filed on February 20, 2020).
10.8	Tax Protection Agreement dated October 24, 2014, by and among Jon S. Wheeler, Wheeler REIT, L.P., and Wheeler Real Estate Investment Trust, Inc (Filed as exhibit to Form 8-K, filed on October 30, 2014).
10.9	Shareholders Rights Agreement, dated March 19, 2015, by and between Wheeler Real Estate Investment Trust, Inc. and Westport Capital Partners LLC as agent on behalf of certain investor (Filed as exhibit to Form 8-K, filed on March 19, 2015).
10.10	Letter Agreement, dated March 19, 2015, by and between Wheeler Real Estate Investment Trust, Inc. and Jon S. Wheeler (Filed as exhibit to Form 8-K, filed on March 19, 2015).
10.11	Tax Protection Agreement dated February 8, 2017 (Filed as exhibit to Form 8-K, filed on February 10, 2017).

10.12	Amended and Restated Credit Agreement dated December 21, 2017 (Filed as exhibit to Form 8-K, filed on December 22, 2017).
10.13	Keybank Letter Agreement Amendment to the Amended and Restated Credit Agreement dated March 2, 2018 (Filed as exhibit to Form 8-K/A, filed on March 7, 2018).
10.14	KeyBank Letter Amendment to the Amended and Restated Credit Agreement dated August 7, 2018 (Filed as exhibit to Form 8-K/A, filed on August 8, 2018).
10.15	KeyBank Letter Amendment to the Amended and Restated Credit Agreement dated October 15, 2018 (Filed as exhibit to Form 8-K/A, filed on October 19, 2018).
10.16	KeyBank Letter Amendment to the Amended and Restated Credit Agreement dated February 28, 2019 (Filed as exhibit to Form 8-K/A, filed on March 14, 2019).
10.17	First Amendment to the KeyBank Amended and Restated Credit Agreement dated April 25, 2019 (Filed as exhibit to Form 8-K/A, filed on May 1, 2019).
10.18	Second Amendment to the KeyBank Amended and Restated Credit Agreement dated January 24, 2020 (Filed as exhibit to Form 8-K, filed on January 28, 2020).
10.19	Equity Interests Pledge and Security Agreement to the KeyBank Amended and Restated Credit Agreement dated January 24, 2020 (Filed as exhibit to Form 8-K, filed on January 28, 2020).
10.20	Third Amendment to the KeyBank Amended and Restated Credit Agreement dated July 20, 2020 (Filed as exhibit to Form 8-K, filed on July 24, 2020).
10.21	Purchase and Sale Agreement dated November 3, 2016 between WHLR-JANAF, LLC, JANAF Shopping Center, LLC, JANAF Shops, LLC, JANAF HQ, LLC, and JANAF Crossing, LLC (Filed as exhibit to Form 8-K, filed on January 9, 2018).
10.22	First Amendment to JANAF Purchase and Sale Agreement, dated December 2, 2016 (Filed as exhibit to Form 8-K, filed on January 9, 2018).
10.23	Second Amendment to JANAF Purchase and Sale Agreement, dated January 6, 2017 (Filed as exhibit to Form 8-K, filed on January 9, 2018).
10.24	Third Amendment to JANAF Purchase and Sale Agreement, dated January 9, 2017 (Filed as exhibit to Form 8-K, filed on January 9, 2018).
10.25	Fourth Amendment to JANAF Purchase and Sale Agreement, dated January 11, 2017 (Filed as exhibit to Form 8-K, filed on January 9, 2018).
10.26	Fifth Amendment to JANAF Purchase and Sale Agreement, dated January 13, 2017 (Filed as exhibit to Form 8-K, filed on January 9, 2018).
10.27	Sixth Amendment to JANAF Purchase and Sale Agreement, dated February 3, 2017 (Filed as exhibit to Form 8-K, filed on January 9, 2018).
10.28	Seventh Amendment to JANAF Purchase and Sale Agreement, dated March 6, 2017 (Filed as exhibit to Form 8-K, filed on January 9, 2018).
10.29	Eighth Amendment to JANAF Purchase and Sale Agreement, dated March 7, 2017 (Filed as exhibit to Form 8-K, filed on January 9, 2018).
10.30	Ninth Amendment to JANAF Purchase and Sale Agreement, dated March 8, 2017 (Filed as exhibit to Form 8-K, filed on January 9, 2018).
10.31	Tenth Amendment to JANAF Purchase and Sale Agreement, dated June 9, 2017 (Filed as exhibit to Form 8-K, filed on January 9, 2018).

10.32	Eleventh Amendment to JANAF Purchase and Sale Agreement, dated October 17, 2017 (Filed as exhibit to Form 8-K, filed on January 9, 2018).
10.33	Twelfth Amendment to JANAF Purchase and Sale Agreement, dated November 9, 2017 (Filed as exhibit to Form 8-K, filed on January 9, 2018).
10.34	Thirteenth Amendment to JANAF Purchase and Sale Agreement, dated November 30, 2017 (Filed as exhibit to Form 8-K, filed on January 9, 2018).
10.35	Fourteenth Amendment to JANAF Purchase and Sale Agreement, dated December 19, 2017 (Filed as exhibit to Form 8-K, filed on January 9, 2018).
10.36	Fifteenth Amendment to JANAF Purchase and Sale Agreement, dated January 17, 2018 (Filed as exhibit to Form 10-K, filed on March 7, 2018).
10.37	JANAF Loan Agreement dated June 5, 2013 (Filed as exhibit to Form 8-K, filed on January 23, 2018).
10.38	Powerscourt Financing Agreement, dated December 22, 2020 (Filed as an exhibit to Form 8-K, filed on December 23, 2020).
10.39	Common Stock Purchase Warrant, dated December 22, 2020 (Filed as an exhibit to Form 8-K, filed on December 23, 2020).
10.40	Powerscourt Registration Rights Agreement, dated December 22, 2020 (Filed as an exhibit to Form 8-K, filed on December 23, 2020).
10.41	Magnetar/AY2 Financing Agreement, dated March 12, 2021 (Filed as an exhibit to Form 8-K, filed on March 12, 2021).
10.42	Form of Common Stock Purchase Warrant, dated March 12, 2021 (Filed as an exhibit to Form 8-K, filed on March 12, 2021).
10.43	Magnetar/AY2 Registration Rights Agreement, dated March 12, 2021 (Filed as an exhibit to Form 8-K, filed on March 12, 2021).
10.44	Backstop Commitment Letter, dated July 8, 2021, by and between Wheeler Real Estate Investment Trust, Inc. and Magnetar Structured Credit Fund, LP, Magnetar Longhorn Fund LP, Magnetar Lake Credit Fund LLC, Purpose Alternative Credit Fund - F LLC, and Purpose Alternative Credit Fund - T LLC, AY2 Capital LLC.*

14.1	Code of Ethics (Filed as exhibit to Form S-11 (Registration No. 333-177262) previously filed on October 12, 2011 pursuant to the Securities Act of 1933).
21.1	Subsidiaries of Registrant (Filed as exhibit to From 10-K, filed on March 18, 2021).
23.1	Consent of Cherry Bekaert LLP.**
23.2	Consent of Gordon Feinblatt LLC (included in Exhibit 5.1).*
23.3	Consent of Cadwalader, Wickersham & Taft LLP (included in Exhibit 5.2).*
23.4	Consent of Williams Mullen (included in Exhibit 8.1).*
24.1	Power of Attorney (included on Signature Page of Registration Statement).*
25.1	Statement of Eligibility of Trustee on Form T-1.*
99.1	Form of Instructions for Use of Wheeler Real Estate Investment Trust, Inc. Rights Certificates.*
99.2	Form of Letter to Stockholders who are Record Holders.*
99.3	Form of Letter to Brokers, Dealers, Banks and Other Nominee Holders.*
99.4	Form of Beneficial Owner Election Form.*
99.5	Form of Notice of Guaranteed Delivery for Rights Certificates.*

* Filed herewith.
** Previously filed.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing this Form S-11 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Virginia Beach, State of Virginia, on July 8, 2021.

WHEELER REAL ESTATE INVESTMENT TRUST, INC.

By: /s/ Andrew Franklin
Andrew Franklin
Interim Chief Executive Officer
(Principal Executive Officer)

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

Each person whose signature appears below appoints each of Andrew Franklin and Crystal Plum as his or her true and lawful attorney-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he or she might or would do in person, hereby ratifying and confirming all that said attorney-in-fact and agents or any of them or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1933, this registration statement has been signed below by the following persons on behalf of the Company and in the capacities and on the dates indicated.

Name	Title	Date
/s/ Andrew Franklin Andrew Franklin	Interim Chief Executive Officer (Principal Executive Officer)	July 8, 2021
/s/ Crystal Plum Crystal Plum	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	July 8, 2021
/s/ Stefani D. Carter Stefani D. Carter	Chair of the Board	July 8, 2021
/s/ Andrew Jones Andrew Jones	Director	July 8, 2021
/s/ Clayton (“Chip”) Andrews Clayton (“Chip”) Andrews	Director	July 8, 2021
/s/ Joseph D. Stilwell	Director	July 8, 2021

Joseph D. Stilwell		
/s/ Paula J. Poskon Paula J. Poskon	Director	July 8, 2021
/s/ Kerry G. Campbell Kerry G. Campbell	Director	July 8, 2021
/s/ E.J. Borrack E.J. Borrack	Director	July 8, 2021

Exhibit 4.5

WHEELER REAL ESTATE INVESTMENT TRUST, INC.

AND

WILMINGTON SAVINGS FUND SOCIETY, FSB

as Trustee

INDENTURE

Dated as of [•], 2021

7.00% Senior Subordinated Convertible Notes due 2031

WHEELER REAL ESTATE INVESTMENT TRUST, INC.

RECONCILIATION AND TIE BETWEEN TRUST INDENTURE ACT
OF 1939 AND INDENTURE, DATED AS OF [•], 2021

TRUST INDENTURE ACT SECTION		INDENTURE SECTION
310	(a)(1)	6.08
	(a)(2)	6.08
	(b)	6.09
312	(a)	7.01
	(c)	7.02
313	(a)	7.03
	(c)	7.03
314	(a)(4)	10.08(b)
	(c)(1)	1.02
	(c)(2)	1.02
	(e)	1.02
315	(a)	6.01(a)
	(b)	6.02
	(c)	6.01(b)
	(d)	6.01(c), 6.03
316	(a)(last sentence)	1.01 (“Outstanding”)
	(a)(1)(A)	5.02, 5.12
	(a)(1)(B)	5.13
	(b)	5.08
	(c)	1.04(d)
317	(a)(1)	5.03
	(a)(2)	5.04
	(b)	10.03
318	(a)	13.04

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INDENTURE, dated as of [•], 2021 (this "Indenture"), among WHEELER REAL ESTATE INVESTMENT TRUST, INC., a Maryland corporation (the "Company"), and WILMINGTON SAVINGS FUND SOCIETY, FSB, as trustee (together with its successors and assigns, in such capacity, the "Trustee").

RECITALS OF THE COMPANY

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issuance of its 7.00% Senior Subordinated Convertible Notes due 2031 (the "Notes"), initially in an aggregate principal amount of $30,000,000 (the "Initial Notes"), and in order to provide the terms and conditions upon which the Notes are to be authenticated, issued and delivered, the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, the Form of Note, the certificate of authentication to be borne by each Note, and the Form of Assignment and Transfer to be borne by the Notes are to be substantially in the forms hereinafter provided; and

WHEREAS, all acts and things necessary to make the Notes, when executed by the Company and authenticated and delivered by the Trustee or a duly authorized Authenticating Agent, as in this Indenture provided, the valid, binding and legal obligations of the Company, and this Indenture a valid agreement according to its terms, have been done and performed, and the execution of this Indenture and the issuance hereunder of the Notes have in all respects been duly authorized.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Notes by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders, as follows:

ARTICLE 1.
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 1.01 DEFINITIONS.

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in this Article have the meanings assigned to them in this Article, and words in the singular include the plural as well as the singular, and words in the plural include the singular as well as the plural;

(b) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, or defined by Commission rule and not otherwise defined herein have the meanings assigned to them therein;

(c) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP (as herein defined);

(d) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;

(e) the word "or" is not exclusive;

(f) "including" means including without limitation;

(g) all references to Articles, Sections and Exhibits shall be construed to refer to Articles and Sections of, and Exhibits to, this Indenture; and

(h) provisions of this Indenture apply to successive events and transactions.

"Act" when used with respect to any Holder, means any request, demand, authorization, direction, notice, consent, waiver or other action provided by the Indenture to be given or taken by Holders, that is embodied in and evidenced by one or more instruments of substantially similar tenor signed by Holders in person or by agents duly appointed in writing; except as otherwise expressly provided in the Indenture, such actions becoming effective when such instruments are delivered to the Trustee and, where it is expressly required, to the Company.

"Adjustment Event" has the meaning specified in Section 14.05(k).

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with

such specified Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

"Agent" means any Paying Agent, Authenticating Agent, Conversion Agent and Note Registrar under this Indenture.

"Agent for Service" has the meaning specified in Section 13.04(c).

"Applicable Procedures" means, with respect to any transfer or exchange of or for beneficial interests in any Global Note, the rules and procedures of the Depository to the extent applicable to such transaction and as in effect from time to time.

"Authenticating Agent" means the Person appointed, if any, by the Trustee as an authenticating agent pursuant to the last paragraph of Section 3.03.

"Bankruptcy Law" means Title 11, United States Bankruptcy Code of 1978, as amended, or any similar United States federal or state or foreign law relating to bankruptcy, insolvency, receivership, winding-up, liquidation, reorganization or relief of debtors or any amendment to, succession to or change in any such law.

"Board of Directors" means, with respect to any Person, either the board of directors of such Person or any duly authorized committee thereof.

"Board Resolution" means, with respect to any Person, a copy of a resolution certified by the Secretary or an Assistant Secretary of such Person to have been duly adopted by the Board of Directors of such Person or any committee thereof and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"Business Day" means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in The City of New York or the place of payment are authorized or obligated by law or executive order to close.

"Change of Control" means the occurrence of any of the following:

(a) any Person or group (as that term is used in Section 13(d) of the Exchange Act, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan and the rules and regulations thereunder) shall have acquired beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of a percentage (based on voting power, in the event different classes of stock shall have different voting powers) of the voting stock of the Company equal to at least fifty percent (50%); or

(b) the Company consolidates with, or merges into or with any Person (other than a consolidation or merger in which the Company is the continuing or surviving entity).

"Change of Control Conversion Date" means the date of the mandatory conversion of the Notes upon a Change of Control, as determined by the Company, which date shall be no earlier than 20 days and no later than 35 days from the date notice thereof is sent to Holders.

"Commission" means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this Indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"Common Stock" means the common stock, without par value, of the Company.

"Common Stock Record Date" has the meaning specified in Section 14.05(h)(ii).

"Company" means Wheeler Real Estate Investment Trust, Inc., a Maryland Corporation, until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Company" shall mean such successor Person.

"Company Request" or "Company Order" means a written request or order signed in the name of the Company by any one of its Chairman, President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Secretary, or any Vice President and delivered to the Trustee.

"Conversion Agent" means any office or agency (including the Company acting as Conversion Agent) where the Notes may be presented for conversion.

"Conversion Notice" has the meaning specified in Section 14.03 of this Indenture.

"Conversion Price" has the meaning specified in Section 14.02 of this Indenture.

"Conversion Rate" has the meaning specified in Section 14.02 of this Indenture.

"Convertible Securities" has the meaning specified in Section 14.05(g).

"Corporate Trust Office" means the designated corporate trust office of the Trustee, at which at any particular time its corporate trust business shall be administered, which office at the date of execution of this Indenture is located at 500 Delaware, Wilmington, DE 19801, except that with respect to presentation of Notes for payment or for registration of transfer or exchange, such term shall mean any office or agency of the Trustee at which, at any particular time, its corporate agency business shall be conducted.

"Current Market Price" has the meaning specified in Section 14.05(h)(i).

"Custodian" means any receiver, trustee, assignee, liquidator, sequestrator or similar official under any Bankruptcy Law.

"Default" means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

"Definitive Note" means a certificated Note issued pursuant to the terms of this Indenture that is not a Global Note.

"Depository" means The Depository Trust Company, its nominees and successors.

"Determination Date" has the meaning specified in Section 14.05(k).

"Distributed Property" has the meaning specified in Section 14.05(d).

"Event of Default" has the meaning specified in Section 5.01 of this Indenture.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Ex-date" has the meaning specified in Section 14.05(h)(iii).

"Expiration Time" has the meaning specified in Section 14.05(e).

"Form of Notice of Conversion" means the "Form of Notice of Conversion" attached as Attachment 1 to the Form of Note attached hereto as Exhibit A.

"Global Notes" means one or more permanent global Notes in definitive, fully registered form.

"Holder" means the Person in whose name a Note is registered on the books of the Note Registrar.

"Indenture" means this Indenture between the Company and the Trustee dated as of the date hereof, as originally executed and as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions of this Indenture.

"Initial Notes" has the meaning specified in the recitals to this Indenture.

"Interest Payment Date" means the Stated Maturity of an installment of interest on the Notes.

"Issuance Date" means the closing date for the sale and original issuance of the Initial Notes hereunder.

"Judgment Currency" shall have the meaning specified in Section 13.16.

"Market Disruption Event" means, for the purposes of determining amounts due upon conversion (a) a failure by the primary U.S. national or regional securities exchange or market on which the Common Stock, Series B Preferred Stock, or Series D Preferred Stock, as the case may be, is listed or admitted for trading to open for trading during its regular trading session or (b) the occurrence or existence prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for the Common Stock, Series B Preferred Stock, or Series D Preferred Stock, as the case may be, for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in the Common Stock, Series B Preferred Stock, or Series D Preferred Stock, as the case may be, or in any options contracts or futures contracts relating to the Common Stock, Series B Preferred Stock, or Series D Preferred Stock, as the case may be.

"Maturity" means, with respect to any Note, the date on which any principal of such Note becomes due and payable as therein or herein provided, whether at the Stated Maturity by declaration of acceleration, call for redemption or purchase or otherwise.

"Maturity Date" means December 31, 2031.

"Nasdaq" has the meaning specified in the definition of "Trading Day".

"National Securities Exchange" means the New York Stock Exchange, NYSE Amex, the NASDAQ Stock Market or another national securities exchange or any successor to the foregoing.

"Note Register" and "Note Registrar" have the respective meanings specified in Section 3.05.

"Notes" means any Notes authenticated and delivered under the Indenture.

"Notes Custodian" means the custodian with respect to a Global Note, or any successor Person thereto and shall initially be the Trustee.

"Obligations" means any principal, interest, penalties, fees, expenses, indemnifications, reimbursements (including, without limitation, reimbursement obligations with respect to letters of credit and banker's acceptances), damages and other liabilities, and guarantees of payment of such principal, interest, penalties, fees, expenses, indemnifications, reimbursements, damages and other liabilities, payable under the documentation governing any indebtedness.

"Officer" means the Chairman of the Board, the Chief Executive Officer, the Chief Financial Officer, the Chief Operating Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of the Company.

"Officers' Certificate" means a certificate signed on behalf of the Company by an Officer of the Company, whom must be the President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Secretary, or any Vice President, stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture (including any covenant compliance which constitutes a condition precedent) relating to the proposed action have been complied with, and shall include: (i) a statement that such individual signing such certificate has read such covenant or condition; (ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate are based; (iii) a statement that, in the opinion of each such individual, such individual has made such examination or investigation as is necessary to enable such individual to express an informed opinion as to whether or not such covenant or condition has been complied with; and (iv) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

"Opinion of Counsel" means a written opinion of legal counsel addressed to the Trustee complying with the requirements of Section 1.02. Unless otherwise

required by the TIA, such legal counsel may be an employee of or counsel to the Company.

"Outstanding," when used with respect to Notes, means, as of the date of determination, all Notes theretofore authenticated and delivered under this Indenture, except:

(a) Notes theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(b) Notes, or portions thereof, for whose payment or redemption money or shares of the Company's Common Stock in the necessary amount have been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Notes; provided that, if such Notes are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;

(c) Notes paid pursuant to Section 3.06 in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture, other than any such Notes in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Notes are held by a bona fide purchaser in whose hands the Notes are valid obligations of the Company;

provided, however, that in determining whether the Holders of the requisite principal amount of Outstanding Notes have given any request, demand, authorization, direction, consent, notice or waiver, and for the purpose of making the calculations required by TIA Section 313, Notes owned by the Company or any other obligor upon the Notes or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be Outstanding (provided, that in connection with any offer by the Company or any obligor to purchase the Notes, Notes tendered for purchase will be deemed to be Outstanding and held by the tendering Holder until the date of purchase), except that, in determining whether the Trustee shall be protected in making such calculation or in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Notes so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Notes and that the pledgee is not the Company or any other obligor upon the Notes or any Affiliate of the Company or such other obligor. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officers' Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of any of the above described Persons; and, subject to Section 6.01, the Trustee, shall be entitled to accept such Officers' Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

"Paying Agent" means any Person (including the Company acting as Paying Agent) authorized by the Company to pay the principal of (and premium, if any) or interest on any Notes on behalf of the Company.

"Person" means any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

"Pricing Date" has the meaning specified in 14.05(g).

"Prospectus" means the prospectus dated [•], 2021, as supplemented by any prospectus supplement, relating to the Rights Offering.

"Purchased Shares" has the meaning specified in 14.05(e)(i).

"Ranking Junior to the Notes", when used with respect to any Obligation of the Company, means any Obligation of the Company which (a) ranks junior to and not equally with or prior to the Notes in right of payment upon the happening of any event of the kind specified in the first sentence of the first paragraph of Section 12.01, and (b) is specifically designated as ranking junior to the Notes by express provisions in the instrument creating or evidencing such obligation. The securing of any Obligations of the Company, otherwise Ranking Junior to the Notes, is not deemed to prevent such Obligations from constituting obligations Ranking Junior to the Notes.

"Ranking on a Parity with the Notes", when used with respect to any Obligation of the Company, means any Obligation of the Company which (a) ranks equally with and not prior to the Notes in right of payment upon the happening of any event of the kind specified in the first sentence of the first paragraph of Section 12.01, and (b) is specifically designated as ranking on a parity with the Notes by express provision in the instrument creating or evidencing such Obligation. The securing of any Obligations of the Company, otherwise Ranking on a Parity with the Notes, is not deemed to prevent such Obligations from constituting obligations Ranking on a Parity with the Notes.

"Redemption Date," when used with respect to any Note to be redeemed, in whole or in part, means the date fixed for such redemption by or pursuant to this Indenture.

"Redemption Price" has the meaning specified in Section 11.01(a) of this Indenture.

"Regular Record Date" for the interest payable on any Interest Payment Date means June 1 or December 1 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date.

"Responsible Officer," when used with respect to the Trustee, means any vice president, any assistant secretary, any assistant treasurer, any trust officer or assistant trust officer or any other officer of the Trustee customarily performing functions similar to those performed by any of the above-designated officers, and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject, and who shall in each case have direct responsibility for the administration of this Indenture.

"Rights Offering" means the offering made to holders of the Company's Common Stock of subscription rights to purchase the Notes pursuant to the Prospectus.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Senior Indebtedness" means the Obligations under the Term Loan Facility and any other indebtedness permitted to be incurred by the Company under the terms of this Indenture that is senior to the Notes.

"Series B Preferred Stock" means Series B Convertible Preferred Stock, without par value, of the Company.

"Series D Preferred Stock" means Series D Cumulative Convertible Preferred Stock, without par value, of the Company.

"Settlement" has the meaning specified in Section 14.03 of this Indenture.

"Significant Subsidiary" means any Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such Regulation is in effect on the date hereof.

"Spinoff Valuation Period" has the meaning specified in Section 14.05(d).

"Stated Maturity" when used with respect to any Note or any installment of interest thereon, means the date specified in such Note as the fixed date on which the principal of such Note or such installment of interest is due and payable, and, when used with respect to any other indebtedness, means the date specified in the instrument governing such indebtedness as the fixed date on which the principal of such indebtedness, or any installment of interest thereon, is due and payable.

"Subsidiary" means, with respect to any Person, (i) any corporation, association, or other business entity (other than a partnership, joint venture or limited liability company) of which more than 50% of the total voting power of shares of capital stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof and (ii) any partnership, joint venture, limited liability company or similar entity of which more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership interests or otherwise.

"Term Loan Facility" means the loans provided pursuant to that certain Financing Agreement, dated as of March 12, 2021, by and among the Company as borrower, certain subsidiaries of the Company as guarantors, the lenders from time to time party thereto and the Trustee as administrative agent and collateral agent.

"Trading Day" means a day on which: (1) there is no Market Disruption Event; and (2) trading in shares of the Common Stock, Series B Preferred Stock, or Series D Preferred Stock generally occurs on the Nasdaq Capital Market ("Nasdaq") or, if shares of the Common Stock, Series B Preferred Stock, or Series D Preferred Stock are not then listed on Nasdaq, on the principal other U.S. national or regional securities exchange on which shares of the Common Stock, Series B Preferred Stock, or Series D Preferred Stock are then listed or, if shares the Common Stock, Series B Preferred Stock, or Series D Preferred Stock are not then listed on a U.S. national or regional securities exchange, on the principal other market on which shares of the Common Stock, Series B Preferred Stock, or Series D Preferred Stock are then listed or admitted for trading. If shares of the Common Stock, Series B Preferred Stock, or Series D Preferred Stock are not so listed or traded, "Trading Day" means a "Business Day."

"Trigger Event" has the meaning specified in 14.05(d).

"Trust Indenture Act" or "TIA" means the Trust Indenture Act of 1939 as amended and in force on the date as of which this Indenture was executed, except as provided in Section 9.05 hereof.

"Trustee" means the Person named as the "Trustee" in the first paragraph of the Indenture until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall mean such successor Trustee.

"Underlying Shares" has the meaning specified in 14.05(b)(i).

"Voting Stock" of any Person as of any date means the capital stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"VWAP" means, for each of the 15 consecutive Trading Days immediately prior to the date of determination, the per share volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page "WHLR <equity> AQR" (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of the Common Stock, Series B Preferred Stock, and Series D Preferred Stock on such Trading Day determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the Company). "VWAP" shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

SECTION 1.02 COMPLIANCE CERTIFICATES AND OPINIONS.

Upon any application or request by the Company to the Trustee to take or refrain from taking any action under any provision of this Indenture, the Company and any other obligor on the Notes (if applicable) shall furnish to the Trustee an Officers' Certificate stating that, in the opinion of the signer, all conditions precedent, if any, provided for in this Indenture (including any covenant compliance with which constitutes a condition precedent) relating to the proposed action have been complied with and, if requested by the Trustee, an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(a) a statement that each individual signing such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of each such individual or such firm, such individual or firm has made such examination or investigation as is necessary to enable such individual or firm to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of such individual, such condition or covenant has been complied with.

SECTION 1.03 FORM OF DOCUMENTS DELIVERED TO TRUSTEE.

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an Officer of the Company or other obligor on the Notes may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such Officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an Officer or Officers of the Company or other obligor on the Notes stating that the information with respect to such factual matters is in the possession of the Company or other obligor on the Notes unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

SECTION 1.04 ACTS OF HOLDERS.

(a) Proof of execution of any Act shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 1.04.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient.

(c) The principal amount and serial and/or CUSIP numbers of Notes held by any Person, and the date of holding the same, shall be proved by the Note Register.

(d) If the Company shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may, at its option, by or pursuant to a Board Resolution, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Company shall have no obligation to do so. Notwithstanding TIA Section 3.16(c), such record date shall be the record date specified in or pursuant to such Board Resolution, which shall be a date not earlier than the date 30 days prior to the first solicitation of Holders generally in connection therewith and not later than the date such solicitation is completed. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of Outstanding Notes have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the Outstanding Notes shall be computed as of such record date; provided that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Note shall bind every future Holder of the same Note and the Holder of every Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof (including in accordance with Section 3.06) in respect of anything done, omitted or suffered to be done by the Trustee, any Paying Agent or the Company in reliance thereon, whether or not notation of such action is made upon such Note.

Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Note may do so with regard to all or any part of the principal amount of such Note or by one or more duly appointed agents, each of which may do so pursuant to such appointment with regard to all or any part of such principal amount. Any notice given or action taken by a Holder or its agents with regard to different parts of such principal amount pursuant to this paragraph shall have the same effect as if given or taken by separate Holders of each such different part.

Without limiting the generality of the foregoing, a Holder, including the Depository that is the Holder of a Global Note, may make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders, and the Depository that is the Holder of a Global Note may provide its proxy or proxies to the beneficial owners of interests in any such Global Note through such Depository's standing instructions and customary practices.

The Company may fix a record date for the purpose of determining the Persons who are beneficial owners of interests in any Global Note held by the Depository entitled under the procedures of such Depository to make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by the Holders.

SECTION 1.05 NOTICES, ETC., TO TRUSTEE AND THE COMPANY.

Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(a) the Trustee by any Holder or by the Company or any other obligor on the Notes shall be sufficient for every purpose hereunder if made, given, furnished or delivered in writing (which may be via facsimile or any other electronic means that the Trustee agrees to accept), to or with the Trustee and received at its Corporate Trust Office, Attention: Wheeler Real Estate Investment Trust, Inc. Notes Administrator, or

(b) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if made, given, furnished or delivered, in writing (which may include via facsimile), or mailed, first-class postage prepaid, or delivered by recognized overnight courier, to the Company, addressed to it at the address of its principal office specified in the first paragraph of this Indenture, or at any other address previously furnished in writing to the Trustee by the

Company.

The Trustee agrees to accept instructions or directions pursuant to this Indenture sent by unsecured e-mail, pdf, facsimile transmission or other similar unsecured electronic methods: *provided*, *however*, that the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the Company elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee acts upon such instructions as required or permitted by this Indenture, then the Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Company agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk or interception and misuse by third parties.

SECTION 1.06 NOTICE TO HOLDERS; WAIVER.

Where this Indenture provides for notice of any event to Holders by the Company or the Trustee, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, by email or such other applicable customary procedures of the Depository, to each Holder affected by such event, at such Holder's address as it appears in the Note Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Any notice mailed to a Holder in the manner herein prescribed shall be conclusively deemed to have been received by such Holder, whether or not such Holder actually receives such notice. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case by reason of the suspension of or irregularities in regular mail service or by reason of any other cause, it shall be impracticable to mail notice of any event to Holders when such notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice for every purpose hereunder.

SECTION 1.07 SUCCESSORS AND ASSIGNS.

All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not. All agreements of the Trustee in this Indenture shall bind its successors, whether so expressed or not.

SECTION 1.08 NO PERSONAL LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES, OR STOCKHOLDERS.

No director, officer, employee, incorporator or stockholders, as such, of the Company shall have any liability for any obligations of the Company under the Notes or this Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creations. Each Holder by accepting a Note waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Notes. Such waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the Commission that such a waiver is against public policy.

ARTICLE 2.
NOTE FORMS

SECTION 2.01 FORMS GENERALLY.

The Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A which is hereby incorporated in, and expressly made a part of, this Indenture. The Notes may have notations, legends or endorsements required by law, stock exchange rule, agreements to which the Company is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form reasonably acceptable to the Company). Each Note shall be dated the date of its authentication. The terms of the Note set forth in Exhibit A are part of the terms of this Indenture.

ARTICLE 3.
THE NOTES

SECTION 3.01 TITLE AND TERMS.

The aggregate principal amount of Notes which may be authenticated and issued under this Indenture is not limited; provided, however that any additional Notes issued under this Indenture are issued in accordance with Section 3.03 hereof, as part of the same series as the Initial Notes, form a single class with the Initial Notes and shall have the same terms as to status, redemption, conversion or otherwise as the Initial Notes.

The Notes shall be known and designated as the "7.00% Senior Subordinated Convertible Notes due 2031" of the Company. The Stated Maturity of the Notes shall be December 31, 2031. Interest on the Notes will be payable semi-annually on June 30 and December 31 of each year starting on December 31, 2021 to Holders of record at the close of business on the preceding June 1 and December 1, respectively. Interest shall accrue on the Notes at a rate of 7.0% per annum. Interest will accrue on the Notes from and including the Issuance Date or from, and including, the last date in respect of which interest has been paid or provided for, as the case may be, to, but excluding, the next Interest Payment Date or the Maturity Date, as the case may be. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months, until the principal thereof is paid or duly provided for. Interest on any overdue principal, interest (to the extent lawful) or premium, if any, shall be payable on demand in the form as provided in Article Fourteen hereof.

The principal of (and premium, if any) and interest on the Notes shall be payable at the office or agency of the Company maintained for such purpose; provided, however, that, at the option of the Company, payment of interest may be paid by check mailed to addresses of the Persons entitled thereto as such addresses shall appear on the Note Register; provided that all payments of principal, premium, if any, and interest with respect to Notes represented by one or more permanent Global Notes registered in the name of or held by the Depository or its nominee will be made by wire transfer of immediately available funds to the accounts specified by the Holders thereof.

The Notes shall be convertible into Common Stock pursuant to Article Fourteen.

The Notes shall be redeemable as provided in Article Eleven and in the Notes.

SECTION 3.02 DENOMINATIONS.

The Notes shall be issuable only in registered form without coupons and only in minimum denominations of $25.00 and integral multiples thereof.

SECTION 3.03 EXECUTION, AUTHENTICATION, DELIVERY AND DATING.

The Notes shall be executed on behalf of the Company by an Officer. The signature of an Officer on the Notes may be manual or facsimile signatures of the present or any future such authorized Officer and may be imprinted or otherwise reproduced on the Notes.

Notes bearing the manual or facsimile signatures of individuals who were at any time the proper Officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Notes or did not hold such offices at the date of such Notes.

On or prior to the Issuance Date, the Company shall deliver the Initial Notes in an aggregate principal amount not to exceed thirty million dollars ($30,000,000) executed by the Company to the Trustee for authentication, together with a Company Order directing the Trustee to authenticate the Initial Notes and certifying that all conditions precedent to the issuance of Notes contained herein have been fully complied with, and the Trustee in accordance with such Company Order shall authenticate and deliver such Initial Notes.

Each Note shall be dated the date of its authentication.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Note a certificate of authentication substantially in the form provided for herein duly executed by the Trustee by manual signature of an authorized signatory, and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder and is entitled to the benefits of this Indenture.

The Trustee may appoint an Authenticating Agent acceptable to the Company to authenticate Notes on behalf of the Trustee. Unless limited by the terms of such appointment, an Authenticating Agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such Agent. An Authenticating Agent has the same rights as any Note Registrar or Paying Agent to deal with the Company and its Affiliates.

SECTION 3.04 TEMPORARY NOTES.

Pending the preparation of certificates representing Notes, the Company may execute, and upon receipt of a Company Order the Trustee shall authenticate and deliver, temporary Notes which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the Definitive Notes in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the Officers executing such Notes may determine, as conclusively evidenced by their execution of such Notes.

If temporary Notes are issued, the Company will cause Definitive Notes to be prepared without unreasonable delay. After the preparation of Definitive Notes, the temporary Notes shall be exchangeable for Definitive Notes upon surrender of the temporary Notes at the office or agency of the Company designated for such purpose pursuant to Section 10.02, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Notes, the Company shall execute and the Trustee shall, upon receipt of a Company Order, authenticate and deliver in exchange therefor a like principal amount of Definitive Notes of authorized denominations. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits under this Indenture as Definitive Notes.

SECTION 3.05 REGISTRATION, REGISTRATION OF TRANSFER AND EXCHANGE.

The Company shall cause to be kept at the Corporate Trust Office of the Trustee a register (the register maintained in such office and in any other office or agency designated pursuant to Section 10.02 being herein sometimes referred to as the “Note Register”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. The Note Register shall be in written form or any other form capable of being converted into written form within a reasonable time. At all reasonable times, the Note Register shall be open to inspection by the Trustee. The Trustee is hereby initially appointed as security registrar (the Trustee in such capacity, together with any successor of the Trustee in such capacity, the “Note Registrar”) for the purpose of registering Notes and transfers of Notes as herein provided. The Trustee is hereby initially appointed to act as the Paying Agent and the Conversion Agent.

Upon surrender for registration of transfer of any Note at the office or agency of the Company designated pursuant to Section 10.02, the Company shall execute, and the Trustee shall, upon receipt of a Company Order, authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denomination or denominations of a like aggregate principal amount. The Trustee shall not be required to register transfers of Notes or to exchange Notes for a period of 15 days before selection of any Notes to be redeemed. The Trustee shall not be required to exchange or register transfers of any Notes called or being called for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part. The Trustee shall not be required to register the transfer of or to exchange a Note between a record date and the next succeeding Interest Payment Date.

Furthermore, any Holder of a Global Note shall, by acceptance of such Global Note, agree that transfers of beneficial interests in such Global Note may be effected only through a book-entry system maintained by the Holder of such Global Note (or its agent), and that ownership of a beneficial interest in the Note shall be required to be reflected in a book entry.

At the option of the Holder, Notes may be exchanged for other Notes of any authorized denomination and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at such office or agency. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall, upon receipt of a Company Order, authenticate and deliver, the Notes which the Holder making the exchange is entitled to receive and the Notes to be exchanged shall be cancelled by the Trustee.

All Notes issued upon any registration of transfer or exchange of Notes shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Notes surrendered upon such registration of transfer or exchange.

Every Note presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Note Registrar) be duly endorsed, or be accompanied by a written instrument of transfer, in form satisfactory to the Company and the Note Registrar, duly executed by the Holder thereof or such Holder’s attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange or redemption of Notes, but the Company may require payment of a sum sufficient to cover any taxes, fees or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Notes, other than exchanges pursuant to Section 3.04 or Section 9.06, not involving any transfer.

Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Company may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Company shall be affected by notice to the contrary.

Each Holder of a Note agrees to indemnify the Company and the Trustee against any liability that may result from the transfer, exchange or assignment of such Holder's Note by such Holder in violation of any provision of this Indenture and/or applicable United States federal or state securities laws.

Neither the Trustee nor any Agent of the Trustee shall have any responsibility for any actions taken or not taken by the Depository.

SECTION 3.06 MUTILATED, DESTROYED, LOST AND STOLEN NOTES.

If (i) any mutilated Note is surrendered to the Trustee, or (ii) the Company and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Note, and there is delivered to the Company and the Trustee such security or indemnity bond, in each case, as may be required by them to save each of them and any Authenticating Agent harmless, then, in the absence of notice to the Company or the Trustee that such Note has been acquired by a bona fide purchaser, the Company shall execute and upon receipt of a Company Order the Trustee shall authenticate and deliver, in exchange for any such mutilated Note or in lieu of any such destroyed, lost or stolen Note, a new Note of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Note, pay such Note.

Upon the issuance of any new Note under this Section 3.06, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) in connection therewith.

Every new Note issued pursuant to this Section 3.06 in lieu of any mutilated, destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Company and any other obligor upon the Notes, whether or not the mutilated, destroyed, lost or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

The provisions of this Section 3.06 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

SECTION 3.07 PAYMENT OF INTEREST; INTEREST RIGHTS PRESERVED.

Interest on any Note which is payable, and is punctually paid or duly provided for as set forth in the following paragraph, on any Interest Payment Date shall be paid to the Person in whose name such Note is registered at the close of business on the Regular Record Date for such interest at the office or agency of the Company maintained for such purpose pursuant to Section 10.02.

The interest payable on any Interest Payment Date may be paid: (a) in cash; (b) in shares of Series B Preferred Stock; (c) in shares of Series D Preferred Stock; or (d) in any combination of (a), (b), and/or (c). For purposes of determining the value of Series B Preferred Stock and Series D Preferred Stock paid as interest on the Notes, each share of Series B Preferred Stock and Series D Preferred Stock shall be deemed have a value equal to the product of (x) the average of the VWAPs for the Series B Preferred Stock or the Series D Preferred Stock, as the case may be, for the 15 consecutive Trading Days ending on the third Business Day immediately preceding the relevant Interest Payment Date, and (y) 0.55. On each Regular Record Date, the Company shall instruct the Subscription Agent, with a copy to the Trustee, whether the interest paid on the next interest payment date should be in the form of (a), (b), (c), or (d) above and, if (d), the percentage of such interest to be paid in cash, Series B Preferred Stock and/or Series D Preferred Stock.

SECTION 3.08 PERSONS DEEMED OWNERS.

Prior to the due presentment of a Note for registration of transfer, the Company, the Trustee and any Agent of the Company or the Trustee may treat the Person in whose name such Note is registered as the owner of such Note for the purpose of receiving payment of principal of (and premium, if any) and (subject to Sections 3.05 and 3.07) interest on such Note and for all other purposes whatsoever, whether or not such Note be overdue, and none of the Company, the Trustee nor any Agent of the Company or the Trustee shall be affected by notice to the contrary.

SECTION 3.09 CANCELLATION.

All Notes surrendered for payment, redemption, conversion, registration of transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Notes previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other Person for delivery to the Trustee) for cancellation any Notes previously authenticated hereunder which the Company has not issued and sold, and all Notes so delivered shall be promptly cancelled by the Trustee. If the Company shall acquire any of the Notes other than as set forth in the preceding sentence, the acquisition shall not operate as a redemption, conversion or satisfaction of the indebtedness represented by such Notes unless and until the same are surrendered to the Trustee for cancellation pursuant to this Section 3.09. No Notes shall be authenticated in lieu of or in exchange for any Notes cancelled as provided in this Section 3.09, except as expressly permitted by this Indenture. All cancelled Notes held by the Trustee shall be disposed of by the Trustee in accordance with its customary procedures, and certification of the destruction of all canceled Notes will be delivered to the Company, at the Company's written request.

SECTION 3.10 COMPUTATION OF INTEREST.

Interest on the Notes shall be computed on the basis of a 360-day year of twelve 30-day months.

SECTION 3.11 CUSIP NUMBERS.

The Company in issuing the Notes may use "CUSIP" numbers, ISINs and "Common Code" numbers (in each case, if then generally in use) in addition to serial numbers, and, if so, the Trustee shall use such "CUSIP" numbers, ISINs and "Common Code" numbers in addition to serial numbers in notices of redemption, repurchase or other notices to Holders as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such "CUSIP" numbers, ISINs and "Common Code" numbers either as printed on the Notes or as contained in any notice of a redemption or repurchase and that reliance may be placed only on the serial or other identification numbers printed on the Notes, and any such redemption or repurchase shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee in writing of any change in the "CUSIP" numbers, ISINs and "Common Code" numbers applicable to the Notes.

SECTION 3.12 CALCULATION OF PRINCIPAL AMOUNT OF NOTES.

The aggregate principal amount of the Notes, at any date of determination, shall be the principal amount of the Notes at such date of determination. With respect to any matter requiring consent, waiver, approval or other action of the Holders of a specified percentage of the principal amount of all the Notes, such percentage shall be calculated, on the relevant date of determination, by dividing (a) the principal amount, as of such date of determination, of Notes, the Holders of which have so consented, by (b) the aggregate principal amount, as of such date of determination, of the Notes then Outstanding.

ARTICLE 4.
[RESERVED]

ARTICLE 5.
REMEDIES

SECTION 5.01 EVENTS OF DEFAULT.

"Event of Default," wherever used herein, means any one of the following events (whatever the reason for such Event of Default or be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) the Company's failure to pay in cash or in shares of the Company's Common Stock at the Company's election the principal of or premium, if any, on any Note when due whether at Maturity, on a Redemption Date, on a Change of Control Conversion Date with respect to a Change of Control or otherwise;

(b) the Company's failure to pay in cash, shares of Series B Preferred Stock and/or Series D Preferred Stock an installment of interest on any Note when due, if the failure continues for 30 days after the date when due;

(c) the Company's failure to timely provide notice with respect to any conversion or redemption of the Notes or failure to timely provide shares of Common Stock upon conversion of the Notes;

(d) the Company's failure to comply with any other term, covenant or agreement contained in the Notes or this Indenture, if the failure is not cured within 60 days after notice to the Company by the Trustee or to the Trustee and the Company by Holders of at least 25% in aggregate principal amount of the applicable Notes then outstanding, in accordance with this Indenture;

(e) [Reserved];

(f) [Reserved];

(g) the Company or any of its Significant Subsidiaries, pursuant to or within the meaning of the United States Bankruptcy Code: (A) commences a voluntary case; (B) consents to the entry of an order for relief against it in an involuntary case; (C) consents to the appointment of a Custodian of it or for all or substantially all of its property; (D) makes a general assignment for the benefit of its creditors, or (E) admits in writing that it is generally not paying its debts (other than debts which are the subject of a bona fide dispute) as they become due; and

(h) a court of competent jurisdiction enters an order or decree under any bankruptcy code that remains unstayed and in effect for 60 days and: (A) is for relief against the Company or any of its Significant Subsidiaries in an involuntary case; (B) appoints a Custodian of the Company or any of its Significant Subsidiaries or for all or substantially all of the property of the Company or any of its Significant Subsidiaries; or (C) orders the liquidation of the Company or any of its Significant Subsidiaries.

SECTION 5.02 ACCELERATION OF MATURITY; RESCISSION AND ANNULMENT.

If an Event of Default, other than an Event of Default specified in Section 5.01(g) or 5.01(h), occurs and is continuing, either the Trustee, by notice to the Company, or the Holders of at least 25% in aggregate principal amount of the Notes Outstanding, by notice to the Company and the Trustee, may declare the principal of, (and premium, if any) accrued and unpaid interest on, all the then Outstanding Notes to be immediately due and payable in cash. In the case of an Event of Default specified in Section 5.01(g) or 5.01(h) occurs and is continuing, then the principal amount of, and accrued and unpaid interest on, all the Notes shall automatically become and be immediately due and payable in cash without any declaration or other act on the part of the Trustee or any Holder.

At any time after a declaration of acceleration has been made, the Holders of a majority in aggregate principal amount of the Notes Outstanding, by written notice to the Trustee, may rescind and annul such declaration and its consequences if

(a) the rescission would not conflict with any order or decree;

(b) all Events of Default, other than the non-payment of accelerated principal of (or premium, if any, on) or interest, have been cured or waived; and

(c) all amounts due to the Trustee are paid.

The Trustee is not obligated to exercise any of its rights or powers at the request or demand of the Holders, unless the Holders have offered to the Trustee security or indemnity that is satisfactory to the Trustee against the costs, expenses and liabilities that the Trustee may incur to comply with the request or demand. Subject to applicable law and the Trustee's rights to indemnification, the Holders of a majority in aggregate principal amount of the Outstanding Notes will have the right to direct the

time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or, if the Trustee, being advised by counsel, determines that the action or proceeding so directed may not lawfully be taken or if the Trustee in good faith shall determine that the action or proceeding so directed would involve the Trustee in personal liability or expense for which it is not adequately indemnified, or that the Trustee determines is unduly prejudicial to the rights of any other Holder (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders).

SECTION 5.03 COLLECTION OF INDEBTEDNESS AND SUITS FOR ENFORCEMENT BY TRUSTEE.

If an Event of Default specified in Section 5.01(a) or 5.01(b) occurs and is continuing, the Trustee, in its own name as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid (and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Notes, wherever situated.

If an Event of Default occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders under this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights or any proper remedy, subject however to Section 5.13. No recovery of any such judgment upon any property of the Company shall affect or impair any rights, powers or remedies of the Trustee or the Holders.

SECTION 5.04 TRUSTEE MAY FILE PROOFS OF CLAIM.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Notes or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal, premium, if any, or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of principal (and premium, if any) and interest owing and unpaid in respect of the Notes, to take such other actions (including participating as a member, voting or otherwise, of any official committee of creditors appointed in such matter) and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its Agents and counsel) and of the Holders allowed in such judicial proceeding, and

(b) to collect, receive and distribute any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any Custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its Agents and counsel, and any other amounts due the Trustee under Section 6.07.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding; provided, however, that the Trustee may, on behalf of such Holders, vote for the election of a trustee in bankruptcy or other similar official.

SECTION 5.05 TRUSTEE MAY ENFORCE CLAIMS WITHOUT POSSESSION OF NOTES.

All rights of action and claims under this Indenture or the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name and as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its Agents and counsel, be for the ratable benefit of the Holders in respect of which such judgment has been recovered.

SECTION 5.06 APPLICATION OF MONEY AND PROPERTY COLLECTED.

Any money and property collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money and property on account of principal (or premium, if any) or interest, upon presentation of the Notes and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 6.07;

SECOND: To the payment of the amounts then due and unpaid for principal of (and premium, if any) and interest on the Notes in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Notes for principal (and premium, if any) and interest, respectively; and

THIRD: The balance, if any, to the Person or Persons entitled thereto, including the Company or any other obligor on the Notes, as their interests may appear or as a court of competent jurisdiction may direct in writing; provided that all sums due and owing to the Holders and the Trustee have been paid in full as required by this Indenture.

The Trustee may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 5.06.

SECTION 5.07 LIMITATION ON SUITS.

No Holder of any Notes shall have any right to institute any proceeding with respect to its rights, or for the appointment of a receiver or a Trustee, or for any other remedy hereunder, unless

(a) such Holder has previously given written notice to the Trustee of a continuing Event of Default;

(b) the Holders of at least 25% in aggregate principal amount of the Outstanding Notes shall have made written request to the Trustee to pursue the remedy;

(c) such Holder or Holders have offered and, if requested, provided to the Trustee indemnity satisfactory to it against any loss, liability or expense to be incurred in compliance with such request; and

(d) the Trustee fails to comply with the request within 60 days after the Trustee receives the notice, request and offer of indemnity and does not receive, during those 60 days, from Holders of a majority in aggregate principal amount of the Notes then outstanding, a direction that is inconsistent with the request.

Notwithstanding any other provision of this Indenture and any provision of any Note, each Holder shall have the right to receive payment or delivery, as the case may be, of (x) the principal (including the Redemption Price, if applicable) of, (y) accrued and unpaid interest, if any, on, and (z) the consideration due upon conversion of, such Note, on or after the respective due dates expressed or provided for in such Note or in this Indenture, or to institute suit for the enforcement of any such payment or delivery, as the case may be.

A Holder may not use this Indenture to prejudice the rights of another Holder to obtain a preference or priority over another Holder.

SECTION 5.08 UNCONDITIONAL RIGHT OF HOLDERS TO RECEIVE PRINCIPAL, PREMIUM AND INTEREST.

Notwithstanding any other provision in this Indenture, the Holder of any Note shall have the right, which is absolute and unconditional, to receive payment, as provided herein (including, if applicable, Article Eleven) and in such Note of the principal of (and premium, if any) and (subject to Section 3.07) interest on such Note on the respective Stated Maturities expressed in such Note (or, in the case of redemption or repurchase, on the Redemption Date or repurchase date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

SECTION 5.09 RESTORATION OF RIGHTS AND REMEDIES.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, any other obligor on the Notes, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

SECTION 5.10 RIGHTS AND REMEDIES CUMULATIVE.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in the last paragraph of Section 3.06, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 5.11 DELAY OR OMISSION NOT WAIVER.

No delay or omission of the Trustee or of any Holder of any Note to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

SECTION 5.12 CONTROL BY HOLDERS.

The Holders of not less than a majority in principal amount of the Outstanding Notes shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee; provided that:

(a) such direction shall not be in conflict with any rule of law or with this Indenture,

(b) the Trustee need not take any action which might involve it in personal liability or be unjustly prejudicial to the Holders not consenting (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unjustly prejudicial to such Holders); and

(c) subject to the provisions of Section 3.15 of the Trust Indenture Act, the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

SECTION 5.13 WAIVER OF PAST DEFAULTS.

The Holders of a majority in aggregate principal amount of the Outstanding Notes may by notice to the Trustee waive any past Default or Event of Default and its consequences under this Indenture other than a Default or Event of Default:

(a) in the payment of principal of, premium, if any, or interest on, any Note or in the payment of the Redemption Price;

(b) arising from the Company's failure to convert or redeem any Note in accordance with this Indenture; or

(c) in respect of any provision under this Indenture that cannot be modified or amended without the consent of the Holders of each Outstanding Note affected.

The Company will promptly notify the Trustee in writing upon its becoming aware of the occurrence of any Default or Event of Default, its status and what action the Company is taking or proposes to take in respect thereof. In addition, the Company is required to furnish to the Trustee, on an annual basis within 180 days after January 1 in any year, beginning January 1, 2022, a written certificate by the Company's Officers stating whether they have actual knowledge of any Default or Event of Default by the Company in performing any of its obligations under this Indenture or the Notes and describing any such Default or Event of Default. If a Default or Event of Default has occurred and the Trustee has received notice of the Default or Event of Default in accordance with this Indenture, the Trustee must mail to each registered Holder of applicable Notes a notice of the Default or Event of Default within 90 days after receipt of the notice. However, the Trustee need not mail the notice if the Default or Event of Default:

(a) has been cured or waived; or

(b) is not in the payment or delivery of any amounts due (including upon conversion or redemption) with respect to any Note and the Trustee in good faith determines that withholding the notice is in the best interests of Holders.

Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

SECTION 5.14 WAIVER OF STAY OR EXTENSION LAWS.

Each of the Company and any other obligors upon the Notes covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and each of the Company and any such obligor (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

SECTION 5.15 UNDERTAKING FOR COSTS.

All parties to this Indenture agree, and each Holder of any Note by such Holder's acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 5.15 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Outstanding Notes, or to any suit instituted by any Holder for the enforcement of the payment of the principal of (or premium, if any) or interest on any Note on or after the respective Stated Maturities expressed in such Note (or, in the case of redemption, on or after the Redemption Date).

ARTICLE 6.
THE TRUSTEE

SECTION 6.01 CERTAIN DUTIES AND RESPONSIBILITIES.

(a) Except during the continuance of an Event of Default,

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith or willful misconduct on its part, as determined in a final and non-appealable decision of a court of competent jurisdiction, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture, but not to verify the contents thereof.

(b) In case an Event of Default has occurred and is continuing of which written notice of such Event of Default shall have been given to the Trustee by the Company, any other obligor of the Notes or by any Holder, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, EXCEPT that

(i) this paragraph (c) shall not be construed to limit the effect of paragraph (a) of this Section 6.01;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved in a final and non-appealable decision of a court of competent jurisdiction that the Trustee was negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in aggregate principal amount of the Outstanding Notes relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 6.01.

(e) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company.

(f) The Trustee shall not be deemed to have knowledge of any Default or Event of Default or fact or event which might require the Trustee to take any action or give any notice unless it has received written notice from the Company, any other obligor of the Notes or any Holder of the circumstances constituting the same and stating so in such written notification thereof.

(g) The Trustee shall have no duty to inquire as to the performance of the Company with respect to the covenants contained in Article Ten. Delivery of reports, information and documents to the Trustee is for information purposes only and the receipt by the Trustee of the foregoing shall not constitute constructive notice of any

information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder, as to which the Trustee is entitled to rely on Officers' Certificates.

(h) Any permissive right or authority granted to the Trustee shall not be construed as a mandatory duty.

SECTION 6.02 NOTICE OF DEFAULTS.

Within 90 days after the receipt of written notice from the Company, any other obligor of the Notes or any Holder of the occurrence of any Default or Event of Default hereunder, the Trustee shall transmit in the manner and to the extent provided in TIA Section 313(c), mail notice of such Default or Event of Default hereunder known to the Trustee, unless such Default or Event of Default shall have been cured or waived or, is not in the payment or delivery of any amounts due (including upon conversion) with respect to any Note and the Trustee in good faith determines that withholding notice is in the best interests of the Holders. In addition, the Trustee shall have no obligation to accelerate the Notes if in the judgment of the Trustee acceleration is not in the interest of the Holders of such Notes.

SECTION 6.03 CERTAIN RIGHTS OF TRUSTEE.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Subject to the provisions of TIA Sections 315(a) through 315(d):

(i) the Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document (whether in original or facsimile form) believed by it to be genuine and to have been signed or presented by the proper party or parties;

(ii) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors of the Company may be sufficiently evidenced by a Board Resolution;

(iii) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, request and conclusively rely upon an Officers' Certificate or an Opinion of Counsel, or both;

(iv) the Trustee may consult with counsel of its selection and any advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(v) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses, losses and liabilities which might be incurred by it in compliance with such request or direction;

(vi) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation;

(vii) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder; and

(viii) the Trustee shall not be liable for any action taken, suffered or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture; provided that the Trustee's conduct does not constitute negligence or willful misconduct.

(c) The Trustee shall not be required to expend or risk its own funds or otherwise incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(d) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(e) In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(f) The Trustee may make a written request that the Company deliver to the Trustee within five Business Days a certificate setting forth the names of individuals and/or titles of Officers authorized at such time to take specified actions pursuant to this Indenture.

(g) Unless otherwise required by applicable law, the Trustee shall not have any duty (1) to see to any recording, filing or depositing of this Indenture or any Indenture referred to herein, or see to the maintenance of any such recording or filing or depositing or to any rerecording, refiling or redepositing of any thereof or (2) to see to any insurance.

(h) Unless otherwise required by applicable law, the Trustee shall not be required to give any bond or surety in respect of the execution of the powers granted hereunder.

SECTION 6.04 TRUSTEE NOT RESPONSIBLE FOR RECITALS OR ISSUANCE OF NOTES.

The recitals contained herein and in the Notes, except for the Trustee's certificates of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes, except that the Trustee represents that it is duly authorized to execute and deliver this Indenture, authenticate the Notes and perform its obligations hereunder and that the statements made by it in a Statement of Eligibility on Form T-1 supplied to the Company are true and accurate, subject to the qualifications set forth therein. The Trustee shall not be accountable for the use or application by the Company of Notes or the proceeds thereof.

SECTION 6.05 MAY HOLD NOTES.

The Trustee, any Paying Agent, any Note Registrar, any Authenticating Agent or any other Agent of the Company or of the Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes and, subject to TIA Sections 310(b) and 311, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Paying Agent, Note Registrar, Authenticating Agent or such other Agent; *provided however*, that, if it acquires any conflicting interest, it must eliminate such conflict within 90 days, apply to the Commission for permission to continue or resign.

SECTION 6.06 MONEY HELD IN TRUST.

All moneys received by the Trustee shall, until used or applied as herein provided, be held in trust hereunder for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company.

SECTION 6.07 COMPENSATION AND REIMBURSEMENT.

(a) The Company agrees to pay to the Trustee from time to time such compensation as shall be agreed to in writing between the Company and the Trustee for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(b) The Company agrees, except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents, professional advisers and counsel and costs and expenses of collection), except any such expense, disbursement or advance as may be attributable to its willful misconduct or negligence, as determined in a final and non-appealable decision of a court of competent jurisdiction; and

(c) The Company agrees to indemnify each of the Trustee or any predecessor Trustee (and their respective directors, officers, employees and agents) for, and to hold it harmless against, any and all loss, damage, claim, liability or expense, including taxes (other than taxes based on the income of the Trustee) incurred without willful misconduct or negligence on its part, as determined in a final and non-appealable decision of a court of competent jurisdiction, arising out of or in connection with the acceptance or administration of this Indenture, the Notes or the trust created hereby, including the reasonable costs and expenses of defending itself against any claim (regardless of whether such claim is asserted by the Company, a Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder.

The obligations of the Company under this Section 6.07 to compensate the Trustee, to pay or reimburse the Trustee for expenses, disbursements and advances and to indemnify and hold harmless the Trustee shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Indenture. As security for the performance of such obligations of the Company, the Trustee shall have a lien prior to the Notes upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of (and premium, if any) or interest on particular Notes.

When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 5.01(g) or (h), the expenses (including the reasonable charges and expenses of its counsel) of and the compensation for such services are intended to constitute expenses of administration under any applicable Bankruptcy Law.

The provisions of this Section 6.07 shall survive the termination of this Indenture or the earlier resignation or removal of the Trustee.

SECTION 6.08 CORPORATE TRUSTEE REQUIRED; ELIGIBILITY.

There shall be at all times a Trustee hereunder which shall be eligible to act as Trustee under TIA Section 310(a), and which shall have a combined capital and surplus of at least $100,000,000 (or in the case of a corporation included in a bank holding company system, the related bank holding company shall have a combined capital and surplus of at least $100,000,000). If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of federal, state, territorial or District of Columbia supervising or examining authority, then for the purposes of this Section 6.08, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 6.08, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

SECTION 6.09 RESIGNATION AND REMOVAL; APPOINTMENT OF SUCCESSOR.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of this Section 6.09.

(b) The Trustee may resign at any time by giving written notice thereof to the Company. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument executed by authority of the Board of Directors of the Company, a copy of which shall be delivered to the resigning Trustee and a copy to the successor trustee. If an instrument of acceptance required by this Section 6.09 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may, at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time by Act of the Holders of not less than a majority in principal amount of the Outstanding Notes, delivered to the

Trustee and to the Company.

(d) If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of removal, the Trustee being removed may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Notes of such series.

(e) If at any time:

(i) the Trustee shall fail to comply with the provisions of TIA Section 310(b) after written request therefor by the Company or by any Holder who has been a bona fide Holder for at least six months, or

(ii) the Trustee shall cease to be eligible under Section 6.08 and shall fail to resign after written request therefor by the Company or by any Holder who has been a bona fide Holder for at least six months, or

(iii) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a Custodian of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then, in any such case, (i) the Company, by a Board Resolution, may remove the Trustee, or (ii) subject to TIA Section 315(e), any Holder who has been a bona fide Holder for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(f) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, the Company, by a Board Resolution of the Board of Directors of the Company, shall promptly appoint a successor Trustee. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Notes delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee and supersede the successor Trustee appointed by the Company. If no successor Trustee shall have been so appointed by the Company or the Holders and accepted appointment in the manner hereinafter provided, any Holder who has been a bona fide Holder for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(g) The Company shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee to the Holders in the manner provided for in Section 1.06. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

SECTION 6.10 ACCEPTANCE OF APPOINTMENT BY SUCCESSOR.

Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of all its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder. Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article.

SECTION 6.11 MERGER, CONVERSION, CONSOLIDATION OR SUCCESSION TO BUSINESS.

Any corporation or national association into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or national association resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or national association succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation or national association shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Notes shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Notes so authenticated with the same effect as if such successor Trustee had itself authenticated such Notes. In case at that time any of the Notes shall not have been authenticated, any successor Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor Trustee. In all such cases such certificates shall have the full force and effect which this Indenture provides for the certificate of authentication of the Trustee shall have; provided, however, that the right to adopt the certificate of authentication of any predecessor Trustee or to authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

ARTICLE 7.
HOLDERS LISTS AND REPORTS BY TRUSTEE AND COMPANY

SECTION 7.01 COMPANY TO FURNISH TRUSTEE NAMES AND ADDRESSES.

The Company will furnish or cause to be furnished to the Trustee

(a) semi-annually, not more than 10 days after each Regular Record Date, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of such Regular Record Date; and

(b) at such other times as the Trustee may reasonably request in writing, within 30 days after receipt by the Company of any such request, a list of similar form and content to that in paragraph (a) hereof as of a date not more than 15 days prior to the time such list is furnished; provided, however, that if and so long as the Trustee shall be the Note Registrar, no such list need be furnished.

SECTION 7.02 DISCLOSURE OF NAMES AND ADDRESSES OF HOLDERS.

Every Holder, by receiving and holding Notes, agrees with the Company and the Trustee that none of the Company or the Trustee or any agent of any of them

shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders in accordance with TIA Section 312, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under TIA Section 312(b).

SECTION 7.03 REPORTS BY TRUSTEE.

Within 60 days after February 15 of each year commencing with February 15, 2022, the Trustee shall transmit to the Holders, in the manner and to the extent provided in TIA Section 313(c), a brief report dated as of such reporting date if required by TIA Section 313(a).

ARTICLE 8.
[RESERVED]

ARTICLE 9.
SUPPLEMENTS AND AMENDMENTS TO INDENTURE

SECTION 9.01 SUPPLEMENTAL INDENTURES WITHOUT CONSENT OF HOLDERS.

Without notice to or the consent of any Holder, the Company may, with the consent of the Trustee, at any time and from time to time, amend or supplement this Indenture or the Notes, in form satisfactory to the Trustee, for any of the following purposes to:

(a) evidence the assumption of its obligations under the Indenture and the Notes by a successor upon its consolidation or merger or the sale, transfer, lease, conveyance or other disposition of all of or substantially all of its property or assets in accordance with the Indenture;

(b) make adjustments in accordance with this Indenture to the right to convert the Notes upon certain reclassifications in its Common Stock and certain consolidations, mergers, and binding share exchanges involving the Company and upon the sale, transfer, lease, conveyance or other disposition of all or substantially all of its property or assets;

(c) add guarantees with respect to, or secure its obligations in respect of, the Notes;

(d) add to its covenants for the benefit of the Holders or to surrender any right or power conferred upon the Company;

(e) cure any ambiguity, defect, omission or inconsistency in this Indenture;

(f) comply with the requirements of the Commission in order to effect or maintain the qualification of this Indenture under the Trust Indenture Act as in effect on the date on which this Indenture is qualified thereunder;

(g) to pay interest in accordance with the terms of this Indenture;

(h) make any change that does not adversely affect the rights of any Holder, subject to the provisions of this Indenture;

(i) provide for the appointment of a successor Trustee, Note Registrar, Paying Agent, or Conversion Agent;

(j) comply with the rules of any applicable securities depositary in a manner that does not adversely affect the rights of any Holder; or

(k) to conform the provisions of this Indenture or the Notes to the "Description of Notes" section of the Prospectus to the extent that such provision in the "Description of the Notes" was intended (as evidenced by an Officers' Certificate of the Company) to be a verbatim recitation of a provision of this Indenture or the Notes.

SECTION 9.02 SUPPLEMENTAL INDENTURES WITH CONSENT OF HOLDERS.

With the written consent of the Holders of at least a majority in aggregate principal amount of the Outstanding Notes delivered to the Company and the Trustee (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, the Notes), the Company and the Trustee may amend or supplement this Indenture or the Notes for the purpose of adding any provisions hereto or thereto, changing in any manner or eliminating any of the provisions hereunder or thereunder or of modifying in any manner the rights of the Holders hereunder or thereunder and any existing Default or Event of Default or compliance with any provision of this Indenture or the Notes may be waived with the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Notes, other than Notes beneficially owned by the Company or its affiliates; provided, however, that no such amendment, supplement or waiver shall, without the consent of the Holder of each Outstanding Note affected thereby (with respect to any Notes held by a nonconsenting Holder):

(a) change the stated maturity of the principal of, or the payment date of any installment of interest on, or any additional amounts with respect to, any Note;

(b) reduce the principal amount of, or any premium or interest on, any Note;

(c) change the manner, consideration or currency of payment of principal of, or any premium or interest on, any Note;

(d) impair the right to institute a suit for the enforcement of any payment on, or with respect to, or of the conversion of, any Note;

(e) modify, in a manner adverse to the Holders, the provisions of this Indenture relating to the Redemption Price or the Company's obligation to pay the Redemption Price when due;

(f) modify the ranking provisions of this Indenture, relative to other indebtedness of the Company in a manner adverse to the Holders;

(g) reduce the percentage in aggregate principal amount of Outstanding Notes whose Holders must consent to a modification or amendment of this Indenture or the Notes;

(h) reduce the percentage in aggregate principal amount of Outstanding Notes whose Holders must consent to a waiver of compliance with any provision of this Indenture or the Notes or a waiver of any Default or Event of Default; or

(i) modify the provisions of this Indenture with respect to modification and waiver (including waiver of a Default or Event of Default), except to increase the percentage required for modification or waiver or to provide for the consent of each affected Holder.

It shall not be necessary for any Act of Holders under this Section 9.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

SECTION 9.03 EXECUTION OF SUPPLEMENTAL INDENTURES.

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall receive, and shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel, each stating that the execution of such supplemental indenture is authorized or permitted by this Indenture and, with respect to such Opinion of Counsel, that such amended or supplemental indenture is a valid and binding obligation of the Company, enforceable against it in accordance with its terms (subject to customary conditions). The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties, privileges, protections, indemnities or immunities under this Indenture or otherwise.

SECTION 9.04 EFFECT OF SUPPLEMENTAL INDENTURES.

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder theretofore or thereafter authenticated and delivered hereunder shall be bound thereby (except as provided in Section 9.02).

SECTION 9.05 CONFORMITY WITH TRUST INDENTURE ACT.

Every supplemental indenture executed pursuant to the Article shall conform to the requirements of the Trust Indenture Act as then in effect.

SECTION 9.06 REFERENCE IN NOTES TO SUPPLEMENTAL INDENTURES.

Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form satisfactory to the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee, upon receipt of a Company Order in exchange for Outstanding Notes.

Failure to make the appropriate notation or issue a new Note in accordance with this Section will not affect the validity and effect of such supplemental indenture.

SECTION 9.07 NOTICE OF SUPPLEMENTAL INDENTURES.

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of Section 9.02, the Company shall give notice thereof to the Holders of each Outstanding Note affected, in the manner provided for in Section 1.06, setting forth in general terms the substance of such supplemental indenture.

ARTICLE 10.
COVENANTS

SECTION 10.01 PAYMENT OF PRINCIPAL, PREMIUM, IF ANY, AND INTEREST.

The Company covenants and agrees for the benefit of the Holders that it will duly and punctually pay the principal of (and premium, if any) and interest on the Notes in accordance with the terms of the Notes and this Indenture. On the Maturity Date, the Company may repay the principal accrued on the Notes: (a) in cash; (b) in Common Stock as provided in Section 14.01(b) of this Indenture; or (c) in any combination of (a) and (b). To the extent paid in cash, principal shall be considered paid on the date it is due if the Trustee or Paying Agent holds, for the benefit of the Holders, as of 10:00 a.m., New York City time on that date U.S. legal tender designated for and sufficient to pay such principal or interest then due, or the Company consummates the conversion of Notes in accordance with Article 14 by such date.

SECTION 10.02 MAINTENANCE OF OFFICE OR AGENCY.

The Company will maintain an office or agency where the Notes may be surrendered for registration of transfer or exchange, where the Notes may be presented for payment or conversion and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The designated office of the Trustee shall be such office or agency of the Company, unless the Company shall designate and maintain some other office or agency for one or more of such purposes. The Company will give prompt written notice to the Trustee of any change in the location of any such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its Agent to receive all such presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind any such designation; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and any change in the location of any such other office or agency.

SECTION 10.03 MONEY FOR NOTE PAYMENTS TO BE HELD IN TRUST.

If the Company shall at any time elect to make cash payments in respect of principal of (or premium, if any) or cash interest, if any, on any of the Notes, and the Company at such time is acting as its own Paying Agent, the Company shall segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay in cash the principal of (or premium, if any) or cash interest so becoming due until such sums shall be paid in cash to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of its action or failure to so act.

Whenever the Company elects to make cash payments in respect of principal of (or premium, if any) or cash interest, if any, on any of the Notes, and at such time has appointed one or more Paying Agents for the Notes, the Company will, on or before each due date of the principal of (premium, if any) or cash interest on any Notes, deposit with a Paying Agent a sum in same day funds (or New York Clearing House funds if such deposit is made prior to the date on which such deposit is required to be made) sufficient to pay the principal (and premium, if any) or interest so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of such action or any failure to so act.

The Company will cause each Paying Agent (other than the Trustee) to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 10.03, that such Paying Agent will:

(a) hold all sums held by it for the payment of the principal of (and premium, if any) or interest on Notes in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(b) give the Trustee notice of any default by the Company (or any other obligor upon the Notes) in the making of any payment of principal (and premium, if any) or interest; and

(c) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Company may at any time pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such sums.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of (or premium, if any) or interest on any Note and remaining unclaimed for two years after such principal, premium or interest has become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment to the Company, may at the written request and expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in the Borough of Manhattan, The City of New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

SECTION 10.04 CORPORATE EXISTENCE.

The Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the corporate rights (charter and statutory) licenses and franchises of the Company, except to the extent that the failure to be so qualified could not reasonably be expected to have a material adverse effect; provided, however, that the Company shall not be required to preserve any such existence (except that of the Company), right, license or franchise if the Board of Directors of the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not, and will not be, disadvantageous in any material respect to the Holders.

SECTION 10.05 PAYMENT OF TAXES AND OTHER CLAIMS.

The Company will pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (a) all material taxes, assessments and governmental charges levied or imposed upon the Company or any Subsidiary or upon the income, profits or property of the Company or any Subsidiary prior to the date on which material penalties attach thereto and (b) all lawful claims for labor, materials and supplies, which, if unpaid, might by law become a material liability or lien upon the property of the Company or any Subsidiary; provided, however, that the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings and for which appropriate accruals, if necessary (in the good faith judgment of management of the Company) are being maintained in accordance with GAAP.

SECTION 10.06 MAINTENANCE OF PROPERTIES.

The Company will cause all material properties owned by the Company or used or held for use in the conduct of its business to be maintained and kept in normal condition, repair and working order, ordinary wear and tear excepted, and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Company may be necessary so that the business carried on in connection therewith may be properly conducted at all times, except to the extent the failure to so maintain and preserve or so comply could not reasonably be expected to have a material adverse effect; provided, however, that nothing in this Section 10.06 shall prevent the Company from discontinuing the maintenance of any of such properties if such discontinuance is, in the judgment of the Company, desirable in the conduct of its business and not adverse in any material respect to the Holders.

SECTION 10.07 COMPLIANCE WITH LAWS.

The Company shall comply with all applicable statutes, rules, regulations, orders and restrictions of the United States of America, all states and municipalities thereof, and of any governmental regulatory authority, in respect of the conduct of their respective businesses and the ownership of their respective properties, except such as may be contested in good faith or as to which a bona fide dispute may exist and except for such noncompliances as would not in the aggregate have a material adverse effect on the financial condition or results of operations of the Company and its Subsidiaries, taken as a whole.

SECTION 10.08 NOTICES TO THE TRUSTEE

(a) The Company shall provide prompt written notice to the Trustee of any change to its fiscal year, which as of the date hereof ends on December 31.

(b) When any Default has occurred and is continuing under this Indenture, or if the trustee for or the holder of any other evidence of indebtedness of the Company or any Subsidiary gives any notice or takes any other action with respect to a claimed default (other than with respect to indebtedness in the principal amount of less than $5.0 million), the Company shall notify the Trustee in writing of such event, notice or other action within five Business Days of its occurrence. The Company shall furnish to the Trustee, not less than annually, an Officers' Certificate certifying that, to the knowledge of the Company, it is in compliance with all conditions and covenants under the Indenture.

SECTION 10.09 COMMISSION REPORTS AND REPORTS TO HOLDERS.

The Company will deliver to the Trustee (without exhibits), within 15 days after it is required to file them with the Commission copies of: (A) annual reports on Form 10-K (or any successor or comparable form) containing the information required to be contained therein (or required in such successor or comparable form); (B) reports on Form 10-Q (or any successor or comparable form); (C) reports on Form 8-K (or any successor or comparable form); and (D) any other information, documents and other reports which the Company would be required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act; provided, however, if the Company is not obligated to file such reports with the Commission or if the Commission does not permit such filing, the Company shall make available such information to prospective purchasers of the Notes, in addition to providing such information to the Trustee and the Holders of the Notes, in each case within 15 days after the time the Company would have been required to file such information with the Commission, if it were subject to Sections 13 or 15(d) of the Exchange Act. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates). The Company shall be deemed to have furnished the reports, documents and information referred to above to the Trustee, the Holders and/or the prospective purchasers of the Notes, if the Company has filed such reports, documents or information with the Commission via the EDGAR filing system (or any successor system) and/or posted such reports, documents or information on the Company's website and such reports, documents and information are publicly available. Without limiting the effect of the preceding sentence, the Trustee shall have no obligation to monitor whether the Company posts such reports, information and documents on the Company's website or the Commission's EDGAR service, or to collect any such information from the Company's website or the Commission's EDGAR service. The Trustee shall have no liability or responsibility for the content, filing or timeliness of any report delivered or filed under or in connection with this Indenture or the transactions contemplated hereunder.

ARTICLE 11.
REDEMPTION OR REPURCHASE OF NOTES

SECTION 11.01 OPTIONAL REDEMPTION.

(a) After January 1, 2024, the Company may redeem the Notes, in whole or from time to time in part, at the Company's option at a redemption price equal to 100% of the principal amount thereof plus accrued and unpaid interest as of the Redemption Date (the "Redemption Price"). The Redemption Price may be paid: (a) in cash; (b) in shares of Common Stock; or (c) in any combination of (a) and (b). For purposes of determining the value of Common Stock paid as all or part of the Redemption Price, each share of Common Stock shall be deemed to have a value equal to the product of (x) the average VWAPs for the Common Stock for the 15 consecutive Trading Days ending on the third Business Day immediately preceding the relevant Redemption Date and (y) 0.55.

SECTION 11.02 APPLICABILITY OF ARTICLE.

Redemption of Notes at the election of the Company or otherwise, as permitted or required by any provision of this Indenture or the Notes, shall be made in accordance with such provision and this Article.

SECTION 11.03 ELECTION TO REDEEM; NOTICE TO TRUSTEE.

The election of the Company to redeem any Notes pursuant to Section 11.01 shall be evidenced by a Board Resolution of the Board of Directors of the Company. In case of any redemption at the election of the Company, the Company shall, at least 3 Business Days prior to the date notice is required to be sent to Holders (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee in writing of such Redemption Date, the paragraph of the Notes or Section of this Indenture pursuant to which the Notes are to be redeemed, and of the principal amount of Notes to be redeemed.

SECTION 11.04 NOTICE OF REDEMPTION.

Notice of redemption shall be given by the Company in the manner provided for in Section 1.06 at least 10 but not more than 60 days prior to the Redemption Date, to each Holder to be redeemed at such Holder's registered address.

All notices of redemption shall be prepared by the Company and shall state:

(b) the Redemption Date,

(c) the Redemption Price payable as provided in Section 11.06, if any,

(d) if less than all Outstanding Notes are to be redeemed, the identification (and, in the case of a partial redemption, the principal amounts) of the particular Notes to be redeemed,

(e) in case any Note is to be redeemed in part only, the notice which relates to such Note shall state that on and after the Redemption Date, upon surrender of such Note, the Holder shall receive, without charge, a new Note or Notes of authorized denominations for the principal amount thereof remaining unredeemed,

(f) what percentage of the Redemption Price will be paid in cash or in Common Stock,

(g) that on the Redemption Date the Redemption Price will become due and payable upon each such Note, or the portion thereof, to be redeemed, and, unless the Company defaults in making the redemption payment, that interest on Notes called for redemption (or the portion thereof) will cease to accrue on and after said date,

(h) the place or places where such Notes are to be surrendered for payment of the Redemption Price and accrued interest, if any,

(i) the name and address of the Paying Agent,

(j) that Notes called for redemption must be surrendered to the Paying Agent to collect the Redemption Price,

(k) the CUSIP number, and that no representation is made as to the accuracy or correctness of the CUSIP number, if any, listed in such notice or printed on the Notes, and

(l) the paragraph of the Notes or Section of this Indenture pursuant to which the Notes are to be redeemed.

At the Company's request, the Trustee will give the notice of redemption in the Company's name and at its expense; provided, however, that the Company has delivered to the Trustee, at least 45 days prior to the Redemption Date, an Officers' Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

SECTION 11.05 DEPOSIT OF REDEMPTION PRICE.

If the Company elects to pay the Redemption Price in cash, then prior to 10:00 a.m. (New York City time) on any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 10.03) an amount of money sufficient to pay the Redemption Price of, and accrued interest on, all the Notes which are to be redeemed on that date.

If the Redemption Date falls after a Record Date and on or prior to the corresponding Interest Payment Date, the Company will pay the full amount of accrued and unpaid interest due on such Interest Payment Date to the Holder of record at the close of business on the corresponding Regular Record Date. On and after the Redemption Date, interest will cease to accrue on the Notes or portions thereof called for redemption as long as the Company has deposited with the Paying Agent funds (to the extent the Company elects to pay the Redemption Price in cash) and issues Common Stock to the Holders (to the extent the Company elects to pay the Redemption Price in shares of Common Stock) in full satisfaction of the applicable Redemption Price, pursuant to this Indenture.

If the Company elects to pay the Redemption Price in shares of the Company's Common Stock, then the Company shall direct the Trustee by Company Order to make a notation on such Global Note or an adjustment on the Trustee's books and records as to the reduction in the principal amount represented thereby, and the Company shall take all actions as may be necessary or appropriate to effectuate the issuance of shares of the Company's Common Stock to the Holders. For the avoidance of doubt, in no event shall the Trustee, in its capacity as Paying Agent, be required to hold shares of the Company's Common Stock in trust in connection with a redemption of the Notes.

SECTION 11.06 NOTES PAYABLE ON REDEMPTION DATE.

Notice of redemption having been given as aforesaid, the Notes so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Company shall default in the payment of the Redemption Price) such Notes shall cease to bear interest. Upon surrender of any such Note for redemption in accordance with said notice, such Note shall be paid by the Company at the Redemption Price, and such Notes shall be cancelled by the Trustee; provided, however, that installments of interest whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Notes or one or more predecessor Notes registered as such at the close of business on the relevant Regular Record Date according to their terms and the provisions of Section 3.07.

If any Note called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, bear interest from the Redemption Date at the rate borne by the Notes.

SECTION 11.07 SELECTION OF NOTES TO BE REDEEMED.

If less than all of the Notes are to be redeemed at any time, the Trustee shall select the Notes to be redeemed (a) if the Notes are listed on any national securities exchange, in compliance with the requirements of the principal national securities exchange on which the Notes are listed (and the Company shall notify the Trustee of any such listing), or (b) if the Notes are not listed on a national securities exchange, (i) on a pro rata basis to the extent practicable or (ii) by lot or such other similar method in accordance with the procedures of the Depository (to the extent the Notes are Global Notes).

SECTION 11.08 NOTES REDEEMED IN PART.

Any Note which is to be redeemed only in part (pursuant to the provision of this Article) shall be surrendered at the office or agency of the Company maintained for such purpose pursuant to Section 10.01 (with, if the Company or the Trustee so require, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Note without service charge, a new Note or Notes, of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Note so surrendered.

ARTICLE 12.
SUBORDINATION

SECTION 12.01 AGREEMENT TO SUBORDINATE.

The Company, for itself, its successors and assigns, covenants and agrees, and each Holder of a Note likewise covenants and agrees by its acceptance thereof, that the obligation of the Company to make any payment on account of the principal and interest on each and all of the Notes shall be subordinate and junior in right of payment to the Company's Obligations to the holders of Senior Indebtedness to the extent provided herein, and that in the case of any insolvency, receivership, conservatorship, reorganization, readjustment of debt, marshalling of assets and liabilities or similar proceedings or any liquidation or winding-up of or relating to the Company as a whole, whether voluntary or involuntary, all Obligations to holders of Senior Indebtedness shall be entitled to be paid in full before any payment shall be made on account of the principal or interest on the Notes. In the event of any such proceeding, after payment in full of all sums owing with respect to Senior Indebtedness, the Holders of the Notes, together with the holders of any Obligations of the Company Ranking on a Parity with the Notes, shall be entitled to be paid from the remaining assets of the Company the amounts at the time due and owing on account of unpaid principal and interest on the Notes before any payment or other distribution, whether in cash, property or otherwise,

shall be made on account of any capital stock or any Obligations of the Company Ranking Junior to the Notes. In addition, subject to the provisions of Section 12.03, in the event of any such proceeding, if any payment or distribution of assets of the Company of any kind or character, whether in cash, property or Notes, including any such payment or distribution which may be payable or deliverable by reason of the payment of any other indebtedness of the Company being subordinated to the payment of the Notes, shall be received by the Trustee or any Holder of the Notes before all Senior Indebtedness is paid in full and if such Holder or the Trustee, as the case may be, receiving such payment is aware at the time of receipt that all Senior Indebtedness has not been paid in full, then such payment or distribution shall, if received by any Holder, be held in trust for the benefit of the holders of Senior Indebtedness or, if received by the Trustee, shall be held by it and delivered forthwith to the trustee in bankruptcy, receiver, assignee, agent or other Person making payment or distribution of the assets of the Company, and, in each case, shall be applied to the payment of all Senior Indebtedness remaining unpaid, until all such Senior Indebtedness shall have been paid in full, after giving effect to any concurrent payment or distribution to the holders of such Senior Indebtedness. For purposes of this paragraph only, the words, "cash, property or Notes" shall not be deemed to include shares of capital stock of the Company, or indebtedness of the Company or any other company provided for by a plan of reorganization or readjustment which are subordinated in right of payment to all Senior Indebtedness which may at the time be outstanding to substantially the same extent as, or to a greater extent than, the Notes are so subordinated as provided in this Article 12. For the avoidance of doubt, the foregoing provisions relating to the preference of the Senior Indebtedness shall not be affected by the conversion of the Notes into shares of Common Stock of the Company.

The subordination provisions of the foregoing paragraph shall not be applicable to amounts at the time due and owing on the Notes on account of the unpaid principal or interest on the Notes for the payment of which funds have been deposited in trust with the Trustee or have been set aside by the Company in trust in accordance with the provisions of this Indenture; nor shall such provisions impair any rights, interests, remedies or powers of any secured creditor of the Company in respect of any security the creation of which is not prohibited by the provisions of this Indenture.

If there shall have occurred and be continuing (a) a default in any payment with respect to any Senior Indebtedness or (b) an event of default with respect to any Senior Indebtedness as a result of which the maturity thereof is accelerated, unless and until such payment default or event of default shall have been cured or waived or shall have ceased to exist, no cash payments shall be made by the Company with respect to the principal or interest on the Notes. The provisions of this paragraph shall not apply to any payment with respect to which the first paragraph of this Section 12.01 would be applicable.

The securing of any Obligations of the Company Ranking on a Parity with the Notes or Ranking Junior to the Notes shall not be deemed to prevent such Obligations from constituting Obligations of the Company Ranking on a Parity with the Notes or Ranking Junior to the Notes.

The consolidation of the Company with, or the merger of the Company into, another Person or the liquidation or dissolution of the Company following the conveyance or transfer of its properties and assets substantially as an entirety to another Person shall not be deemed a dissolution, winding-up, liquidation, reorganization, assignment for the benefit of creditors or marshalling of assets and liabilities of the Company for the purposes of this Section 12.01.

SECTION 12.02 OBLIGATION OF THE COMPANY UNCONDITIONAL.

Nothing contained in this Article 12 or elsewhere in this Indenture is intended to or shall impair, as between the Company and the Holders of the Notes, the obligation of the Company, which is absolute and unconditional, to pay the Holders of the Notes the principal and interest on the Notes when, where and as the same shall become due and payable, all in accordance with the terms of the Notes and this Indenture, or is intended to or shall affect the relative rights of the Holders of the Notes and creditors other than the holders of Senior Indebtedness, nor shall anything herein or therein prevent the Trustee or the Holder of any Note from exercising all remedies otherwise permitted by applicable law upon an Event of Default under this Indenture, subject to the rights, if any, under this Article 12 of the holders of Senior Indebtedness in respect of cash, property, or securities of the Company (other than shares of the Company's Common Stock issued upon conversion of the Notes as contemplated herein) received upon the exercise of any such remedy.

SECTION 12.03 NOTICE TO TRUSTEE OF FACTS PROHIBITING PAYMENT.

The Company shall give prompt written notice to a Responsible Officer of the Trustee located at the Corporate Trust Office of the Trustee of any fact known to the Company which would prohibit the making of any cash payment to or by the Trustee in respect of the Notes. Notwithstanding the provisions of this Article 12 or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment to or by the Trustee in respect of the Notes, unless and until the Trustee shall have received at its Corporate Trust Office written notice thereof from the Company or a holder of Senior Indebtedness or from any trustee therefor, and, prior to the receipt of any such written notice, the Trustee, subject to the provisions of Section 6.01, shall be entitled in all respects to assume that no such facts exist; *provided, however*, that if the Trustee shall not have received the notice provided for in this Section 12.03 at least five Business Days prior to the date upon which by the terms hereof any money may become payable for any purpose (including, without limitation, the payment of the principal or interest on any Notes), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such money and to apply the same to the purpose for which such money was received and shall not be affected by any notice to the contrary which may be received by it during or after such five Business Day period.

Subject to the provisions of Section 6.01, the Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing itself to be a holder of Senior Indebtedness (or a trustee therefor) to establish that such notice has been given by a holder of Senior Indebtedness (or a trustee therefor). In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Indebtedness to participate in any payment or distribution pursuant to this Article 12, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article 12, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

SECTION 12.04 APPLICATION BY TRUSTEE OF MONEYS DEPOSITED WITH IT.

Anything in this Indenture to the contrary notwithstanding, any deposit of moneys by the Company with the Trustee or any other Agent (whether or not in trust) for any payment of the principal or interest on any Notes shall, except as provided in Section 12.03, be subject to the provisions of Section 12.01.

SECTION 12.05 SUBROGATION TO RIGHTS OF HOLDERS OF SENIOR INDEBTEDNESS.

Subject to the payment in full of all Senior Indebtedness, the Holders of the Notes shall be subrogated to the rights of the holders of Senior Indebtedness to receive payments or distributions of assets of the Company applicable to such Senior Indebtedness until the principal and interest on the Notes shall be paid in full. For purposes of such subrogation, none of the payments or distributions to the holders of the Senior Indebtedness to which the Holders of the Notes or the Trustee would be entitled except for the provisions of this Article 12, or of payments over pursuant to the provisions of this Article 12 to the holders of Senior Indebtedness by Holders of the Notes or the Trustee

shall, as among the Company, its creditors other than holders of Senior Indebtedness and the Holders of the Notes, be deemed to be a payment or distribution by the Company to or on account of the Senior Indebtedness; it being understood that the provisions of this Article 12 are and are intended solely for the purpose of defining the relative rights of the Holders of the Notes, on the one hand, and the holders of the Senior Indebtedness, on the other hand.

SECTION 12.06 SUBORDINATION RIGHTS NOT IMPAIRED BY ACTS OR OMISSIONS OF COMPANY OR HOLDERS OF SENIOR INDEBTEDNESS.

No right of any present or future holders of any Senior Indebtedness to enforce subordination as herein provided shall at any time or in any way be prejudiced or impaired by any act or failure to act on the part of the Company or any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof with which any such holder may have or be otherwise charged.

SECTION 12.07 AUTHORIZATION OF TRUSTEE TO EFFECTUATE SUBORDINATION OF NOTES.

Each Holder of a Note, by its acceptance thereof, authorizes and expressly directs the Trustee on its behalf to take such actions as may be necessary or appropriate to effectuate the subordination provided in this Article 12 and appoints the Trustee its attorney-in-fact for any and all such purposes.

If, in the event of any proceeding or other action relating to the Company referred to in the first sentence of Section 12.01, a proper claim or proof of debt in the form required in such proceeding or action is not filed by or on behalf of the Holders of the Notes prior to fifteen days before the expiration of the time to file such claim or claims, then the holder or holders of Senior Indebtedness shall have the right to file and are hereby authorized to file appropriate claim for and on behalf of the Holders of the Notes; *provided*, that no such filing by any holders of Senior Indebtedness shall preclude the Trustee from filing such a proof of claim on behalf of the Holders of Notes.

SECTION 12.08 [Reserved]

SECTION 12.09 RIGHT OF TRUSTEE TO HOLD SENIOR INDEBTEDNESS.

The Trustee in its individual capacity shall be entitled to all of the rights set forth in this Article 12 in respect of any Senior Indebtedness at any time held by it in its individual capacity to the same extent as any other holder of such Senior Indebtedness, and nothing in this Indenture shall be construed to deprive the Trustee of any of its rights as such holder. Nothing in this Article shall subordinate to Senior Indebtedness the claims of, or any payments to, the Trustee under Section 6.07.

SECTION 12.10 NOT TO PREVENT EVENTS OF DEFAULT.

The failure to make a payment pursuant to the Notes by reason of any provision in this Article 12 shall not be construed as preventing the occurrence of a default or an Event of Default.

SECTION 12.11 ARTICLE APPLICABLE TO PAYING AGENTS.

In case at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "Trustee" as used in this Article 12 shall in such case (unless the content otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article in addition to or in place of the Trustee; *provided, however*, that Section 12.09 shall not apply to the Company or any Affiliate of the Company if it or such Affiliate acts as Paying Agent.

SECTION 12.12 RELIANCE ON JUDICIAL ORDER OR CERTIFICATE OF LIQUIDATING AGENT.

Upon any payment or distribution of assets of the Company referred to in this Article 12, the Trustee, subject to the provisions of Section 6.01, and the Holders of the Notes shall be entitled to rely upon any order or decree entered by any court of competent jurisdiction in which such insolvency, bankruptcy, receivership, liquidation, reorganization, dissolution, winding-up or similar case or proceeding is pending, or a certificate of the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of Notes for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article 12.

SECTION 12.13 TRUSTEE NOT FIDUCIARY FOR HOLDERS OF SENIOR INDEBTEDNESS.

The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness and shall not be liable to any such holders if it shall in good faith mistakenly pay over or distribute to Holders of Notes or to the Company or to any other Person, cash, property or securities to which any holders of Senior Indebtedness shall be entitled by virtue of this Article 12 or otherwise.

SECTION 12.14 PAYMENT PERMITTED IF NO DEFAULT.

Nothing contained in this Article 12 or elsewhere in this Indenture or in any of the Notes shall prevent the Company, at any time except during the case of any insolvency, receivership, conservatorship, reorganization, readjustment or debt, marshalling of assets and liabilities or similar proceedings or any liquidation or winding-up of or relating to the Company referred to in Section 12.01 or as provided in the third paragraph of Section 12.01, and except as required by any regulatory enforcement action of any governmental body relating to the Company, from making payments at any time of principal or interest on the Notes.

SECTION 12.15 THIRD PARTY BENEFICIARIES.

The subordination provisions in this Article 12 are for the benefit of the holders of the Senior Indebtedness, and the holders of the Senior Indebtedness shall be deemed to be third party beneficiaries of the provisions in this Article 12.

ARTICLE 13.
MISCELLANEOUS PROVISIONS

SECTION 13.01 PROVISIONS BINDING ON COMPANY'S SUCCESSORS.

All the covenants, stipulations, promises and agreements of the Company contained in this Indenture shall bind its successors and assigns whether so expressed or not.

SECTION 13.02 OFFICIAL ACTS BY SUCCESSOR CORPORATION.

Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or Officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation or other entity that shall at the time be the lawful sole successor of the Company.

SECTION 13.03 ADDRESSES FOR NOTICES, ETC.

Any notice or demand that by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders on the Company shall be deemed to have been sufficiently given or made, for all purposes if given or served by overnight courier or by being deposited postage prepaid by registered or certified mail in a post office letter box addressed (until another address is filed by the Company with the Trustee) to [•][2]. Any notice, direction, request or demand hereunder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed to the Corporate Trust Office of the Trustee or sent electronically in PDF format.

The Trustee, by notice to the Company, may designate an additional or different address for subsequent notices or communications.

Any notice or communication delivered or to be delivered to a Holder of Definitive Notes shall be mailed to it by first class mail, postage prepaid, at its address as it appears on the Note Register and shall be sufficiently given to it if so mailed within the time prescribed. Any notice or communication delivered or to be delivered to a Holder of Global Notes shall be delivered in accordance with the Applicable Procedures of the depositary and shall be sufficiently given to it if so delivered within the time prescribed. Notwithstanding any other provision of this Indenture or any Note, where this Indenture or any Note provides for notice of any event to a Holder of a Global Note (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depository (or its designee) pursuant to the standing instructions from the Depository or its designee, including by electronic mail in accordance with the Depository's Applicable Procedures.

[2] Company/company counsel to provide.

Failure to mail or deliver a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed or delivered, as the case may be, in the manner provided above, it is duly given, whether or not the addressee receives it.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice to Holders by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

SECTION 13.04 GOVERNING LAW; CONSENT TO JURISDICTION AND SERVICE.

THIS INDENTURE AND THE NOTES SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. THIS INDENTURE SHALL BE SUBJECT TO THE PROVISIONS OF THE TRUST INDENTURE ACT THAT ARE REQUIRED TO BE PART OF THIS INDENTURE AND SHALL, TO THE EXTENT APPLICABLE, BE GOVERNED BY SUCH PROVISIONS.

(a) By the execution and delivery of this Indenture, the Company submits to the non-exclusive jurisdiction of any U.S. Federal or state court located in the Borough of Manhattan in the City of New York in any suit, action or proceeding arising out of or relating to this Indenture, the Notes, or the transactions contemplated hereby. The Company agrees that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Indenture or the Notes shall affect any right that the Trustee or any Holder may otherwise have to bring any suit, action or proceeding relating to this Indenture, the Notes or the transactions contemplated hereby against the Company or its properties in the courts of any jurisdiction.

(b) The Company hereby irrevocably and unconditionally waives to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Indenture, the Notes, or the transactions contemplated hereby in any court referred to in Section 13.04(a). The Company hereby irrevocably and unconditionally waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such suit, action or proceeding in any such court.

(c) By the execution and delivery of this Indenture, the Company (i) acknowledges that the Company has, by separate written instrument, irrevocably designated and appointed Kaufman & Canoles, P.C., 150 W. Main Street, Suite 2100, Norfolk, VA 23510 (or any successor) (together with any successor, the "Agent for Service"), as its authorized agent upon which process may be served in any suit, action or proceeding arising out of or relating to this Indenture, the Notes or the transactions contemplated hereby that may be instituted in any U.S. Federal or state court located in the Borough of Manhattan in the City of New York, or brought under U.S. Federal or state securities laws, and acknowledge that the Agent for Service has accepted such designation and (ii) agrees that service of process upon the Agent for Service (or any successor) and written notice of said service to the Company, shall be deemed in every respect effective service of process upon the Company in any such suit, action or proceeding. The Company further agrees to take any and all action, including the execution and filing of any and all such documents and instruments, as may be necessary to continue such designation and appointment of the Agent for Service in full force and effect until the final satisfaction and discharge of this Indenture.

SECTION 13.05 EVIDENCE OF COMPLIANCE WITH CONDITIONS PRECEDENT; CERTIFICATES AND OPINIONS OF COUNSEL TO TRUSTEE

Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall, if requested by the Trustee, furnish to the Trustee an Officers' Certificate stating that such action is permitted by the terms of this Indenture.

Notwithstanding anything to the contrary in this Section 13.05, if any provision in this Indenture specifically provides that the Trustee shall or may receive an Opinion of Counsel in connection with any action to be taken by the Trustee or the Company hereunder, the Trustee shall be entitled to, or entitled to request, such Opinion of Counsel.

SECTION 13.06 LEGAL HOLIDAYS.

In any case where any Interest Payment Date, any Redemption Date, Stated Maturity or Maturity of any Note shall not be a Business Day, then

(notwithstanding any other provision of this Indenture or of the Notes) payment of principal (or premium, if any) or interest need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the Interest Payment Date, Redemption Date, or at the Stated Maturity or Maturity; provided that no interest shall accrue for purposes of such payment for the period from and after such Interest Payment Date, Redemption Date, Stated Maturity or Maturity, as the case may be, to the next succeeding Business Day.

SECTION 13.07 NO SECURITY INTEREST CREATED.

Nothing in this Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

SECTION 13.08 BENEFITS OF INDENTURE.

Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the Holders, the parties hereto, any Paying Agent, any Conversion Agent, any Authenticating Agent, any Note Registrar and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Indenture.

SECTION 13.09 TABLE OF CONTENTS, HEADINGS, ETC.

The table of contents and the titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

SECTION 13.10 EXECUTION IN COUNTERPARTS.

This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile, PDF or other electronic transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile, PDF or other electronic transmission shall constitute effective execution and delivery of this Indenture as to the other parties hereto shall be deemed to be their original signatures for all purposes.

SECTION 13.11 SEVERABILITY.

In the event any provision of this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

SECTION 13.12 WAIVER OF JURY TRIAL.

EACH OF THE COMPANY AND THE TRUSTEE, ON BEHALF OF ITSELF AND THE HOLDERS, HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

SECTION 13.13 FORCE MAJEURE.

In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, or loss or malfunctions of utilities; it being understood that the Trustee shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

SECTION 13.14 CALCULATIONS.

Except as otherwise provided herein, the Company shall be responsible for making all calculations called for under the Notes and this Indenture. These calculations include, but are not limited to, determinations of the Redemption Price, the VWAPs, accrued interest payable on the Notes, the Conversion Rate of the Notes and calculations related to currency exchange rates and the Conversion Rate. The Company shall make all these calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on Holders. The Company shall provide a schedule of its calculations to the Trustee and the Conversion Agent, and the Trustee, the Paying Agent, the Note Registrar and the Conversion Agent are entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification. The Trustee shall forward the Company's calculations to any Holder upon the written request of that Holder.

SECTION 13.15 USA PATRIOT ACT.

The parties hereto acknowledge that in accordance with Section 326 of the USA PATRIOT Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, are required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The Company agrees that it shall provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the USA PATRIOT Act.

SECTION 13.16 CURRENCY CONVERSION.

Payments of principal and interest in respect of the Notes are payable in U.S. Dollars. If for the purposes of obtaining judgment in any court it is necessary to convert a sum due under this Indenture to the Holder from U.S. dollars to another currency, the Company agrees, and each Holder by holding such Note shall be deemed to have agreed, to the fullest extent that the Company and they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures such Holder could purchase U.S. dollars with such other currency in New York City, New York on the Business Day preceding the day on which final judgment is given. The Company's Obligations to any Holder will, notwithstanding any judgment in a currency (the "Judgment Currency") other than U.S. dollars, be discharged only to the extent that on the Business Day following receipt by such Holder or the Trustee, as the case may be, of any amount in such Judgment Currency, such Holder may in accordance with normal banking procedures purchase U.S. dollars with the Judgment Currency.

If the amount of the U.S. dollars so purchased is less than the amount originally to be paid to such Holder or the Trustee in the Judgment Currency (as determined in the manner set forth in the preceding paragraph), as the case may be, the Company agrees, as a separate Obligation and notwithstanding any such judgment, to indemnify the Holder and the Trustee, as the case may be, against any such loss. If the amount of the U.S. dollars so purchased is more than the amount originally to be paid to such Holder or the Trustee, as the case may be, such Holder or the Trustee, as the case may be, shall pay the Company such excess; provided that such Holder or the Trustee, as the case may be, shall not have any Obligation to pay any such excess if the Company shall have failed to pay such Holder or the Trustee any amounts then due and payable under such Note or this Indenture, in which case such excess may be applied by such Holder or the Trustee to such Obligations.

SECTION 13.17 ANTI-MONEY LAUNDERING.

Subject at all times to Article 6, the Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Trustee, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering, anti-terrorist or economic sanctions legislation, regulation or guideline. Further, should the Trustee in its sole judgment, determine at any time that its acting under this Indenture has resulted in its being in noncompliance with any applicable anti-money laundering, anti-terrorist or economic sanctions legislation, regulation or guideline, then it shall have the right to resign in accordance with the requirements of Section 6.09.

SECTION 13.18 NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS.

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

SECTION 13.19 THIRD PARTY.

The Company hereby represents to the Trustee that any account to be opened by, or interest to be held by, the Trustee in connection with this Indenture, for or to the credit of the Company, either (i) is not intended to be used by or on behalf of any third party; or (ii) is intended to be used by or on behalf of a third party, in which case, the Company hereto agrees to complete and execute forthwith a declaration in the Trustee's prescribed form as to the particulars of such third party.

SECTION 13.20 WAIVER OF IMMUNITY.

To the extent that the Company or any of its properties, assets or revenues may have or may hereafter become entitled to, or have attributed to the Company, any right of immunity, on the grounds of sovereignty or otherwise, from any legal action, suit or proceeding, from the giving of any relief in any such legal action, suit or proceeding, from setoff or counterclaim, from the jurisdiction of New York state or U.S. federal court, from service of process, from attachment upon or prior to judgment, from attachment in aid of execution of judgment, or from execution of judgment, or other legal process or proceeding for the giving of any relief or for the enforcement of any judgment, in any such court in which proceedings may at any time be commenced, with respect to the obligations and liabilities of the Company, the Company hereby irrevocably and unconditionally waives or shall waive such right to the extent permitted by applicable law, and agrees not to plead or claim any such immunity and consents to such relief and enforcement.

ARTICLE 14.
CONVERSION

SECTION 14.01 MANDATORY CONVERSION.

(a) Upon a Change of Control, each Note shall mandatorily convert into shares of Common Stock equal to: (i) the principal amount of each Note divided by (ii) the product of (x) the average VWAPs for the Common Stock for the 15 consecutive Trading Days ending on the third Business Day immediately preceding the date of such Change of Control and (y) 0.55.

(b) On the Maturity Date, in lieu of paying the principal of the Note in cash, the Company may elect to pay such principal: (a) in cash; (b) in shares of Common Stock; or (c) in any combination of (a) or (b). To the extent principal is paid in shares of Common Stock each share of Common Stock shall be deemed to have a value equal to the product of (x) the average VWAPs for the Common Stock for the 15 consecutive Trading Days ending on the third Business Day preceding the Maturity Date and (y) 0.55.

SECTION 14.02 OPTIONAL CONVERSION.

The Notes are convertible, in whole or in part, at any time, at the option of the Holders thereof, into shares of Common Stock at a conversion price of $6.25 per share of Common Stock (the "Conversion Price") (4 common shares for each $25.00 of principal amount of the Notes being converted (the "Conversion Rate")); provided, however, that if at any time after September 21, 2023 holders of Series D Preferred Stock have required the Company to redeem (payable in cash or stock) in the aggregate at least 100,000 shares of Series D Preferred Stock, then the Conversion Price shall be adjusted to the lower of (i) 55% of the Conversion Price or (ii) a 45% discount to the lowest price at which any Series D Preferred Stock was converted by a Holder thereof into the Company's Common Stock.

SECTION 14.03 LIMITATIONS ON CONVERSION

Notwithstanding any other provision of the Notes or this Indenture, no Holder of the Notes will be entitled to receive Common Stock following conversion of such Notes to the extent that receipt of such Common Stock would cause such Holder to exceed the ownership limitations set forth in Section 6.2 of the Company's charter; provided, however, that if any delivery of Common Stock owed to a Holder upon conversion of the Notes is not made, in whole or in part, as a result of the foregoing limitation, the Company's obligation to make such delivery shall not be extinguished and the Company shall deliver such shares as promptly as practicable after any such converting Holder gives notice to the Company that such delivery would not result in it being in violation of the ownership limitations set forth in Section 6.2 of the Company's charter.

SECTION 14.04 CONVERSION PROCEDURES.

(a) Notice of conversion pursuant to Section 14.01(a) of this Indenture (the "Conversion Notice") shall be given by the Company in the manner provided for in Section 1.06 at least 10 but not more than 60 days prior to the date of a Change of Control, if practicable, or as soon as practicable if a Change of Control occurs or is to occur, to each Holder to be converted at such Holder's registered address.

All notices of conversion shall be prepared by the Company and shall state:

(i) the date of the Change of Control,

(ii) the aggregate principal amount of the Notes Outstanding and the amount of accrued interest to the date of the Change of Control, if any,

(iii) that on the date of the Change of Control, all Notes Outstanding will convert into shares of the Company's Common Stock, and, unless the Company defaults in such conversion, that interest on Notes called for conversion will cease to accrue on and after said date,

(iv) the place or places where such Notes are to be surrendered for conversion,

(v) the name and address of the Paying Agent, if any,

(vi) that Notes called for conversion must be surrendered to the Paying Agent to receive the shares of the Company's Common Stock,

(vii) whether any such conversion or notice of any conversion is, at the Company's discretion, subject to one or more conditions precedent, including, but not limited to, a Change of Control. If such conversion or notice is subject to satisfaction of one or more conditions precedent, such notice shall describe each such condition, and if applicable, shall state that, in the Company's discretion, the conversion date may be delayed until such time as any or all such conditions shall be satisfied, or such conversion may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied by the conversion date, or by the conversion date as so delayed; and

(viii) the CUSIP number, and that no representation is made as to the accuracy or correctness of the CUSIP number, if any, listed in such notice or printed on the Notes.

At the Company's written request, the Trustee will give the notice of conversion in the Company's name and at its expense; provided, however, that the Company has delivered to the Trustee, at least three Business Days prior to the date notice is required to be given to Holders, an Officers' Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

(ix) On and after the conversion date, the conversion of all Holders' Notes, as set forth in the Conversion Notice, shall become irrevocable.

(x) Notes shall be deemed to have been converted immediately upon the opening of business on the conversion date, and at such time the rights of the Holders of such Notes as Holders will cease, and the Person or Persons entitled to receive the shares of Common Stock payable and issuable upon conversion will be treated for all purposes as the payee or payees of such payment and the record Holder or Holders of such Common Stock at such time.

(b) Following any conversion date or the Maturity Date, if Common Stock is used in whole or in part to pay principal of the Notes, the Company shall satisfy its obligations with respect to such conversion by either:

(i) delivering to the Conversion Agent, for delivery to the Holder (or such other Person as may be named in the Conversion Notice if applicable), the cash payment, if any, together with certificates representing the number of shares of Common Stock, payable and issuable upon the conversion; or

(ii) delivering to such Holder the cash payment, if any, together with such number of shares of Common Stock payable and issuable upon such conversion in accordance with the Applicable Procedures, in each case, together with payment in lieu of fractional shares, if any, as provided in Section 14.03(c) below (such cash payment and delivery of shares, if any, the "Settlement"); provided that shares of Common Stock only will be deliverable in certificated form if the Company determines that delivery is required in certificated shares either because (i) delivery to the Holder (or such other Person named in the relevant Conversion Notice) is not practicable in accordance with the Applicable Procedures or (ii) in the opinion of legal counsel, delivery is required in certificated form in order to comply with the requirements of applicable securities laws. Settlement shall occur within 5 Business Days.

(c) No fractional shares of Common Stock shall be issued upon conversion of any Note or Notes. If more than one Note shall be surrendered for conversion at one time by the same Holder, the number of full shares which shall be issuable upon conversion thereof shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof) so surrendered. Instead of any fractional share of Common Stock that would otherwise be issuable upon conversion of any Note or Notes (or specified portions thereof), the Company shall calculate and pay a cash adjustment for the fractional amount (calculated to the nearest 1/100th of a share) based upon the applicable Conversion Rate or deemed value as the case may be. The amount of the cash adjustment payable in lieu of issuing such fractional share shall be equal to such fractional share otherwise issuable multiplied by the deemed value of one share of Common Stock.

(d) Upon conversion, a Holder shall not receive any payment of an installment of interest for accrued and unpaid interest except as set forth below. The Settlement shall be deemed to satisfy the Company's obligation to pay the principal amount of the Notes and accrued and unpaid interest to, but not including, the conversion date or the Maturity Date, as the case may be. As a result, accrued and unpaid interest to, but not including, the conversion date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. If Notes are converted after a Regular Record Date for the payment of an installment of interest, notwithstanding such prior Regular Record Date, such interest shall be included in the calculation of the shares of the Company's Common Stock to be issued on the conversion date.

(e) Subject to Section 14.03(f), before any Holder of a Note shall be entitled to convert a Note as set forth above in Section 14.02, such Holder shall (i) in the case of a Global Note, comply with the Applicable Procedures of the Depository and any transfer agent in effect at that time and, if required, pay funds equal to interest payable on the next Interest Payment Date to which such Holder is not entitled, and if the conversion occurs prior to the Common Stock being fully DTC FAST eligible, in addition to Depository's standard procedures, converting Holders shall need to provide the transfer agent with physical documentation, which forms shall be provided by the transfer agent to the Holder (or its representative if directed by the Holder), and (ii) in the case of a Definitive Note (1) complete, manually sign and deliver an irrevocable notice to the Conversion Agent as set forth in the Form of Notice of Conversion (or a facsimile, PDF or other electronic transmission thereof) (a notice pursuant to the Applicable Procedure of the Depository or a notice as set forth in the Form of Notice of Conversion), at the office of the Conversion Agent and state in writing therein the principal amount of Notes to be converted and the name or names (with addresses) in which such Holder wishes the certificate or certificates for any Common Stock to be delivered upon Settlement of the Conversion Rate to be registered, (2) surrender such Notes, duly endorsed to the Company or in blank (and accompanied by appropriate endorsement and transfer documents), at the office of the Conversion Agent, (3) if required, furnish appropriate endorsements and transfer documents and (4) if required, pay funds equal to interest payable on the next Interest Payment Date to which such Holder is not entitled. The Trustee (and if different, the Conversion Agent) shall notify the Company of any conversion pursuant to this Article 14 on the conversion date for such conversion.

If more than one Note shall be surrendered for conversion at one time by the same Holder, the Conversion Rate with respect to such Notes shall be computed

on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted thereby) so surrendered.

(f) If a Holder submits a Note for conversion, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issuance of any Common Stock upon conversion, unless the tax is due because the Holder requests such Common Stock to be issued in a name other than the Holder's name, in which case the Holder shall pay that tax. The Conversion Agent may refuse to deliver the certificates representing the Common Stock being issued in a name other than the Holder's name until the Trustee receives a sum sufficient to pay any tax that is due by such Holder in accordance with the immediately preceding sentence.

(g) Upon the conversion of an interest in a Global Note, the Trustee, or the Notes Custodian at the direction of the Trustee, shall make a notation on such Global Note or an adjustment on the Trustee's books and records as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversion of Notes effected through any Conversion Agent other than the Trustee.

SECTION 14.05 NO RESPONSIBILITY OF TRUSTEE FOR CONVERSION PROVISIONS.

The Company is responsible for all calculations under the Indenture and the Notes, including the determination of Conversion Rate, and the VWAPs of the Common Stock. The Company shall make all such calculations in good faith. In the absence of manifest error, such calculations shall be final and binding on all Holders. The Company shall provide a copy of such calculations to the Trustee and the Conversion Agent, as required hereunder, and, the Trustee and the Conversion Agent shall be entitled to conclusively rely on the accuracy of any such calculation without independent verification.

The Trustee shall not be under any responsibility to perform any calculations under the Indenture. The Trustee makes no representation as to the validity or value of any securities or assets issued upon conversion of the Notes, and the Trustee shall not be responsible for the Company's failure to comply with any provision of this Article 14. The Conversion Agent shall have the same protection under this Section 14.04 as the Trustee.

SECTION 14.06 ADJUSTMENT OF CONVERSION RATES.

The applicable Conversion Rate shall be adjusted from time to time by the Company as follows:

(a) In case the Company shall hereafter pay a dividend or make a distribution to all or substantially all holders of the outstanding Common Stock in shares of Common Stock, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying such Conversion Rate in effect at the opening of business on the date following the Common Stock Record Date by a fraction,

(i) the numerator of which shall be sum of (x) the number of shares of Common Stock outstanding at the close of business on the Common Stock Record Date and (y) the total number of shares of Common Stock constituting such dividend or other distribution; and

(ii) the denominator of which shall be the number of shares of Common Stock outstanding at the close of business on the Common Stock Record Date; such increase to become effective at the opening of business on the date following such Common Stock Record Date. For the purpose of this paragraph (a), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of Company. Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of Company. If any dividend or distribution of the type described in this Section 14.05(a) is declared but not so paid or made, the applicable Conversion Rate shall again be adjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) In case Company shall issue rights, options or warrants to all or substantially all holders of its outstanding shares of Common Stock (except as to rights, options and warrants which do not entitle their holders to purchase shares until the occurrence of a Trigger Event) entitling them (for a period expiring within forty-five (45) days after the Common Stock Record Date) to subscribe for or purchase shares of Common Stock at a price per share less than the Current Market Price calculated using the declaration date as the date for determination of stockholders entitled to receive such rights, options or warrants, each Conversion Rate shall be increased by multiplying such Conversion Rate in effect at the opening of business on the Common Stock Record Date by a fraction,

(i) the numerator of which shall be the sum of (x) the number of shares of Common Stock outstanding at the close of business on the Common Stock Record Date, and (y) the total number of shares (the "Underlying Shares") of Common Stock underlying all of such issued rights, options or warrants (whether by exercise, conversion, exchange or otherwise); and

(ii) the denominator of which shall be the sum of (x) the number of shares of Common Stock outstanding at the close of business on the Common Stock Record Date, and (y) the number of shares of Common Stock which the aggregate exercise, conversion, exchange or other price at which the Underlying Shares may be subscribed for or purchased pursuant to such rights or warrants would purchase at such Current Market Price; such increase to become effective at the opening of business on the date following such Common Stock Record Date.

Such adjustment shall be successively made whenever any such rights, options or warrants are issued, and shall become effective immediately after the opening of business on the Common Stock Record Date. To the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants, each Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights or warrants are not so issued, the Conversion Rate shall again be adjusted to be each Conversion Rate that would then be in effect if a Common Stock Record Date had not been fixed. In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such Current Market Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors acting in good faith.

(c) In case outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, each Conversion Rate in effect at the opening of business on the date following the date upon which such subdivision becomes effective shall be proportionately increased, and conversely, in case outstanding shares of Common Stock shall be combined into a smaller number of shares of Common Stock, each Conversion Rate in effect at the opening of business on the date following the date upon which such combination becomes effective shall be proportionately reduced, such increase or reduction, as the case may be, to become effective immediately after the opening of business on the date following the date upon which such subdivision or combination becomes effective.

(d) In case Company shall, by dividend or otherwise, distribute to all or substantially all holders of its Common Stock a portion of its assets (including cash, debt, or other securities or rights to purchase securities (but excluding any distribution referred to in Sections 14.05(a), 14.05(b), 14.05(c) or 14.05(f))) (any of the foregoing hereinafter in this Section 14.05(d) called the "Distributed Property"), then, in each such case (unless Company elects to reserve such Distributed Property for distribution to the Noteholders upon the conversion of the Notes, so that any such holder converting Notes will receive upon such conversion, in addition to the shares of Common Stock to which

such holder is entitled, the amount and kind of such Distributed Property which such holder would have received if such holder had converted its Notes into Common Stock immediately prior to the Common Stock Record Date) each Conversion Rate shall be increased so that the same shall be equal to the rate determined by multiplying such Conversion Rate in effect at the opening of business on the Common Stock Record Date with respect to such distribution by a fraction,

(i) the numerator of which shall be the Current Market Price with respect to such Common Stock Record Date; and

(ii) the denominator of which shall be the Current Market Price with respect to such Common Stock Record Date less the fair market value (as determined by the Board of Directors acting in good faith, whose determination shall be conclusive, and described in a resolution of the Board of Directors) on the Common Stock Record Date of the portion of the Distributed Property so distributed applicable to one share of Common Stock, such adjustment to become effective immediately at the opening of business on the date following such Common Stock Record Date; provided that if the then fair market value (as so determined) of the portion of the Distributed Property so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price on the Common Stock Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each Noteholder shall have the right to receive upon conversion the amount of the Distributed Property such holder would have received had such holder converted each Note on the Common Stock Record Date. If such dividend or distribution is not so paid or made, each Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. If the Board of Directors determines the fair market value of any distribution for purposes of this Section 14.05(d) by reference to the actual or when issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the Current Market Price with respect to Common Stock Record Date.

Notwithstanding the foregoing, if the Distributed Property distributed by Company to all or substantially all holders of its Common Stock consists of capital stock of, or similar equity interests in, a Subsidiary or other business unit, each Conversion Rate shall be increased so that the same shall be equal to the rate determined by multiplying such Conversion Rate in effect at the opening of business on the Common Stock Record Date with respect to such distribution by a fraction: (1) the numerator of which shall be the product of (x) the average of the VWAPs per share of Common Stock over the fifteen (15) consecutive Trading Days (the "Spinoff Valuation Period") commencing on and including the Trading Day after the date on which "ex-dividend trading" commences on the Common Stock on the principal national or regional securities exchange on which the Common Stock is then listed or quoted and (y) the average fair market value (as determined by the Board of Directors acting in good faith, whose determination shall be conclusive, and described in a resolution of the Board of Directors) over the Spinoff Valuation Period of the portion of the Distributed Property so distributed applicable to one share of Common Stock; and (2) the denominator of which shall be the average of the VWAPs per share of Common Stock over the Spinoff Valuation Period, such adjustment to become effective at the opening of business on the date following such Common Stock Record Date; provided that the Company may in lieu of the foregoing adjustment make adequate provision so that each Noteholder shall have the right to receive upon conversion the amount of Distributed Property such holder would have received had such holder converted each Note on the Common Stock Record Date with respect to such distribution.

Rights, options or warrants distributed by Company to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's capital stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("Trigger Event"): (i) are deemed to be transferred with such shares of Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 14.05(d) (and no adjustment to the Conversion Rates under this Section 14.05(d) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rates shall be made under this Section 14.05(d).

If any such right or warrant, including any such existing rights, options or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and record date with respect to new rights, options or warrants with such rights (and a termination or expiration of the existing rights, options or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rates under this Section 14.05 was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rates shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such Holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rates shall be readjusted as if such rights, options and warrants had not been issued.

No adjustment of the Conversion Rates shall be made pursuant to this Section 14.05(d) in respect of rights, options or warrants distributed or deemed distributed on any Trigger Event to the extent that such rights, options or warrants are actually distributed, or reserved by the Company for distribution, to holders of Notes upon conversion by such holders of Notes to Common Stock.

For purposes of this Section 14.05(d) and Section 14.05(a) and Section 14.05(b), any dividend or distribution to which this Section 14.05(d) is applicable that also includes shares of Common Stock, or rights, options or warrants to subscribe for or purchase shares of Common Stock (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets or shares of capital stock other than such shares of Common Stock or rights, options or warrants (and any Conversion Rate adjustments required by this Section 14.05(d) with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights, options or warrants (and any further Conversion Rate adjustments required by Section 14.05(a) and Section 14.05(b) with respect to such dividend or distribution shall then be made), except that any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding at the close of business on the date fixed for such determination" within the meaning of Section 14.05(a).

(e) In case a tender or exchange offer made by Company or any of its Subsidiaries for all or any portion of the Common Stock shall expire and such tender or exchange offer (as amended upon the expiration thereof) shall require the payment to stockholders of consideration per share of Common Stock having a fair market value (as determined by the Board of Directors acting in good faith, whose determination shall be conclusive and described in a resolution of the Board of Directors) that as of the last time (the "Expiration Time") tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended) exceeds the VWAP per share of Common Stock on the Trading Day next succeeding the Expiration Time, each Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying such Conversion Rate in effect immediately prior to the Expiration Time by a fraction,

(i) the numerator of which shall be the sum of (x) the fair market value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Expiration Time (the shares deemed so accepted up to any such maximum, being referred to as the "Purchased Shares") and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) at the Expiration Time and the VWAP per share of Common Stock on the Trading Day (or, if a Qualified Public Offering has not yet occurred, the Business Day) next succeeding the Expiration Time, and

(ii) the denominator of which shall be the number of shares of Common Stock outstanding (including any tendered or exchanged shares) at the Expiration Time multiplied by the VWAP per share of Common Stock on the Trading Day (or, if a Qualified Public Offering has not yet occurred, the Business Day) next succeeding the Expiration Time, such adjustment to become effective at the opening of business on the date following the Expiration Time. If Company is obligated to purchase shares pursuant to any such tender or exchange offer, but is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, each Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made.

(f) In case Company shall, by dividend or otherwise, at any time make a distribution of cash (excluding any cash that is distributed as part of a distribution requiring a Conversion Rate adjustment pursuant to Section 14.05(d)) to all or substantially all holders of Common Stock, then in such case each Conversion Rate shall be increased by multiplying such Conversion Rate in effect at the opening of business on the Common Stock Record Date for the determination of holders of Common Stock entitled to such distribution by a fraction, the numerator of which shall be the Current Market Price with respect to such Common Stock Record Date and the denominator of which shall be an amount equal to the Current Market Price with respect to such Common Stock Record Date less the amount of the distribution per share of Common Stock, such adjustment to become effective at the opening of business on the date following the Common Stock Record Date.

(g) In case Company shall issue (i) shares of Common Stock, or (ii) options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock, or options to purchase or rights to subscribe for such convertible or exchangeable securities (collectively, "Convertible Securities"), without consideration or for consideration per share less than the Common Stock fair market value on the date the price of such shares of Common Stock or such Convertible Securities is fixed by the Company (such date, the "Pricing Date"), excluding:

(i) dividends, distributions, rights, options or warrants as to which an adjustment was effected pursuant to Sections 14.05(a), 14.05(b), 14.05(c) or 14.05(d);

(ii) shares of Common Stock issued pursuant to any equity compensation plans;

(iii) shares of Common Stock issued in connection with (x) the funding of an acquisition (whether by stock sale, merger, recapitalization, asset purchase or otherwise) or (y) a joint venture or strategic alliance;

(iv) shares of Common Stock issued in a tender offer or exchange offer by Company or any of its Subsidiaries as to which an adjustment was effected pursuant to Section 14.05(e) above;

(v) public or broadly marketed offerings (as determined by the Board of Directors of Company acting in good faith) and sales of shares of Common Stock, securities convertible into shares of Common Stock or rights or warrants entitling the holder to purchase shares of Common Stock for cash, conducted on a basis consistent with offerings by public companies of similar size in their own capital raising transactions; each Conversion Rate shall be increased so that the same shall be equal to the rate determined by multiplying such Conversion Rate in effect on the Pricing Date by a fraction: (x) the numerator of which shall be the sum of (A) the number of shares of Common Stock outstanding immediately prior to the Pricing Date and (B) the number of additional shares of Common Stock issued (or into which such Convertible Securities may be exercised or converted); and (y) the denominator of which shall be the sum of (A) the number of shares of Common Stock outstanding immediately prior to the Pricing Date and (B) the number of shares of Common Stock which the aggregate consideration receivable by Company for the total number of shares of Common Stock so issued (or into which such Convertible Securities may be exercised or convert) would purchase at fair market value (as determined by the Board of Directors in good faith, whose determination shall be conclusive and described in a resolution of the Board of Directors) on the last Trading Day preceding the Pricing Date.

Such adjustments shall be made successively whenever any shares of Common Stock are issued (or into which such Convertible Securities may be exercised or converted). Any adjustment made pursuant to this Section 14.05(g) shall become effective after the close of business on the Pricing Date.

For purposes of this Section 14.05(g), the aggregate consideration receivable by Company in connection with the issuance of such shares of Common Stock or Convertible Securities shall be deemed to be equal to the sum of the net offering price (including the fair market value (as determined by the Board of Directors in good faith, whose determination shall be conclusive and described in a resolution of the Board of Directors) of any non-cash consideration and after deduction of any related reasonable expenses payable to third parties) of all such securities plus, if applicable, the minimum aggregate amount, if any, payable upon exercise or conversion of any such Convertible Securities into shares of Common Stock.

(h) For purposes of this Section 14.05, the following terms shall have the meaning indicated:

(i) "Current Market Price" means (i) at such times as the Common Stock is not listed on a National Securities Exchange, the fair market value (as determined by the Board of Directors in good faith, whose determination shall be conclusive and described in a resolution of the Board of Directors) of the Common Stock, and (ii) at such times as the Common Stock is listed on a National Securities Exchange, the average of the VWAPs per share of Common Stock for the fifteen (15) consecutive Trading Days ending on the earlier of the date of determination of the Common Stock holders entitled to receive such issuance or distribution and the day before the "Ex-date" with respect to the issuance or distribution requiring such computation immediately prior to the date in question.

If another issuance, distribution, subdivision or combination to which Section 14.05 applies occurs during the period applicable for calculating "Current Market Price" pursuant to the definition in the preceding paragraph, "Current Market Price" shall be calculated for such period in a manner determined in good faith by the Board of Directors to reflect the impact of such issuance, distribution, subdivision or combination on the VWAP of the Common Stock during such period.

(ii) "Common Stock Record Date" means, for purposes of this Section 14.05, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

(iii) "Ex-date" means (A) at such time as the Common Stock is not listed on a National Securities Exchange, the applicable Common Stock Record Date, and (B) (1) when used with respect to any issuance or distribution, means the first date on which the Common Stock trades, regular way, on the relevant exchange or in the relevant market from which the VWAP was obtained without the right to receive such issuance or distribution, and (2) when used with respect to any subdivision or combination of shares of Common Stock, means the first date on which the Common Stock trades, regular way, on such exchange or in such market after the time at which such subdivision or combination becomes effective.

(i) The Company may make such increases in a Conversion Rate, in addition to those required by Section 14.05(a), (b), (c), (d), (e), (f) or (g) as the Board of

Directors considers to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any dividend or distribution of Common Stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

To the extent permitted by applicable law, the Company from time to time may increase the Conversion Rate by any amount for any period of time if the period is at least twenty (20) days, the increase is irrevocable during the period and the Board of Directors shall have made a determination that such increase would be in the best interests of the Company, which determination shall be conclusive. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall mail to holders of the Notes a notice of the increase at least fifteen (15) days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(j) Whenever a Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee and any Conversion Agent other than the Trustee an Officers' Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee shall have received such Officers' Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume that the last related Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such Officers' Certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to the holder of each Note at his last address appearing on the Note Register provided for in Section 2.5 of this Indenture, within twenty (20) days after the date of execution of such Officers' Certificate. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(k) In any case in which this Section 14.05 provides that an adjustment shall become effective on or after (1) a record date or Common Stock Record Date for an event, (2) the date fixed for the determination of stockholders entitled to receive a dividend or distribution pursuant to Section 14.05(a), (d) or (f), (3) a date fixed for the determination of stockholders entitled to receive rights, options or warrants pursuant to Section 14.05(b), or (4) the Expiration Time for any tender or exchange offer pursuant to Section 14.05(e), or (5) on the Pricing Date pursuant to Section 14.05(g) (each a "Determination Date"), the Company may elect to defer such adjustment until the occurrence of the applicable Adjustment Event (as hereinafter defined) by issuing to the holder of any Note converted after such Determination Date and before the occurrence of such Adjustment Event, the additional shares of Common Stock or other securities issuable upon such conversion by reason of the adjustment required by such Adjustment Event over and above the Common Stock issuable upon such conversion before giving effect to such adjustment. For purposes of this Section 14.05(k), the term "Adjustment Event" shall mean:

(i) in any case referred to in clause (1) hereof, the occurrence of such event,

(ii) in any case referred to in clause (2) hereof, the date any such dividend or distribution is paid or made,

(iii) in any case referred to in clause (3) hereof, the date of expiration of such rights, options or warrants,

(iv) in any case referred to in clause (4) hereof, the date a sale or exchange of Common Stock pursuant to such tender or exchange offer is consummated and becomes irrevocable, and

(v) in any case of an adjustment pursuant to Section 14.05(g), the date of the closing of such sale.

(l) For purposes of this Section 14.05, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. Company shall not pay any dividend or make any distribution on shares of Common Stock held in the treasury of Company.

(m) Upon conversion of the Notes, the holders shall receive, in addition to any shares of Common Stock issuable upon such conversion, the associated rights issued under any future shareholder rights plan Company adopts unless, prior to conversion, the rights have separated from the Common Stock, expired, terminated or been redeemed or exchanged in accordance with such plan. If the holders receive rights under such shareholder rights plans as described in the preceding sentence upon conversion of their Notes, then no other adjustment pursuant to this Section 14.05 shall be made in connection with such shareholder rights plans. If the rights under a shareholder rights plan have separated from the Common Stock, then each Conversion Rate shall be adjusted as provided in Section 14.05(d).

(n) If, in connection with any adjustment to the Conversion Rate as set forth in this Section 14.05, a Holder shall be deemed for U.S. federal tax purposes to have received a distribution, the Company may set off any withholding tax it reasonably believes it is required to collect with respect to any such deemed distribution against cash payments of interest in accordance with the provisions of Section 3.07 or from Common Stock, if any, otherwise deliverable to a Holder upon a conversion of the Notes in accordance with the provisions of Section 14.02 or a redemption or repurchase of the Notes in accordance with the provisions of Article 11.

SECTION 14.07 OVERDUE PRINCIPAL AND INTEREST

(a) Overdue principal and interest of the Notes shall be payable on demand by the Company at a rate of 7% per annum in cash.

[*Signature page follows*]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

WHEELER REAL ESTATE INVESTMENT TRUST, INC.

By: _____
Name:
Title:

WILMINGTON SAVINGS FUND SOCIETY, FSB, as Trustee

By: _____
Name:
Title:

EXHIBIT A

FORM OF NOTE

[FORM OF FACE OF NOTE]

[INCLUDE FOLLOWING LEGEND IF A GLOBAL NOTE]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREUNDER IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

WHEELER REAL ESTATE INVESTMENT TRUST, INC.

7.00% Senior Subordinated Convertible Notes due 2031

No. [_____] [Initially][3] $[ ]
CUSIP No.

WHEELER REAL ESTATE INVESTMENT TRUST, INC., a corporation duly organized and validly existing under the laws of the State of Delaware (the "**Company**," which term includes any successor corporation or other entity under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to [CEDE & CO.][4] or registered assigns, the principal sum [as set forth in the "Schedule of Exchanges of Notes" attached hereto][5] [of $[•]][6], in accordance with the rules and procedures of the Depositary, on [•], [•], and interest thereon as set forth below.

The Company covenants and agrees for the benefit of the Holders that it will duly and punctually pay the principal of (and premium, if any) and interest on the Notes in accordance with the terms of the Notes and this Indenture. On the Maturity Date, the Company may repay the principal accrued on the Notes: (a) in cash; (b) in Common Stock as provided in Section 14.01(b) of this Indenture; or (c) in any combination of (a) and (b). To the extent paid in cash, principal shall be considered paid on the date it is due if the Trustee or Paying Agent holds, for the benefit of the Holders, as of 10:00 a.m., New York City time on that date U.S. legal tender designated for and sufficient to pay such principal or interest then due, or the Company consummates the conversion of Notes in accordance with Article 14 by such date.

This Note shall bear interest at the rate of 7.00% per year from [•], 2021, or from the most recent date to which interest had been paid or provided for to December 31, 2031, but excluding, the next scheduled Interest Payment Date until [•]. Interest is payable semi-annually in arrears on each June 30 and December 31, commencing on [•], to Holders of record at the close of business on the preceding and (whether or not such day is a Business Day), respectively. For any interest period, the Company shall pay interest on the Notes: (a) in cash; (b) in shares of Series B Preferred Stock; (c) in shares of Series D Preferred Stock; or (d) in any combination of (a), (b), and/or (c). For purposes of determining the value of Series B Preferred Stock and Series D Preferred Stock paid as interest on the Notes, each share of Series B Preferred Stock and Series D Preferred Stock shall be deemed have a value equal to the product of (x) the average of the VWAPs for the Series B Preferred Stock or the Series D Preferred Stock, as the case may be, for the 15 consecutive Trading Days ending on the third Business Day immediately preceding the relevant Interest Payment Date, and (y) 0.55.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions pursuant to which this Note shall be mandatorily converted into shares of Common Stock of the Company on the terms and subject to the limitations set forth in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Note, and any claim, controversy or dispute arising under or related to this Note, shall be construed in accordance with and governed by the laws of the State of New York (without regard to the conflicts of laws provisions thereof).

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control and govern.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed manually or by facsimile by the Trustee or a duly authorized authenticating agent under the Indenture.

[3] Include if a global note.
[4] Include if a global note.
[5] Include if a global note.
[6] Include if a physical note

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed.

WHEELER REAL ESTATE INVESTMENT TRUST, INC.

By: _____
Name:
Title:

Dated:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

WILMINGTON SAVINGS FUND SOCIETY, FSB,
as Trustee, certifies that this is one of the Notes described
in the within-named Indenture.

By: _____
Authorized Officer

[FORM OF REVERSE OF NOTE]

WHEELER REAL ESTATE INVESTMENT TRUST, INC.

7.00% Senior Subordinated Convertible Notes due 2031

This Note is one of a duly authorized issue of Notes of the Company, designated as its 7.00% Senior Subordinated Convertible Notes due 2031 (the "Notes"), issued under and pursuant to an Indenture dated as of [●], 2021 (the "Indenture"), between the Company and WILMINGTON SAVINGS FUND SOCIETY, FSB (the "Trustee"), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties, privileges, protections, indemnities and immunities thereunder of the Trustee, the Company and the Holders of the Notes. Capitalized terms used in this Note and not defined in this Note shall have the respective meanings set forth in the Indenture.

In case certain Events of Default shall have occurred and be continuing, the principal of, and interest on, all Notes may be declared, by either the Trustee or Holders of at least 25% in aggregate principal amount of Notes then Outstanding, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions and certain exceptions set forth in the Indenture.

The Indenture contains provisions permitting the Company and the Trustee in certain circumstances, without the consent of the Holders of the Notes, and in certain other circumstances, with the consent of the Holders of not less than a majority in aggregate principal amount of the Notes at the time Outstanding, evidenced as in the Indenture provided, to execute supplemental indentures modifying the terms of the Indenture and the Notes as described therein. It is also provided in the Indenture that, subject to certain exceptions, the Holders of a majority in aggregate principal amount of the Notes at the time Outstanding may on behalf of the Holders of all of the Notes waive any past Default or Event of Default under the Indenture and its consequences.

Each Holder shall have the right to receive payment of interest on any Interest Payment Date paid: (a) in cash; (b) in shares of Series B Preferred Stock; (c) in shares of Series D Preferred Stock; or (d) in any combination of (a), (b), and/or (c). For purposes of determining the value of Series B Preferred Stock and Series D Preferred Stock paid as interest on the Notes, each share of Series B Preferred Stock and Series D Preferred Stock shall be deemed have a value equal to the product of (x) the average of the VWAPs for the Series B Preferred Stock or the Series D Preferred Stock, as the case may be, for the 15 consecutive Trading Days ending on the third Business Day immediately preceding the relevant Interest Payment Date, and (y) 0.55. On each Regular Record Date, the Company shall instruct the Subscription Agent, with a copy to the Trustee, whether the interest paid on the next interest payment date should be in the form of (a), (b), (c), or (d) above and, if (d), the percentage of such interest to be paid in cash, Series B Preferred Stock and/or Series D Preferred Stock.

Each Holder shall have the right to receive payment of principal (and premium, if any) and interest on the Notes on the Maturity Date, the Company may repay the principal accrued on the Notes: (a) in cash; (b) in Common Stock as provided in Section 14.01(b) of this Indenture; or (c) in any combination of (a) and (b). To the extent paid in cash, principal shall be considered paid on the date it is due if the Trustee or Paying Agent holds, for the benefit of the Holders, as of 10:00 a.m., New York City time on that date U.S. legal tender designated for and sufficient to pay such principal or interest then due, or the Company consummates the conversion of Notes in accordance with Article 14 by such date.

Upon a Change of Control, each Note shall mandatorily convert into shares of Common Stock equal to: (i) the principal amount of each Note divided by (ii) the product of (x) the average VWAPs for the Common Stock for the 15 consecutive Trading Days ending on the third Business Day immediately preceding the date of such Change of Control and (y) 0.55.

The Notes are convertible, in whole or in part, at any time, at the option of the Holders thereof, into shares of Common Stock at a conversion price of $6.25 per share of Common Stock (the "Conversion Price") (4 common shares for each $25.00 of principal amount of the Notes being converted (the "Conversion Rate")); provided, however, that if at any time after September 21, 2023 holders of Series D Preferred Stock have required the Company to redeem (payable in cash or stock) in the aggregate at least 100,000 shares of Series D Preferred Stock, then the Conversion Price shall be adjusted to the lower of (i) 55% of the Conversion Price or (ii) a 45% discount to the lowest price at which any Series D Preferred Stock was converted by a Holder thereof into the Company's Common Stock.

The Notes are initially issuable in registered form without coupons in minimum denominations of $25 principal amount and integral multiples thereof. At the office or agency of the Company referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations, without payment of any service charge but, if required by the Company or Trustee, with payment of a sum sufficient to cover any transfer or similar tax that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such exchange of Notes being different from the name of the Holder of the old Notes surrendered for such exchange.

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM = as tenants in common

UNIF GIFT MIN ACT = Uniform Gifts to Minors Act

CUST = Custodian

TEN ENT = as tenants by the entireties

JT TEN = joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

SCHEDULE A[7]

SCHEDULE OF EXCHANGES OF NOTES

WHEELER REAL ESTATE INVESTMENT TRUST, INC.

7.00% Senior Subordinated Convertible Notes due 2031

The initial principal amount of this Global Note is _____ DOLLARS ($[ ]). The following increases or decreases in this Global Note have been made:

Date of issuance	Amount of decrease in principal Amount of this Global Note	Amount of increase in principal amount of this Global Note	Principal Amount of this Global Note following such decrease or increase	Signature of authorized Signatory of Trustee or Custodian

[7] Include if a global note.

ATTACHMENT 1

[FORM OF NOTICE OF CONVERSION]

To: **Wilmington Savings Fund Society, FSB**
6201 15th Avenue
Brooklyn, New York 11219

Attention: Administrator for Wheeler Real Estate Investment Trust, Inc.

The undersigned registered owner of this Note hereby exercises the option to convert this Note, or the portion hereof (that is $25 principal amount or an integral multiple thereof) below designated, into Common Stock, in accordance with the terms of the Indenture referred to in this Note, and directs that any Common Stock issuable and deliverable upon such conversion, and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below. If any Common Stock or any portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned shall pay all documentary, stamp or similar issue or transfer taxes, if any in accordance with Section 14.03(f) of the Indenture. Any amount required to be paid to the undersigned on account of interest accompanies this Note. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

In the case of Definitive Notes, the certificate numbers of the Notes to be converted are as set forth below:

Dated: _____

_____

Signature(s)

_____

Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if shares of Common Stock are to be issued, or Notes are to be delivered, other than to and in the name of the registered holder.

Fill in for registration of shares if to be issued, and Notes if to be delivered, other than to and in the name of the registered holder:

_____

(Name)

_____

(Street Address)

_____

(City, State and Zip Code) Please print name and address.

Principal amount to be converted (if less than all):

$ _____

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

_____

Social Security or Other Taxpayer Identification Number

ATTACHMENT 2

[FORM OF ASSIGNMENT AND TRANSFER]

For value received hereby sell(s), assign(s) and transfer(s) unto (Please insert name and social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

Dated: _____

Signature(s)

Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if Notes are to be delivered, other than to and in the name of the registered Holder.

NOTICE: The signature on the assignment must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Exhibit 4.7

Computershare

Wheeler Real Estate Investment Trust, Inc.

Computershare Trust Company, N.A.
150 Royall Street
Canton Massachusetts 02021
Within USA, US territories & Canada (800) 546-5141
Outside USA, US territories & Canada (781) 575-2765
www.computershare.com

MR A SAMPLE
DESIGNATION (IF ANY)
ADD 1
ADD 2
ADD 3
ADD 4
ADD 5
ADD 6

C 1234567890 J N T

Rights 12345678901234

RIGHTS CERTIFICATE

THIS RIGHTS OFFERING EXPIRES AT 5:00 P.M., NEW YORK CITY TIME, ON [•], 2021, UNLESS THE EXERCISE PERIOD IS EXTENDED (SUCH DATE AND TIME, AS IT MAY BE EXTENDED, THE "EXPIRATION DATE").

Wheeler Real Estate Investment Trust, Inc. (the "Company") is distributing, at no charge, to holders of common stock, $0.01 par value per share (the "Common Stock"), on a pro-rata basis, non-transferable subscription rights (the "Rights") to purchase up to $30 million in aggregate principal amount of 7.00% senior subordinated convertible notes due 2031 (the "Notes"). The offering of the Notes through the Rights is referred to as the "Rights Offering." Only holders of Common Stock at 5:00 p.m., New York City time, on June 1, 2021 (the "Record Date") will be entitled to participate in the Rights Offering and receive Rights. Holders of Common Stock as of the Record Date will receive one Right for each eight (8) shares of Common Stock owned (the "basic subscription privilege"). Each Right will entitle a holder to purchase $25.00 principal amount of Notes, provided that no fractional Notes will be issued pursuant to the Rights Offering and exercises of Rights will be rounded down to the nearest whole increment of $25.00. If, and only if, a holder exercises the basic subscription privilege will it also have an over-subscription privilege which will allow it to subscribe for an additional principal amount of Notes issuable pursuant to Rights that were not exercised by other stockholders (the "over-subscription privilege"). The Notes sold through the over-subscription privilege will be sold at the same subscription price and, if necessary, subject to relative Common Stock ownership. The terms and conditions of the Rights Offering are set forth in the Company's Prospectus dated [•], 2021 (as it may be amended or supplemented, the "Prospectus"), which is incorporated into this Rights Certificate by reference. Capitalized terms used but not defined herein have the meanings set forth in the Prospectus. The owner of this certificate is entitled to the number of Rights shown on this Rights Certificate.

THE RIGHTS ARE NON-TRANSFERABLE

The Rights are non-transferable. The Rights will not be listed on any securities exchange or quoted on any automated quotation system.

SUBSCRIPTION PRICE

The subscription price for the basic subscription privilege and over-subscription privilege is $25.00 for $25.00 principal amount of Notes. The Company will not issue fractional Rights or cash in lieu of Notes in less than the minimum denomination of $25.00. In other words, fractional Rights cannot be exercised for fractional Notes of the Company.

METHOD OF EXERCISE OF RIGHTS

IN ORDER TO EXERCISE YOUR RIGHTS, YOU MUST PROPERLY COMPLETE AND SIGN THIS RIGHTS CERTIFICATE ON THE BACK AND RETURN IT IN THE ENVELOPE PROVIDED TO COMPUTERSHARE TRUST COMPANY, N.A., TOGETHER WITH PAYMENT IN FULL FOR AN AMOUNT EQUAL TO THE APPLICABLE SUBSCRIPTION PRICE MULTIPLIED BY THE TOTAL NUMBER OF NOTES THAT YOU ARE REQUESTING TO PURCHASE TO THE SUBSCRIPTION AGENT, COMPUTERSHARE TRUST COMPANY, N.A., BEFORE 5:00 PM, NEW YORK CITY TIME, ON [•], 2021.

Holder ID	COY	Class	Rights Qty Issued	Rights Cert #
123456789	XXXX	Rights	XXX.XXXXXX	12345678

Signature of Owner and U.S. Person for Tax Certification | Signature of Co-Owner (if more than one registered holder listed) | Date (mm/dd/yyyy)

12345678 CLS XRT2 COYC

03HH9I

Full payment of the subscription price for Notes you wish to purchase must be made in U.S. dollars by (1) certified check drawn upon a U.S. bank payable to the Subscription Agent, or (2) cashier's check drawn upon a U.S. bank or express money order payable to the Subscription Agent, in each case in accordance with the "Instructions For Use of Wheeler Real Estate Investment Trust, Inc. Rights Certificates" that accompanied the mailing of the Prospectus. Notwithstanding the foregoing, holders who hold shares as a depository or nominee must make all payments by wire transfer of immediately available funds to the account maintained by the Subscription Agent.

The Subscription Agent will hold funds received in payment for Notes in a segregated account pending completion of the Rights Offering. The Subscription Agent will hold this money in escrow until the Rights Offering is completed or is withdrawn and canceled. If the Rights Offering is canceled for any reason, all subscription payments received by the Subscription Agent will be returned, without interest, as soon as practicable. All funds relating to exercises of the over-subscription privilege which are not accepted by the Company (due to proration or otherwise) will be returned, without interest, as soon as practicable.

PLEASE PRINT ALL INFORMATION CLEARLY AND LEGIBLY

SECTION 1: **OFFERING INSTRUCTIONS** (check the appropriate boxes)
IF YOU WISH TO SUBSCRIBE FOR YOUR FULL ENTITLEMENT OF RIGHTS:

☐ I apply for ALL of my entitlement of Notes pursuant to the basic subscription privilege _____ (no. of common stock) x 0.125 (subscription ratio) x $25.00 (principal amount of Notes) = $ _____

EXAMPLE: If you own 1,000 shares of common stock, your basic subscription privilege permits the purchase of $3,125.00 principal amount of Notes. [1,000 shares of common stock / 8 = 125 (with fractional shares rounded down to the nearest whole number) x $25.00].

☐ In addition, I apply for additional Notes pursuant to the over-subscription privilege* _____ (no. of additional Notes) x $25.00 (principal amount of Notes) = $ _____

IF YOU DO NOT WISH TO APPLY FOR YOUR FULL ENTITLEMENT OF NOTES PURSUANT TO THE BASIC SUBSCRIPTION PRIVILEGE:

☐ I apply for _____ (no. of common stock) x 0.125 (subscription ratio) x x $25.00 (principal amount of Notes) = $ _____

Amount of check or money order enclosed: $ _____

IF YOU DO NOT WISH TO EXERCISE YOUR RIGHT TO SUBSCRIBE:

Please disregard this mailing.

SECTION 2: **SUBSCRIPTION AUTHORIZATION:**

I acknowledge that I have received the Prospectus for this offering of Rights and I hereby subscribe for the amount of Notes indicated above on the terms and conditions specified in the Prospectus relating to the basic subscription privilege and over-subscription privilege in the Rights Offering.

Signature of Subscriber(s)

_____

(and address if different than that listed on this Rights Certificate)

_____

_____

Telephone number (including area code) _____

* You can only participate in the over-subscription privilege if you have subscribed for your full entitlement of Notes pursuant to the basic subscription privilege.

Please complete all applicable information and return to: **COMPUTERSHARE TRUST COMPANY, N.A.**

By First Class Mail: Computershare Trust Company, N.A., Corporate Actions Voluntary Offer, P.O. Box 43011, Providence, RI 02940-3011

By Express Mail or Overnight Delivery: Computershare Trust Company, N.A., Corporate Actions Voluntary Offer, 150 Royall Street, Suite V, Canton, MA 02021

DELIVERY OF THIS RIGHTS CERTIFICATE TO AN ADDRESS OTHER THAN AS SET FORTH ABOVE DOES NOT CONSTITUTE A VALID DELIVERY.

Any questions regarding this Rights Certificate and Rights Offering may be directed to Equiniti (US) Services LLC. toll free for shareholders at (516) 220-8356 or for brokers at (833) 503-4130.

Subscription Agent Agreement
Between
Wheeler Real Estate Investment Trust Inc.
And
Computershare Trust Company, N.A.
And
Computershare Inc.

This **SUBSCRIPTION AGENT AGREEMENT** (this "**Agreement**"), dated as of June 18, 2021 (the "**Effective Date**"), is by and between Wheeler Real Estate Investment Trust Inc., a Maryland corporation ("**Company**"), and Computershare Trust Company, N.A., a federally chartered trust company ("**Trust Company**"), and Computershare Inc., a Delaware corporation ("**Computershare**", and together with Trust Company, "**Agent**").

1. Appointment.

1.1 Company is making an offer (the "**Subscription Offer**") to issue to holders of record of its outstanding shares of common stock, par value $0.01 per share (the "**Common Stock**"), at the close of business on June 1, 2021 (the "**Record Date**"), the right to subscribe for and purchase (each, a "**Right**", and collectively, the "**Rights**") up to $30 million in aggregate principal amount of the Company's 7.00% subordinated convertible notes due 2031 (the "**Notes**"), in which eligible shareholders will receive one Right for each eight (8) shares of Common Stock owned, with each Right entitling a shareholder to purchase $25.00 principal amount of Notes (the "**Subscription Price**"), payable as described on the Subscription Form (as defined below) sent to eligible shareholders, upon the terms and conditions set forth herein. The term "**Subscribed**" shall mean submitted for purchase from Company by a stockholder in accordance with the terms of the Subscription Offer, and the term "**Subscription(s)**" shall mean any such submission. Company hereby appoints Agent to act as subscription agent in connection with the Subscription Offer and Agent hereby accepts such appointment in accordance with and subject to the terms and conditions of this Agreement.

1.2 The Subscription Offer will expire at 5:00 p.m., Eastern Time, on [●], 2021 (the "**Expiration Time**"), unless Company shall have extended the period of time for which the Subscription Offer is open, in which event the term "**Expiration Time**" shall mean the latest time and date at which the Subscription Offer, as so extended by Company from time to time, shall expire.

1.3 The Company filed a registration statement relating to the Notes and the Company securities underlying the Notes with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "**1933 Act**"), on June 2, 2021, as amended on [●], 2021, and such registration statement was declared effective on [●], 2021. The terms of the Notes are more fully described in the prospectus forming a part of the registration statement as it was declared effective. All terms used and not defined herein shall have the same meaning(s) as in the prospectus.

1.4 Promptly after the Record Date, Company will furnish Agent with, or will instruct Agent, in its capacity as transfer agent for Company, to prepare, a certified list in a format acceptable to Agent of holders of record of the Common Stock at the Record Date, including each such holder's name, address, taxpayer identification number ("**TIN**"), share amount with applicable tax lot detail, any certificate detail and information regarding any applicable account stops or blocks (the "**Record Stockholders List**").

1.5 No later than the earlier of (i) forty-five (45) days after the Record Date or (ii) January 15 of the year following the year in which the Record Date occurs, Company shall deliver to Agent written direction on the adjustment of cost basis for covered securities that arise from or are affected by the Subscription Offer in accordance with current Internal Revenue Service regulations (see the Tax Instruction/Cost Basis Information Letter attached hereto as Exhibit B for additional information)

2. Subscription of Rights.

2.1 Each Right entitles the holders to subscribe, upon payment of the Subscription Price, to purchase Notes (the "**Basic Subscription Privilege**"). No fractional Notes will be issued.

2.2 If the Rights Offering is not fully subscribed and holders fully exercise thier Rights, then such holders may also exercise an over-subscription privilege to purchase additional principal amount of Notes that remain unsubscribed as a result of unexercised Rights, such privilege being referred to as the "oversubscription right." The Company shall provide Agent with instructions regarding the allocation to such shareholders of the Notes after the initial allocation thereof.

2.3 Except as otherwise indicated to Agent by Company in writing, all of the Notes delivered hereunder upon the exercise of the Rights. Company shall, if applicable, inform Agent as soon as possible in advance as to whether any Note issued hereunder is to be issued with restrictive legend(s) and, if so, Company shall provide the appropriate legend(s) and a list identifying the affected shareholders, certificate numbers (if applicable) and share amounts for such affected shareholders.

3. Duties of Subscription Agent.

3.1 Agent shall issue the Rights in accordance with this Agreement in the names of the holders of the Common Stock of record on the Record Date, keep such records as are necessary for the purpose of recording such issuance(s), and furnish a copy of such records to Company.

3.2 Promptly after Agent receives the Record Stockholders List, Agent shall:

(a) mail or cause to be mailed, by first class mail, to each holder of the Common Stock of record on the Record Date whose address of record is within the United States of America and Canada, (i) a subscription form with respect to the Rights to which such stockholder is entitled under the Subscription Offer (the "**Subscription Form**"), a form of which is attached hereto as Exhibit A, (ii) a copy of the prospectus and (iii) a return envelope addressed to Agent.

(b) At the direction of Company, mail or cause to be mailed, to each holder of the Common Stock of record on the Record Date whose address of record is outside the United States of America and Canada, or is an A.P.O. or a F.P.O. address, a copy of the prospectus. Agent shall refrain from mailing the Subscription Form to any holder of the Common Stock of record on the Record Date whose address of record is outside the United States of America and Canada, or is an A.P.O. or a F.P.O. address, and hold such Subscription Form for the account of such stockholder subject to such stockholder making satisfactory arrangements with Agent for

the exercise or other disposition of the Rights described therein, and effect the exercise, sale or delivery of such Rights in accordance with the terms of this Agreement if notice of such arrangements is received at or before 11:00 a.m., Eastern Time, on _____. In the event that a request to exercise the Rights is received from such a holder, Agent will consult with Company for instructions as to the number of Notes, if any, Agent is authorized to issue.

(c) Upon request by Company, Agent shall mail or deliver a copy of the prospectus (i) to each assignee or transferee of the Rights upon receiving appropriate documentation satisfactory to Agent to register the assignment or transfer thereof and (ii) with Notes when such are issued to persons other than the registered holder of the Rights.

(d) Agent shall accept Subscriptions upon the due exercise of the Rights (including payment of the Subscription Price) on or prior to the Expiration Time in accordance with the Subscription Form.

(e) Agent shall accept Subscriptions, without further authorization or direction from Company, without procuring supporting legal papers or other proof of authority to sign (including, without limitation, proof of appointment of a fiduciary or other person acting in a representative capacity), and without signatures of co-fiduciaries, co-representatives or any other person:

(i) If the Right is registered in the name of a fiduciary and the Subscription Form is executed by such fiduciary, provided, that the Notes are to be issued in the name of such fiduciary;

(ii) If the Right is registered in the name of joint tenants and the Subscription Form is executed by one of the joint tenants, provided, that the Notes are to be issued in the names of such joint tenants; or

(iii) If the Right is registered in the name of a corporation and the Subscription Form is executed by a person in a manner which appears or purports to be done in the capacity of an officer or agent thereof, provided, that the Notes are to be issued in the name of such corporation.

(f) Each document received by Agent relating to its duties hereunder shall be dated and time stamped when received at the applicable address(es) as outlined in the offering documents.

(g) Agent shall, absent specific and mutually agreed upon instructions between Agent and Company, follow its normal and customary procedures with respect to the acceptance or rejection of all Subscriptions received after the Expiration Time. Subscriptions not authorized to be accepted pursuant to this Section 3 and Subscriptions otherwise failing to comply with the terms and conditions of the Subscription Form will be rejected and returned to the applicable shareholder.

(h) Company shall provide an opinion of counsel prior to the Expiration Time to set up a reserve for the Company's securities underlying the Notes. The opinion shall state that all of the Company's securities, or the transactions in which they are being issued, as applicable, are:

(i) Registered, or subject to a valid exemption from registration, under the 1933 Act, and all appropriate state securities law filings have been made with respect to the Share, or alternatively, that the Company securities undlying the Notes are "covered securities" under Section 18 of the 1933 Act; and

(ii) Validly issued, fully paid and non-assessable.

4. Acceptance of Subscriptions.

4.1 Following Agent's first receipt of Subscriptions, on each business day, or more frequently if reasonably requested as to major tally figures, forward a report by email to Crystal Plum (cplum@whlr.us) and Daniel Raglan (daniel.raglan@cwt.com) (the "**Company Representative**") as to the following information, based upon a preliminary review (and at all times subject to a final determination by Company) as of the close of business on the preceding business day or the most recent practicable time prior to such request, as the case may be: (i) the total number of Notes Subscribed for; (ii) the total number of the Rights sold; (iii) the total number of the Rights partially Subscribed for; (iv) the amount of funds received; and (v) the cumulative totals in categories (i) through (iv), above.

4.2 As promptly as possible following the Expiration Time, advise the Company Representative by email of (i) the number of Notes Subscribed for and (ii) the number of Notes unsubscribed for.

5.

6. Completion of Subscription Offer.

6.1 Upon completion of the Subscription Offer, Agent shall request the transfer agent for the Common Stock to issue the appropriate number of Notes as required in order to effectuate the Subscriptions.

6.2 The Rights shall be issued in registered, book-entry form only. Agent shall keep books and records of the registration, transfer and exchange of the Rights (the **Rights Register**").

6.3 All of the Rights issued upon any registration of transfer or exchange of the Rights shall be the valid obligations of Company, evidencing the same obligations and entitled to the same benefits under this Agreement as the Rights surrendered for such registration of transfer or exchange; provided, that until such transfer or exchange is registered in the Rights Register, Company and Agent may treat the registered holder thereof as the owner for all purposes.

6.4 For so long as this Agreement shall be in effect, Company will reserve for issuance and keep available free from preemptive rights a sufficient number of Company securities undelying the Notes to permit the exercise in full of all of the Rights issued pursuant to the Subscription Offer.

6.5 Company shall take any and all action, including, without limitation, obtaining the authorization, consent, lack of objection, registration or approval of any governmental authority, or the taking of any other action under the laws of the United States of America or any political subdivision thereof, to insure that all of the Notes issuable upon the exercise of the Rights (subject to payment of the Subscription Price) will be duly and validly issued and fully paid and non-assessable Notes, free from all preemptive rights and taxes, liens, charges and security interests created by or imposed upon Company with respect thereto.

6.6 Company shall, from time to time, take all action necessary or appropriate to obtain and keep effective all registrations, permits, consents and approvals of the Securities and

Exchange Commission and any other governmental agency or authority and make such filings under federal and state laws, which may be necessary or appropriate in connection with the issuance, sale, transfer and delivery of the Rights or the Notes issued upon the exercise of the Rights.

7. Procedure for Discrepancies. Agent shall follow its regular procedures to attempt to reconcile any discrepancies between the number of Notes that any Subscription Form may indicate are to be issued to a stockholder upon the exercise of the Rights and the number that the Record Stockholders List indicates may be issued to such stockholder. In any instance where Agent cannot reconcile such discrepancies by following such procedures, Agent will consult with Company for instructions as to the number of Notes, if any, Agent is authorized to issue. In the absence of such instructions, Agent is authorized not to issue any Notes to such stockholder and will return to the subscribing stockholder (at Agent's option by either first class mail under a blanket surety bond or insurance protecting Agent and Company from losses or liabilities arising out of the non-receipt or non-delivery of the Subscription Form or by registered mail insured separately for the value of the applicable Rights) to such stockholder's address as set forth in the Subscription Form, any Subscription Form delivered to Agent, any other documents delivered therewith and a letter explaining the reason for the return of such documents.

8. Procedure for Deficient Items.

8.1 Agent shall examine the Subscription Form(s) received by it as agent to ascertain whether they appear to have been completed and executed in accordance with the Subscription Offer. In the event that Agent determines that any Subscription Form does not appear to have been properly completed or executed, or to be in proper form, or any other deficiency in connection with the Subscription Form appears to exist, Agent shall follow, where possible, its regular procedures to attempt to cause such irregularity to be corrected. Agent is not authorized to waive any deficiency in connection with the Subscription, unless Company provides written authorization to waive such deficiency.

8.2 If a Subscription Form specifies that Notes are to be issued to a person other than the person in whose name a surrendered Right is registered, Agent will not issue such shares until such Subscription Form has been properly endorsed with the signature guaranteed in a manner acceptable to Agent (or otherwise put in proper form for transfer).

8.3 If any such deficiency is neither corrected nor waived, Agent will return to the subscribing stockholder (at Agent's option by either first class mail under a blanket surety bond or insurance protecting Agent and Company from losses or liabilities arising out of the non-receipt or non-delivery of the Subscription Form or by registered mail insured separately for the value of the applicable Rights) to such stockholder's address as set forth in the Subscription Form, any Subscription Form delivered to Agent, any other documents delivered therewith and a letter explaining the reason for the return of such documents.

9. Tax Reporting.

9.1 Agent shall prepare and file with the appropriate governmental agency and mail to each stockholder, as applicable, all appropriate tax information forms, including, but not limited to, Forms 1099-B, covering payments or any other distributions made by Agent pursuant to this Agreement during each calendar year, or any portion thereof, during which Agent performs services hereunder, as described in the attached Exhibit B. Any cost basis or tax adjustments required after the Effective Time will incur additional fees.

9.2 With respect to any surrendering stockholder whose TIN has not been certified as correct, Agent shall deduct and withhold the appropriate backup withholding tax from any payment made to such stockholder pursuant to the Internal Revenue Code.

9.3 Should any issue arise regarding federal income tax reporting or withholding, Agent shall take such reasonable action as Company may reasonably request in writing. Such action may be subject to additional fees.

10.

11.

12.

13 Damages. Notwithstanding anything in this Agreement to the contrary, neither party shall be liable to the other for any incidental, indirect, special or consequential damages of any nature whatsoever, including, but not limited to, loss of anticipated profits, occasioned by a breach of any provision of this Agreement even if apprised of the possibility of such damages.

14.

15. Compensation and Expenses.

15.1 Company shall pay to Agent compensation in accordance with the fee schedule attached as Exhibit B hereto, together with reimbursement for reasonable fees and disbursements of counsel, regardless of whether any Rights are surrendered to Agent, for Agent's services hereunder.

15.2 Company shall be charged for certain expenses advanced or incurred by Agent in connection with Agent's performance of its duties hereunder. Such charges include, but are not limited to, stationery and supplies, such as checks, envelopes and paper stock, as well as any disbursements for telephone and document creation and delivery. While Agent endeavors to maintain such charges (both internal and external) at competitive rates, these charges may not reflect actual out-of-pocket costs, and may include handling charges to cover internal processing and use of Agent's billing systems.

15.3 If any out-of-proof condition caused by Company or any of its prior agents arises during any terms of this agreement, Company will, promptly upon Agent's request, provide Agent with funds or shares sufficient to resolve the out-of-proof condition.

15.4 All amounts owed to Agent hereunder are due within thirty (30) days of the invoice date. Delinquent payments are subject to a late payment charge of one and one half percent (1.5%) per month commencing forty-five (45) days from the invoice date. Company agrees to reimburse Agent for any attorney's fees and any other costs associated with collecting delinquent payments.

15.5 Company is responsible for all taxes, levies, duties, and assessments levied on services purchased under this Agreement (collectively, "**Transaction Taxes**"). Computershare is responsible for collecting and remitting Transaction Taxes in all jurisdictions in which Computershare is registered to collect such Transaction Taxes. Computershare shall invoice Company for such Transaction Taxes that Computershare is obligated to collect upon the furnishing of services provided hereunder. Company shall pay such Transaction Taxes according to the terms in Section 15.1, above. Computershare shall timely remit to the appropriate governmental authorities all such Transaction Taxes that Computershare collects from Company. To the extent that Company provides Computershare with valid exemption certificates, direct pay permits, or other documentation that exempts Computershare from collecting Transaction Taxes from Company, invoices issued for services hereunder provided after Computershare's

receipt of such certificates, permits, or other documentation will not reflect exempted Transaction Taxes. Computershare is solely responsible for the payment of all personal property taxes, franchise taxes, corporate excise or privilege taxes, property or license taxes, taxes relating to Computershare's personnel, and taxes based on Computershare's net income or gross revenues relating to services provided hereunder.

16. Termination. Either party may terminate this Agreement upon thirty (30) days' prior written notice to the other party. Unless so terminated, this Agreement shall continue in effect until ninety (90) days following the Expiration Time. In the event of such early termination, Company will appoint a successor agent and inform Agent of the name and address of any successor agent so appointed, provided, that no failure by Company to appoint such a successor agent shall affect the termination of this Agreement or the discharge of Agent as agent hereunder. Upon any such termination, Agent shall be relieved and discharged of any further responsibilities with respect to its duties hereunder. Upon payment of all outstanding fees and expenses hereunder, Agent shall promptly forward to Company or its designee any Subscription Forms or other documents relating to the Subscription Offer that Agent may receive after its appointment has so terminated.

17. Assignment. Neither this Agreement nor any rights or obligations hereunder may be assigned by Company or Agent without the written consent of the other; provided, however, that Agent may, without further consent of Company, assign any of its rights and obligations hereunder to any affiliated agent registered under Rule 17Ac2-1 promulgated under the 1934 Act.

18.

19. Miscellaneous.

19.1 Notices. All notices, demands and other communications given pursuant to the terms and provisions hereof shall be in writing, shall be deemed effective on the date of receipt, and may be sent by overnight delivery services, or by certified or registered mail, return receipt requested to:

If to Company:

Wheeler Real Estate Investment Trust Inc.
2529 Virginia Beach Blvd., Suite 200
Virginia Beach, Virginia 23452
Cplum@whlr.us
Attn:Crystal Plum

with an additional copy to:

Cadwalader, Wickersham & Taft LLP
200 Liberty St.
New York, NY 10281
Daniel.Raglan@cwt.com
Attn: Daniel Raglan

If to Agent:

Computershare Inc.
480 Washington Blvd., 29th Floor
Jersey City, NJ 07310
Attn: Corp Actions Relationship Manager
Or
Computershare Inc.
150 Royall Street
Canton, MA 02021
Attn: Corp Actions Relationship Manager

with an additional copy to:

Computershare Inc.
150 Royall Street
Canton, MA 02021
Attn: Legal Department

19.2

19.3 Publicity. Neither party hereto shall issue a news release, public announcement, advertisement, or other form of publicity concerning the existence of this Agreement or the services to be provided hereunder without obtaining the prior written approval of the other party, which may be withheld in the other party's sole discretion; provided, that Agent may use Company's name in its customer lists or otherwise as required by law or regulation.

19.4 Successors. All the covenants and provisions of this Agreement by or for the benefit of Company or Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

19.5 Amendments. This Agreement may be amended or modified by a written amendment executed by the parties hereto and, to the extent required, authorized by a resolution of the Board of Directors of Company.

19.6 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

19.7 Governing Law; Jurisdiction. This Agreement shall be governed by the laws of the State of New York, without regard to principles of conflicts of law. The parties hereto irrevocably (a) submit to the non-exclusive jurisdiction of any New York State court sitting in New York City or the United States District Court for the Southern District of New York in any action or proceeding arising out of or relating to this Agreement, (b) waive, to the fullest extent they may effectively do so, any defense based on inconvenient forum, improper venue or lack of jurisdiction to the maintenance of any such action or proceeding, and (c) waive all right to trial by jury in any action, proceeding or counterclaim arising out of this Agreement or the transactions contemplated hereby. Agent shall not be required hereunder to comply with the laws or regulations of any country other than the United States of America or any political subdivision thereof. Agent may consult with foreign counsel, at Company's expense, to resolve any foreign law issues that may arise as a result of Company or any other party being subject to the laws or regulations of any foreign jurisdiction.

19.8 Force Majeure. Agent will not be liable for any delay or failure in performance when such delay or failure arises from circumstances beyond its reasonable control, including without limitation acts of God, acts of government in its sovereign or contractual capacity, acts of public enemy or terrorists, acts of civil or military authority, war, riots, civil strife, terrorism, blockades, sabotage, rationing, embargoes, epidemics, pandemics, outbreaks of infectious diseases or any other public health crises, earthquakes, fire, flood, other natural disaster, quarantine or any other employee restrictions, power shortages or failures, utility or communication failure or delays, labor disputes, strikes, or shortages, supply shortages, equipment failures, or software malfunctions.

19.9 Third Party Beneficiaries. The provisions of this Agreement are intended to benefit only Agent, Company and their respective permitted successors and assigns. No rights

shall be granted to any other person by virtue of this Agreement, and there are no third party beneficiaries hereof.

19.10 Survival. All provisions regarding indemnification, warranty, liability and limits thereon, compensation and expenses and confidentiality and protection of proprietary rights and trade secrets shall survive the termination or expiration of this Agreement.

19.11 Priorities. In the event of any conflict, discrepancy, or ambiguity between the terms and conditions contained in (a) this Agreement, (b) any exhibits, schedules or attachments hereto, and (c) the Subscription Offer, the terms and conditions contained in this Agreement shall take precedence.

19.12 Merger of Agreement. This Agreement constitutes the entire agreement between the parties hereto and supersedes any prior agreement with respect to the subject matter hereof, whether oral or written.

19.13 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by all parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

19.14 Descriptive Headings. Descriptive headings contained in this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

19.15 Counterparts. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument. A signature to this Agreement executed and/or transmitted electronically shall have the same authority, effect, and enforceability as an original signature.

[The remainder of this page has been intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as of the Effective Date hereof.

WHEELER REAL ESTATE INVESTMENT TRUST INC.

By: /s/ Daniel Khoshaba
Name: Daniel Khoshaba
Title: Chief Executive Officer

COMPUTERSHARE INC. and
COMPUTERSHARE TRUST COMPANY, N.A.
For both entities

By: /s/ Neda Sheridan
Name: Neda Sheridan
Title: Regional Manager

Exhibit 5.1

GORDON·FEINBLATT LLC
ATTORNEYS AT LAW

1001 FLEET STREET
SUITE 700
BALTIMORE, MARYLAND 21202-4346

July 8, 2021

Wheeler Real Estate Investment Trust, Inc.
2529 Virginia Beach Boulevard
Virginia Beach, VA 23452

Re: Rights Offering

Ladies and Gentlemen:

We are furnishing this opinion letter in accordance with the requirements of Item 601(b)(5) of Regulation S-K in connection with the Registration Statement on Form S-11, as amended by Amendment Number 1 on Form S-11/A (as amended to date, the "Registration Statement"), of Wheeler Real Estate Investment Trust, Inc., a Maryland corporation (the "Company"), to be filed on or about the date hereof with the U.S. Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), in connection with the proposed distribution by the Company to the holders of its common stock, par value $.01 per share (the "Common Stock"), of non-transferable subscription rights (the "Rights") entitling such holders to purchase $30 million aggregate principal amount of 7.00% Senior Subordinated Convertible Notes due 2031 (each, a "Note" and collectively, the "Notes") to be issued by the Company (the "Rights Offering"). Interest on the Notes will be payable, at the Company's election, (1) in cash, (2) in shares of its Series B Preferred Stock (the "Series B Stock"), and/or (3) in shares of its Series D Cumulative Convertible Preferred Stock (the "Series D Stock"), as provided in the Notes and an Indenture to be executed by the Company and Wilmington Savings Fund Society, FSB, as trustee, in the form attached as an exhibit to the Registration Statement (the "Indenture"). After January 1, 2024, the Company may redeem a Note at any time, in whole or in part, at a redemption price equal to 100% of the principal amount thereof plus accrued and unpaid interest to be paid in cash and/or in shares of Common Stock, as provided in the Notes and the Indenture. The Notes will be convertible, in whole or in part, at any time, at the option of the holders thereof, into shares of Common Stock as provided in the Notes and the Indenture. Upon a "Change of Control" of the Company (as defined in the Indenture), the Notes will mandatorily convert into shares of Common Stock as provided in the Notes and the Indenture. At maturity, the principal balance then due under each Note will be repaid, in the Company's discretion, in cash and/or in shares of Common Stock as provided in the Notes and the Indenture. The Notes, the shares of Series B Stock that may be issued pursuant to the Notes (the "Series B Shares"), the Series D Stock that may be issued pursuant to the Notes (the "Series D Shares"), and the shares of Common Stock that may be issued pursuant to the Notes (the "Common Shares") are collectively referred to herein as the "Securities."

I. Documents Reviewed

We have examined copies of the following documents (the "Documents"):

1. the Registration Statement and the prospectus that is included therein, each in the form in which it will be filed with the Commission;

2. Articles of Amendment and Restatement filed by the Company with the State Department of Assessments and Taxation of Maryland ("SDAT") on August 5, 2016 (the "Articles of Incorporation");

3. Articles Supplementary filed by the Company with SDAT on September 16, 2016, as corrected by the Certificate of Correction filed with SDAT on May 3, 2018;

4. Articles Supplementary filed by the Company with SDAT on November 15, 2016;

5. Articles Supplementary filed by the Company with SDAT on November 21, 2016;

6. Articles Supplementary filed by the Company with SDAT on December 1, 2016;

7. A first Articles of Amendment to the Articles of Incorporation filed by the Company with SDAT on March 28, 2017;

8. A second Articles of Amendment to the Articles of Incorporation filed by the Company with SDAT on March 28, 2017;

9. Articles of Amendment to the Articles of Incorporation filed by the Company on May 29, 2020;

10. Articles Supplementary filed by the Company with SDAT on July 8, 2021 (together with the documents identified in Items 2 through 9 of this Section I, the "Charter");

11. the Bylaws of the Company (the "Bylaws);

12. the certificate of good standing issued by SDAT on July 7, 2021 with respect to the Company (the "Good Standing Certificate");

13. the resolutions adopted by the Board of Directors of the Company on June 1, 2021 relating to certain matters referred to herein;

14. the resolutions adopted by the Board of Directors of the Company on July 5, 2021 related to certain matters referred to herein (together with the resolutions identified in Item 13 of this Section I, the "Resolutions");

15. the Subscription Agent Agreement, dated as of June 18, 2021, by and among the Company, Computershare Trust Company, N.A., and Computershare, Inc. (the "Subscription Agent Agreement");

16. the Rights Certificate, which is attached as an exhibit to the Registration Statement (a "Rights Certificate");

17. the Indenture;

18. the form of Note, which is attached as an exhibit to the Registration Statement; and

19. the Certificate of Secretary, dated as of the date hereof, issued to us by the Secretary of the Company with respect to certain factual matters relevant to this opinion letter.

II. Assumptions

In expressing the opinion set forth below, we have assumed, and so far as is known to us there are no facts inconsistent therewith, that:

1. all Documents submitted to us as originals are authentic;

2. all Documents submitted to us as certified or photostatic copies conform to the original documents;

3. all signatures on all such Documents are genuine;

4. all public records reviewed or relied upon by us or on our behalf are true and complete;

5. all statements and information contained in the Documents are true and complete;

6. all signatories to the Documents were legally competent to do so;

7. there has been no oral or written modification of or amendment to any of the Documents, and there has been no waiver of any provision of any of the Documents, in connection with this opinion letter, by action or omission of the parties thereto or otherwise;

8. the Charter, the Bylaws, and the Resolutions will not have been amended or rescinded, and will be in full force and effect, at all times at which any Securities are offered or sold by the Company;

9. the Securities will, if and when sold and issued, be sold and issued in the manner stated in the Registration Statement and pursuant to the Prospectus;

10. the issuance by the Company from time to time of any Series B Shares, Series D Shares, and/or Common Shares will be authorized and approved by the Board of Directors of the Company, or a duly authorized committee thereof, in accordance with the Maryland General Corporation Law, the Charter, and the Bylaws (such approvals are referred to herein as the "Corporate Proceedings");

11. upon the issuance of any Common Shares, the total number of shares of Common Stock issued and outstanding will not exceed the total number of shares of Common Stock that the Company is then authorized to issue under the Charter;

12. upon the issuance of any Series B Shares, the total number of issued and outstanding shares of Series B Stock will not exceed the total number of shares of Series B Stock or the total number of shares of preferred stock that the Company is then authorized to issue under the Charter;

13. upon the issuance of any Series D Shares, the total number of issued and outstanding shares of Series D Stock will not exceed the total number of shares of Series D Stock or the total number of shares of preferred stock that the Company is then authorized to issue under the Charter;

14. none of the Securities will be issued in violation of the restrictions on transfer and ownership set forth in Article VI of the Articles of Incorporation;

15. at the time of the issuance of any Series B Shares, Series D Shares, and/or Common Shares, the Company or its transfer agent will record in the Company's stock ledger the name(s) of the persons to whom such shares are issued;

16. the Registration Statement, and any amendments thereto (including post-effective amendments), will have been declared effective by the Commission; and

17. the Company will remain duly organized, validly existing, and in good standing under the laws of the State of Maryland at the time any Securities are issued.

As to any facts material to this opinion letter that we did not independently establish or verify, we have relied upon statements and representations of officers and other representatives of the Company and others.

III. Opinions

Based on the foregoing, and subject to the qualifications and assumptions set forth herein, it is our opinion that:

1. based solely on the Good Standing Certificate, the Company is duly incorporated under the laws of, and is validly existing in, the State of Maryland;

2. the Subscription Agent Agreement and its execution and delivery by the Company have been duly authorized and approved;

3. the Company has the corporate power and authority to execute and deliver the Rights Certificates and the Indenture and to execute and issue the Notes;

4. if and when sold and issued by the Company under the circumstances contemplated by the Registration Statement, the Notes will be duly authorized;

5. upon the completion of all Corporate Proceedings relating thereto, the Series B Shares will, if and when issued and delivered against payment therefor in accordance with the Registration Statement, the Prospectus, and the Corporate Proceedings, be duly authorized, validly issued, fully paid, and non-assessable;

6. upon the completion of all Corporate Proceedings relating thereto, the Series D Shares will, if and when issued and delivered against payment therefor in accordance with the Registration Statement, the Prospectus, and the Corporate Proceedings, be duly authorized, validly issued, fully paid, and non-assessable; and

7. upon the completion of all Corporate Proceedings relating thereto, the Common Shares will, if and when issued and delivered against payment therefor in accordance with the Registration Statement, the Prospectus, and the Corporate Proceedings, be duly authorized, validly issued, fully paid, and non-assessable.

IV. Additional Qualifications

In addition to the qualifications set forth above, the opinions set forth herein are also subject to the following qualifications:

1. We are opining only as to the matters expressly set forth herein, and no opinion should be inferred as to any other matters. The foregoing opinion is limited to the Maryland General Corporation Law, the applicable provisions of the Maryland Declaration of Rights, and reported judicial decisions interpreting these laws, and we do not express any opinion herein concerning any other law. The foregoing opinions are based upon currently existing statutes, rules, regulations and judicial decisions, and we disclaim any obligation to advise you of any change in any of these sources of law or subsequent legal or factual developments which might affect any matters or opinion set forth herein.

2. We express no opinion concerning the securities laws of the State of Maryland, or the rules and regulations promulgated thereunder, or any decisional laws interpreting any of the provisions of the securities laws of the State of Maryland, or the rules and regulations promulgated thereunder.

3. We have not participated in the preparation of the Registration Statement and assume no responsibility for its contents.

4. Various issues pertaining to the enforceability of the Notes and the Indenture are addressed in the opinion letter that Cadwalader, Wickersham & Taft LLP has separately provided to the Company. We express no opinion with respect to those matters.

We hereby consent to the filing of this opinion letter as an exhibit to the Registration Statement and to the use of the name of our firm therein. In issuing this opinion letter, we do not admit that we are within the category of persons whose consent is required by Section 7 of the Securities Act.

Sincerely,

/s/ Gordon Feinblatt LLC

Exhibit 5.2

CADWALADER

Cadwalader, Wickersham & Taft LLP
200 Liberty Street, New York, NY 10281
Tel +1 212 504 6000 Fax +1 212 504 6666
www.cadwalader.com

July 8, 2021

Wheeler Real Estate Investment Trust, Inc.
2529 Virginia Beach Boulevard
Virginia Beach, VA 23452

Ladies and Gentlemen:

We have acted as special counsel to Wheeler Real Estate Investment Trust, Inc., a Maryland corporation (the "Company"), in connection with the Registration Statement on Form S-11 (Registration No. 333-256699) filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), and as subsequently amended (the "Registration Statement"), with respect to the offer, issuance and sale by the Company to its common stockholders of non-transferable subscription rights (the "Rights"), entitling the holders thereof to purchase up to $30,000,000 in aggregate principal amount of 7.00% Senior Subordinated Convertible Notes due 2031 (the "Notes") of the Company (the "Rights Offering"), with each Right entitling its holder to purchase for cash, at a purchase price of 100% of the face amount thereof, $25.00 in principal amount of Notes. The Rights will be evidenced by rights certificates (collectively, the "Rights Certificates").

In rendering the opinions set forth below, we have examined and relied upon the originals, copies or specimens, certified or otherwise identified to our satisfaction, of such certificates or corporate and public records, agreements and instruments and other documents, including, among other things, the documents delivered on the date hereof, as we have deemed appropriate as a basis for the opinions expressed below. In such examination we have assumed the genuineness of all signatures, the authenticity of all documents, agreements and instruments submitted to us as originals, the conformity to original documents, agreements and instruments of all documents, agreements and instruments submitted to us as copies or specimens, the authenticity of the originals of such documents, agreements and instruments submitted to us as copies or specimens, the conformity of the text of each document filed with the U.S. Securities and Exchange Commission (the "Commission") through the Commission's Electronic Data Gathering, Analysis and Retrieval System to the printed document reviewed by us, the accuracy of the matters set forth in the documents, agreements and instruments we reviewed, and that such documents, agreements and instruments evidence the entire understanding between the parties thereto and have not been amended, modified or supplemented in any manner material to the opinions expressed herein. Except as expressly set forth herein, we have not undertaken any independent investigation (including, without limitation, conducting any review, search or investigation of any public files, records or dockets) to determine the existence or absence of the facts that are material to our opinions, and no inference as to our knowledge concerning such facts should be drawn from our reliance on the representations of the Company and others in connection with the preparation and delivery of this letter.

CADWALADER

Cadwalader, Wickersham & Taft LLP
200 Liberty Street, New York, NY 10281
Tel +1 212 504 6000 Fax +1 212 504 6666
www.cadwalader.com

In particular, we have examined, among other documents, the following:

1. the Registration Statement;

2. the form of Indenture between the Company and Wilmington Savings Fund Society, FSB, as Trustee (the "Trustee"), included as Exhibit 4.5 to the Registration Statement (as amended or supplemented, the "Indenture") with respect to the Notes;

3. the form of Note, included as Exhibit 4.6 to the Registration Statement;

4. the form of Rights Certificate included as Exhibit 4.7 to the Registration Statement;

5. the Subscription Agent Agreement, dated as of June 18, 2021, by and among the Company, Computershare Trust Company, N.A., and Computershare, Inc. (the "Subscription Agent Agreement"), included as Exhibit 4.8 to the Registration Statement;

6. Articles of Amendment and Restatement filed by the Company with the State Department of Assessments and Taxation of Maryland ("SDAT") on August 5, 2016 (the "Articles of Incorporation");

7. Articles Supplementary filed by the Company with SDAT on September 16, 2016, as corrected by the Certificate of Correction filed with SDAT on May 3, 2018;

8. Articles Supplementary filed by the Company with SDAT on November 15, 2016;

9. Articles Supplementary filed by the Company with SDAT on November 21, 2016;

10. Articles Supplementary filed by the Company with SDAT on December 1, 2016;

11. A first Articles of Amendment to the Articles of Incorporation filed by the Company with SDAT on March 28, 2017;

12. A second Articles of Amendment to the Articles of Incorporation filed by the Company with SDAT on March 28, 2017;

13. Articles of Amendment to the Articles of Incorporation filed by the Company on May 29, 2020;

14. Articles Supplementary filed by the Company with SDAT on July 8, 2021 (together with the documents identified in Items 6 through 13, the "Charter")

15. the bylaws of the Company; and

16. resolutions of the board of directors of the Company relating to, among other things, the authorization and issuance of the Rights and the Notes.

We have also assumed (x) the legal capacity of all natural persons and (y) (except to the extent expressly opined on herein) that all documents, agreements and instruments have been duly authorized, executed and delivered by all parties thereto, that all such parties are validly existing and in good standing under the laws of their respective jurisdictions of organization, that all such parties had the power and legal right to execute and deliver all such documents, agreements and instruments, and that such documents, agreements and instruments constitute the legal, valid and binding obligations of such parties, enforceable against such parties in accordance with their respective terms. As used herein, "to our knowledge," "known to us" or words of similar import mean the actual knowledge, without independent investigation, of any lawyer in our firm actively involved in representing the Company.

The opinions expressed herein are limited to the laws of the State of New York, as currently in effect, and no opinion is expressed with respect to any other laws or any effect that such other laws may have on the opinion expressed herein. The opinions expressed herein are limited to the matters stated herein, and no opinion is implied or may be inferred beyond the matters expressly stated herein. This letter is given only as of the date and time of effectiveness of the Registration Statement, and we undertake no responsibility to update or supplement this letter after such date and time.

Based upon and subject to the foregoing and the other assumptions and qualifications set forth herein, we are of the opinion that:

1. Assuming the due authorization, execution and delivery of the Subscription Agent Agreement by the parties thereto, the Rights, when issued and delivered by the Subscription Agent in the manner contemplated by the Subscription Agent Agreement, the Registration Statement and the Rights Certificate, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

2. Assuming the due authorization, execution and delivery of the Indenture by the by the parties thereto and the authentication of the Notes in accordance with the terms of the Indenture, the Notes, when they have been paid for in accordance with the terms of the Indenture and issued and delivered by the Trustee in accordance with the terms of the Indenture, will constitute, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms and entitled to the benefits provided by the Indenture.

Each opinion with respect to the Rights and the Notes constituting "valid and binding obligations of the Company, enforceable against the Company in accordance with their terms" is subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights, to general equity principles and public policy considerations which may limit the right of parties to obtain certain remedies.

This opinion is being furnished in accordance with the provisions of Section 601(b)(5) of Regulation S-K promulgated under the Securities Act. We hereby consent to the filing of this opinion with the Commission as an exhibit to the Registration Statement. We also consent to the reference to our firm under the caption "Legal Matters" in the Registration Statement. In giving this consent, we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission. This opinion is expressed as of the date hereof unless otherwise expressly stated, and we disclaim any undertaking to advise you of any subsequent changes of the facts stated or assumed herein or any subsequent changes in applicable law.

Very truly yours,

/s/ Cadwalader Wickersham & Taft LLP

WILLIAMS MULLEN

July 8, 2021

Board of Directors
Wheeler Real Estate Investment Trust, Inc.
2529 Virginia Beach Blvd.
Suite 200
Virginia Beach, Virginia 23452

Re: Wheeler Real Estate Investment Trust, Inc. – REIT Opinion

Ladies and Gentlemen:

We have acted as tax counsel to Wheeler Real Estate Investment Trust, Inc., a Maryland corporation (the "Company"), in connection with the Company filing the registration statement on Form S-11, Registration No.333-256699, dated June 2, 2021 (such registration statement, as amended through the date hereof, the "Registration Statement") with the Securities and Exchange Commission (the "Commission"). Under the Registration Statement, we understand that the Company is distributing to holders of the Company's common stock non-transferable subscription rights (the "Rights Offering") to purchase up to $30 million in aggregate principal amount of the Company's 7.00% senior subordinated convertible notes due 2031 (the "Notes").

In connection with the Rights Offering, we are delivering to you our opinion as to certain matters related to the qualification of the Company as a real estate investment trust (a "REIT") within the meaning of Section 856(a) of the Internal Revenue Code of 1986, as amended (the "Code").

We have reviewed certain documents (collectively, the "Documents") that we have deemed necessary or appropriate as a basis for our opinions, including without limitation, (i) the organizational documents of the Company, (ii) the certificate, dated as of the date hereof, executed by a duly appointed officer of the Company setting forth certain factual representations (the "Officer's Certificate"), and (iii) certain schedules, memoranda, financial information, and such other records and documents, as we have deemed relevant or appropriate.

Qualifications and Limitations

We have based our opinions on the correctness of the following specific assumptions:

1. The Company, at all times, has been, and will continue to be, operated in accordance with the laws of the State of Maryland in the manner described in its organizational documents;

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2. The board of directors of the Company has not revoked or otherwise terminated, and will not exercise its discretion under the charter of the Company and applicable law to authorize the Company to revoke or otherwise terminate, its REIT election pursuant to Section 856(g) of the Code;

3. Each of the statements made in the Officer's Certificate is true, correct, and complete without regard to any qualification as to knowledge or belief, and the Officer's Certificate has been executed by the appropriate and authorized officer of the Company;

4. Each of the Documents has been duly authorized, executed, and delivered; is authentic, if an original, or is accurate, if a copy; and has not been amended in any material respect;

5. The transactions contemplated by the Documents will be consummated in accordance with the terms thereof;

6. Any Documents that have not yet been executed will be finalized in substantially the same form as the versions that we have reviewed; and

7. The issuance of the Notes (and any other transactions in connection therewith) as set forth in the Documents will be consummated in accordance with the terms of the Documents.

Although we have made such inquiries and performed such investigations as we have deemed necessary to fulfill our professional responsibilities as counsel, we have not undertaken an independent investigation of all of the facts referred to in this letter or in the Documents. Consequently, we have relied on representations that the information presented in the Documents accurately and completely describes all material facts. No facts have come to our attention that would cause us to question the accuracy or completeness of the factual representations in the Documents.

Our opinions represent our evaluation of statutory, regulatory, judicial, and administrative authorities existing as of the date hereof, any of which are subject to change at any time, potentially with retroactive effect. We undertake no responsibility to advise you of any legal developments arising after the date hereof or to supplement or otherwise revise our opinions to reflect any such developments.

Our advice on each legal issue addressed in this letter represents our opinion as to how that issue should be resolved were it to be considered by the highest court of the jurisdiction upon whose law our opinion on that issue is based. The manner in which any particular issue would be treated in any actual court case would depend, in part, on facts and circumstances particular to the case, and this letter is not intended to guarantee the outcome of any legal dispute that may arise in the future.

In rendering our opinions, we also have relied upon the Code and the Treasury regulations promulgated thereunder, published rulings of the Internal Revenue Service (the "IRS"), and other interpretations of the Code and the Treasury regulations by the courts and the IRS, all as they exist and are in effect as of the date hereof. Statutes, regulations, judicial decisions, and administrative interpretations are subject to change at any time, and in some circumstances, with retroactive effect. A material change that is made after the date hereof in any of the foregoing bases for our opinions could affect our conclusions. We undertake no responsibility to advise you of any factual developments arising after the date hereof or to supplement or otherwise revise our opinions to reflect any such developments.

Our opinions are limited to the U.S. federal income tax matters addressed herein, and no other opinions are rendered with respect to other federal tax matters or to any issues raising under the tax laws of any other country, or any state or locality.

Our opinions are not binding on the IRS or any court, and there is no assurance or guarantee that the IRS or a court will agree with our conclusions.

Opinions

Based on the foregoing and subject to the limitations contained in this letter, we are of the opinion that:

1. commencing with its taxable year ended December 31, 2012, the Company has been organized and has operated in conformity with the requirements for qualification and taxation as a REIT under the Code, and the Company's proposed method of operation will enable the Company to continue to meet the requirements for qualification and taxation as a REIT under the Code; and

2. the statements in the Registration Statement under the heading "Material U.S. Federal Income Tax Considerations," to the extent that they constitute matters of law or legal conclusions with respect thereto, are a fair and accurate summary of the U.S. federal income tax considerations that are likely to be material to a holder of the Notes.

As described in the Registration Statement, qualification of the Company as a REIT will depend upon the satisfaction by the Company, through actual operating results, distribution levels, diversity of stock ownership and otherwise, of the applicable asset composition, source of income, shareholder distribution, record keeping and other requirements of the Code necessary for a corporation to qualify as a REIT. Accordingly, no assurance can be given that the actual results of the Company's operations for any taxable year will satisfy all such requirements. We do not undertake to monitor whether the Company actually will satisfy the various qualification tests.

We are providing this opinion letter to you solely in connection with the Registration Statement. Except as provided in the next paragraph, this opinion letter may not be distributed, quoted in whole or in part or otherwise reproduced in any document, filed with any governmental agency, or relied upon by any other person for any other purpose (other than as required by law) without our express written consent.

We consent to the filing of this opinion letter as an exhibit to the Registration Statement and to the use of our name under the caption "Material U.S. Federal Income Tax Considerations" in the Registration Statement. In giving this consent, we do not hereby admit that we come within the category of persons whose consent is required under section 7 of the Securities Act of 1933, as amended (the "Securities Act"), or the rules or regulations of the Commission thereunder, nor do we thereby admit that we are experts with respect to any part of the Registration Statement within the meaning of the term "experts" as used in the Securities Act or the rules and regulations of the Commission promulgated thereunder.

/s/ WILLIAMS MULLEN

Wheeler Real Estate Investment Trust, Inc.
Riversedge North
2529 Virginia Beach Boulevard
Virginia Beach, VA 23452

July 8, 2021

TO: Magnetar Structured Credit Fund, LP
Magnetar Longhorn Fund LP
Magnetar Lake Credit Fund LLC
Purpose Alternative Credit Fund – F LLC
Purpose Alternative Credit Fund – T LLC
AY2 Capital LLC

Re: Rights Offering - Backstop Commitment

Ladies and Gentlemen:

Reference is made to: (i) the Registration Rights Agreement, dated as of March 12, 2021 (the "RRA"), among Wheeler Real Estate Investment Trust, Inc., a Maryland corporation (the "Company") and the holders from time to time of the Magnetar/AY2 Warrants ("Investors"); (ii) the Registration Statement on Form S-11, filed with the Securities and Exchange Commission on July 8, 2021 (the "Form S-11"); (iii) the rights offering notice sent to each of the Backstop Parties (as defined below) on June 2, 2021 (the "Rights Offering Notice"); and (iv) the election notice to backstop the Rights Offering (as defined below) that the Backstop Parties sent to the Company on June 16, 2021 whereby the Backstop Parties exercised their Backstop Right (as defined below) in respect of the Rights Offering (as defined below). Terms used but not defined herein shall have the meaning ascribed to them in the RRA and Form S-11, as applicable.

The Company delivered the Rights Offering Notice to Magnetar Structured Credit Fund, LP, Magnetar Longhorn Fund LP, Magnetar Lake Credit Fund LLC, Purpose Alternative Credit Fund – F LLC, Purpose Alternative Credit Fund – T LLC and AY2 Capital LLC (collectively, the "Backstop Parties" and each individually, a "Backstop Party") on June 2, 2021, indicating the Company's intention to conduct a rights offering (the "Rights Offering") by issuing to holders of its common stock ("Common Shareholders") at 5:00 p.m., New York City time, on June 1, 2021 (the "Record Date") on a pro rata basis non-transferable subscription rights (the "Rights") to purchase up to $30,000,000 in aggregate principal amount of the Company's 7.00% Senior Subordinated Convertible Notes due 2031 (the "Notes"), with one (1) Right issuable for every eight (8) shares of common stock owned (the "Basic Subscription Privilege"). The Form S-11 further describes the terms of the Rights Offering, the Rights and the Notes.

If the Rights Offering is not fully subscribed, then Common Shareholders who fully exercise their Basic Subscription Privilege will be eligible to subscribe for an over-subscription privilege, which will allow them to subscribe for an additional principal amount of the Company's Notes issuable pursuant to Rights that were not exercised by other Common Shareholders (the "Over-Subscription Privilege"). The Notes sold through the Over-Subscription Privilege will be sold at the same subscription price and, if necessary, subject to proration based on relative Common Stock ownership. As indicated in the Form S-11, we intend to apply to list the Notes for trading on the Nasdaq.

The RRA grants the Backstop Parties the right to elect to subscribe for any unsubscribed amount not fully subscribed for by the Common Shareholders or by Waterfall. The Company informed the Backstop Parties on June 24, 2021 that Waterfall determined that it would not subscribe for any such unsubscribed amount.

Each of the Backstop Parties, severally and not jointly, irrevocably commits and agrees as follows:

1. Such Backstop Party irrevocably commits (such commitment a "Backstop Commitment" and collectively with those commitments of the other Backstop Parties, the "Backstop Commitments") to purchase any and all Notes that remain unsubscribed by the Common Shareholders (after any exercises of the Over-Subscription Privilege) upon the expiration of the offer period for the Rights Offering (the "Offer Period") in an aggregate principal amount for such Backstop Party equal to (a) its Notes Commitment Percentage as set forth on Schedule 1 hereto *multiplied by* (b) the Unsubscribed Notes Amount (as defined below) (the product of clauses (a) and (b) for such Backstop Party, its "Backstop Commitment Amount"). The term "Unsubscribed Notes Amount" shall mean such principal amount of Notes equal to the excess, if any, of (i) the aggregate principal amount of Notes that may be purchased pursuant to all Rights issued by the Company in connection with the Rights Offering, *over* (ii) the aggregate principal amount of Notes that are purchased by common shareholders in the Rights Offering.

2. Each of the foregoing Backstop Commitments is subject solely to (a) the receipt by such Backstop Party of written notice from the Company within six (6) Business Days of expiration of the Offer Period but prior to the termination of the Backstop Commitments pursuant to Section 3 below that each Backstop Party must fund its Backstop Commitment and setting forth the amount of the Backstop Commitment to be funded, which, for each Backstop Commitment Party, shall not be in excess of the Backstop Commitment Amount, and (b) the receipt by each Backstop Party of its Notes thereupon purchased. The Company agrees to issue such Notes simultaneously with the receipt by the Company of the proceeds of such funding. Each Backstop Party agrees to fund its Backstop Commitment within eleven (11) calendar days following written notice from the Company that such Backstop Party must so fund under this Letter Agreement.

3. This Letter Agreement, including each Backstop Party's obligation to fund the Backstop Commitment, terminates upon the earliest to occur of (a) the receipt by the Company of an aggregate of $30,000,000 in proceeds from the sale of Notes to participating Common Shareholders in the Rights Offering (including the Backstop Parties as a result of their purchase of Notes under this Letter Agreement) (b) fifteen (15) Business Days after the expiration of the Offer Period if the Company has not provided the Backstop Parties with the written notice specified in Section (2)(a) prior to such date (provided, however, that such fifteen (15) Business Day period in this clause (b) can be extended in the sole discretion of the Backstop Parties, (c) the date on which the Backstop Parties have provided the Company with cash in the amount of the full amount of the Backstop Commitments on the terms set forth in this Letter Agreement (assuming the Company has simultaneously therewith issued the corresponding Notes to such Backstop Party as required under Section 2 hereof) and (d) September 15, 2021. Upon any such termination of this Letter Agreement, all obligations of the Backstop Parties hereunder will terminate (other than the indemnity and expense reimbursement obligations of the Company set forth herein) and none of the parties hereto shall have any liability under this Letter Agreement whatsoever to any other party, except in regard to the indemnity and expense reimbursement obligations of the Company set forth herein (which shall survive any such termination).

4. The obligation of any Backstop Party to fund its Backstop Commitment may not be assigned to any other person or entity without the prior written consent of the Company; provided, however, that any Backstop Party may assign all or a portion of its obligations hereunder to any other Backstop Party. The Company may not assign or delegate any of its rights or obligations hereunder to any other person or entity without the prior written consent of the Backstop Parties. For the avoidance of doubt however, this Section 4 shall not restrict the ability of the Backstop Parties to transfer any Notes purchased by them hereunder.

5. This Letter Agreement is binding on and solely for the benefit of and enforceable by the Backstop Parties and the Company, and nothing set forth in this Letter Agreement is to be construed to confer upon or give to any other person any benefits, rights or remedies under or by reason of, or any rights to enforce or cause the Company to enforce, the Backstop Commitments or any provisions of this Letter Agreement.

6. Notwithstanding anything to the contrary contained herein, the Company, in accepting the Backstop Commitments hereunder, agrees and acknowledges the liability and obligations of each Backstop Party hereunder shall not exceed its respective Backstop Commitment Amount. Each Backstop Party's commitment herein to contribute or otherwise fund to the Company its respective Backstop Commitment Amount shall be the sole and exclusive remedy of the Company against such Backstop Party and its Affiliates in respect of this Letter Agreement, and the Company, on behalf of itself and its Affiliates, hereby waives all other rights and remedies it may have against the Backstop Parties and their respective Affiliates, whether sounding in contract or tort, or whether at law or in equity, or otherwise, relating to this Letter Agreement, including, for the avoidance of doubt, any right to seek damages against such Backstop Party in excess of such Backstop Commitment Amount.

7. The Company agrees to indemnify and hold harmless each Backstop Party and each of their Affiliates and their respective officers, directors, employees, agents, advisors and other representatives (each an "Indemnified Party") from and against (and will reimburse each Indemnified Party as the same are incurred for) any and all claims, damages, losses, liabilities and expenses (including, without limitation, the reasonable fees, disbursements and other charges of counsel) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation or proceeding or preparation of a defense in connection therewith) the Backstop Parties agreeing to backstop the Rights Offering as provided in this Letter Agreement, except to the extent such claim, damage, loss, liability or expense is found in a judgment by a court of competent jurisdiction to have resulted from (i) such Indemnified Party's gross negligence or willful misconduct or (ii) such Indemnified Party's material breach of its obligations under this Letter Agreement. In the case of an investigation, litigation or proceeding to which the indemnity in this paragraph applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by the Company, its subsidiaries, its equityholders or creditors or an Indemnified Party, whether or not an Indemnified Party is otherwise a party thereto and whether or not any aspect of the Rights Offering is consummated. The Company also agrees that no Indemnified Party shall have any liability (whether direct or indirect, in contract or tort, or otherwise) to the Company or the Company's subsidiaries or Affiliates or their respective equity holders or creditors arising out of, related to or in connection with any aspect of the Rights Offering, except to the extent of direct, as opposed to special, indirect, consequential or punitive, damages determined in a judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct or material breach of its obligations under this Letter Agreement.

8. This Letter Agreement shall be governed by and construed in accordance with the laws of the State of New York applied to contracts to be performed wholly within the State of New York, without regard to conflicts of laws principles. Any judicial proceeding brought by or against any party hereto with respect to this Letter Agreement must be brought in any court of competent jurisdiction located in the County and State of New York, United States of America, and, by execution and delivery of this Letter Agreement, each of the parties hereto accepts for itself, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Letter Agreement. THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) BROUGHT BY ANY OF THEM AGAINST THE OTHER IN ANY MATTERS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LETTER AGREEMENT.

9. This Letter Agreement (together with the Form S-11 and the RRA) constitutes the sole agreement, and supersedes all prior agreements, understandings and statements, written or oral, between the parties hereto with respect to the Backstop Parties' election to backstop the Rights Offering pursuant to Section 4.1 of the RRA. (For the avoidance of doubt, the Accordion Right is a separate right (in addition to the Backstop Right) that the Investors may later exercise under the RRA.) The terms of this Letter Agreement may not be modified or otherwise amended, or waived, except pursuant to a written agreement signed by all of the parties hereto. This Letter Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

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Very truly yours,

WHEELER REAL ESTATE INVESTMENT TRUST, INC.

By: /s/ M. Andrew Franklin
Name: M. Andrew Franklin
Title: Interim Chief Executive Officer

[Signature Page to Backstop Commitment Letter]

Acknowledged and agreed as of the date first above written:

MAGNETAR STRUCTURED CREDIT FUND, LP
By Magnetar Financial LLC, its general partner

By: /s/ Michael Turro
Name: Michael Turro
Title: Chief Compliance Officer

MAGNETAR LONGHORN FUND LP
By Magnetar Financial LLC, its investment manager

By: /s/ Michael Turro
Name: Michael Turro
Title: Chief Compliance Officer

MAGNETAR LAKE CREDIT FUND LLC
By Magnetar Financial LLC, its manager

By: /s/ Michael Turro
Name: Michael Turro
Title: Chief Compliance Officer

PURPOSE ALTERNATIVE CREDIT FUND - F LLC
By Magnetar Financial LLC, its investment manager

By: /s/ Michael Turro
Name: Michael Turro
Title: Chief Compliance Officer

[Signature Page to Backstop Commitment Letter]

PURPOSE ALTERNATIVE CREDIT FUND-T LLC
By Magnetar Financial LLC, its investment manager

By: /s/ Michael Turro
Name: Michael Turro
Title: Chief Compliance Officer

[Signature Page to Backstop Commitment Letter]

AY2 CAPITAL LLC
By: Never Summer Holdings LLC, its Manager

By: /s/ Harrison Wreschner
Name: Harrison Wreschner
Title: Managing Member

[Signature Page to Backstop Commitment Letter]

Schedule 1
Backstop Commitments

Backstop Party	**Applicable Percentage** Represents Applicable Percentage of Backstop Party on the Record Date.	**Notes Commitment Percentage** Represents Backstop Party's *pro rata* share (*i.e.*, relative to the other Backstop Parties) of total commitments hereunder by all Backstop Parties in connection with the Notes Offering.
Magnetar Structured Credit Fund, LP	2.59%	27.69%
Magnetar Longhorn Fund LP	0.40%	4.32%
Magnetar Lake Credit Fund LLC	2.79%	29.78%
Purpose Alternative Credit Fund – F LLC	2.61%	27.89%
Purpose Alternative Credit Fund – T LLC	0.87%	9.32%
AY2 Capital LLC	0.59%	1%[1]
Total:	9.86 %(1)	100 %

(1) Based on 10,768,713 shares of Common Stock outstanding (on a Fully Diluted Basis (and excluding, for the avoidance of doubt, the Waterfall warrants)) as of the Record Date and assuming full (cash) exercise of the Warrants held by the entities listed above on such date.

[1] AY2 Capital LLC has elected to participate in less than its Applicable Percentage and has no obligation to fund more than the stated percentage in this column.

Exhibit 25.1

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM T-1

STATEMENT OF ELIGIBILITY
UNDER THE TRUST INDENTURE ACT OF 1939
OF A CORPORATION DESIGNATED TO ACT AS TRUSTEE
Check if an Application to Determine Eligibility of a Trustee Pursuant to Section 305(b)(2) _____

WILMINGTON SAVINGS FUND SOCIETY, FSB
(Exact name of Trustee as specified in its charter)

N/A	**51-0054940**
(Jurisdiction of incorporation of organization if not a U.S. national bank)	(I.R.S. Employer Identification No.)

500 Delaware Avenue, 11th Floor
Wilmington, DE 19801
(302) 792-6000
(Address of principal executive offices, including zip code)

WILMINGTON SAVINGS FUND SOCIETY
CONTROLLERS OFFICE
500 Delaware Avenue
Wilmington, DE 19801
(302) 792-6000
(Name, address, including zip code, and telephone number, including area code, of agent of service)

Wheeler Real Estate Investment Trust, Inc.
(Exact name of obligor as specified in its charter)

Maryland	**45-2681082**
(State or other jurisdiction or incorporation or organization)	(I.R.S. Employer Identification No.)

2529 Virginia Beach Blvd
Virginia Beach, Virginia 23452
(Address of principal executive offices, including zip code)

7.00% Senior Subordinated Convertible Notes due 2031
(Title of the indenture securities)

ITEM 1. GENERAL INFORMATION.

Furnish the following information as to the trustee:

(a) Name and address of each examining or supervising authority to which it is subject.

Securities and Exchange Commission
Washington, DC 20549

Federal Reserve
District 3
Philadelphia, PA

FDIC
Washington, DC 20549

Office of the Comptroller of the Currency
New York, NY 10173

(b) Whether it is authorized to exercise corporate trust powers.

The trustee is authorized to exercise corporate trust powers.

ITEM 2. AFFILIATIONS WITH THE OBLIGOR.

If the obligor is an affiliate of the trustee, describe each affiliation:

Based upon an examination of the books and records of the trustee and information available to the trustee, the obligor is not an affiliate of the trustee.

ITEM 16. LIST OF EXHIBITS.

Listed below are all exhibits filed as part of this Statement of Eligibility and Qualification.

Exhibit 1.	A copy of the articles of association of the trustee as now in effect.
Exhibit 2.	A copy of the certificate of authority of the trustee to commence business, if not contained in the articles of association.
Exhibit 3.	A copy of the authorization of the trustee to exercise corporate trust powers, if such authorization is not contained in the documents specified in paragraph (1) or (2) above.
Exhibit 4.	A copy of the existing bylaws of the trustee, or instruments corresponding thereto.
Exhibit 5.	Not applicable.
Exhibit 6.	The consents of United States institutional trustees required by Section 321(b) of the Act.
Exhibit 7.	A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority.
Exhibit 8.	Not applicable.
Exhibit 9.	Not applicable.

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Wilmington Savings Fund Society, FSB, a federal savings bank organized and existing under the laws of the United States of America, has duly caused this Statement of Eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Wilmington and State of Delaware on the 7th day of July, 2021.

WILMINGTON SAVINGS FUND SOCIETY, FSB

By: /s/ Patrick J. Healy
Name: Patrick J. Healy
Title: Senior Vice President

FEDERAL STOCK CHARTER

WILMINGTON SAVINGS FUND SOCIETY

SECTION 1. *Corporate Title.* The full corporate title of the savings bank is "Wilmington Savings Fund Society, Federal Savings Bank."

SECTION 2. *Office.* The home office of the savings bank shall be located in the County of New Castle, State of Delaware.

SECTION 3. *Duration.* The duration of the savings bank is perpetual.

SECTION 4. *Purpose and Powers.* The purpose of the savings bank is to pursue any or all of the lawful objectives of a Federal savings bank chartered under Section 5 of the Home Owners' Loan Act and to exercise all the express, implied, and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto, subject to the Constitution and laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Federal Home Loan Bank Board ("Board"). In addition, the savings bank may make any investment and engage in any activity as may be specifically authorized by action of the Board, including authorization by delegated authority, in connection with action approving the issuance of the charter.

SECTION 5. *Capital Stock.* The total number of shares of all classes of the capital stock which the savings bank has authority to issue is Twenty Five Million (25,000,000), of which Seventeen and One Half Million (17,500,000) shall be common stock, par value $.01 per share, and of which Seven and One Half Million (7,500,000) shall be preferred stock, par value $.01 per share. The shares may be issued from time to time as authorized by the board of directors without further approval of stockholders except as otherwise provided in this Section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the shares shall be paid in full before their issuance and shall not be less than the par value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of the savings bank. The consideration for the shares shall be cash, tangible or intangible property (to the extent direct investment in such property would be permitted), labor or services actually performed for the savings bank, or any combination of the foregoing. In the absence of actual fraud in the transaction, the value of such property, labor, or services, as determined by the board of directors of the savings bank, shall be conclusive. Upon payment of such consideration, such shares shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the surplus of the savings bank which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for their issuance.

Except for shares issuable in connection with the conversion of the savings bank from the mutual to the stock form of capitalization, no shares of capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons of the savings bank other than as part of a general public offering or as qualifying shares to a director, unless their issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

Nothing contained in this Section 5 (or in any supplementary sections hereto) shall entitle the holders of any class of a series of capital stock to vote as a separate class or series or to more than one vote per share, except as to the cumulation of votes for the election of directors: *Provided,* That this restriction on voting separately by class or series shall not apply:

(i) To any provision which would authorize the holders of preferred stock, voting as a class or series, to elect some members of the board of directors, less than a majority thereof, in the event of default in the payment of dividends on any class or series of preferred stock;

(ii) To any provision which would require the holders of preferred stock, voting as a class or series, to approve the merger or consolidation of the savings bank with another corporation or the sale, lease, or conveyance (other than by mortgage or pledge) of properties or business in exchange for securities of a corporation other than the savings bank if the preferred stock is exchanged for securities of such other corporation: *Provided,* That no provision may require such approval for transactions undertaken with the assistance or pursuant to the direction of the Federal Savings and Loan Insurance Corporation;

(iii) To any amendment which would adversely change the specific terms of any class of series of capital stock as set forth in this Section 5 (or in any supplementary sections hereto), including any amendment which would create or enlarge any class or series ranking prior thereto in rights and preferences. An amendment which increases the number of authorized shares of any class or series of capital stock, or substitutes the surviving association in a merger or consolidation for the savings bank, shall not be considered to be such an adverse change.

A description of the different classes and series (if any) of the savings bank's capital stock and a statement of the designations, and the relative rights, preferences, and limitations of the shares of each class of and series (if any) of capital stock are as follows:

A. *Common Stock.* Except as provided in this Section 5 (or in any supplementary sections hereto) the holders of the common stock shall exclusively possess all voting power. Each holder of shares of common stock shall be entitled to one vote for each share held by such holder, except as to the cummulation of votes for the election of directors.

Whenever there shall have been paid, or declared and set aside for payment, to the holders of the outstanding shares of any class of stock having preference over the common stock as to the payment of dividends, the full amount of dividends and of sinking fund, retirement fund, or other retirement payments, if any, to which such holders are respectively entitled in preference to the common stock, then dividends may be paid on the common stock and on any class or series of stock entitled to participate therewith as to dividends out of any assets legally available for the payment of dividends.

In the event of any liquidation, dissolution, or winding up of the savings bank, the holders of the common stock (and the holders of any class or series of stock entitled to participate with the common stock in the distribution of assets) shall be entitled to receive, in cash or in kind, the assets of the savings bank available for distribution remaining after: (i) payment or provision for payment of the savings bank's debts and liabilities; (ii) distributions or provision for distributions in settlement of its liquidation account; and (iii) distributions or provision for distributions to holders of any class or series of stock having preference over the common stock in the liquidation, dissolution, or winding up of the savings bank. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

B. *Preferred Stock.* The savings bank may provide in supplementary sections to its charter for one or more classes of preferred stock, which shall be separately identified. The shares of any class may be divided into and issued in series, with each series separately designated so as to distinguish the shares thereof from the shares of all other series and classes. The terms of each series shall be set forth in a supplementary section to the charter. All shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

(a) The distinctive serial designation and the number of shares constituting such series;

(b) The dividend rate or the amount of dividends to be paid on the shares of such series, whether dividends shall be cumulative and, if so, from which date(s) the payment date(s) for dividends, and the participating or other special rights, if any, with respect to dividends;

(c) The voting powers, full or limited, if any, of the shares of such series;

(d) Whether the shares of such series shall be redeemable and, if so, the price(s) at which, and the terms and conditions on which, such shares may be redeemed;

(e) The amount(s) payable upon the shares of such series in the event of voluntary or involuntary liquidation, dissolution, or winding up to the savings bank;

(f) Whether the shares of such series shall be entitled to the benefit of a sinking or retirement fund to be applied to the purchase or redemption of such shares, and if so entitled, the amount of such fund and the manner of its application, including the price(s) at which such shares may be redeemed or purchased through the application of such fund;

(g) Whether the shares of such series shall be convertible into, or exchangeable for, shares of any other class or classes of stock of the savings bank and, if so, the conversion price(s) or the rate(s) of exchange, and the adjustments thereof, if any, at which such conversion or exchange may be made, and any other terms and conditions of such conversion or exchange.

(h) The price or other consideration for which the shares of such series shall be issued; and

(i) Whether the shares of such series which are redeemed or converted shall have the status of authorized but unissued shares of serial preferred stock and whether such shares may be reissued as shares of the same or any other series of serial preferred stock.

Each share of each series of serial preferred stock shall have the same relative rights as and be identical in all respects with all the other shares of the same series.

The board of directors shall have authority to divide, by the adoption of supplementary charter sections, any authorized class of preferred stock into series, and, within the limitations set forth in this section and the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

Prior to the issuance of any preferred shares of a series established by a supplementary charter section adopted by the board of directors, the savings bank shall file with the Secretary to the Board a dated copy of that supplementary section of this charter establishing and designating the series and fixing and determining the relative rights and preferences thereof.

SECTION 6. *Net Worth Certificates.* Notwithstanding any provision of Section 5, *Capital Stock,* the savings bank may issue net worth certificates, income capital certificates or similar certificates to the Federal Savings and Loan Insurance Corporation (the "Corporation") or the Federal Deposit Insurance Corporation in exchange for appropriate consideration, including promissory notes of the Corporation, in accordance with the rules, regulations, and policies of the Board. Subject to such rules, regulations, and policies, the board of directors of the savings bank is authorized without the prior approval of the stockholders of the savings bank and by resolution(s) from time to time adopted by the board of directors to cause the issuance of net worth certificates to the Corporation and to fix the designations, preferences, and relative, participating, optional, or other special rights of the certificates, and the qualifications, limitations, and restrictions thereon. Stockholders of the savings bank shall not be entitled to preemptive rights with respect to the issuance of net worth certificates, nor shall holders of such certificates be entitled to preemptive rights with respect to any additional issuance of net worth certificates.

SECTION 7. *Preemptive Rights.* Holders of the capital stock of the savings bank shall not be entitled to preemptive rights with respect to any shares of the savings bank which may be issued.

SECTION 8. *Certain provisions applicable for five years.* Notwithstanding anything contained in the savings bank charter or bylaws to the contrary, for a period of five years from the date of completion of the conversion of the savings bank from mutual to stock form, the following provisions shall apply:

A. *"Beneficial ownership limitation."* No person shall directly or indirectly offer to acquire or acquire the beneficial ownership of more than 10 percent of any class of an equity security of the savings bank. This limitation shall not apply to a transaction in which the savings bank forms a holding company without change in the respective beneficial ownership interests of its stockholders other than pursuant to the exercise of any dissenter and appraisal rights or the purchase of shares by underwriters in connection with a public offering.

In the event shares are acquired in violation of this Section 8, all shares beneficially owned by any person in excess of 10% shall be considered 'excess shares' and shall not be counted as shares entitled to vote and shall not be voted by any person or counted as voting shares in connection with any matters submitted to the stockholders for a vote.

For the purposes of this Section 8, the following definitions apply.

(1) The term "person" includes an individual, a group acting in concert, a corporation, a partnership, an association, a joint stock company, a trust, any unincorporated organization or similar company, a syndicate or any other group formed for the purpose of acquiring, holding or disposing of securities of the savings bank.

(2) The term "offer" includes every offer to buy or otherwise acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tenders of, a security or interest in a security for value.

(3) The term "acquire" includes every type of acquisition, whether effected by purchase, exchange, operation of law or otherwise.

(4) The term "acting in concert" means (a) knowing participation in a joint activity or conscious parallel action towards a common goal whether or not pursuant to an express agreement, or (b) a combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement or other arrangements, whether written or otherwise.

B. *Cumulative voting limitation.* Stockholders shall not be permitted to cumulate their votes for election of directors.

C. *Call for special meetings.* Special meetings of stockholders relating to changes in control of the savings bank or amendments to its charter shall be called only upon direction of the board of directors.

SECTION 9. *Liquidation Account.* Pursuant to the requirements of the Board's regulations (12 C.F.R. Subchapter D), the savings bank shall establish and maintain a liquidation account for the benefit of its savings account holders as of December 31, 1983 ("eligible savers"). In the event of a complete liquidation of the savings bank, it shall comply with such regulations with respect to the amount and the priorities on liquidation of each of the savings bank's eligible saver's inchoate interest in the liquidation account, to the extent it is still in existence: *Provided,* that an eligible saver's inchoate interest in the liquidation account shall not entitle such eligible saver to any voting rights at meetings of the savings bank's stockholders.

SECTION 10. *Directors.* The savings bank shall be under the direction of a board of directors. The authorized number of directors, as stated in the savings bank's bylaws, shall not be less than seven or more than fifteen except when a greater number is approved by the Board.

SECTION 11. *Amendment of Charter.* Except as provided in Section 5, no amendment, addition, alteration, change, or repeal of this charter shall be made, unless such is first proposed by the board of directors of the savings bank, then preliminarily approved by the Board, which preliminary approval may be granted by the Board pursuant to regulations specifying preapproved charter amendments, and thereafter approved by the shareholders by a majority of the total votes eligible to be cast at a legal meeting. Any amendment, addition, alteration, change, or repeal so acted upon shall be effective upon filing with the Board in accordance with regulatory procedures or on such other date as the Board may specify in its preliminary approval.

Any amendment, addition, alteration, change or repeal so acted upon shall be effective upon filing with the Board in accordance with the regulatory procedures or on such other date as the Board may specify in its preliminary approval.

Attest: Linda C. Smith — By: J. Walton H. Clark, Jr.

Secretary of the Savings Bank — *President or Chief Executive Officer of the Savings Bank*

Declared effective this 4th day of December, 1986.

FEDERAL HOME LOAN BANK BOARD

Attest: Gray B. Smith — By: J Terry Fleck

Acting Secretary to the Board 12/4/86 — Associate General Counsel for Conversions

Office of the Comptroller of the Currency

Washington, DC 20219

CERTIFICATE OF CORPORATE EXISTENCE AND FIDUCIARY POWERS

I, Blake Paulson, Acting Comptroller of the Currency, do hereby certify that:

1. The Comptroller of the Currency, pursuant to Revised Statutes 324, et seq, as amended, and 12 USC 1, et seq, as amended, has possession, custody, and control of all records pertaining to the chartering, regulation, and supervision of all national banking associations.

2. "Wilmington Savings Fund Society, Federal Savings Bank," Wilmington, Delaware (Charter No. 707938), is a national banking association formed under the laws of the United States and is authorized thereunder to transact the business of banking and exercise fiduciary powers on the date of this certificate.

IN TESTIMONY WHEREOF, today, March 1, 2021, I have hereunto subscribed my name and caused my seal of office to be affixed to these presents at the U.S. Department of the Treasury, in the City of Washington, District of Columbia.

Acting Comptroller of the Currency

2021-00473-C

BYLAWS OF
WILMINGTON SAVINGS FUND SOCIETY, FEDERAL SAVINGS BANK

ARTICLE I. HOME OFFICE

The home office of Wilmington Savings Fund Society, Federal Savings Bank ("Bank") shall be at Wilmington in the county of New Castle in the State of Delaware.

ARTICLE II. STOCKHOLDERS

SECTION 1. *Place of Meetings.* All annual and special meetings of stockholders shall be held at such place as the board of directors may determine in the state in which the Bank has its principal place of business.

SECTION 2. *Annual Meeting.* The annual meeting of the stockholders of the Bank for the election of directors and for the transaction of any other business of the Bank shall be held within 120 days after the end of the Bank's fiscal year. Such meeting date shall be designated annually by the board of directors.

SECTION 3. *Special Meetings.* Special Meetings of the shareholders for any purpose or purposes, unless otherwise prescribed by the regulations of the Federal Home Loan Bank Board ("Board") (which as hereinafter used includes the Federal Savings and Loan Insurance Corporation), may be called at any time by the chairman of the board, the president, or a majority of the board of directors, and shall be called by the chairman of the board, the president, or the secretary upon the written request of the holders of not less than one-tenth of all of the outstanding capital stock of the Bank entitled to vote at the meeting. Such written request shall state the purpose or purposes of the meeting and shall be delivered to the home office of the Bank addressed to the chairman of the board, the president, or the secretary.

SECTION 4. *Conduct of Meetings.* Annual and special meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order unless otherwise prescribed by regulations of the Federal Home Loan Bank Board, or these bylaws. The board of directors shall designate, when present, either the chairman of the board or president to preside at such meetings.

SECTION 5. *Notice of Meetings.* Written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than twenty nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the chairman of the board, the president, the secretary, the directors calling the meeting to each stockholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail, addressed to the stockholder at his address as it appears on the stock transfer books or records of the Bank as of the record date prescribed in Section 6 of this Article II, with postage thereon prepaid. When any stockholders' meeting, either annual or special, is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. It shall not be necessary to give any notice of the time and place of any meeting adjourned for less than thirty days or of the business to be transacted therein, other than an announcement at the meeting at which such adjournment is taken.

SECTION 6. *Fixing of Record Date.* For the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or stockholders entitled to receive payment of any dividend, or in order to make a determination of stockholders for any other proper purpose, the board of directors shall fix in advance a date as the record date for any such determination of stockholders. Such date in any case shall be not more than sixty days and, in case of a meeting of

Neither treasury shares of its own stock held by the Bank, nor shares held by another corporation, if a majority of the shares entitled to vote for the election of directors of such other corporation are held by the Bank, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time for purposes of any meeting.

SECTION 12. *Cumulative Voting.* For a period of five years following the date of the completion of the conversion of the Bank from mutual to stock form, the cumulation of votes for the election of directors is not permitted. Thereafter, at each election for directors every stockholder entitled to vote at such election shall have the right either to vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote, or to cumulate his votes by giving one candidate as many votes as the number of such directors to be elected multiplied by the number of his shares shall equal, or by distributing such votes on the same principle among any number of candidates.

SECTION 13. *Informal Action by Stockholders.* Any action required to be taken at a meeting of the stockholders, or any other action which may be taken at a meeting of the stockholders, may be taken without a meeting if unanimous consent in writing, setting forth the action so taken, shall be given by all of the stockholders entitled to vote with respect to the subject matter thereof.

SECTION 14. *Inspectors of Election.* In advance of any meeting of stockholders, the board of directors may appoint any persons other than nominees for office as inspectors of election to act at such meeting or any adjournment thereof. The number of inspectors shall be either one or three. If the board of directors so appoints either one or three such inspectors that appointment shall not be altered at the meeting. If inspectors of election are not so appointed, the chairman of the board or the president may make such appointment at the meeting. If appointed at the meeting, the majority of the votes present shall determine whether one or three inspectors are to be appointed. In case any person appointed as inspector fails to appear or refuses to act, the vacancy may be filled by appointment by the board of directors in advance of the meeting, by the chairman of the board, or by the president.

Unless otherwise prescribed by regulations of the Federal Home Loan Bank Board, the duties of such inspectors shall include: determining the number of shares of stock and the voting power of each share, the shares of stock represented at the meeting, the existence of a quorum, the authenticity, validity and effect of proxies; receiving votes, ballots or consents; hearing and determining all challenges and questions in any way arising in connection with the right to vote; counting and tabulating all votes or consents; determining the result; and such acts as may be proper to conduct the election or vote with fairness to all stockholders.

SECTION 15. *Nominating Committee.* The board of directors shall act as a nominating committee for selecting the management nominees for election as directors. Except in the case of a nominee substituted as a result of the death or other incapacity of a management nominee, the nominating committee shall deliver written nominations to the secretary at least 20 days prior to the date of the annual meeting. Upon delivery, such nominations shall be posted in a conspicuous place in each office of the Bank. No nominations for directors except those made by the nominating committee shall be voted upon at the annual meeting unless other nominations by stockholders are made in writing and delivered to the secretary of the Bank at least five days prior to the date of the annual meeting. Upon delivery, such nominations shall be posted in a conspicuous place in each office of the Bank. Ballots bearing the names of all the persons nominated by the nominating committee and by stockholders shall be provided for use at the annual meeting. However, if the nominating committee shall fail or refuse to act at least 20 days prior to the annual meeting, nominations for directors may be made at the annual meeting by any stockholder entitled to vote and shall be voted upon.

SECTION 16. *New Business.* Any new business proposed by a stockholder to be taken up at the annual meeting shall be stated in writing and filed with the secretary of the Bank at least five days before the date of the annual meeting, and all business so stated, proposed and filed shall be considered at the annual meeting, but no other proposal shall be acted upon at the annual meeting. Such writing filed with the secretary shall contain such information as required by Regulation 14A and Schedule 14A under the Securities Exchange Act 1934. Any stockholder may make any other proposal at the annual meeting and the same may be discussed and considered, but unless stated in writing and filed with the secretary at least five days before the meeting, as provided above, such proposal shall be laid over for action at an

stockholders, not fewer than ten days prior to the date on which the particular action, requiring such determination of stockholders, is to be taken. When a determination of stockholders entitled to vote at any meeting of stockholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

SECTION 7. *Voting Lists.* The officer or agent having charge of the stock transfer books for shares of the Bank shall make, at least twenty days before each meeting of the stockholders, a complete list of the stockholders entitled to vote at such meeting, or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each, which list, shall be kept on file at the home office of the Bank and shall be subject to inspection by any stockholder at any time during usual business hours, for a period of twenty days prior to such meeting. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any stockholder during the whole time of the meeting. The original stock transfer book shall be prima facie evidence as to who are the stockholders entitled to examine such list or transfer books or to vote at any meeting of stockholders.

In lieu of making the stockholders list available for inspection by any stockholder as provided in the preceding paragraph, the board of directors may elect to follow the procedures prescribed in Section 552.6(d) of the Board's Regulations, as now or hereafter in effect.

SECTION 8. *Quorum.* A majority of the outstanding shares of the Bank entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of stockholders. If less than a majority of the outstanding shares are represented at a meeting, a majority of the shares so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The stockholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

SECTION 9. *Proxies.* At all meetings of stockholders, a stockholder may vote by proxy executed in writing by the stockholder or by his duly authorized attorney in fact. Proxies solicited on behalf of the management shall be voted as directed by the stockholder or, in the absence of such direction, as determined by a majority of the board of directors. No proxy shall be valid after eleven months from the date of its execution except for a proxy coupled with an interest.

SECTION 10. *Voting of Shares in the Name of Two or More Persons.* When ownership stands in the name of two or more persons, in the absence of written directions to the Bank to the contrary, at any meeting of the stockholders of the Bank any one or more of such stockholders may cast, in person or by proxy, all votes to which such ownership is entitled. In the event an attempt is made to cast conflicting votes, in person or by proxy, by the several persons in whose names shares of stock stand, the vote or votes to which those persons are entitled shall be cast as directed by a majority of those holding such stock and present in person or by proxy at such meeting, but no votes shall be cast for such stock if a majority cannot agree.

SECTION 11. *Voting of Shares by Certain Holders.* Shares standing in the name of another corporation may be voted by any officer, agent or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine. Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name. Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority to do so is contained in an appropriate order of the court or other public authority by which such receiver was appointed.

A stockholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee and thereafter the pledgee shall be entitled to vote the shares so transferred.

adjourned, special or annual meeting of the stockholders taking place thirty days or more thereafter. This provision shall not prevent the consideration and approval or disapproval at the annual meeting of reports of officers, directors and committees, but in connection with such reports no new business shall be acted upon at such annual meeting unless stated and filed as herein provided.

ARTICLE III. BOARD OF DIRECTORS

SECTION 1. *General Powers.* The business and affairs of the Bank shall be under the direction of its board of directors. The board of directors shall annually elect a chairman of the board and a president from among its members and shall designate, when present, either the chairman of the board or the president to preside at its meetings.

SECTION 2. *Number and Term.* The board of directors shall consist of eleven (11) members and shall be divided into three classes as nearly equal in number as possible. The members of each class shall be elected for a term of three years and until their successors are elected and qualified. One class shall be elected by ballot annually.

SECTION 3. *Regular Meetings.* A regular meeting of the board of directors shall be held without other notice than this bylaw immediately after, and at the same place as, the annual meeting of stockholders. The board of directors may provide, by resolution, the time and place, within the Bank's regular lending area, for the holding of additional regular meetings without other notice than such resolution.

SECTION 4. *Qualification.* Each Director shall at all times be the beneficial owner of not less than 100 shares of capital stock of the association unless the association is a wholly owned subsidiary of a holding company.

SECTION 5. *Special Meetings.* Special meetings of the board of directors may be called by or at the request of the chairman of the board, the president or one-third of the directors. The persons authorized to call special meetings of the board of directors may fix any place, within the Bank's regular lending area, as the place for holding any special meeting of the board of directors called by such persons. All meetings of the board of directors shall be conducted in accordance with the most current edition of Robert's Rules of Order.

Members of the board of directors may participate in meetings by means of conference telephone, or by means of similar communications equipment by which all persons participating in the meeting can hear each other. Such participation shall constitute presence in person but shall not constitute attendance for the purpose of compensation pursuant to Section 12 of this Article.

SECTION 6. *Notice.* Written notice of any special meeting shall be given to each director at least two days prior thereto delivered personally or by telegram, or at least five days prior thereto when delivered by mail at the address at which the director is most likely to be reached. Such notice shall be deemed to be delivered when deposited in the U.S. mail so addressed, with postage thereon prepaid if mailed, or when delivered to the telegraph company if sent by telegram. Any director may waive notice of any meeting by a writing filed with the secretary. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

SECTION 7. *Quorum.* A majority of the number of directors fixed by Section 2 of this Article III shall constitute a quorum for the transaction of business at any meeting of the board of directors, but if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time. Notice of any adjourned meeting shall be given in the same manner as prescribed by Section 6 of this Article III.

SECTION 8. *Manner of Acting.* The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless governing law, rules or regulation requires otherwise.

SECTION 9. *Action Without a Meeting.* Any action required or permitted to be taken by the board of directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors.

SECTION 10. *Resignation.* Any director may resign at any time by sending a written notice of such resignation to the home office of the Bank addressed to the secretary. Unless otherwise specified therein such resignation shall take effect upon receipt thereof by the secretary.

SECTION 11. *Vacancies.* Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors, even if less than a quorum of the board of directors remains. A director elected to fill a vacancy shall be elected to serve until the next election of directors by the stockholders. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the stockholders.

SECTION 12. *Compensation.* Directors, as such, may receive a stated compensation for their services. By resolution of the board of directors, a reasonable fixed sum, and reasonable expenses of attendance, if any, may be allowed for actual attendance at each regular or special meeting of the board of directors. Members of either standing or special committees may be allowed such compensation for actual attendance at committee meetings as the board of directors may determine.

SECTION 13. *Presumption of Assent.* A director of the Bank who is present at a meeting of the board of directors at which action on any Bank matter is taken shall be presumed to have assented to the action taken unless his dissent or abstention shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the Bank within five days after the date he receives a copy of the minutes of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

SECTION 14. *Removal of Directors.* At a meeting of stockholders called expressly for that purpose, any director may be removed for cause by a vote of the holders of a majority of the shares then entitled to vote at an election of directors. If less then the entire board is to be removed, no one of the directors may be removed if the votes cast against the removal would be sufficient to elect a director if then cumulatively voted at an election of the class of directors of which such director is a part. Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the charter or supplemental sections thereto, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

SECTION 15. *Age limitation on directors.* No person shall be eligible for election, re-election, appointment, or reappointment to the board of directors of the Bank if such person is then more than 75 years of age. No director shall serve beyond the annual meeting of the Bank immediately following his attainment of 75 years of age. The age limitation shall not apply to a person serving as a director emeritus of the Bank.

Directors emeritus may be appointed and their compensation for services (in an amount not to exceed those fees paid to voting directors) determined by resolution of the board of directors of the Bank. Only former directors of the Bank (including former directors of other banks which have merged with, or otherwise been acquired by the Bank) shall be eligible to serve as directors emeritus. Directors emeritus shall be available for consultation with and advice to management of the Bank. Directors emeritus may attend meetings of the board of directors, but shall have no vote on any matter acted upon by such board.

ARTICLE IV. EXECUTIVE AND OTHER COMMITTEES

SECTION 1. *Appointment.* The board of directors, by resolution adopted by a majority of the full board, may designate the chief executive officer and two or more of the other directors to constitute an executive committee. The designation of any committee pursuant to this Article IV and the delegation of authority thereto shall not operate to relieve the board of directors, or any director, of any responsibility imposed by law or regulation.

SECTION 2. *Authority.* The executive committee, when the board of directors is not in session, shall have and may exercise all of the authority of the board of directors except to the extent, if any, that such

authority shall be limited by the resolution appointing the executive committee; and except also that the executive committee shall not have the authority of the board of directors with reference to: a declaration of dividends, an amendment of the charter or bylaws of the Bank, or recommending to the stockholders a plan of merger, consolidation, or conversion; the sale, lease or other disposition of all or substantially all of the property and assets of the Bank otherwise than in the usual and regular course of its business; a voluntary dissolution of the Bank; a revocation of any of the foregoing; or the approval of a transaction in which any member of the executive committee, directly or indirectly, has any material beneficial interest.

SECTION 3. *Tenure.* Subject to the provisions of Section 8 of this Article IV, each member of the executive committee shall hold office until the next regular annual meeting of the board of directors following his designation and until his successor is designated as a member of the executive committee.

SECTION 4. *Meetings.* Regular meetings of the executive committee may be held without notice at such times and places as the executive committee may fix from time to time by resolution. Special meetings of the executive committee may be called by a member thereof upon not less than one days' notice stating the place, date and hour of the meeting, which notice may be written or oral. Any member of the executive committee may waive notice of any meeting and no notice of any meeting need be given to any member thereof who attends in person. The notice of a meeting of the executive committee need not state the business proposed to be transacted at the meeting.

SECTION 5. *Quorum.* A majority of the members of the executive committee shall constitute a quorum for the transaction of business at any meeting thereof, and action of the executive committee must be authorized by the affirmative vote of a majority of the members present at a meeting at which a quorum is present.

SECTION 6. *Action Without a Meeting.* Any action required or permitted to be taken by the executive committee at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members of the executive committee.

SECTION 7. *Vacancies.* Any vacancy in the executive committee may be filled by a resolution adopted by a majority of the full board of directors.

SECTION 8. *Resignations and Removal.* Any member of the executive committee may be removed at any time with or without cause by resolution adopted by a majority of the full board of directors. Any member of the executive committee may resign from the executive committee at any time by giving written notice to the president or the secretary of the Bank. Unless otherwise specified therein, such resignation shall take effect upon receipt. The acceptance of such resignation shall not be necessary to make it effective.

SECTION 9. *Procedure.* The executive committee shall elect a presiding officer from its members and may fix its own rules of procedure which shall not be inconsistent with these bylaws. It shall keep regular minutes of its proceedings and report the same to the board of directors for its information at the meeting thereof held next after the proceedings shall have occurred.

SECTION 10. *Other Committees.* The board of directors may by resolution establish an audit committee, a loan committee or other committees composed of directors as they may determine to be necessary or appropriate for the conduct of the business of the Bank and may prescribe the duties, constitution and procedures thereof.

ARTICLE V. OFFICERS

SECTION 1. *Positions.* The officers of the Bank shall be a president, one or more vice presidents, a secretary and a treasurer, each of whom shall be elected by the board of directors. The board of directors may also designate the chairman of the board as an officer. The president shall be the chief executive officer, unless the board of directors designates the chairman of the board as chief executive officer. The president shall be a director of the Bank. The offices of the secretary and treasurer may be held by the same person and a vice president may also be either the secretary or the treasurer. The board of directors may designate one or more vice presidents as executive vice president or senior vice president. The board

of directors may also elect or authorize the appointment of such other officers as the business of the Bank may require. The officers shall have such authority and perform such duties as the board of directors may from time to time authorize or determine. In the absence of action by the board of directors, the officers shall have such powers and duties as generally pertain to their respective offices.

SECTION 2. *Election and Term of Office.* The officers of the Bank shall be elected annually at the first meeting of the board of directors held after each annual meeting of the stockholders. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as possible. Each officer shall hold office until his successor shall have been duly elected and qualified or until his death or until he shall resign or shall have been removed in the manner hereinafter provided. Election or appointment of an officer, employee or agent shall not of itself create contract rights. The board of directors may authorize the Bank to enter into an employment contract with any officer in accordance with regulations of the Federal Home Loan Bank Board; but no such contract shall impair the right of the board of directors to remove any officer at any time in accordance with Section 3 of this Article V.

SECTION 3. *Removal.* Any officer may be removed by the board of directors whenever in its judgment the best interests of the Bank shall be served thereby, but such removal, other than for cause, shall be without prejudice to the contract rights, if any, of the person so removed.

SECTION 4. *Vacancies.* A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the board of directors for the unexpired portion of the term.

SECTION 5. *Remuneration.* The remuneration of the officers shall be fixed from time to time by the board of directors.

SECTION 6. *Age limitation on officers.* No person 65 years of age or above shall be eligible for election, re-election, appointment, or reappointment as an officer of the Bank. No officer shall serve beyond the annual meeting of the Bank immediately following his or her becoming 65.

ARTICLE VI. CONTRACTS, LOANS, CHECKS AND DEPOSITS

SECTION 1. *Contracts.* To the extent permitted by regulations of the Federal Home Loan Bank Board, and except as otherwise prescribed by the bylaws with respect to certificates for shares, the board of directors may authorize any officer, employee, or agent of the Bank to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Bank. Such authority may be general or confined to specific instances.

SECTION 2. *Loans.* No loans shall be contracted on behalf of the Bank and no evidence of indebtedness shall be issued in its name unless authorized by the board of directors. Such authority may be general or confined to specific instances.

SECTION 3. *Checks, Drafts, Etc.* All checks, drafts or orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Bank shall be signed by one or more officers, employees or agents of the Bank in such manner as shall from time to time be determined by the board of directors.

SECTION 4. *Deposits.* All funds of the Bank not otherwise employed shall be deposited from time to time to the credit of the Bank in any of its duly authorized depositories as the board of directors may select.

ARTICLE VII. CERTIFICATES FOR SHARES AND THEIR TRANSFER

SECTION 1. *Certificates for Shares.* Certificates representing shares of capital stock of the Bank shall be in such form as shall be determined by the board of directors and approved by the Federal Home Loan Bank Board. Such certificates shall be signed by the chief executive officer or by any other officer of the Bank authorized by the board of directors, attested by the secretary or an assistant secretary, and sealed with the corporate seal or a facsimile thereof. The signatures of such officers upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar, other than the Bank itself or one of its employees. Each certificate for shares of capital stock shall be consecutively

numbered or otherwise identified. The name and address of the person to whom the shares are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the Bank. All certificates surrendered to the Bank for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled, except that in case of a lost or destroyed certificate, a new certificate may be issued therefor upon such terms and indemnity to the Bank as the board of directors may prescribe.

SECTION 2. *Transfer of Shares.* Transfer of shares of capital stock of the Bank shall be made only on its stock transfer books. Authority for such transfer shall be given only by the holder of record thereof or by his legal representative, who shall furnish proper evidence of such authority, or by his attorney thereunto authorized by power of attorney duly executed and filed with the Bank. Such transfer shall be made only on surrender for cancellation of the certificate for such shares. The person in whose name shares of capital stock stand on the books of the Bank shall be deemed by the Bank to be the owner thereof for all purposes.

ARTICLE VIII. FISCAL YEAR; ANNUAL AUDIT

The fiscal year of the Bank shall end on the 31st day of December of each year. The Bank shall be subject to an annual audit as of the end of its fiscal year by independent public accountants appointed by by and responsible to the board of directors. The appointment of such accountants shall be subject to annual ratification by the stockholders.

ARTICLE IX. DIVIDENDS

Subject to the terms of the Bank's charter and the regulations and orders of the Federal Home Loan Bank Board, the board of directors may, from time to time, declare and the Bank may pay, dividends to its outstanding shares of capital stock.

ARTICLE X. CORPORATE SEAL

The board of directors shall approve a Bank seal.

ARTICLE XI. AMENDMENTS

These bylaws may be amended in any manner not inconsistent with applicable laws, rules, regulations or the charter at any time by a majority of the full board of directors, or by a majority vote of the votes cast by the shareholders of the Bank at any legal meeting called expressly for that purpose.

CONSENT

In accordance with Section 321(b) of the Trust Indenture Act of 1939, the undersigned, WILMINGTON SAVINGS FUND SOCIETY, FSB hereby consents that reports of examination of the undersigned by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon its request therefor.

Dated: July , 2021

By: /s/ Patrick J. Healy
Patrick J. Healy
Senior Vice President

Consolidated Report of Condition for Insured Banks and Savings Associations for March 31, 2021

All schedules are to be reported in thousands of dollars. Unless otherwise indicated, report the amount outstanding as of the last business day of the quarter.

Schedule RC—Balance Sheet

Dollar Amounts in Thousands			RCON	Amount	
Assets					
1. Cash and balances due from depository institutions (from Schedule RC-A):					
a. Noninterest-bearing balances and currency and coin (1)			0081	523,712	1.a.
b. Interest-bearing balances (2)			0071	1,532,189	1.b.
2. Securities:					
a. Held-to-maturity securities (from Schedule RC-B, column A) (3)			JJ34	103,523	2.a.
b. Available-for-sale debt securities (from Schedule RC-B, column D)			1773	2,987,885	2.b.
c. Equity securities with readily determinable fair values not held for trading (4)			JA22	0	2.c.
3. Federal funds sold and securities purchased under agreements to resell:					
a. Federal funds sold			B987	0	3.a.
b. Securities purchased under agreements to resell (5,6)			B989	0	3.b.
4. Loans and lease financing receivables (from Schedule RC-C):					
a. Loans and leases held for sale			5369	155,447	4.a.
b. Loans and leases held for investment	B528	8,578,584			4.b.
c. LESS: Allowance for loan and lease losses (7)	3123	204,818			4.c.
d. Loans and leases held for investment, net of allowance (item 4.b minus 4.c)			B529	8,373,766	4.d.
5. Trading assets (from Schedule RC-D)			3545	0	5.
6. Premises and fixed assets (including capitalized leases)			2145	245,385	6.
7. Other real estate owned (from Schedule RC-M)			2150	2,068	7.
8. Investments in unconsolidated subsidiaries and associated companies			2130	4,339	8.
9. Direct and indirect investments in real estate ventures			3656	0	9.
10. Intangible assets (from Schedule RC-M)			2143	530,351	10.
11. Other assets (from Schedule RC-F) (6)			2160	237,555	11.
12. Total assets (sum of items 1 through 11)			2170	14,696,220	12.
Liabilities					
13. Deposits:					
a. In domestic offices (sum of totals of columns A and C from Schedule RC-E)			2200	12,514,992	13.a.
(1) Noninterest-bearing (8)	6631	3,865,147			13.a.1.
(2) Interest-bearing	6636	8,649,845			13.a.2.
b. Not applicable					
14. Federal funds purchased and securities sold under agreements to repurchase:					
a. Federal funds purchased (9)			B993	0	14.a.
b. Securities sold under agreements to repurchase (10)			B995	0	14.b.
15. Trading liabilities (from Schedule RC-D)			3548	0	15.
16. Other borrowed money (includes mortgage indebtedness) (from Schedule RC-M)			3190	21,455	16.
17. and 18. Not applicable					
19. Subordinated notes and debentures (11)			3200	0	19.

1 Includes cash items in process of collection and unposted debits.

2 Includes time certificates of deposit not held for trading.

3 Institutions that have adopted ASU 2016-13 should report in item 2.a amounts net of any applicable allowance for credit losses, and item 2.a should equal Schedule RC-B, item 8, column A, less Schedule RI-B, Part II, item 7, column B.

4 Item 2.c is to be completed by all institutions. See the instructions for this item and the Glossary entry for "Securities Activities" for further detail on accounting for investments in equity securities.

5 Includes all securities resale agreements, regardless of maturity.

6 Institutions that have adopted ASU 2016-13 should report in items 3.b and 11 amounts net of any applicable allowance for credit losses.

7 Institutions that have adopted ASU 2016-13 should report in item 4.c the allowance for credit losses on loans and leases.

8 Includes noninterest-bearing, demand, time, and savings deposits.

9 Report overnight Federal Home Loan Bank advances in Schedule RC, item 16, "Other borrowed money."

10 Includes all securities repurchase agreements, regardless of maturity.

11 Includes limited-life preferred stock and related surplus.

Schedule RC—Continued

Dollar Amounts in Thousands	RCON	Amount	
Liabilities—continued			
20. Other liabilities (from Schedule RC-G)	2930	336,251	20.
21. Total liabilities (sum of items 13 through 20)	2948	12,872,698	21.
22. Not applicable			
Equity Capital			
Bank Equity Capital			
23. Perpetual preferred stock and related surplus	3838	0	23.
24. Common stock	3230	0	24.
25. Surplus (excludes all surplus related to preferred stock)	3839	1,538,174	25.
26. a. Retained earnings	3632	301,237	26.a.
b. Accumulated other comprehensive income (1)	B530	(13,702)	26.b.
c. Other equity capital components (2)	A130	0	26.c.
27. a. Total bank equity capital (sum of items 23 through 26.c)	3210	1,825,709	27.a.
b. Noncontrolling (minority) interests in consolidated subsidiaries	3000	(2,187)	27.b.
28. Total equity capital (sum of items 27.a and 27.b)	G105	1,823,522	28.
29. Total liabilities and equity capital (sum of items 21 and 28)	3300	14,696,220	29.

Memoranda

To be reported with the March Report of Condition.

1. Indicate in the box at the right the number of the statement below that best describes the most comprehensive level of auditing work performed for the bank by independent external auditors as of any date during 2020	RCON	Number	
	6724	1a	M.1.

1a = An integrated audit of the reporting institution's financial statements and its internal control over financial reporting conducted in accordance with the standards of the American Institute of Certified Public Accountants (AICPA) or the Public Company Accounting Oversight Board (PCAOB) by an independent public accountant that submits a report on the institution

1b = An audit of the reporting institution's financial statements only conducted in accordance with the auditing standards of the AICPA or the PCAOB by an independent public accountant that submits a report on the institution

2a = An integrated audit of the reporting institution's parent holding company's consolidated financial statements and its internal control over financial reporting conducted in accordance with the standards of the AICPA or the PCAOB by an independent public accountant that submits a report on the consolidated holding company (but not on the institution separately)

2b = An audit of the reporting institution's parent holding company's consolidated financial statements only conducted in accordance with the auditing standards of the AICPA or the PCAOB by an independent public accountant that submits a report on the consolidated holding company (but not on the institution separately)

3 = This number is not to be used

4 = Directors' examination of the bank conducted in accordance with generally accepted auditing standards by a certified public accounting firm (may be required by state-chartering authority)

5 = Directors' examination of the bank performed by other external auditors (may be required by state-chartering authority)

6 = Review of the bank's financial statements by external auditors

7 = Compilation of the bank's financial statements by external auditors

8 = Other audit procedures (excluding tax preparation work)

9 = No external audit work

To be reported with the March Report of Condition.

2. Bank's fiscal year-end date (report the date in MMDD format)	RCON	Date	
	8678	12/31	M.2.

1 Includes, but is not limited to, net unrealized holding gains (losses) on available-for-sale securities, accumulated net gains (losses) on cash flow hedges, and accumulated defined benefit pension and other postretirement plan adjustments.

2 Includes treasury stock and unearned Employee Stock Ownership Plan shares.

FORM OF INSTRUCTIONS
FOR USE OF
WHEELER REAL ESTATE INVESTMENT TRUST, INC.
RIGHTS CERTIFICATES

CONSULT THE INFORMATION AGENT,
YOUR BANK OR BROKER AS TO ANY
QUESTIONS

The following instructions relate to a rights offering (the "rights offering") by Wheeler Real Estate Investment Trust, Inc., a Maryland corporation (the "Company"), to the holders of record of its common stock, par value $0.01 per share (the "common stock"), as described in the Company's Prospectus dated [●], 2021 (as it may be amended or supplemented, the "Prospectus"). Holders of common stock (each, a "holder" and collectively, the "holders") as of 5:00 p.m., New York City time, on June 1, 2021 (the "record date") are receiving non-transferable subscription rights (the "rights") to purchase up to $30 million in aggregate principal amount of the Company's 7% senior subordinated convertible notes due 2031 (the "Notes"). Each holder will receive one (1) right for every eight (8) shares of common stock owned of record as of the record date.

The rights will expire, if not exercised, by 5:00 p.m. New York City time on [●], 2021 (the "expiration date"), unless extended by the Company. After the expiration date, unexercised rights will be null and void. The Company will not be obligated to honor any purported exercise of rights received by Computershare Trust Company, N.A. (the "subscription agent") after 5:00 p.m. New York City time on the expiration date, regardless of when the documents relating to such exercise were sent. If the Company's board of directors extends the rights offering, the Company will issue a press release notifying stockholders of the extension of the expiration date as promptly as practical, but in no event later than 9:00 a.m. New York City time on the next business day following the most recently announced expiration date. The rights are evidenced by rights certificates (the "rights certificates"). Each right allows the holder thereof to subscribe for $25.00 principal amount of Notes (the "basic subscription privilege").

Fractional rights will not be issued. Fractional rights will be rounded down to the nearest whole number of $25.00, with such adjustments as may be necessary to ensure that the Company offers $30 million in aggregate principal amount of Notes in the rights offering. As an example, if you owned 1,000 shares of common stock as of the record date, you would receive 125 rights pursuant to your basic subscription privilege, and you would have the right to purchase up to $3,125.00 aggregate principal amount of Notes in the rights offering pursuant to the subscription price.

In addition, rights holders who fully exercise their basic subscription privilege will be entitled to subscribe for additional Notes that remain unsubscribed as a result of any unexercised basic subscription privileges (the "over-subscription privilege"). The over -subscription privilege allows a rights holder to subscribe for additional Notes at the subscription price per Note on a *pro rata* basis if any Notes are not purchased by other holders of rights under their basic subscription privileges as of the expiration date. "Pro rata" means in proportion to your relative Common Stock ownership.

You may exercise your over-subscription privilege only if you have exercised your basic subscription privilege in full and other holders of rights do not exercise their basic subscription privileges in full. If there are not enough Notes to satisfy all subscriptions made under the over-subscription privilege, the Company will allocate the remaining Notes *pro rata*, after eliminating all fractional Notes, among those over-subscribing rights holders. For purposes of determining if you have fully exercised your basic subscription privilege, the Company will consider only the basic subscription privilege held by you in the same capacity. See "*Description of Subscription Rights*" in the Prospectus.

The number of rights to which you are entitled is printed on the face of your rights certificate. You should indicate your wishes with regard to the exercise of your rights by completing the appropriate portions of your rights certificate and returning the certificate to the subscription agent pursuant to the procedures described in the Prospectus.

YOUR RIGHTS CERTIFICATE AND SUBSCRIPTION PRICE PAYMENT, BY PERSONAL CHECK DRAWN UPON A UNITED STATES BANK, MUST BE ACTUALLY RECEIVED BY THE SUBSCRIPTION AGENT ON OR BEFORE 5:00 P.M. NEW YORK CITY TIME, ON THE EXPIRATION DATE. ONCE A HOLDER OF RIGHTS HAS EXERCISED THE BASIC SUBSCRIPTION PRIVILEGE AND THE OVER-SUBSCRIPTION PRIVILEGE, SUCH EXERCISE MAY NOT BE REVOKED. RIGHTS NOT EXERCISED PRIOR TO THE EXPIRATION DATE OF THE RIGHTS OFFERING WILL EXPIRE WITHOUT VALUE.

1. Method of Subscription—Exercise of Rights.

To exercise rights, complete your rights certificate and send the properly completed and executed rights certificate evidencing such rights, with any signatures required to be guaranteed so guaranteed, together with payment in full of the subscription price for the Notes subscribed for pursuant to the basic subscription privilege and the over-subscription privilege, to the subscription agent so that it will be actually received by the subscription agent on or prior to 5:00 p.m. New York City time on the expiration date. The subscription agent will hold your payment of the subscription price in a segregated account with other payments received from other rights holders until the Company issues your Notes upon completion of the rights offering, and after all *pro rata* allocations and adjustments have been completed and upon payment of the subscription price for such Notes. **All payment of the subscription price must be made in United States dollars for the full number of Notes for which you are subscribing by personal check drawn upon a United States bank payable to Computershare Trust Company, N.A., as subscription agent.** Please reference your rights certificate number on your check. Payments will be deemed to have been received by the subscription agent only upon receipt by the subscription agent of a personal check drawn upon a United States bank.

The rights certificate and payment of the subscription price must be delivered to the subscription agent by one of the methods described below:

By Mail:

Computershare
c/o Corporate Actions Voluntary Offer; COY: WHLR
P.O. Box 43011
Providence, RI 02940-3011

By Overnight Courier:

Computershare
c/o Corporate Actions Voluntary Offer; COY: WHLR
150 Royall Street, Suite V
Canton, MA 02021

Telephone Number for Confirmation:

Within USA, US territories & Canada: (800) 546-5141
Outside USA, US territories & Canada: (781) 575-2765

Delivery to any address or by a method other than those set forth above will not constitute valid delivery.

If you have any questions, require assistance regarding the method of exercising rights or require additional copies of relevant documents, please contact the information agent, Equiniti (US) Services LLC at:

(516) 220-8356 (brokers)
(833) 503-4130 (stockholders)

When making arrangements with your bank or broker for the delivery of funds on your behalf, you may also request such bank or broker to exercise the rights certificate on your behalf.

Banks, brokers, and other nominee holders of rights who exercise the basic subscription privilege and the over-subscription privilege on behalf of beneficial owners of rights will be required to certify to the subscription agent and the Company, in connection with the exercise of the over-subscription privilege, as to the aggregate number of rights that have been exercised and the amount of Notes that are being subscribed for pursuant to the over-subscription privilege, by each beneficial owner of rights (including such nominee itself) on whose behalf such nominee holder is acting. If there are not enough Notes to satisfy all subscriptions made under the over-subscription privilege, the Company will allocate the remaining Notes *pro rata*, after eliminating all fractional Notes, among those over-subscribing rights holders. "Pro rata" means in proportion to your relative Common Stock ownership.

If the aggregate subscription price paid by you is insufficient to purchase the amount of Notes subscribed for, or if no amount of Notes to be purchased is specified, then you will be deemed to have exercised your rights under the basic subscription privilege to purchase Notes to the full extent of the payment tendered.

If the aggregate subscription price paid by you exceeds the amount necessary to purchase the amount of Notes for which you have indicated an intention to subscribe, then the remaining amount will be returned to you by mail, without interest or deduction, promptly after the expiration date and after all *pro rata* allocations and adjustments contemplated by the terms of the rights offering have been effected.

2. Issuance of Notes.

Promptly following the expiration of the rights offering, and the valid exercise of rights pursuant to the basic subscription privilege and over-subscription privilege, and after all *pro rata* allocations and adjustments contemplated by the terms of the rights offering have been effected, the following deliveries and payments will be made to the address shown on the face of your rights certificate, or, if you hold your shares in book-entry form, such deliveries and payments will be in the form of a credit to your account, unless you provide instructions to the contrary in your rights certificate:

a. *Basic Subscription Privilege*: The subscription agent will deliver to each exercising rights holder the amount of Notes purchased pursuant to the basic subscription privilege. See "*Description of Subscription Rights*" in the Prospectus.

b. *Over-Subscription Privilege*: The subscription agent will deliver to each rights holder who validly exercises the over-subscription privilege the amount of Notes, if any, allocated to such rights holder pursuant to the over-subscription privilege (and after all *pro rata* allocations and adjustments have been completed with respect to the over-subscription privilege and taking into account the guaranteed delivery period). See "*Description of Subscription Rights*" in the Prospectus.

c. *Excess Cash Payments*: The subscription agent will mail to each rights holder who exercises the over-subscription privilege any excess amount, without interest or deduction, received in payment of the subscription price for Notes that are subscribed for by such rights holder but not allocated to such rights holder pursuant to the over-subscription privilege. See "*Description of Subscription Rights*" in the Prospectus.

3. Transfer or Sale of Rights.

The rights are non-transferable and will not be publicly traded on a stock exchange. As a result, you will not be able to transfer or sell your rights if you do not want to purchase any Notes.

4. Fees and Expenses

The Company will pay all customary fees and expenses of the subscription agent related to it acting in such role in connection with the rights offering. The Company has also agreed to indemnify the subscription agent from certain liabilities that they may incur in connection with the rights offering.

5. Execution.

a. *Execution by Registered Holder.* The signature on the rights certificate must correspond with the name of the registered holder exactly as it appears on the face of the rights certificate without any alteration, enlargement or change. Persons who sign the rights certificate in a representative or other fiduciary capacity on behalf of a registered holder must indicate their capacity when signing and, unless waived by the subscription agent in its sole and absolute discretion, must present to the subscription agent satisfactory evidence of their authority so to act.

b. *Execution by Person Other than Registered Holder.* If the rights certificate is executed by a person other than the holder named on the face of the rights certificate, proper evidence of authority of the person executing the rights certificate must accompany the same unless, for good cause, the subscription agent dispenses with proof of authority.

c. *Signature Guarantees*. If you are neither a registered holder (or signing in a representative or other fiduciary capacity on behalf of a registered holder) nor an eligible institution, such as a member firm of a registered national securities exchange or a member of the Financial Industry Regulatory Authority, Inc., or a commercial bank or trust company having an office or correspondent in the United States, your signature must be guaranteed by such an eligible institution.

6. Method of Delivery to Subscription Agent.

The method of delivery of rights certificates and payment of the subscription price to the subscription agent will be at the election and risk of the rights holder, and it is recommended that such certificates and payments be sent by registered mail, properly insured, with return receipt requested and that a sufficient number of days be allowed to

ensure delivery to the subscription agent and the clearance of payment prior to 5:00 p.m. New York City time on the expiration date.

7. Special Provisions Relating to the Delivery of Rights through the Depository Trust Company.

In the case of rights that are held of record through The Depository Trust Company ("DTC") or are held in "street name" with DTC participants, exercises of the basic subscription privilege and of the over-subscription privilege may be effected by instructing DTC to transfer rights from the DTC account of such holder to the DTC account of the subscription agent, together with certification as to the aggregate number of rights exercised and the amount of Notes thereby subscribed for under the basic subscription privilege and the over-subscription privilege by each beneficial owner of rights on whose behalf such nominee is acting, and payment of the subscription price for the Notes subscribed for pursuant to the basic subscription privilege and the over-subscription privilege. See the Company's "Letter to Stockholders Who Are Record Holders."

8. Determinations Regarding the Exercise of Your Rights.

The Company will decide, in its sole discretion, all questions concerning the timeliness, validity, form, and eligibility of the exercise of your rights. Any such determinations by the Company will be final and binding. The Company, in its sole discretion, may waive, in any particular instance, any defect or irregularity or permit, in any particular instance, a defect or irregularity to be corrected within such time as the Company may determine. The Company will not be required to make uniform determinations in all cases. The Company may reject the exercise of any of your rights because of any defect or irregularity. The Company will not accept any exercise of rights until all irregularities have been waived by the Company or cured by you within such time as the Company decides, in its sole discretion.

Neither the Company nor the subscription agent will be under any duty to notify you of any defect or irregularity in connection with your submission of rights certificates, and the Company will not be liable for failure to notify you of any defect or irregularity. The Company reserves the right to reject your exercise of rights if it determines that your exercise is not in accordance with the terms of the rights offering, as set forth in the Prospectus and these Instructions, or in proper form. The Company will also not accept the exercise of your rights if the issuance of shares of Notes to you could be deemed unlawful under applicable law.

Exhibit 99.2

FORM OF LETTER TO STOCKHOLDERS WHO ARE RECORD HOLDERS
WHEELER REAL ESTATE INVESTMENT TRUST, INC.

Rights to Purchase Notes Offered Pursuant to Rights
Distributed to Common Stockholders of Wheeler Real Estate Investment Trust, Inc.

[●], 2021

Dear Stockholder:

This notice is being distributed by Wheeler Real Estate Investment Trust, Inc., a Maryland corporation (the "Company"), to all holders of record of shares of its common stock, par value $0.01 per share (the "common stock"), as of 5:00 p.m. New York City time on June 1, 2021 (the "record date"), in connection with the distribution in a rights offering (the "rights offering") of non-transferable subscription rights (the "rights") to purchase up to an aggregate $30 million in aggregate principal amount of 7.00% senior subordinated convertible notes due 2031 (the "Notes"). The rights are described in the Company's Prospectus, dated [●], 2021 (as it may be amended or supplemented, the "Prospectus").

In the rights offering, the Company is offering up to an aggregate $30 million in aggregate principal amount of 7.00% senior subordinated convertible notes due 2031 pursuant to the Prospectus. The rights will expire, if not exercised, by 5:00 p.m. New York City time on [●], 2021 (the "expiration date"), unless extended by the Company.

As described in the accompanying Prospectus, you will receive one right for every eight (8) shares of common stock owned of record as of 5:00 p.m. New York City time on the record date.

Each right will allow the holder thereof to subscribe for $25.00 principal amount of Notes (the "basic subscription privilege") at the subscription price of $25.00 (the "subscription price"). Fractional rights will not be issued. Fractional rights will be rounded down to the nearest whole number, with such adjustments as may be necessary to ensure that the Company offers $30 million in aggregate principal amount of Notes in the rights offering. As an example, if you owned 1,000 shares of common stock as of the record date, you would receive 125 rights pursuant to your basic subscription privilege, and you would have the right to purchase up to $3,125 principal amount of Notes in the rights offering pursuant to your basic subscription privilege.

In addition, rights holders who fully exercise their basic subscription privilege will be entitled to subscribe for additional Notes that remain unsubscribed as a result of any unexercised basic subscription privileges (the "over- subscription privilege"). The over-subscription privilege allows a rights holder to subscribe for additional Notes at the subscription price per share on a *pro rata* basis if any Notes are not purchased by other holders of rights under their basic subscription privileges as of the expiration date. "Pro rata" means in proportion to your relative Common Stock ownership. Holders may exercise such holder's over-subscription privilege only if such holder exercised its basic subscription privilege in full and other holders of rights do not exercise their basic subscription privileges in full. If there are not enough Notes to satisfy all subscriptions made under the over-subscription privilege, the Company will allocate the remaining Notes *pro rata*, after eliminating all fractional shares, among those over-subscribing rights holders. For purposes of determining if a holder has fully exercised its basic subscription privilege, the Company will consider only the basic subscription privilege held by such holder in the same capacity. See "*Description of Subscription Rights*" in the Prospectus.

Any excess payments received by the subscription agent will be returned, without interest or deduction, promptly following the expiration of the rights offering. The rights are evidenced by rights certificates (the "rights certificates"). The rights are non-transferable and will not trade on the Nasdaq Capital Market ("Nasdaq").

Enclosed are copies of the following documents:

(1) Prospectus;

(2) Rights Certificate;

(3) Instructions For Use of Wheeler Real Estate Investment Trust, Inc. Rights Certificates; and

(4) Notice of Guaranteed Delivery For Rights Certificates Issued by Wheeler Real Estate Investment Trust, Inc.

Your prompt action is requested. To exercise your rights, you should properly complete and sign the rights certificate and forward it, with payment of the subscription price in full for the Notes subscribed for pursuant to the basic subscription privilege and the over-subscription privilege, to the subscription agent, as indicated in the Prospectus. The subscription agent must receive the rights certificate with payment of the subscription price on or prior to 5:00 p.m. New York City time on the expiration date. **All payments of the subscription price must be made in United States dollars for the full number of Notes for which you are subscribing by personal check drawn upon a United States bank payable to Computershare Trust Company, N.A., as subscription agent. Failure to return the properly completed rights certificate with the correct payment will result in your not being able to exercise the rights held in your name on behalf of yourself or other beneficial owners.**

Additional copies of the enclosed materials may be obtained from the information agent, Equiniti (US) Services LLC. The information agent's toll-free telephone number is (516) 220-8356 (brokers); (833) 503-4130 (stockholders).

Very truly yours,

WHEELER REAL ESTATE INVESTMENT TRUST, INC.

FORM OF LETTER TO BROKERS, DEALERS, BANKS AND OTHER NOMINEE HOLDERS
WHEELER REAL ESTATE INVESTMENT TRUST, INC.

Rights to Purchase Notes Offered Pursuant to Rights
Distributed to Common Stockholders of Wheeler Real Estate Investment Trust, Inc.

[●], 2021

To Brokers, Dealers, Banks, and Other Nominees:

This letter is being distributed to brokers, dealers, banks, and other nominees in connection with the rights offering (the "rights offering") by Wheeler Real Estate Investment Trust, Inc., a Maryland corporation (the "Company"), of shares of its common stock, par value $0.01 per share (the "common stock"), pursuant to non-transferable subscription rights (the "rights") distributed to all holders of record ("record holders") of shares of common stock, as of 5:00 pm New York City time on June 1, 2021 (the "record date"). The rights are described in the Company's Prospectus dated [n], 2021 (as it may be amended or supplemented, the "Prospectus").

In the rights offering, the Company is offering up to $30 million in aggregate principal amount of 7.00% senior subordinated convertible notes due 2031 (the "Notes") pursuant to the Prospectus. The rights will expire, if not exercised, by 5:00 p.m. New York City time on [n], 2021 (the "expiration date"), unless extended by the Company.

As described in the accompanying Prospectus, each record holder will receive one (1) right for every eight (8) shares of common stock owned of record as of 5:00 p.m. New York City time on the record date. Each right will allow the holder thereof to purchase $25.00 principal amount of Notes (the "basic subscription privilege"). Fractional rights will not be issued. Fractional rights will be rounded down to the nearest whole number, with such adjustments as may be necessary to ensure that the Company offers up to $30 million in aggregate principal amount of Notes in the rights offering. As an example, if you owned 1,000 shares of common stock as of the record date, you would receive 125 rights pursuant to your basic subscription privilege, and you would have the right to purchase $3,125.00 principal amount of Notes in the rights offering pursuant to your basic subscription privilege.

In addition, rights holders who fully exercise their basic subscription privilege will be entitled to subscribe for additional Notes that remain unsubscribed as a result of any unexercised basic subscription privileges (the "over-subscription privilege"). The over-subscription privilege allows a rights holder to subscribe for additional Notes on a *pro rata* basis if any Notes are not purchased by other holders of rights under their basic subscription privilege as of the expiration date. "Pro rata" means in proportion to your relative Common Stock ownership.

Holders may exercise such holder's over-subscription privilege only if such holder exercised its basic subscription privilege in full and other holders of rights do not exercise their basic subscription privileges in full. If there are not enough Notes to satisfy all subscriptions made under the over-subscription privilege, the Company will allocate the remaining Notes *pro rata*, after eliminating all fractional Notes, among those over-subscribing rights holders. For purposes of determining if a holder has fully exercised its basic subscription privilege, the Company will consider only the basic subscription privilege held by such holder in the same capacity. See "*Description of Subscription Rights*" in the Prospectus.

The rights are evidenced by a rights certificate (a "rights certificate") registered in your name or the name of your nominee. Each beneficial owner of shares of common stock registered in your name or the name of your nominee is entitled to one (1) right for every eight (8) share of common stock owned by such beneficial owner as of the record date. The rights are non-transferable and will not trade on a stock exchange.

We are asking persons who hold shares of common stock beneficially and who have received the rights distributable with respect to those shares through a broker, dealer, commercial bank, trust company or other nominee, as well as persons who hold certificates of common stock directly and prefer to have such institutions effect transactions relating to the rights on their behalf, to contact the appropriate institution or nominee and request it to effect the transactions for them. In addition, we are asking beneficial owners who wish to obtain a separate rights certificate to contact the appropriate nominee as soon as possible and request that a separate rights certificate be issued.

Please take prompt action to notify any beneficial owners of common stock as to the rights offering and the procedures and deadlines that must be followed to exercise their rights. If you exercise the rights on behalf of beneficial owners, you will be required to certify to the subscription agent and the Company, in connection with the exercise of such rights, as to the aggregate number of rights that have been exercised pursuant to the basic subscription privilege, whether the basic subscription privilege of each beneficial owner of rights on whose behalf you are acting has been exercised in full, and the amount of Notes, if any, being subscribed for pursuant to the over-subscription privilege by each beneficial owner of rights on whose behalf you are acting.

All commissions, fees, and other expenses (including brokerage commissions and transfer taxes), other than certain fees and expenses of the subscription agent and the information agent, incurred in connection with the exercise of the rights will be for the account of the holder of the rights, and none of such commissions, fees, or expenses will be paid by the Company, the subscription agent or the information agent.

Enclosed are copies of the following documents:

(1) Prospectus;

(2) Rights Certificate;

(3) Instructions For Use of the Wheeler Real Estate Investment Trust, Inc. Rights Certificates;

(4) Notice of Guaranteed Delivery For Rights Certificates Issued by Wheeler Real Estate Investment Trust, Inc; and

(5) Form of Beneficial Owner Election Form.

Your prompt action is requested. To exercise rights, you should deliver the properly completed and signed rights certificate, with payment of the subscription price in full for the Notes subscribed for, to the subscription agent, as indicated in the Prospectus. The subscription agent must receive the rights certificate with payment of the subscription price on or prior to 5:00 p.m. New York City time on the expiration date. **All payments of the subscription price must be made in United States dollars for the full amount of Notes for which you are subscribing by personal check drawn upon a United States bank payable to Computershare Trust Company, N.A., as subscription agent.**

Failure to return the properly completed rights certificate with the correct payment will result in your not being able to exercise the rights held in your name on behalf of yourself or other beneficial owners. A rights holder cannot revoke the exercise of his or her rights. Rights not exercised prior to the expiration date will expire without value. Additional copies of the enclosed materials may be obtained from the information agent, Equiniti (US) Services LLC. The information agent's toll-free telephone number is (516) 220-8356 (brokers); (833) 503-4130 (stockholders).

Very truly yours,

WHEELER REAL ESTATE INVESTMENT TRUST, INC.

NOTHING IN THE PROSPECTUS OR IN THE ENCLOSED DOCUMENTS SHALL CONSTITUTE YOU OR ANY PERSON AS AN AGENT OF WHEELER REAL ESTATE INVESTMENT TRUST, INC., THE SUBSCRIPTION AGENT, THE INFORMATION AGENT, OR ANY OTHER PERSON MAKING OR DEEMED TO BE MAKING OFFERS OF THE SECURITIES ISSUABLE UPON VALID EXERCISE OF THE RIGHTS, OR AUTHORIZE YOU OR ANY OTHER PERSON TO MAKE ANY STATEMENTS ON BEHALF OF ANY OF THEM WITH RESPECT TO THE OFFERING EXCEPT FOR STATEMENTS EXPRESSLY MADE IN THE PROSPECTUS.

FORM OF BENEFICIAL OWNER ELECTION FORM

The undersigned acknowledge(s) receipt of your letter and the enclosed materials relating to the rights offering (the "rights offering") by Wheeler Real Estate Investment Trust, Inc., a Maryland corporation (the "Company"), to the holders of record of its common stock, par value $0.01 per share (the "common stock"), as described in the Company's Prospectus dated [●], 2021 (as it may be amended or supplemented, the "Prospectus"). Holders of common stock as of 5:00 p.m., New York City time, on June 1, 2021 are receiving non-transferable subscription rights (the "rights") to purchase up to $30 million in aggregate principal amount of the Company's 7% senior subordinated convertible notes due 2031 (the "Notes"). Each holder will receive one (1) right for every eight (8) shares of common stock owned of record as of the record date.

With respect to any instructions to exercise (or not to exercise) Rights, the undersigned acknowledges that this form must be completed and returned such that it will actually be received by you by 5:00 p.m., New York City time, on [●], 2021 the last business day prior to the scheduled expiration date of the rights offering of [●], 2021 (which may be extended by the Company).

This will instruct you whether to exercise the Rights to purchase Notes distributed with respect to the shares of the Company's common stock, held through you as broker, dealer, custodian bank or other nominee for the account of the undersigned, pursuant to the terms and subject to the conditions set forth in the Prospectus and the related "Instructions for Use Of Wheeler Real Estate Investment Trust, Inc. Rights Certificates."

I (we) hereby instruct you as follows:

(CHECK THE APPLICABLE BOXES AND PROVIDE ALL REQUIRED INFORMATION)

Box 1. ☐ Please **DO NOT EXERCISE RIGHTS**.

Box 2. ☐ Please **EXERCISE RIGHTS** as set forth below:

PLEASE PRINT ALL INFORMATION CLEARLY AND LEGIBLY

IF YOU WISH TO SUBSCRIBE FOR YOUR FULL ENTITLEMENT OF RIGHTS:

☐ I apply for ALL of my entitlement of Notes pursuant to the basic subscription privilege _____ (no. of common stock) x 0.125 (subscription ratio) x $25.00 (principal amount of Notes) = $ _____

EXAMPLE: If you own 1,000 shares of common stock, your basic subscription privilege permits the purchase of $3,125.00 principal amount of Notes. [1,000 shares of common stock / 8 = 125 (with fractional shares rounded down to the nearest whole number) x $25.00]

☐ In addition, I apply for additional Notes pursuant to the over-subscription privilege* _____ (no. of additional Notes) x $25.00 (principal amount of Notes) = $ _____

IF YOU DO NOT WISH TO APPLY FOR YOUR FULL ENTITLEMENT OF NOTES PURSUANT TO THE BASIC SUBSCRIPTION PRIVILEGE:

☐ I apply for _____ (no. of common stock) x 0.125 (subscription ratio) x $25.00 (principal amount of Notes) = $ _____

Amount of check or money order enclosed: $ _____

* You can only participate in the over-subscription privilege if you have subscribed for your full entitlement of Notes pursuant to the basic subscription privilege

Box 3. ☐ Payment in the following amount is enclosed: $ _____

Box 4. ☐ Please deduct payment of $ _____ from the following account maintained by you as follows:

Type of Account _____ Account No. _____

Amount to be deducted: $ _____

Signature (s): _____

Please type or print name(s) below:

_____

_____

Date: [●], 2021

FORM OF NOTICE OF GUARANTEED DELIVERY
FOR
RIGHTS CERTIFICATES
ISSUED BY WHEELER REAL ESTATE INVESTMENT TRUST, INC.

This form, or one substantially equivalent hereto, must be used to exercise the non-transferable subscription rights (the "rights") pursuant to the rights offering (the "rights offering") as described in the Prospectus dated [●], 2021 (as it may be amended or supplemented, the "Prospectus") of Wheeler Real Estate Investment Trust, Inc., a Maryland corporation (the "Company"), if a holder of rights cannot deliver the certificate(s) evidencing the rights (the "rights certificates") to the subscription agent listed below (the "subscription agent") prior to 5:00 p.m. New York City time on [●], 2021 (the "expiration date"), unless extended by the Company.

Such form must be delivered by first class mail, overnight courier or sent by email transmission to the subscription agent, and must be received by the subscription agent prior to the expiration date. See "*The Rights Offering— Guaranteed Delivery Procedures*" in the Prospectus.

Payment of the subscription price of $25.00 per Note (a "Note"), subscribed for upon exercise of such rights must be received by the subscription agent in the manner specified in the Prospectus prior to the expiration date even if the rights certificates evidencing such rights are being delivered pursuant to the Guaranteed Delivery Procedures thereof. See "*The Rights Offering—Guaranteed Delivery Procedures*" in the Prospectus. Each right entitles you to purchase $25.00 principal amount of Notes (the "basic subscription privilege"). In addition, each holder of rights who fully exercise such holder's basic subscription privilege will be entitled to subscribe for additional Notes that remain unsubscribed as a result of any unexercised basic subscription privileges (the "over-subscription privilege").

THE SUBSCRIPTION AGENT IS:

Computershare

Computershare
c/o Corporate Actions Voluntary Offer; COY: WHLR
P.O. Box 43011
Providence, RI 02940-3011

By Overnight Courier:

Computershare
c/o Corporate Actions Voluntary Offer; COY: WHLR
150 Royall Street, Suite V
Canton, MA 02021

If By Email: *canoticeofguarantee@computershare.com*

DELIVERY OF THIS INSTRUMENT TO AN ADDRESS OTHER THAN AS SET FORTH ABOVE OR TRANSMISSION VIA AN EMAIL ADDRESS OTHER THAN ONE LISTED ABOVE DOES NOT CONSTITUTE A VALID DELIVERY. THE ABOVE EMAIL ADDRESS CAN ONLY BE USED FOR DELIVERY OF THIS NOTICE OF GUARANTEED DELIVERY. ANY TRANSMISSION OF OTHER MATERIALS WILL NOT BE ACCEPTED AND WILL NOT BE CONSIDERED A VALID SUBMISSION FOR THE OFFER.

The undersigned, a member firm of the NYSE, Nasdaq or other national exchange, or bank or trust company, must communicate this guarantee and the amount of Notes subscribed for in connection with this guarantee, (separately disclosed as to the basic subscription privilege and the over-subscription privilege, subject, in the case of the over-subscription privilege, to proration, as described in the Prospectus) to the subscription agent and must deliver this Notice of Guaranteed Delivery, to the subscription agent, prior to 5:00 p.m., New York City time, on the expiration date, guaranteeing delivery of (a) payment in full for all subscribed Notes and (b) a properly completed and signed rights certificate (which certificate and full payment (at the subscription price of $25.00 per Note) must then be delivered to the subscription agent no later than the close of business of the second business day after the expiration date). Failure to do so will result in a forfeiture of the rights.

VOLUNTARY CORPORATE ACTIONS COY: WHLR

Ladies and Gentlemen:

The undersigned, a member firm of the NYSE, Nasdaq or other national exchange, or a bank or trust company, having an office or correspondent in the United States, guarantees delivery to the subscription agent prior to 5:00 p.m., New York City time, on the second business day after the expiration date **([●]**, 2021), unless extended, as described in the Prospectus, of (a) a properly completed and executed rights certificate and (b) payment in full for all subscribed Notes. Participants should notify the subscription agent prior to covering through the submission of a physical security directly to the subscription agent based on a guaranteed delivery that was submitted via the PSOP platform of The Depository Trust Company ("DTC").

Price for Notes subscribed for under the basic subscription privilege and for any additional Notes subscribed for pursuant to the over-subscription privilege, subject, in the case of the over-subscription privilege, to proration, as described in the Prospectus, as subscription for such Notes is indicated herein or in the rights certificate.

Method of delivery of the Notice of Guaranteed
Delivery (circle one)
A. Through DTC
B. Direct to Computershare, as Subscription Agent.
Please reference below the registration of the rights to be delivered.

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PLEASE ASSIGN A UNIQUE CONTROL NUMBER
FOR EACH GUARANTEE SUBMITTED. This
number needs to be referenced on any direct delivery
of rights or any delivery through DTC.

Name of Firm
Authorized Signature
DTC Participant Number
Title
Address
Name (Please Type or Print)
Zip Code
Phone Number
Contact Name
Date

The institution that completes this form must communicate the guarantee to the subscription agent and must deliver the rights certificate(s) to the subscription agent within the time period shown in the Prospectus. Failure to do so could result in a financial loss to such institution.

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