

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

FORM 8-K

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

Date of report (date of earliest event reported): **August 25, 2022 (August 22, 2022)**

WHEELER REAL ESTATE INVESTMENT TRUST, INC.
(Exact name of registrant as specified in its charter)

Maryland

(State or other jurisdiction of
incorporation or organization)

001-35713

(Commission File Number)

45-2681082

(IRS Employer
Identification No.)

**2529 Virginia Beach Blvd.,
Virginia Beach, VA**

(Address of principal executive offices)

23452

(Zip code)

Registrant's telephone number, including area code: **(757) 627-9088**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligations of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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

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

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

Introductory Note

This Current Report on Form 8-K (this “Form 8-K”) is being filed in connection with the consummation, on August 22, 2022 (the “Closing Date”), of the transactions contemplated by that certain Agreement and Plan of Merger, dated as of March 2, 2022 (as amended, the “Merger Agreement”), by and among Wheeler Real Estate Investment Trust, Inc. (the “Company” or “WHLR”), WHLR Merger Sub Inc., a wholly owned subsidiary of WHLR (“Merger Sub I”), WHLR OP Merger Sub LLC, a wholly owned subsidiary of Merger Sub I (“Merger Sub II”), Cedar Realty Trust, Inc. (“Cedar”), and Cedar Realty Trust Partnership, L.P., the operating partnership of Cedar (“Cedar OP”). Pursuant to the Merger Agreement, on the Closing Date, Merger Sub II merged with and into Cedar OP, with Cedar OP being the surviving limited partnership resulting from such merger, and immediately following such merger, Merger Sub I merged with and into Cedar, with Cedar being the surviving company resulting from such merger (together, the “Mergers”). The following events took place in connection with the consummation of the Mergers.

Item 1.01 Entry into a Material Definitive Agreement.

Guaranty

In connection with the consummation of the Mergers, on August 22, 2022, the Company has entered into a Guaranty (the “Guaranty”) of the obligations of Cedar OP (the “Borrower”) under a Loan Agreement (the “Cedar Loan Agreement”) by and between the Borrower, KeyBanc Capital Markets, as Lead Arranger and Bookrunner, and KeyBank National Association, as administrative agent (in such capacity, the “Agent”) and as lender (in such capacity, the “Lender”), and under the other loan documents executed in connection with the Cedar Loan Agreement (together with the Cedar Loan Agreement, the “Loan Documents”).

In addition to the Company, the obligations of the Borrower under the Cedar Loan Agreement and the other Loan Documents are also guaranteed by Cedar and certain subsidiaries of the Borrower (the “Subsidiary Guarantors”).

Pursuant to the Guaranty, the Agent has agreed that upon the occurrence of an Event of Default, the Agent shall use reasonable efforts to pursue its rights and remedies against the Borrower, Cedar, the Subsidiary Guarantors (Cedar and the Subsidiary Guarantors collectively, the “Other Guarantors”) and/or the collateral securing the Loan (the “Collateral”) prior to exercising its rights and remedies under the Guaranty against the Company, unless (i) there is any bankruptcy or similar filing by any of the Borrower, the Company or the Other Guarantors, (ii) any of the Borrower, the Company or any Other Guarantor shall bring any other legal action which seeks to prevent or interfere with the exercise of the rights and remedies under the Loan Documents by the Agent, or (iii) any action or claim is filed by any third party that challenges the validity or enforceability of the Loan Documents or the liens and rights and remedies of the Agent thereunder with respect to the Borrower, the Other Guarantors and/or the Collateral.

The foregoing description of the Guaranty does not purport to be complete and is qualified in its entirety by reference to the full text of the Guaranty, a copy of which is attached hereto as Exhibit 10.1 and incorporated herein by reference.

Environmental Compliance and Indemnity Agreement

In connection with the Cedar Loan Agreement, the Company has also entered into an Environmental Compliance and Indemnity Agreement (the “Environmental Indemnity Agreement”) pursuant to which the Company, the Borrower, the Subsidiary Guarantors and Cedar (the Borrower, the Subsidiary Guarantors and Cedar collectively, the “Other Indemnitors”) assumed certain indemnification and other obligations with respect to environmental matters relating to the properties owned by the Subsidiary Guarantors.

Pursuant to an Environmental Indemnity Agreement, the Agent has agreed that upon the occurrence of an Event of Default, Agent shall use reasonable efforts to pursue its rights and remedies against the Other Indemnitors and/or the Collateral prior to exercising its rights and remedies under the Environmental Indemnity Agreement against the Company unless (i) there is any bankruptcy or similar filing by any of the Other Indemnitors, (ii) any of the Other Indemnitors shall bring any other legal action which seeks to prevent or interfere with the exercise of the rights and remedies under the Loan Documents by the Agent, or (iii) any action or claim is filed by any third party that challenges the validity or enforceability of the Loan Documents or the liens and rights and remedies of the Agent thereunder with respect to the Other Indemnitors and/or the Collateral.

The foregoing description of the Environmental Indemnity Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of such agreement, a copy of which is attached hereto as Exhibit 10.2 and incorporated herein by reference.

Cedar Loan Agreement

Under the Cedar Loan Agreement, the Lender has made a loan to the Borrower in the principal amount of \$130 million (the “Loan”), with a scheduled maturity date of August 22, 2023 (such date, or any earlier date on which the entire Loan is required to be paid in full by acceleration or otherwise, the “Maturity Date”).

The outstanding principal balance of the Loan bears interest at the Applicable Margin plus, at the Borrowers’ election, either (a) the Daily Simple SOFR rate plus 0.10%, (b) the Term SOFR rate plus 0.10% (the “Adjusted Term SOFR Rate”), or (c) the highest of (i) the rate of interest publicly announced by the Agent as its prime rate from time to time, (ii) the federal funds effective rate from time to time plus 0.50% per annum, and (iii) the 1-month Adjusted Term SOFR plus 1.00 per annum (the “Base Rate”). The Applicable Margin is (i) for the period through and including February 22, 2023, 1.50% for Base Rate Loans and 2.50% for SOFR Loans, and (ii) from and after February 23, 2023, 3.00% for Base Rate Loans and 4.00% for SOFR Loans. Interest on the principal balance of the Loan will accrue from and after the date of the Cedar Loan Agreement until the obligations under the Loan Documents are paid in full. The Borrower may prepay and terminate the Loan without penalty, subject to certain restrictions and costs specified in the Cedar Loan Agreement.

Commencing on August 31, 2022 and continuing thereafter, the Borrower will pay interest in arrears on (i) if the Loan is accruing interest at the Base Rate or the Daily Simple SOFR rate, the last day of each calendar month, and (ii) if the Loan is accruing interest at the Term SOFR rate, the last day of each calendar month and the last day of each applicable interest period. The unpaid principal balance is due on the Maturity Date.

There is no material relationship between the Company and its affiliates and the Lender and its affiliates.

The foregoing description of the Cedar Loan Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of such agreement, a copy of which is attached hereto as Exhibit 10.3 and incorporated herein by reference.

Item 2.01 Completion of an Acquisition or Disposition of Assets.

The information set forth in the Introductory Note is incorporated into this Item 2.01 by reference.

On August 22, 2022, the Company, Merger Sub I, Merger Sub II, Cedar and Cedar OP completed the Mergers pursuant to the terms of the Merger Agreement. At the effective time of the Mergers, each outstanding share of common stock of Cedar and outstanding common unit of Cedar OP held by persons other than Cedar immediately prior to the Mergers was cancelled and converted into the right to receive a cash payment of \$9.48 per share or unit. The aggregate merger consideration paid to the common shareholders and common unitholders of Cedar was \$130 million, which was funded with the proceeds of the Loan.

As a result of the Mergers, WHLR has acquired all of the outstanding shares of Cedar’s common stock, which will no longer be publicly traded on the New York Stock Exchange (“NYSE”), and Cedar became a “wholly-owned subsidiary” of WHLR (within the meaning of Rule 12b-2 under the Securities Exchange Act of 1934). Cedar’s outstanding 7.25% Series B Preferred Stock and 6.50% Series C Preferred Stock remain outstanding and will continue to trade on the NYSE. WHLR’s common stock, Series B Convertible Preferred Stock, Series D Cumulative Convertible Preferred Stock and 7.00% Senior Subordinated Convertible Notes due 2031 also remain outstanding and will continue to trade on Nasdaq.

The foregoing description of the Mergers and the Merger Agreement does not purport to be complete, and is qualified in its entirety by reference to the full text of the Merger Agreement, a copy of which was filed as Exhibit 2.1 to Form 8-K filed by the Company with the Securities and Exchange Commission (the “SEC”) on March 7, 2022, and which is incorporated herein by reference, the First Amendment to Merger Agreement, a copy of which was filed as Exhibit 2.2 to Form 10-Q filed by the Company with the SEC on May 11, 2022, and which is incorporated herein by reference, and the Second Amendment to Merger Agreement, a copy of which is filed as Exhibit 2.3 to this Form 8-K and is incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information required by Item 2.03 contained in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.03

Item 9.01 Financial Statements and Exhibits.

(a) Financial Statements of Businesses Acquired.

As permitted by Item 9.01(a)(3) of Form 8-K, the financial statements required by this Item will be filed by amendment to this Form 8-K not later than 71 calendar days after the date on which this Form 8-K is required to be filed.

(b) Pro Forma Financial Information

As permitted by Item 9.01(a)(3) of Form 8-K, the pro forma financial statements required by this Item will be filed by amendment to this Form 8-K not later than 71 calendar days after the date on which this Form 8-K is required to be filed.

(d) Exhibits

2.1	<u>Agreement and Plan of Merger, dated as of March 2, 2022, by and among Wheeler Real Estate Investment Trust, Inc., WHLR Merger Sub Inc., WHLR OP Merger Sub LLC, Cedar Realty Trust, Inc., and Cedar Realty Trust Partnership, L.P. (Filed as an exhibit to Form 8-K, filed on March 7, 2022).</u>
2.2	<u>First Amendment to Merger Agreement, dated as of April 19, 2022, by and among Wheeler Real Estate Investment Trust, Inc., WHLR Merger Sub Inc., WHLR OP Merger Sub LLC, Cedar Realty Trust, Inc., and Cedar Realty Trust Partnership, L.P. (Filed as an exhibit to Form 10-Q, filed on May 11, 2022).</u>
2.3	<u>Second Amendment to Merger Agreement, entered into as of August 9, 2022 by and among Wheeler Real Estate Investment Trust, Inc., WHLR Merger Sub Inc., WHLR OP Merger Sub LLC, Cedar Realty Trust, Inc. and Cedar Realty Trust Partnership, L.P.</u>
10.1	<u>Guaranty, dated August 22, 2022, made by Wheeler Real Estate Investment Trust, Inc.</u>
10.2	<u>Environmental Compliance and Indemnity Agreement, dated as of August 22, 2022, made by Wheeler Real Estate Investment Trust, Inc., Cedar Realty Trust, Inc., Cedar Realty Trust Partnership, L.P., and certain subsidiaries of Cedar Realty Trust Partnership, L.P. *</u>
10.3	<u>Loan Agreement, dated as of August 22, 2022, by and between Cedar Realty Trust Partnership, L.P. as Borrower, KeyBank National Association as Administrative Agent, KeyBanc Capital Markets as Lead Arranger and Bookrunner, and the Lenders party thereto. *</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

* Schedules and/or exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The registrant hereby agrees to furnish a copy of any omitted exhibit to the SEC upon request by the SEC.

SIGNATURE

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

Date: August 25, 2022

Wheeler Real Estate Investment Trust, Inc.

By: /s/ M. Andrew Franklin

Name: M. Andrew Franklin

Title: Chief Executive Officer and President

SECOND AMENDMENT TO MERGER AGREEMENT

This SECOND AMENDMENT TO MERGER AGREEMENT (this "Amendment") is entered into as of August 9, 2022 by and among WHEELER REAL ESTATE INVESTMENT TRUST, INC., a Maryland corporation ("Parent"), WHLR MERGER SUB INC., a Maryland corporation and a wholly owned subsidiary of Parent ("Merger Sub"), WHLR OP MERGER SUB LLC, a Delaware limited liability company and a wholly owned subsidiary of Merger Sub ("OP Merger Sub"), and together with Parent and Merger Sub, the "Parent Parties", CEDAR REALTY TRUST, INC., a Maryland corporation (the "Company"), and CEDAR REALTY TRUST PARTNERSHIP, L.P., a Delaware limited partnership (the "Operating Partnership"), and together with the Company, the "Company Parties". Each entity listed above is referred to as a "Party" and collectively the "Parties".

WHEREAS, the Parties entered into that certain Agreement and Plan of Merger, dated as of March 2, 2022 (as amended by that certain First Amendment to Merger Agreement among the Parties, dated April 19, 2022, the "Merger Agreement"), pursuant to which the Parent Parties intend to acquire the Company Parties by means of the mergers described therein;

WHEREAS, capitalized terms used but not defined herein shall have the meanings assigned to them in the Merger Agreement;

WHEREAS, the Merger Agreement provides for the declaration and payment by the Company of the Closing Dividend, calculated and determined as provided in Section 6.16 of the Merger Agreement, and payable by the Company prior to, and as a condition to, the consummation of the Mergers;

WHEREAS, on even date hereof the Board of Directors of the Company has declared the Closing Dividend in the amount of \$19.52 per share of Company Common Stock (the "Per Share Closing Dividend"), payable to holders of record as of the close of business on August 19, 2022 and to be paid on the fourth Business Day following the Closing;

WHEREAS, the Parties anticipate that the Closing will occur on or about August 22, 2022, the conditions to Closing set forth in Article 7 of the Merger Agreement having been satisfied (other than those conditions that by their terms are to be satisfied at the Closing);

WHEREAS, pursuant to Section 3.1(a)(ii) of the Merger Agreement, the Merger Consideration payable to holders of Company Common Stock and OP Units has been determined to be \$9.48 per share/unit (the "Per Share Merger Consideration"); and

WHEREAS, the Parent Parties and the Company Parties desire to amend the Merger Agreement pursuant to Section 9.1 thereof to clarify certain matters with respect to payment of the Per Share Closing Dividend and the Per Share Merger Consideration, and as otherwise set forth herein.

NOW, THEREFORE, in consideration of the covenants and representations set forth herein and therein, and for other good and valuable consideration, the Parties hereby agree as follows with respect to the Merger Agreement:

1. Treatment of Restricted Stock and RSU Awards.

(i) The Parties agree that notwithstanding anything in the Merger Agreement to the contrary, payment of the Per Share Merger Consideration on account of shares of Common Stock underlying outstanding Company Restricted Stock Awards and Company Performance RSU Awards shall be made directly by the Surviving Company via the Company's regular payroll procedures (rather than via the Paying Agent procedures described in Section 3.2 of the Merger Agreement).

(ii) In furtherance of the foregoing, Section 3.3 of the Merger Agreement is hereby deleted in its entirety and replaced with the following:

“Section 3.3 Treatment of Company Compensatory Awards.

(a) Immediately prior to the Excluded Asset Closings, and contingent upon the occurrence of the Effective Time, each Company Restricted Stock Award shall become fully vested and nonforfeitable and the holder thereof shall have the right to receive the Merger Consideration as set forth in this Section 3.3.

(b) Immediately prior to the Excluded Asset Closings, and contingent upon the occurrence of the Effective Time, each Company Performance RSU Award shall fully vest in accordance with its terms and the holder thereof shall have the right to receive the Merger Consideration as set forth in this Section 3.3.

(c) The Parties stipulate that, as of the Closing, there will be 111,524 of shares of Common Stock underlying outstanding and fully vested Company Restricted Stock Awards, and 113,636 shares of Common Stock underlying outstanding and fully vested Company Performance RSU Awards (collectively, the “Award Shares”). Award Shares shall be deemed issued and outstanding shares of Company Common Stock for all purposes of Section 3.1(a)(ii) hereof.

(d) Prior to the Effective Time, Parent shall deposit with the Company (pursuant to wire instructions timely provided by the Company in advance) cash in immediately available funds in an amount sufficient to pay the aggregate Merger Consideration per share on the Award Shares. Such amount shall be deducted from the amount Parent is required to deposit with the Paying Agent pursuant to Section 3.2(a) hereof. Within four (4) Business Days after the Effective Time, the Surviving Company shall, and Parent shall cause the Surviving Company to, pay the Merger Consideration on account of all Award Shares to the applicable holders thereof. Exchange of Award Shares for Merger Consideration shall be effected by the Surviving Company pursuant to the Company's standard payroll procedures.

(e) Effective as of the Effective Time, (i) the Company Equity Incentive Plan shall terminate and the provisions in any other plan, program or arrangement providing for the issuance or grant of any other interest in respect of the capital stock of the Company or any Acquired Company thereof shall be cancelled and (ii) no participant in the Company Equity Incentive Plan or other plans, programs or arrangements shall have any right thereunder to acquire any equity securities of the Company, the Surviving Company or any Subsidiary thereof.

(f) Prior to the Effective Time, the Company Board (or, if appropriate, any committee thereof administering the Company Equity Incentive Plan) shall adopt such resolutions or take such actions as may be required to effect the provisions of this Section 3.3.

2. **Payment of the Per Share Closing Dividend**

(i) Notwithstanding anything in the Merger Agreement to the contrary, the Parties agree that (A) payment of the Per Share Closing Dividend on account of shares of Common Stock underlying Award Shares shall be made directly by the Surviving Company via the Company's regular payroll procedures, and (B) payment of the Per Share Closing Dividend may be made by the Paying Agent and the Surviving Company, as applicable, to all applicable holders of Company Common Stock, OP Units and Award Shares on the date that is four (4) Business Days following the Closing (rather than prior to Closing).

(ii) In furtherance of the foregoing, Section 7.3 of the Merger Agreement is hereby amended by replacing paragraph (e) in its entirety with the following:

“(e) an amount equal to the Closing Dividend Amount in cash in immediately available funds shall have been deposited by the Company with the Paying Agent (less such aggregate amount as is necessary for the Surviving Company to pay the Closing Dividend with respect to Award Shares).”

3. **No Other Amendments.** Each future reference to “this Agreement” and other similar references set forth in the Merger Agreement shall refer to the Merger Agreement as modified by this Amendment. Except as and to the extent expressly modified by this Amendment, the Merger Agreement is not otherwise being amended, modified or supplemented and shall remain in full force and effect in accordance with its terms.

4. **Counterparts.** This Amendment may be executed and delivered (including by facsimile or other form of electronic transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

[Signature pages follow]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

CEDAR REALTY TRUST, INC.

By: /s/ Bruce J. Schanzer
Name: Bruce J. Schanzer
Title: President and Chief Executive Officer

CEDAR REALTY TRUST PARTNERSHIP, L.P.

By: /s/ Bruce J. Schanzer
Name: Bruce J. Schanzer
Title: President and Chief Executive Officer

WHEELER REAL ESTATE INVESTMENT TRUST, INC.

By: /s/ M. Andrew Franklin
Name: M. Andrew Franklin
Title: Chief Executive Officer

WHLR MERGER SUB INC.

By: /s/ M. Andrew Franklin
Name: M. Andrew Franklin
Title: President

WHLR OP MERGER SUB LLC

By: WHLR Merger Sub Inc., its sole member

By: /s/ M. Andrew Franklin
Name: M. Andrew Franklin
Title: President

GUARANTY

Dated August 22, 2022

This Guaranty (hereinafter, the "Guaranty") is given pursuant to the terms and conditions of that certain Loan Agreement, dated as of the date hereof (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Loan Agreement"), among Cedar Realty Trust Partnership, L.P. (the "Borrower"), the Lenders from time to time party thereto, and KeyBank National Association, as Administrative Agent (in such capacity as Administrative Agent, the "Agent"). *Capitalized terms used herein and not otherwise specifically defined shall have the same meaning herein as in the Loan Agreement.*

FOR VALUE RECEIVED, and to induce Agent and the Lenders to extend credit to the Borrower as provided for in the Loan Agreement and the other Loan Documents, WHEELER REAL ESTATE INVESTMENT TRUST, INC., a Maryland corporation (hereinafter, "Guarantor"), hereby unconditionally agrees with Agent as follows:

1. Guaranty. Guarantor, as a primary party and not merely as a surety, unconditionally and irrevocably guarantees to Agent the prompt and full payment (and not merely the collectability), performance, and observance of all of the obligations, terms and conditions to be paid, performed or observed by Borrower under the Note, Loan Agreement and each other Loan Document, each as the same may be hereafter amended, modified, extended, renewed or recast, including, without limitation, all of the Obligations and the payment of all principal, interest, fees, all obligations and other charges when due under the Note, the Loan Agreement and each other Loan Document (hereinafter, the "Guaranteed Obligations").

Upon the occurrence of and during the continuance of any Event of Default under the Loan Agreement, or any of the other Loan Documents, or if Agent has accelerated the Loan pursuant to a right to do so under the Loan Agreement, Agent may at its option proceed directly and at once, without notice (except as otherwise provided under the Loan Agreement), against Guarantor hereunder, without proceeding against Borrower, any other Guarantor, or any other person or Collateral for the Obligations or the Guaranteed Obligations.

If Borrower, or Guarantor if so required, shall fail or refuse to perform or continue performance of all of the Obligations on the part of Borrower to be kept and performed, then, if an Event of Default exists on account thereof under the Loan Documents or this Guaranty, in addition to any other rights and remedies which Agent may have hereunder or elsewhere, and not in limitation thereof, Agent, at its option, may exercise any or all of its rights and remedies under the Loan Agreement and each other Loan Document.

This Guaranty shall survive and continue in full force and effect beyond and after the payment and satisfaction of the Guaranteed Obligations and the Obligations in the event Agent or any Lender is required to disgorge or return any payment or property received as a result of any laws pertaining to preferences, fraudulent transfers or fraudulent conveyances.

Notwithstanding anything herein or in any other Loan Document to the contrary, by its acceptance of this Guaranty, Agent for itself and on behalf of the Lenders, agrees that upon the occurrence of an Event of Default, Agent shall use reasonable efforts to pursue its rights and remedies against the Borrower, CRT, the Collateral Property Owners (CRT and the Collateral Property Owners, the "Other Loan Guarantors") and/or the Collateral prior to exercising its rights and remedies hereunder against Guarantor, provided, however that such agreement to first exercise rights and remedies with respect to the Borrower, the Other Loan Guarantors, and/or the Collateral shall be null and void if (i) there is any bankruptcy or similar filing by any of the Borrower or Guarantor or the Other Loan Guarantors, (ii) any of the Borrower, Guarantor or any Other Loan Guarantor shall bring any other legal action which seeks to prevent or interfere with the exercise of the rights and remedies under the Loan Documents by Agent, or (iii) any action or claim is filed by any third party that challenges the validity or enforceability of the Loan Documents or the liens and rights and remedies of the Agent thereunder with respect to the Borrower, the Other Loan Guarantors and/or the Collateral.

2. Waivers. Guarantor hereby waives and relinquishes to the fullest extent now or hereafter not prohibited by applicable law:

- (a) all suretyship defenses and defenses in the nature thereof;
- (b) except as otherwise provided in Section 1, any right or claim of right to cause a marshaling of the assets of Borrower or of any Collateral, or to cause Agent to proceed against any of the other security for the Guaranteed Obligations or the Obligations before proceeding under this Guaranty against Guarantor, or, if there shall be more than one Guarantor, to require Agent to proceed against any other Guarantor or any of Guarantors in any particular order;
- (c) until satisfaction in full of the Obligations of the Borrower to the Agent and the Lenders, and the satisfaction in full of the Guaranteed Obligations, all rights of subrogation, contribution, reimbursement, exoneration or indemnification, in each case from Borrower, CRT or a Collateral Property Owner, pursuant to any agreement, express or implied, or now or hereafter accorded by applicable law to indemnitors, guarantors, sureties or accommodation parties; provided, however, unless Agent otherwise expressly agrees in writing, such waiver by Guarantor shall not be effective to the extent that by virtue thereof Guarantor's liability under this Guaranty or under any other Loan Document is rendered invalid, voidable, or unenforceable under any applicable state or federal law dealing with the recovery or avoidance of so-called preferences or fraudulent transfers or conveyances or otherwise;
- (d) notice of the acceptance hereof, presentment, demand for payment, protest, notice of protest, or any and all notice of nonpayment, nonperformance, nonobservance or default, or other proof or notice of demand whereby to charge Guarantor therefor;
- (e) the pleading of any statute of limitations as a defense to Guarantor's obligations hereunder;
- (f) the right to a trial by jury in any matter related to this Guaranty; and
- (g) the benefit of all other provisions of law afforded to a Person on account of its being a surety, indemnitor, guarantor or accommodation party which may be validly waived.

GUARANTOR, AGENT AND LENDERS MUTUALLY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS GUARANTY, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY OR ANY OF THE OTHER LOAN DOCUMENTS OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY, INCLUDING, WITHOUT LIMITATION, ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS OR ACTIONS OF AGENT OR ANY LENDER RELATING TO THE ADMINISTRATION OF THE LOAN OR ENFORCEMENT OF THE LOAN DOCUMENTS, AND AGREE THAT NONE OF THE PARTIES WILL SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. EXCEPT AS PROHIBITED BY LAW, GUARANTOR HEREBY WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LITIGATION ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. GUARANTOR CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF AGENT OR ANY LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT AGENT OR ANY LENDER WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER. THIS WAIVER IS GIVEN AS A MATERIAL INDUCEMENT TO AGENT AND THE LENDERS TO ACCEPT THIS GUARANTY AND TO MAKE THE LOAN.

3. Cumulative Rights. Agent's and any Lender's rights under this Guaranty shall be in addition to and not in limitation of all of the rights and remedies of Agent and any Lender under the Loan Documents. All rights and remedies of Agent and any Lender shall be cumulative and may be exercised in such manner and combination as Agent or any Lender may determine.

4. No Impairment. The liability of Guarantor hereunder shall in no way be limited or impaired by, and Guarantor hereby consents to any amendment or modification of the provisions of the Loan Documents by Borrower or any other Guarantor. In addition, the liability of Guarantor under this Guaranty and the other Loan Documents shall in no way be limited or impaired by:

- (a) any extensions of time for performance required by any of the Loan Documents;
- (b) any amendment to or modification of any of the Loan Documents;
- (c) any sale or assignment of the Loan as Permitted under the Loan Agreement (including any such sale or assignment of the Security Documents), or any foreclosure of the Security Documents, or any sale, transfer or exchange of all or part of the Collateral Properties (the "Property");
- (d) any exculpatory, or nonrecourse, or limited recourse, provision in any of the Loan Documents limiting Agent's or any Lender's recourse to the Property secured by any Security Document, or to any other property, or limiting Agent's or any Lender's or its Affiliate's rights to a deficiency judgment against Borrower or any other person or entity;
- (e) the accuracy or inaccuracy of any of the representations or warranties made by or on behalf of Borrower, any general partner, owner, principal, or agent of Borrower, or Guarantor, under any Loan Document or otherwise;
- (f) the release of Borrower, any general partner, owner, principal, or agent of Borrower, or any other person or entity, from performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Loan Documents by operation of law, Agent's or any Lender's or its Affiliate's voluntary act, or otherwise;
- (g) the filing of any bankruptcy or reorganization proceeding by or against Borrower, any general partner, owner, principal, or agent of Borrower, Guarantor, or any subsequent owner of the Property;
- (h) the release or substitution in whole or part of any collateral or security for the Obligations or the Guaranteed Obligations;
- (i) Agent's failure to record any Security Document or file any UCC financing statements, or Agent's improper recording or filing of any thereof, or Agent's failure to otherwise perfect, protect, secure, or insure any security interest or lien given as security for the Obligations or the Guaranteed Obligations;
- (j) the release of any other party now or hereafter liable upon or in respect of this Guaranty or any of the other Loan Documents; or
- (k) the invalidity or unenforceability of all or any portion of any of the Loan Documents as to Borrower, any Guarantor, or any other person or entity.

Any of the foregoing may be accomplished with or without notice to Borrower, any general partner, owner, principal, or agent of Borrower, or Guarantor, and with or without consideration.

5. Delay Not Waiver. No delay on Agent's or any Lender's part in exercising any right, power or privilege hereunder or under any of the Loan Documents shall operate as a waiver of any such privilege, power or right. No waiver by Agent or any Lender in any instance shall constitute a waiver in any other instance.

6. Warranties and Representations. Guarantor warrants and represents to Agent and each of the Lenders for the express purpose of inducing Agent and the Lenders to enter into the Loan Agreement, to advance the Loan, to accept this Guaranty, and to otherwise complete the transactions contemplated by the Loan Agreement, that as of the date of this Guaranty, as follows:

- (a) Incorporation by Reference. Each warranty and representation made by Guarantor in the Environmental Indemnity Agreement is true, accurate and complete and is incorporated herein by reference.
- (b) Financial Information. Copies of the financial statements of Guarantor have been delivered to Agent and each of the same fairly present Guarantor's financial condition as of the dates thereof and no change has occurred in Guarantor's financial condition since the respective dates thereof that would reasonably be expected to have a Material Adverse Effect; and each financial statement of Guarantor submitted in the future shall fairly present Guarantor's financial condition as of the dates thereof.
- (c) No Violation. The payment and performance by Guarantor of the Guaranteed Obligations and Guarantor's obligations under this Guaranty, the Security Documents to which it is a party, the Environmental Indemnity Agreement, and any other Loan Documents to which it is a party, does not and shall not constitute a violation of any law, order, regulation, contract or agreement to which Guarantor is a party or by which Guarantor or Guarantor's property may be bound that would reasonably be expected to have a Material Adverse Effect.
- (d) No Litigation. There is no material litigation now pending or, to the best of Guarantor's Knowledge threatened in writing, against Guarantor which, if adversely decided would reasonably be expected to have a Material Adverse Effect.
- (e) Entity Matters. The Guarantor is a duly organized, validly existing entity organized and in good standing under the laws of the State of Maryland, and has all requisite power and authority to conduct its business and to own its property as now conducted or owned, and is qualified to do business in all jurisdictions where the nature and extent of its business is such that such qualification is required by law.
- (f) Valid and Binding. Each of the Loan Documents to which Guarantor is a party constitutes Guarantor's legal, valid and binding obligation in accordance with the respective terms thereof, subject to bankruptcy, insolvency and similar laws of general application affecting the rights and remedies of creditors and with respect to the availability of remedies of specific enforcement subject to the discretion of the court before which proceedings therefor may be brought.
- (g) Solvency. Guarantor is solvent and is not rendered insolvent by the obligations undertaken in this Guaranty. Guarantor is not contemplating either the filing of a petition or proceeding under any state or federal bankruptcy or insolvency or reorganization laws or the liquidating of all or a major portion of Guarantor's property.
- (h) Material Economic Benefit. The granting of the Loan to Borrower will constitute a material economic benefit to Guarantor.

7. Notices.

- (a) Any notice or other communication in connection with this Guaranty shall be in writing and shall be delivered by hand or overnight courier service, or mailed by certified or registered mail as follows:

If to Guarantor:

Wheeler Real Estate Investment Trust, Inc.
c/o Wheeler REIT, L.P.
2529 Virginia Beach Boulevard
Virginia Beach, VA 23452
Attention: M. Andrew Franklin
Electronic Mail: afranklin@whlr.us
with a copy to:
Cadwalader, Wickersham & Taft LLP
650 South Tryon Street, Suite 1400
Charlotte, NC 28202
Attention: Kevin Sholette, Esquire
Electronic Mail: kevin.sholette@cw.com

If to Agent:

KeyBank National Association
1200 Abernathy Road NE, Suite 1550
Atlanta, Georgia 30328
Attention: Tom Z. Schmitt
Electronic Mail: tom_schmitt@keybank.com

with copy to:

Riemer & Braunstein LLP
100 Cambridge Street, 22nd Floor
Boston, Massachusetts 02114
Attention: Kevin J. Lyons, Esquire
Electronic Mail: klyons@riemerlaw.com

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

- (b) Electronic Communications. The Agent or the Guarantor may, in their discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Agent or the Guarantor otherwise prescribe, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Change of Address, Etc. Guarantor and the Agent may change its address, telecopier number or email address for notices and other communications hereunder by notice to the other parties hereto.

8. No Oral Change. No provision of this Guaranty may be changed, waived, discharged, or terminated orally (in person or by telephone) or by any other means except by an instrument in writing signed by the party against whom enforcement of the change, waiver or discharge or termination is sought.

9. Parties Bound; Benefit. This Guaranty shall be binding upon Guarantor and Guarantor's respective successors, assigns, heirs and personal representatives and shall be for the benefit of Agent, and of any subsequent Agent permitted under the Loan Agreement.

10. Joint and Several. If there is more than one (1) Guarantor, the obligations of each Guarantor, and such Guarantor's respective successors, assigns, heirs and personal representatives, shall be and remain joint and several.

11. Partial Invalidity. Each of the provisions hereof shall be enforceable against Guarantor to the fullest extent now or hereafter not prohibited by applicable law. The invalidity or unenforceability of any provision hereof shall not limit the validity or enforceability of each other provision hereof.

12. Governing Law. This Guaranty and the rights and obligations of the parties hereunder shall in all respects be governed by and construed and enforced in accordance with the internal laws of the State of New York. Agent may enforce its rights hereunder and under the other Loan Documents to which Guarantor is a party, including, but not limited to, its rights to sue Guarantor or to collect any outstanding indebtedness in accordance with applicable law.

13. Consent to Jurisdiction. Each of Guarantor and Agent (by its acceptance of this Guaranty) irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the courts of the State of New York located in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Guaranty or any other Loan Document, or for recognition or enforcement of any judgment, and each of said parties irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State Court or, to the fullest extent permitted by applicable law, in such Federal Court. Each of said parties agrees that a final judgment in any such 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 Guaranty or in any other Loan Document shall affect any right that the Agent may otherwise have to bring any action or proceeding relating to this Guaranty or any other Loan Document against Guarantor or any other Loan Party or its properties in the courts of any jurisdiction. Guarantor hereby agrees and consents that in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any New York State or Federal Court located within the Southern District of the State of New York may be made in the manner provided for in Section 7.

14. Additional Covenant of the Guarantor. Guarantor shall pay, perform, observe and comply with all of the obligations, terms, covenants and conditions set forth in this Guaranty and any other Loan Documents to which Guarantor is a party.

15. Subordination.

- (a) Except as may be otherwise specifically provided for in the Loan Agreement with respect to Permitted Distributions, any indebtedness of Borrower to Guarantor, now or hereafter existing together with any interest thereon shall be, and such indebtedness is, hereby deferred, postponed and subordinated to the prior, full payment and satisfaction of all Obligations of Borrower to the Agent and the Lenders.
- (b) Except as may be otherwise specifically provided for in the Loan Agreement with respect to Permitted Distributions, at all times until the full payment and satisfaction of the Obligations of Borrower to Agent and the Lenders with respect to the Loan and other Obligations (and including interest accruing on the Loan after the commencement of a case by or against Borrower under any Debtor Relief Laws now or hereafter in effect, which interest the parties agree shall remain a claim that is prior and superior to any claim of Guarantor or any affiliated entity notwithstanding any contrary practice, custom or ruling in cases under the Debtor Relief Laws, as now or hereafter in effect, generally), Guarantor agrees not to accept any payment or satisfaction for any kind of indebtedness of Borrower to Guarantor while any Event of Default is in existence, and hereby assigns such indebtedness to Agent to secure the Guaranteed Obligations, on behalf of the Lenders, including, but not limited to, the right to file proofs of claim and to vote thereon in connection with any such case under any Debtor Relief Laws in which Borrower is the debtor, as now or hereafter in effect, and the right to vote on any plan of reorganization of Borrower.
- (c) Any mortgage, security interest, lien or charge on the Collateral, all rights therein and thereto, and on the revenue and income to be realized therefrom, which Guarantor, or any affiliated entity, may have or obtain as security for any loans, advances, indebtedness or costs, shall be, and such mortgage, security interest, lien or charge hereby is, subordinated to the full payment and satisfaction of all Obligations of Borrower to Agent and the Lenders.

16. Legal Fees, Costs and Expenses. Guarantor further agrees to pay within thirty (30) days after demand all costs and expenses reasonably incurred by Agent, or its successors or permitted assigns, in connection with enforcing any of the rights or remedies of Agent, or such successors or permitted assigns, under or with respect to this Guaranty including, but not limited to, attorneys' fees and the out-of-pocket expenses and disbursements of such attorneys. Any such amounts which are not paid within thirty (30) days of demand therefor shall bear interest at the Default Rate from the date of demand until paid.

17. Setoff. Subject to the terms of this paragraph, Guarantor hereby grants to Agent and each of the Lenders, a lien, security interest and right of setoff as security for all liabilities and obligations to Agent and the Lenders, whether now existing or hereafter arising, upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Agent or any Lender or any entity under the control of Agent or Lender, or in transit to any of them. At any time, from and after the occurrence of and during the continuance of an Event of Default, Agent or any Lender may set off the same or any part thereof and apply the same to any liability or obligation of Guarantor even though unmatured and regardless of the adequacy of any other collateral securing the Loan. Within five (5) Business Days of making any such set-off, Agent agrees to notify Guarantor thereof, provided that the failure by Agent to give such notice shall not affect the validity of such set-off. ANY AND ALL RIGHTS TO REQUIRE AGENT OR ANY LENDER TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE LOAN, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF THE GUARANTOR, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

18. Counterparts. Delivery of executed counterparts of this Guaranty by telecopy or other electronic means shall be effective as an original.

[Signature page to follow]

Witness the execution and delivery hereof as of the date first written above.

GUARANTOR:

WHEELER REAL ESTATE INVESTMENT TRUST, INC., a
Maryland corporation

By: /s/ M. Andrew Franklin

Name: M. Andrew Franklin

Title: Chief Executive Officer and President

[Signature Page to Guaranty (Wheeler Real Estate Investment Trust, Inc.)]

**ENVIRONMENTAL COMPLIANCE AND
INDEMNITY AGREEMENT**

This Environmental Compliance and Indemnity Agreement (hereinafter, the “Environmental Indemnity Agreement” or “Agreement”) is given pursuant to the terms and conditions of a certain Loan Agreement, dated as of August 22, 2022 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Loan Agreement”), among CEDAR REALTY TRUST PARTNERSHIP, L.P., a Delaware limited partnership (the “Borrower”), the Lenders from time to time party thereto, and KEYBANK NATIONAL ASSOCIATION, as Administrative Agent (in such capacity as Administrative Agent, the “Agent”). Capitalized terms used herein and not otherwise specifically defined shall have the same meaning herein as in the Loan Agreement.

As used herein:

(A) The term “Environmental Legal Requirements” shall mean all applicable present or future federal, state, county and local laws, by-laws, rules, regulations, codes and ordinances, or any judicial or administrative interpretations thereof, and the requirements of any governmental agency or authority having or claiming jurisdiction with respect thereto, applicable to the regulation or protection of the environment and all other environmental matters and shall include, but not be limited to, all orders, decrees, judgments and rulings imposed through any public or private enforcement proceedings, relating to Hazardous Materials or the existence, use, discharge, release, containment, transportation, generation, storage, management or disposal thereof, or otherwise regulating or providing for the protection of the environment applicable to the Property and relating to Hazardous Materials, or to the existence, use, discharge, release or disposal thereof. Environmental Legal Requirements presently include, but are not limited to, the following laws: Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.), the Pollution Prevention Act (42 U.S.C. §13101 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §136 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), the Federal Clean Water Act (33 U.S.C. §1251 et seq.), the Federal Clean Air Act (42 U.S.C. §7401 et seq.), and the applicable environmental laws and regulations of the State in which the applicable Property is located.

(B) The term “Hazardous Materials” shall mean asbestos, mold, flammable materials, explosives, radioactive or nuclear substances, polychlorinated biphenyls, other carcinogens, oil and other petroleum products, radon gas, urea formaldehyde, chemicals, gases, solvents, pollutants, contaminants, and any other hazardous or toxic materials, wastes and substances which are defined, determined or identified as such in any present or future federal, state or local laws, by-laws, rules, regulations, codes or ordinances or any judicial or administrative interpretation thereof, but excluding substances of kinds and in amounts ordinarily and customarily used or stored in properties similar to the Property for the purposes of cleaning or other maintenance or operations and otherwise in compliance with all Environmental Legal Requirements.

(C) The term “Property” shall mean the land owned by each Subsidiary Guarantor and identified on Schedule 1 attached hereto.

(D) The term “Surrounding Property” shall mean any property located within one hundred (100) feet of the perimeter of each Property.

(E) The term “Guarantor” shall mean, jointly and severally, Cedar Realty Trust, Inc., a Maryland corporation, Wheeler Real Estate Investment Trust, Inc., a Maryland corporation, and each Subsidiary Guarantor listed on Schedule 2 attached hereto.

(F) The term “Indemnitors” shall mean Borrower and Guarantor.

(G) The term “Indemnified Party” shall mean: (i) Agent and each of the Lenders; (ii) any subsequent holder of the Loan and any present or future owner of a participation interest therein; (iii) any party or entity formed by or under common control with Agent or any Lender or any affiliate thereof to acquire title to the Property from any holder of any portion of the Obligations whether by right of foreclosure or by deed in lieu thereof; and (iv) as to each of the foregoing, their respective affiliate, parent and subsidiary corporations, and, as applicable, the respective officers, directors, stockholders, agents and employees of any one or more of them, and any person, firm or entity which Controls, is Controlled by, or is under common Control with, any Agent or Lender.

(H) The term “Environmental Enforcement Action” shall mean all actions, orders, requirements or liens instituted, threatened in writing, required, completed, imposed or placed by any governmental authority and all claims made or threatened in writing by any other person against or with respect to the Property, or any present or past owner or occupant thereof, arising out of or in connection with any of the Environmental Legal Requirements, any environmental condition, or the assessment, monitoring, clean-up, containment, remediation or removal of, or damages caused or alleged to be caused by, any Hazardous Materials (i) located on or under the Property, or (ii) emanating from the Property.

(I) The terms “generated,” “stored,” “transported,” “utilized,” “disposed,” “managed,” “released” and “threat of release,” and all conjugates thereof, shall have the meanings and definitions set forth in the Environmental Legal Requirements.

(J) The term “Environmental Reports” shall mean those written reports with respect to environmental matters affecting the Property furnished to the Agent prior to the execution of this Agreement.

FOR VALUE RECEIVED, and to induce Agent and the Lenders to grant the Loan and extend credit to the Borrower as provided for in the Loan Agreement and the other Loan Documents, Indemnitors hereby unconditionally agree as follows:

1. Compliance with Environmental Legal Requirements.

1.1 Compliance. Until the full satisfaction of the Obligations, and full satisfaction of the Guaranteed Obligations (as defined in the Guaranty executed by the Guarantor), as applicable, the Indemnitors hereby guaranty that the Indemnitors shall comply in all materials respects with all Environmental Legal Requirements applicable to the Property, and that the Indemnitors shall take all remedial action necessary to avoid any liability of the Indemnitors or any Indemnified Party, and to avoid the imposition of, or to discharge (by payment, bonding, or otherwise), any liens on the Property, as a result of any failure to comply with Environmental Legal Requirements applicable to the Property.

1.2 Prohibitions. Without limitation upon the generality of foregoing, Indemnitors and each of them agree that they:

- (a) shall not release, and shall use commercially reasonable efforts not to permit any other Person to release, any Hazardous Materials on the Property;
- (b) shall not generate, and shall use commercially reasonable efforts not to permit any other Person to generate, any Hazardous Materials on the Property;
- (c) except in compliance with all Environmental Legal Requirements, (i) shall not store or utilize and Hazardous Materials on the Property, and (ii) shall use commercially reasonable efforts not to permit any other Person to permit any Hazardous Materials to be stored or utilized on the Property;
- (d) shall not dispose of, and shall use commercially reasonable efforts not to permit any other Person to dispose of, any Hazardous Materials on the Property;
- (e) shall not fail to operate, maintain, repair and use the Property in accordance with all Environmental Legal Requirements; or
- (f) shall use commercially reasonable efforts not to allow, permit or suffer any other person or entity to operate, maintain, repair and use the Property except in accordance with Environmental Legal Requirements.

2. Notice of Conditions. Except for any condition described in any Environmental Report, Indemnitors shall provide Agent with prompt written notice, but in no event later than ten (10) Business Days after obtaining any actual knowledge or actual notice thereof, of any of the following conditions: (i) the presence, or any release or threat of release, of any Hazardous Materials on, under or from the Property, whether or not caused by any of the Indemnitors; (ii) any Environmental Enforcement Action instituted or threatened in writing with respect to the Property; or (iii) any condition or occurrence on the Property that constitutes a violation of any of the Environmental Legal Requirements with respect to the Property.

3. Indemnitors' Agreement to Take Remedial Actions.

3.1 Remedial Actions. Upon any of the Indemnitors becoming aware of the violation of any Environmental Legal Requirement related to the Property, or the presence, or any release, of any Hazardous Materials on, under, or from the Property, whether or not caused by any of the Indemnitors, Indemnitors shall, subject to the rights to contest set forth in Section 6, promptly take all actions to cure or eliminate any such violation of any such Environmental Legal Requirement and, where required by any such Environmental Legal Requirement, to arrange for the assessment, monitoring, clean-up, containment, removal, remediation, or restoration of the Property.

3.2 Intentionally Omitted

3.3 Environmental Assessments. Agent shall have the right to require the Indemnitors, at their own cost and expense, to obtain a professional environmental assessment of the affected Property in accordance with Agent's then standard environmental assessment requirements and sufficient in scope to comply with the requirements of Section 4 upon the occurrence of any one or more of the following events: (i) an Event of Default, or (ii) upon receipt of any notice of any of the conditions specified in Section 2 of this Agreement.

4. Agent's Rights to Inspect the Property and Take Remedial Actions.

4.1 Agent's Rights. So long as any of the Loan Documents shall remain in force and effect, Agent shall have the right, but not the obligation, through such representatives or independent contractors as it may designate, to enter upon the Property, at reasonable times and upon reasonable notice to the Indemnitors and subject to the rights of any tenants at the Property, and to expend funds to:

(a) Assessments. Cause one (1) or more environmental assessments of the Property to be undertaken, if Agent reasonably determines in good faith that any of the conditions set forth in Section 2 exists. Such environmental assessments may include, without limitation, (A) detailed visual inspections of the Property, including without limitation all storage areas, storage tanks, drains, drywells and leaching areas; (B) if determined to be reasonably necessary by Agent's qualified environmental consultant, the taking of soils and surface and sub-surface water samples; (C) if determined to be reasonably necessary by Agent's qualified environmental consultant, the performance of soils and ground water analysis; and (D) the performance of such other investigations or analysis as are reasonably necessary and consistent with sound professional environmental engineering practice in order for Agent to obtain a complete assessment of the compliance of the applicable Property and the use thereof with all Environmental Legal Requirements and to make a determination as to whether or not any of the conditions set forth in Section 2 exists;

(b) Cure. Upon the occurrence and during the continuance of any Event of Default, cure any breach of the representations, warranties, covenants and conditions made by or imposed upon Indemnitors under this Agreement, including without limitation any violation by any of Indemnitors, or by the Property, or by any other occupant, prior occupant or prior owner thereof, of any of the Environmental Legal Requirements applicable to the Property;

(c) Prevention and Precaution. Upon the occurrence and during the continuance of any Event of Default, to the extent required by applicable Environmental Legal Requirements or to avoid any Material Adverse Effect, take all actions as are necessary to (i) prevent the migration of Hazardous Materials on, under, or from the Property to any other property; (ii) clean-up, contain, remediate or remove any Hazardous Materials on, under, or from any other property which Hazardous Materials originated on, under, or from the Property; or (iii) prevent the migration of any Hazardous Materials on, under, or from any other property to the Property;

(d) Environmental Enforcement Actions. Comply with, settle, or otherwise satisfy any Environmental Enforcement Action instituted by a governmental authority including, but not limited to, the payment of any fines or penalties imposed by any governmental authority and the payment of all amounts required to remove any lien or threat of lien on or affecting the Property; provided, however, that the Agent shall not be permitted to take any such action so long as (i) the Borrower, or any other Indemnitor, is exercising its rights under Section 6 of this Agreement, and (ii) no Event of Default has occurred and is continuing; and

(e) General. Comply with or otherwise satisfy any Environmental Legal Requirement and correct or abate any environmental condition on, or which threatens, the Property and which could cause material damage or injury to the Property or to any person; provided, however, that the Agent shall not be permitted to take any such action so long as (i) the Borrower, or any other Indemnitor, is exercising its rights under Section 6 of this Agreement, and (ii) no Event of Default has occurred and is continuing.

4.2 Recovery of Costs. Any amounts paid or advanced by Agent or any Lender and all costs and expenditures incurred in connection with any action taken pursuant to the terms of this Agreement, including but not limited to reasonable environmental consultants' and experts' fees and expenses, reasonable attorneys' fees and expenses, court costs and all costs of assessment monitoring clean-up, containment, remediation, removal and restoration, with interest thereon at the Default Rate, shall be an obligation of Indemnitors to Agent payable within thirty (30) days after demand and, to the extent not prohibited by law, and so long as the Borrower's Obligations and the Guaranteed Obligations are outstanding, shall be added to the obligations secured by the Security Documents when paid by Agent or any Lender and shall be secured by the lien on the Collateral and the other Security Documents as fully and as effectively and with the same priority as every other obligation secured thereby.

4.3 Agent and the Lenders Not Responsible. The exercise by Agent or any Lender of any one or more of the rights and remedies set forth in this Section 4 shall not operate or be deemed (i) to place upon Agent or any Lender any responsibility for the operation, control, care, service, management, maintenance or repair of the Property, or (ii) make Agent or any Lender the "owner" or "operator" of the Property or a "responsible party" within the meaning of any of the Environmental Legal Requirements.

4.4 Agent's and the Lenders' Subrogation. Furthermore, Agent and/or any Lender by making any such payment or incurring any such costs shall be subrogated to all rights of each of Indemnitors or any other occupant of the Property to seek reimbursement from any other person including, without limitation, any predecessor, owner or occupant of the Property who may be a "responsible party" under any of the Environmental Legal Requirements in connection with the presence of Hazardous Materials on or under or which emanated from, the Property.

4.5 Agent/Lender May Stop. Without limiting the generality of the other provisions of this Agreement, any partial exercise by Agent or any Lender of any one or more rights and remedies set forth in this Section 4 including, without limitation, any partial undertaking on the part of Agent or any Lender to cure any failure by any of the Indemnitors, or of the Property, or any other occupant, prior occupant or prior owner thereof, to comply with any of the Environmental Legal Requirements shall not obligate Agent or any Lender to complete such actions taken or require Agent or any Lender to expend further sums to cure such non-compliance.

5. Indemnification. At all times, both before and after the repayment of the Loan (but subject to Section 19) Indemnitors hereby jointly and severally agree that they shall at their sole cost and expense indemnify, defend, exonerate, protect and save harmless each Indemnified Party against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgment, suits, proceedings, costs, disbursements or expenses of any kind or nature whatsoever, including, without limitation, reasonable attorneys' and experts' fees and disbursements, which may at any time be imposed upon, incurred by or asserted or awarded against any Indemnified Party (collectively, "Losses") and arising from or out of:

5.1 Hazardous Materials. Any Hazardous Materials on, in, under, affecting or emanating from all or any portion of the Property on or before the date hereof, or which may hereafter affect all or any portion of the Property, whenever discovered;

5.2 Environmental Legal Requirements. The violation of any Environmental Legal Requirement by any Indemnitor, or with respect to the Property, existing on or before the date hereof or which may so exist in the future, whenever discovered;

5.3 Breach of Warranty, Representation or Covenant. Any breach of warranty or representation or covenant made by any Indemnitor under or pursuant to this Agreement; and

5.4 General. The enforcement of this Agreement or the assertion by any Indemnitor of any defense to the obligations of any Indemnitor hereunder, whether any of such matters arise before or after foreclosure of the Mortgage or other taking of title to or possession of all or any portion of the Property (and in the case of the Individual Property known as Fieldstone Market Place and located at 500/900 Kings Highway, New Bedford, MA (the "Fieldstone Property") the foreclosure of the pledge of the equity interests in the owner of the Fieldstone Property (the "Fieldstone Pledge") or other taking of ownership of such equity interests or of title to the Fieldstone Property) by Agent or any other Indemnified Party, and specifically including therein, without limitation, the following: (i) reasonable out-of-pocket costs incurred for any of the matters set forth in Section 4 of this Agreement; and (ii) reasonable out-of-pocket costs and expenses incurred in ascertaining the existence or extent of any asserted violation of any Environmental Legal Requirements relating to the Property and any remedial action taken on account thereof including, without limitation, the reasonable costs, fees and expenses of engineers, geologists, chemists, other scientists, attorneys, surveyors, and other professionals, or testing and analyses performed in connection therewith.

5.5 Limitation. Notwithstanding the foregoing provisions of this Section 5, the obligation of the Indemnitors to indemnify, defend, exonerate, protect and save harmless each Indemnified Party, as more particularly set forth herein, shall not be applicable to any damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind which (i) are a direct result of the willful misconduct or gross negligence of any Indemnified Party, or (ii) first arise after a transfer of the applicable Property resulting from a foreclosure of the Mortgage, exercise of a power of sale or deed-in-lieu of foreclosure or any other transfer permitted under the Loan Documents (and in the case of the Fieldstone Property, a transfer of the equity interest in the owner thereof pursuant to a foreclosure of the Fieldstone Pledge or assignment in lieu thereof or the exercise by Agent of any control rights under the Loan Documents over the owner of the Fieldstone Property or the transfer of title to the Fieldstone Property in lieu of such equity foreclosure or any other transfer of such equity interests or Individual Property permitted under the Loan Documents). In addition, the Indemnitors shall have no liability hereunder for any diminution in value of the Property or for any special, indirect, consequential or punitive damages, as opposed to direct or actual damages, except to the extent actually payable by an Indemnified Party to a third party.

6. Right to Contest. Borrower, or any other Indemnitor, may contest in good faith any claim, demand, levy or assessment under any Environmental Legal Requirements, including, but not limited to, any claim with respect to Hazardous Materials, by any person or entity if:

6.1 Material Question in Good Faith. The contest is based upon a material question of law or fact raised by Borrower or such other Indemnitor in good faith;

6.2 Diligent Pursuit. Borrower or such other Indemnitor properly commences and thereafter diligently pursues the contest;

6.3 No Impairment. The contest will not materially impair the taking of any required remedial action with respect to such claim, demand, levy or assessment;

6.4 Adequate Resources. Borrower, or such other Indemnitor, demonstrates to Agent's reasonable satisfaction that Borrower, or such other Indemnitor, has the financial capability to undertake and pay for such contest and any remedial action then or thereafter necessary;

6.5 No Event of Default. No Event of Default exists under the Loan Documents.

7. Waivers. Until the full satisfaction of the Obligations and full satisfaction of the Guaranteed Obligations, Indemnitors each hereby waive and relinquish to the fullest extent now or hereafter not prohibited by applicable law:

7.1 Suretyship Defenses. All suretyship defenses and defenses in the nature thereof;

7.2 Marshalling. Any right or claim of right to cause a marshalling of any Indemnitor's assets or to cause Agent to proceed against any of the Collateral for the Loan before proceeding under this Agreement against any Indemnitor, or to require Agent to proceed against Indemnitors in any particular order;

7.3 Contribution. All rights and remedies against any other Indemnitor, including, but not limited to, any rights of subrogation, contribution, reimbursement, exoneration or indemnification pursuant to any express or implied agreement, or now or hereafter accorded by applicable law to indemnitors, guarantors, sureties or accommodation parties; provided, however, unless Agent otherwise expressly agrees in writing, such waiver by any particular Indemnitor shall not be effective to the extent that by virtue thereof such Indemnitor's liability under this Indemnity Agreement or under any other Loan Document is rendered invalid, voidable, or unenforceable under any applicable state or federal law dealing with the recovery or avoidance of so-called preferences or fraudulent transfers or conveyances or otherwise;

7.4 Notice. Notice of the acceptance hereof, presentment, demand for payment, protest, notice of protest, or any and all notice of nonpayment, nonperformance, nonobservance or default or other proof or notice of demand whereby to charge Indemnitors therefor;

7.5 Statute of Limitations. The pleading of any statute of limitations as a defense to such Indemnitor's obligations hereunder; and

7.6 Jury Trial. The right to a trial by jury in any matter related to this Environmental Indemnity Agreement.

EACH INDEMNITOR, AGENT AND THE LENDERS HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION HERewith OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTIES; THIS WAIVER BEING A MATERIAL INDUCEMENT FOR AGENT AND THE LENDERS TO ACCEPT THIS AGREEMENT AND TO MAKE THE LOAN;

8. Cumulative Rights. Agent's rights under this Agreement shall be in addition to and not in limitation of all of the rights and remedies of Agent under the other Loan Documents. All rights and remedies of Agent shall be cumulative and may be exercised in such manner and combination as Agent may determine.

9. No Impairment. The liability of Indemnitors hereunder shall in no way be limited or impaired by, and each Indemnitor hereby consents to, any amendment or modification of the provisions of the Loan Documents to or with Agent and the Lenders by Borrower or any Indemnitor. In addition, the liability of Indemnitors under this Agreement shall in no way be limited or impaired by:

9.1 Extensions. Any extensions of time for performance required by any of the Loan Documents;

9.2 Amendments. Any amendment to or modification of any of the Loan Documents;

9.3 Transfer. Any sale or assignment of the Loan, or any sale, assignment or foreclosure of the Mortgage (except as otherwise expressly set forth in Section 5.5 above), or any sale or transfer of all or part of the Property;

9.4 Exculpatory Language. Any exculpatory, or nonrecourse, or limited recourse, provision in any of the Loan Documents limiting Agent's or any Lenders' recourse to the Property encumbered by the Security Documents or to any other property or limiting Agent's or any Lenders' rights to a deficiency judgment against Borrower or any other party;

9.5 Inaccuracies. The accuracy or inaccuracy of any of the representations or warranties made by or on behalf of any Indemnitor under the Loan Documents or otherwise;

9.6 Release. The release of any Indemnitee, or of any other person or entity, from performance or observance of any of the agreements, covenants, terms or conditions contained in this Agreement or any of the other Loan Documents by operation of law, Agent's or any Lenders' voluntary act, or otherwise;

9.7 Bankruptcy or Reorganization. The filing of any bankruptcy or reorganization proceeding by or against any Indemnitee, any general partner or owner of any Indemnitee, or any subsequent owner of the Property;

9.8 Substitution. The release or substitution in whole or part of any collateral or security for the Loan;

9.9 Failure To Perfect. Agent's failure to record any Security Document or file any UCC financing statements (or Agent's improper recording or filing of any thereof) or to otherwise perfect, protect, secure, or insure any security interest or lien given as security for the Loan; or

9.10 Invalidity. The invalidity or unenforceability of all or any portion of any of the Loan Documents as to any Indemnitee or to any other person or entity.

Any of the foregoing may be accomplished with or without notice to Borrower or any Indemnitee (except as otherwise required pursuant to the terms and conditions of the Loan Agreement) or with or without consideration.

10. Delay Not Waiver. No delay on Agent's part in exercising any right, power or privilege hereunder or under any of the Loan Documents shall operate as a waiver of any such privilege, power or right. No waiver by Agent in any instance shall constitute a waiver in any other instance.

11. Warranties and Representations. To Indemnitee's Knowledge, except to the extent (i) the failure of the following to be true would not reasonably be expected to have a Material Adverse Effect or (ii) disclosed in an Environmental Report or otherwise disclosed in writing to Administrative Agent prior to the Closing Date, the Indemnitees each represent and warrant to Agent that as of the date hereof:

11.1 No Hazardous Materials at Property. No Hazardous Materials have been or are currently generated, stored, transported, utilized, disposed of, managed, released or located on, under or from the Property in violation of applicable Environmental Legal Requirements, whether or not in reportable quantities, or in any manner introduced onto the Property including without limitation any septic, sewage or other waste disposal systems servicing the Property, in each case, which have not been fully remediated in accordance with Environmental Legal Requirements (to the extent such remediation is required pursuant to applicable Environmental Legal Requirements);

11.2 No Violations Claimed Regarding Property or Indemnitees. None of the Indemnitees has received any written notice from the Environmental Protection Agency of any state in which any Property is located, the United States Environmental Protection Agency or any other governmental authority claiming that (i) the Property or any use thereof violates any of the Environmental Legal Requirements or (ii) any of the Indemnitees or any of their respective employees or agents have violated any of the Environmental Legal Requirements with respect to the Property or any Surrounding Property;

11.3 No Liability to Governmental Authorities. None of the Indemnitors has received any written notice from any Governmental Authority that any Indemnitor has incurred any material liability to the state where any Property is located, the United States of America or any other governmental authority under any of the Environmental Legal Requirements;

11.4 No Lien on Property. No lien against the Property has arisen under or related to any of the Environmental Legal Requirements;

11.5 No Enforcement Actions. There are no Environmental Enforcement Actions pending, or to Indemnitors' actual Knowledge, threatened in writing;

11.6 No Knowledge of Hazardous Materials at Surrounding Property. None of the Indemnitors has any Knowledge that any Hazardous Materials have been or are currently generated, stored, transported, utilized, disposed of, managed, released or located on, under or from the Surrounding Property in violation of any of the Environmental Legal Requirements;

11.7 No Knowledge of Violations Regarding Surrounding Property. None of the Indemnitors has any Knowledge of any action or order instituted or threatened by any person or governmental authority arising out of or in connection with the Environmental Legal Requirements involving the assessment, monitoring, cleanup, containment, remediation or removal of or damages caused or alleged to be caused by any Hazardous Materials generated, stored, transported, utilized, disposed of, managed, released or located on, under or from any Surrounding Property;

11.8 No Underground Storage Tanks. There are no underground storage tanks on or under the Property, except those that are in material compliance with all applicable Environmental Legal Requirements;

11.9 No Dangerous Conditions. No environmental condition exists on the Property which could cause any damage or injury to the Property or to any person;

11.10 Valid and Binding. This Agreement constitutes the legal, valid and binding obligation of each of the Indemnitors in accordance with the respective terms hereof, subject to bankruptcy, insolvency and similar laws of general application affecting the rights and remedies of creditors, and with respect to the availability of the remedy of specific enforcement subject to the discretion of the court before which proceedings therefor may be brought;

11.11 Entity Matters. That each Indemnitor is a duly organized validly existing entity in good standing under the laws of its organization and has all requisite power and authority to conduct its business and to own its properties as now conducted or owned;

11.12 No Violations. To the Knowledge of the Indemnitors, the performance of the obligations evidenced hereby will not constitute a violation of any law, order, regulation, contract, organizational document or agreement to which the Indemnitors or any of them is a party or by which any one or more of them or their property is or may be bound;

11.13 No Litigation. There is no material litigation or administrative proceeding now pending or threatened in writing against the Indemnitors or any of them which if adversely decided would reasonably be expected to materially impair the ability of the Indemnitors to pay or perform their obligations hereunder; and

11.14 Material Economic Benefit. The granting of the Loan to Borrower will constitute a material economic benefit to each Indemnitor.

12. Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. Each of the counterparts shall constitute but one in the same instrument and shall be binding upon each of the parties individually as fully and completely as if all had signed but one instrument so that the joint and several liability of each of the Indemnitors hereunder shall be unaffected by the failure of any of the undersigned to execute any or all of said counterparts.

13. Notices. Any notice or other communication in connection with this Agreement shall be given in accordance with Section 15.1 of the Loan Agreement, and in the case of Indemnitors other than Borrower, at their respective notice addresses set forth in the Guaranty.

14. No Oral Change. No provision of this Agreement may be changed, waived, discharged, or terminated orally by telephone or by any other means except by an instrument in writing signed by the party against whom enforcement of the change, waiver or discharge or termination is sought.

15. Parties Bound; Benefit. This Agreement shall be binding upon the Indemnitors and their respective successors, assigns, heirs and personal representatives and shall be for the benefit of Agent and the Lenders, and of any subsequent holder of the Loan as permitted under the Loan Agreement. In the event the Loan is sold or transferred as permitted under the Loan Agreement, then the liability of the Indemnitors to Agent and the Lenders shall then be in favor of both Agent and the Lenders originally named herein and each subsequent holder of the Loan or any portion thereof.

16. Joint and Several. The obligations of each of the Indemnitors and their respective successors, assigns, heirs and personal representatives shall be joint and several.

17. Partial Invalidity. Each of the provisions hereof shall be enforceable against each Indemnitor to the fullest extent now or hereafter permitted by law. The invalidity or unenforceability of any provision hereof shall not limit the validity or enforceability of each other provision hereof.

18. Governing Law and Consent to Jurisdiction. This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by and construed and enforced, with respect to each Property, in accordance with the laws of the State of New York without giving effect to its principles of conflicts of law, and insofar as Environmental Legal Requirements are concerned, in accordance with applicable federal law as well; provided, however, insofar as formation of the parties hereunder requires the law of the jurisdiction of the state of formation to apply with respect to matters of authorization to enter into the transaction contemplated by this Agreement, such state law shall govern. The parties further agree that Agent may enforce its rights under this Agreement and the other Loan Documents including, but not limited to, the rights to sue any Indemnitor in accordance with applicable law.

Each party hereto irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of the courts of the State of New York located in New York County or any Federal Court located within the Southern District of the State of New York, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State Court or, to the fullest extent permitted by applicable law, in such Federal Court. Each of the parties hereto agrees that a final judgment in any such 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.

19. Right of Indemnitors to Terminate Obligations. Indemnitors shall have the right to terminate their continuing liability hereunder, either generally or as to one or more Individual Properties, upon fulfillment of each of the following conditions to the reasonable satisfaction of Agent:

19.1 Except if Section 19.4(ii) or Section 19.4(iii) below is applicable, Agent and all Lenders shall have received repayment and satisfaction of the Obligations in full.

19.2 The Indemnitors shall have delivered to Agent and the Lenders an environmental report with respect to the applicable Individual Property reasonably satisfactory to Agent, prepared by an environmental engineering firm reasonably acceptable to Agent, which such report does not disclose the existence of any violation of any Environmental Legal Requirements applicable to such Individual Property, or the lawful assertion by any governmental authority or third party of any violation of any Environmental Legal Requirements which has not been cured, on or with respect to such Individual Property, and which report shall be dated, or last updated, as of date which is not more than forty-five (45) days prior to the Trigger Date (as defined below) (provided that if Borrower has transferred the Property to a third party as of the Trigger Date, such report shall be dated, or last updated, no earlier than forty-five (45) days prior to the date on which Borrower transfers the Property to such third party).

19.3 No Environmental Enforcement Action or liability with respect to any Hazardous Materials shall be pending or threatened in writing with respect to the applicable Individual Property.

19.4 At least twenty-four (24) months (such twenty-four (24) month period, the "Sunset Period") have passed since the earlier of (i) the date the principal, interest and fees due Agent and the Lenders in respect of the Loan were paid in full, (ii) the applicable Individual Property or the equity interests in the owner thereof is sold or otherwise conveyed by an Indemnitor to an unrelated third party or the applicable Mortgage is discharged pursuant to the terms of the Loan Agreement (or in the case of the Fieldstone Property, the Fieldstone Pledge is discharged pursuant to the terms of the Loan Agreement), or (iii) transfer of title to the applicable Individual Property following foreclosure of the applicable Mortgage or acceptance of a deed in lieu of such foreclosure (or in the case of the Fieldstone Property, transfer of the ownership of the equity interests in the owner of the Fieldstone Property by foreclosure of the Fieldstone Pledge or by assignment in lieu thereof, or by transfer of title to the Fieldstone Property in lieu of such equity foreclosure), in each case described in the foregoing subsections (i)-(iii), without the Agent, any Lender or any Affiliate of either taking actual or constructive possession of the applicable Individual Property through appointment of a receiver or any other exercise of Agent's or Lenders' rights and remedies following an Event of Default under the Loan Documents. The date on which the event described in clause (i), (ii) or (iii) of the immediately preceding sentence, as applicable, occurs is referred to herein as the "Trigger Date".

19.5 No change shall have occurred in applicable Environmental Legal Requirements or in any official interpretation thereof (including governmental, judicial, or administrative) which would reasonably be expected to result in any Indemnified Party being held responsible for causing the Property to be in compliance with Environmental Legal Requirements due to specific environmental matters with respect to the applicable Individual Property.

Such termination of Indemnitors' liability hereunder shall become effective (a) if the Trigger Date is determined as such date set forth in Section 19.4(i) or 19.4(ii), automatically upon the expiration of the Sunset Period unless Agent provides written notice to Borrower prior thereto of its reasonable, good faith determination that any of the foregoing conditions are not satisfied, which notice shall set forth in reasonable detail the basis of Agent's determination, it being agreed that any environmental report delivered to Agent (including, without limitation, if the Trigger Date is determined as such date set forth in Section 19.4(iii) shall be deemed to satisfy the requirements of Section 19.2 unless Agent delivers to Borrower, within thirty (30) days after Agent's receipt thereof, notice that it does not satisfy such requirements, which notice shall set forth in reasonable detail the basis of Agent's determination, and (b) if the Trigger Date is determined as such date set forth in Section 19.4(iii)), upon the delivery by Agent to the Indemnitors of a specific written acknowledgment (or deemed acknowledgement pursuant to the terms hereinbelow) of the satisfaction of the foregoing conditions and the termination of such obligations, which Agent agrees to promptly provide after request by any Indemnitor, unless Agent makes the reasonable, good faith determination that the conditions to such termination have not been satisfied, in which case Agent shall promptly notify Indemnitors that such conditions have not been satisfied, which notice shall set forth in reasonable detail the basis of Agent's determination; provided, that (i) in the case of clause (a) above, the foregoing conditions shall be deemed satisfied and the Indemnitors' obligations hereunder shall be deemed terminated if Agent fails to provide such written acknowledgement within thirty (30) days after request by Borrower, and (ii) in the case of clauses (a) and (b) above, Indemnitors shall have the right in any action brought by any party hereto relating to this Environmental Indemnity Agreement, to contend that the foregoing conditions were in fact satisfied, and if the applicable court rules in Indemnitor's favor, Indemnitors' liability hereunder shall be deemed to have terminated as of the date of the expiration of the Sunset Period with respect to the applicable Individual Property.

For the avoidance of doubt, in the event that the Indemnitors shall satisfy the conditions of this Section 19 with respect to any one or more, but less than all, of the Individual Properties, then the continuing liability of Indemnitors hereunder shall terminate with respect to all Individual Properties with respect to which such conditions have been satisfied, and shall remain in effect with respect to each Individual Property for which such conditions shall not have been satisfied, and shall thereafter terminate with respect to additional Individual Properties if and when such conditions are satisfied with respect to the applicable Individual Properties.

20. Survival. Except as set forth in Section 19 of this Agreement, the provisions of this Agreement shall continue in effect and shall survive (among other events) any payment and satisfaction of the Loan and the Obligations, any termination or discharge of the security documents granted to the Agent on the Property, foreclosure, a deed-in-lieu transaction, or release of the Property.

21. Counterparts. Delivery of executed counterparts of this Agreement by telecopy or other electronic means shall be effective as an original.

22. Limitation. Notwithstanding anything herein or in any other Loan Document to the contrary, by its acceptance of this Environmental Indemnity Agreement, Agent for itself and on behalf of the Lenders, agrees that upon the occurrence of an Event of Default, Agent shall use reasonable efforts to pursue its rights and remedies against the other Indemnitors and/or the Collateral prior to exercising its rights and remedies hereunder against WHLR, provided, however that such agreement to first exercise rights and remedies with respect to the other Indemnitors, and/or the Collateral, shall be null and void if (i) there is any bankruptcy or similar filing by any of the other Indemnitors, (ii) any of the other Indemnitors shall bring any other legal action which seeks to prevent or interfere with the exercise of the rights and remedies under the Loan Documents by Agent, or (iii) any action or claim is filed by any third party that challenges the validity or enforceability of the Loan Documents or the liens and rights and remedies of the Agent thereunder with respect to the other Indemnitors and/or the Collateral.

[The balance of this page is intentionally left blank]

Witness the execution and delivery hereof as an instrument under seal as of the date first above written.

INDEMNITORS:

CEDAR REALTY TRUST PARTNERSHIP, L.P., a Delaware limited partnership

By: Cedar Realty Trust, Inc., a Maryland corporation, its general partner

By: /s/ Jennifer Bitterman

Name: Jennifer Bitterman

Title: Chief Financial Officer

CEDAR REALTY TRUST, INC., a Maryland corporation

By: /s/ Jennifer Bitterman

Name: Jennifer Bitterman

Title: Chief Financial Officer

WHEELER REAL ESTATE INVESTMENT TRUST, INC., a Maryland corporation

By: /s/ M. Andrew Franklin

Name: M. Andrew Franklin

Title: Chief Executive Officer and President

CEDAR-SOUTH PHILADELPHIA I, LLC,
a Delaware limited liability company

By: /s/ Jennifer Bitterman
Name: Jennifer Bitterman
Title: Authorized Signatory

CEDAR BRICKYARD, LLC,
a Delaware limited liability company

By: /s/ Jennifer Bitterman
Name: Jennifer Bitterman
Title: Authorized Signatory

CEDAR-FAIRVIEW COMMONS, LLC,
a Delaware limited liability company

By: /s/ Jennifer Bitterman
Name: Jennifer Bitterman
Title: Authorized Signatory

CEDAR-BRISTOL, LLC,
a Delaware limited liability company

By: /s/ Jennifer Bitterman
Name: Jennifer Bitterman
Title: Authorized Signatory

CEDAR- PC PLAZA, LLC,
a Delaware limited liability company

By: /s/ Jennifer Bitterman
Name: Jennifer Bitterman
Title: Authorized Signatory

WASHINGTON CENTER L.L.C. 1,
a Delaware limited liability company

By: /s/ Jennifer Bitterman
Name: Jennifer Bitterman
Title: Authorized Signatory

CEDAR-TIMPANY, LLC,
a Delaware limited liability company

By: /s/ Jennifer Bitterman
Name: Jennifer Bitterman
Title: Authorized Signatory

COLISEUM FF, LLC,
a Virginia limited liability company

By: /s/ Jennifer Bitterman
Name: Jennifer Bitterman
Title: Authorized Signatory

CEDAR-KINGS, LLC,
a Delaware limited liability company

By: /s/ Jennifer Bitterman
Name: Jennifer Bitterman
Title: Authorized Signatory

CEDAR-TREXLER, LLC,
a Delaware limited liability company

By: /s/ Jennifer Bitterman
Name: Jennifer Bitterman
Title: Authorized Signatory

PINE GROVE PLAZA ASSOCIATES, LLC,
a Delaware limited liability company

By: /s/ Jennifer Bitterman
Name: Jennifer Bitterman
Title: Authorized Signatory

CEDAR SOUTHLINGTON PLAZA, LLC,
a Delaware limited liability company

By: /s/ Jennifer Bitterman
Name: Jennifer Bitterman
Title: Authorized Signatory

GOLD STAR PLAZA ASSOCIATES,
a Pennsylvania limited partnership

By: Gold Star Realty, Inc., a Pennsylvania corporation, its
general partner

By: /s/ Jennifer Bitterman
Name: Jennifer Bitterman
Title: Authorized Signatory

CEDAR HAMBURG, LLC,
a Delaware limited liability company

By: /s/ Jennifer Bitterman
Name: Jennifer Bitterman
Title: Authorized Signatory

CEDAR GOLDEN TRIANGLE, LLC,
a Delaware limited liability company

By: /s/ Jennifer Bitterman
Name: Jennifer Bitterman
Title: Authorized Signatory

CEDAR 2129 OREGON AVENUE, LLC,
a Delaware limited liability company

By: /s/ Jennifer Bitterman
Name: Jennifer Bitterman
Title: Authorized Signatory

CEDAR PCP-SAN SOUCI, LLC,
a Delaware limited liability company

By: /s/ Jennifer Bitterman
Name: Jennifer Bitterman
Title: Authorized Signatory

CEDAR-FIELDSTONE MARKETPLACE, LP,
a Delaware limited partnership

By: Cedar-Fieldstone SPE, LLC,
a Delaware limited liability company,
its general partner

By: /s/ Jennifer Bitterman
Name: Jennifer Bitterman
Title: Authorized Signatory

LOAN AGREEMENT

Dated as of August 22, 2022

Among

CEDAR REALTY TRUST PARTNERSHIP, L.P.
as Borrower

THE LENDERS FROM TIME TO TIME PARTY HERETO

KEYBANC CAPITAL MARKETS,
as Lead Arranger and Bookrunner

KEYBANK NATIONAL ASSOCIATION,
as Administrative Agent

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LOAN AGREEMENT

This agreement (this "Loan Agreement" or "Agreement") is made and entered into as of August 22, 2022, by and between CEDAR REALTY TRUST PARTNERSHIP, L.P., a Delaware limited partnership (the "Borrower"), KEYBANK NATIONAL ASSOCIATION ("KeyBank") and the several banks and other financial institutions as are, or may from time to time become parties to this Agreement (each a "Lender" and collectively, the "Lenders"), KEYBANC CAPITAL MARKETS, as Lead Arranger and Bookrunner, and KEYBANK NATIONAL ASSOCIATION, as administrative agent for the Lenders (the "Administrative Agent").

WITNESSETH:

WHEREAS, the Borrower has requested that the Lenders provide a term loan to the Borrower on the Closing Date in the amount of \$130,000,000.00 which the Lenders have agreed to provide on the terms and conditions set forth herein.

NOW, THEREFORE, IN CONSIDERATION of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. DEFINITIONS.

1.1 Defined Terms.

As used in this Loan Agreement, the following terms shall have the meanings specified below unless the context otherwise requires:

"Act" shall have the meaning set forth in Section 15.19.

"Adjusted Daily Simple SOFR" means with respect to a Daily Simple SOFR Loan, the greater of (1) the sum of (a) Daily Simple SOFR and (b) the applicable SOFR Index Adjustment and (2) the Floor.

"Adjusted Net Operating Income" shall mean, for any period of determination, for any Individual Property, the Pro Rata Share of (i) Net Operating Income, less (ii) management fees (calculated as the greater of either four percent (4%) of total revenue or actual management expenses incurred), to the extent not already deducted from Net Operating Income, less (iii) allowances for capital expenditures in the amount of \$0.25 per annum per rentable square foot of all other completed improvements.

"Adjusted Term SOFR" means for any Available Tenor and Interest Period with respect to a SOFR Loan, the greater of (1) sum of (a) Term SOFR for such Interest Period and (b) the applicable SOFR Index Adjustment and (2) the Floor.

"Administrative Agent" shall mean, KeyBank National Association, acting as agent for the Lenders, together with its permitted successors and assigns.

“Administrative Agent’s Office” shall mean the Administrative Agent’s address and, as appropriate, account as set forth in Section 15.1, or such other address or account as the Administrative Agent may from time to time provide written notice to the Borrower and the Lenders.

“Administrative Questionnaire” shall mean an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affiliate” shall mean, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Agent Parties” shall have the meaning set forth in Section 15.1(c).

“Aggregate Appraised Value” shall mean, with respect to any group of Individual Properties, the sum of the Appraised Values for such Individual Properties.

“Agreement” shall have the meaning set forth in the Preamble.

“Allocated Loan Amount” shall mean for each Collateral Property, the amount set forth on Schedule ALA.

“Anti-Corruption Laws” shall mean the FCPA, the UK Bribery Act 2010 and similar, applicable legislation in other jurisdictions, in each case, solely to the extent applicable to WHLR, CRT or any of their Subsidiaries.

“Applicable Lending Office” shall mean, with respect to each Lender, the office designated by such Lender to the Administrative Agent as such Lender’s lending office for all purposes of this Agreement. A Lender may have a different Applicable Lending Office for Base Rate Loans and SOFR Loans.

“Applicable Margin” shall mean:

(i) For the period commencing on the Closing Date and continuing through and including February 22, 2023, the Applicable Margin shall be (A) 1.50% for Loans that are Base Rate Loans, (B) 2.50% for Loans that are SOFR Loans; and

(ii) Commencing on February 23, 2023 and continuing thereafter, the Applicable Margin shall be (A) 3.00% for Loans that are Base Rate Loans, (B) 4.00% for Loans that are SOFR Loans.

“Appraisal” shall mean an MAI appraisal reflecting the “as is” appraised market value of an Individual Property ordered by the Administrative Agent in form and substance reasonably acceptable to the Administrative Agent and the Required Lenders and prepared by an MAI Appraiser selected by the Administrative Agent in accordance with the Administrative Agent’s standard appraisal selection process.

“Appraised Value” shall mean, with respect to any Individual Property, the “as is” appraised market value for such Individual Property set forth in the most recent of either (a) the Appraisal obtained by Administrative Agent on or prior to the Closing Date for such Individual Property or (b) the most recent Appraisal obtained by the Administrative Agent during the continuance of an Event of Default for such Individual Property in accordance with the terms and conditions of Section 7.16.1 hereof.

“Approved Fund” shall mean any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arranger” shall mean KeyBanc Capital Markets.

“Assignee Group” shall mean two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment adviser.

“Assignment and Assumption” shall mean an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 13.3, and accepted by the Administrative Agent), in substantially the form of Exhibit D or any other form approved by the Administrative Agent.

“Assignment of Interest Rate Protection Agreement” shall have the meaning set forth in Section 7.14.

“Assignment of Leases and Rents” shall mean each Assignment of Leases and Rents, dated as of the date hereof, by a Collateral Property Owner in favor of Administrative Agent for the ratable benefit of the Lenders, as the same may be amended, restated, supplemented or otherwise updated or modified from time to time.

“Authorized Officer” shall mean, with respect to any Loan Party, Andrew Franklin and Crystal Plum, and their respective successors in the offices of Chief Executive Officer and Chief Financial Officer.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement, or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.6.11(d)

“Bail-In Action” shall mean the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation” shall mean (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Base Rate” means, for any day, a fluctuating interest rate per annum equal to the highest of (i) the Federal Funds Effective Rate plus 0.50% per annum, (ii) the rate of interest in effect for such day as established from time to time by the Administrative Agent as its “prime rate”, whether or not publicly announced, which interest rate may or may not be the lowest rate charged by it for commercial loans or other extensions of credit, and (iii) Adjusted Term SOFR for a one month tenor in effect on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.00% per annum. Any change in the Base Rate due to a change in the prime rate, the Federal Funds Effective Rate or Adjusted Term SOFR shall be effective from and including the effective date of such change in the prime rate, the Federal Funds Effective Rate or Adjusted Term SOFR, respectively.

“Base Rate Loan” shall mean any principal amount outstanding under this Agreement which pursuant to this Agreement bears interest at the Base Rate.

“Benchmark” means, initially, with respect to (a) any Daily Simple SOFR Loan, Daily Simple SOFR, and (b) any Term SOFR Loan, Term SOFR; provided that if a Benchmark Transition Event has occurred with respect to the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.6.11.

“Benchmark Replacement” means, with respect to any Benchmark Transition Event for the then-current Benchmark, the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent in consultation with the Borrower as the replacement for such Benchmark giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for such Benchmark for syndicated credit facilities denominated in U.S. Dollars at such time and (ii) the related Benchmark Replacement Adjustment, if any; provided that, if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of any then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Available Tenor, the spread adjustment, or method for calculating or determining such spread adjustment (which may be a positive or negative value or zero), if any, that has been selected by the Administrative Agent giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. Dollar denominated syndicated credit facilities.

“Benchmark Replacement Date” means the earlier to occur of the following events with respect to the then-current Benchmark:

- (a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event”, the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or
- (b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means, with respect to the then-current Benchmark, the occurrence of one or more of the following events with respect to such Benchmark:

- (a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);
- (b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

- (c) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Start Date” means, with respect to any Benchmark, in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

“Benchmark Unavailability Period” means, with respect to any then-current Benchmark, the period (if any) (i) beginning at the time that a Benchmark Replacement Date with respect to such Benchmark pursuant to clauses (a) or (b) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.6.10 and (ii) ending at the time that a Benchmark Replacement has replaced such Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.6.11.

“Beneficial Ownership Certification” shall mean a certification regarding beneficial ownership required by the Beneficial Ownership Regulation, which certification shall be substantially similar in form and substance to the form of Certification Regarding Beneficial Owners of Legal Entity Customers published jointly, in May 2018, by the Loan Syndications and Trading Association and Securities Industry and Financial Markets Association.

“Beneficial Ownership Regulation” shall mean 31 C.F.R. §1010.230.

“BHC Act Affiliate” shall have the meaning set forth in Section 15.21.

“Book Value” shall mean the value of such property or asset, as determined in accordance with GAAP.

“Borrower” shall have the meaning set forth in the Preamble.

“Borrower Materials” shall have the meaning set forth in Section 7.2.13.

“Borrower Subsidiaries” shall mean, individually and collectively, all of the Subsidiaries of the Borrower and/or CRT.

“Borrower Termination Date” shall have the meaning set forth in Section 2.2.2.

“Breakage Fee” shall have the meaning set forth in Section 2.3.15.

“Business Day” means (i) any day other than Saturday, Sunday or any other day on which commercial banks in Cleveland, Ohio or New York, New York are authorized or required by law to close and (ii) with respect to any matters relating to SOFR Loans, a SOFR Business Day.

“Calculation Date” shall mean the last day of each calendar quarter commencing with September 30, 2022.

“Calculation Period” shall mean for each Calculation Date, the period from the Closing Date to such Calculation Date, annualized and including such proforma adjustments as may be reasonably required or acceptable to the Administrative Agent.

“Capital Stock” shall mean (i) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock, including without limitation, each class or series of common stock and preferred stock of such Person and (ii) with respect to any Person that is not a corporation, any and all investment units, partnership, membership or other equity interests of such Person.

“Cash Collateral Account(s)” means each non-interest bearing deposit account maintained with the Administrative Agent under the sole dominion and control of the Administrative Agent required to be established hereunder, with the amounts deposited therein held as collateral for the Obligations in accordance with the terms hereof, including, without limitation, the Escrow Account. For the avoidance of doubt, the Escrow Account is the only Cash Collateral Account as of the Closing Date.

“Casualty Condemnation Release” shall have the meaning set forth in Section 14.3.

“Casualty/Condemnation Threshold” shall mean the greater of (a) \$1,500,000 and (b) fifteen percent (15%) of the replacement cost of the Improvements located on the affected Collateral Property.

“CFTC” means the Commodity and Futures Trading Commission, and any successor thereto.

“CFTC Regulations” means any and all regulations, rules, directives, or orders now or hereafter promulgated or issued by CFTC relating to Swap Contracts.

“Change in Law” shall mean the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority. Notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines and directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Change of Control” shall mean the occurrence of any of the following:

(a) The acquisition by any Person, or “group” (within the meaning of Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended) of Persons acting in concert, of beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended), directly or indirectly, of 50% or more of the outstanding shares of voting stock of WHLR, other than short term acquisitions necessary in connection with the ultimate sale or other offerings of equity interests otherwise permitted hereunder;

(b) During any period of twelve (12) consecutive calendar months (it being hereby agreed, for the avoidance of doubt, that the first such period shall begin on the Closing Date), individuals:

(1) Who were directors of WHLR on the first day of such period; or

(2) Whose election or nomination for election to the board of directors of WHLR was recommended or approved by at least a majority of the directors then still in office who were directors of WHLR on the first day of such period, or whose election or nomination for election was so approved,

shall cease to constitute a majority of the board of directors of WHLR; or

(c) CRT shall cease to be the sole general partner of Borrower; or

(d) CRT shall cease to own a minimum of 100% of the beneficial ownership interest in the Borrower, or

(e) With respect to any Collateral Property Owner, the transfer of any ownership interest therein such that such Collateral Property Owner is not a Wholly-Owned Subsidiary of the Borrower or CRT; or

(f) WHLR shall fail to own, directly or indirectly, 100% of the common equity interests in CRT.

“Closing Compliance Certificate” shall have the meaning set forth in Section 5.1.2(b).

“Closing Date” shall have the meaning set forth in Section 5.1.

“CME” means CME Group Benchmark Administration Ltd.

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and rulings issued thereunder. Section references to the Code are to the Code, as in effect at the date of this Agreement and any subsequent provisions of the Code, amendatory thereof, supplemental thereto or substituted therefor.

“Collateral” shall mean the collateral securing the Mortgages and the other Loan Documents.

“Collateral Assignment of Contract” shall mean the Collateral Assignment and Security Agreement in respect of Contracts, Licenses and Permits dated as of the date hereof, by each Collateral Property Owner in favor of Administrative Agent, as the same may be amended, restated, supplemented or otherwise updated or modified from time to time.

“Collateral Pool Leverage Ratio” shall mean the ratio of the outstanding principal balance of the Loans to the Aggregate Appraised Value of the Collateral Properties.

“Collateral Property” and “Collateral Properties” shall mean, the Individual Properties initially listed in Schedule 6.14.2 hereto, but excluding any Collateral Property which is released in accordance with Section 3.3 hereof.

“Collateral Property Owner” and “Collateral Property Owners” shall mean, from time to time, the Wholly-Owned Subsidiary or Subsidiaries of the Borrower or CRT which is or are the owner or owners of the fee simple interest in, or the approved ground lessee of, one or more Collateral Properties.

“Combined EBITDA” shall mean the sum of the Pro Rata Share of EBITDA for each Consolidated CRT Entity and each Unconsolidated CRT Entity.

“Commitment Letter” shall mean, collectively, (a) that certain commitment letter dated March 2, 2022, among Administrative Agent, KeyBanc Capital Markets Inc. and WHLR, and (b) that certain Senior Secured Interim Term Loan Summary of Terms and Conditions, dated as of March 2, 2022, by and between WHLR and Administrative Agent.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Compliance Certificate” shall mean a compliance certificate in the form of Exhibit C.

“Conforming Changes” means, with respect to either the use or administration of Daily Simple SOFR or Term SOFR, or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “SOFR Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.3.15 and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Consolidated” or “Consolidating” shall mean consolidated or consolidating as defined in accordance with GAAP.

“Consolidated CRT Entity” or “Consolidated CRT Entities” shall mean, singly and collectively, the Borrower, CRT, and any Subsidiary of the Borrower or CRT that is Consolidated.

“Conversion Request” means a notice in the form of Exhibit A given by the Borrower to the Administrative Agent of its election to convert a Loan in accordance with Section 2.3.

“Control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise (it being acknowledged that a Person shall not be deemed to lack Control of another Person even though certain decisions may be subject to “major decision” consent or approval rights of limited partners, shareholders or non-managing members or representative body or advisory bodies of the foregoing, as applicable). “Controlling” and “Controlled” have meanings correlative thereto.

“Cost to Repair” shall have the meaning set forth in Section 14.3.1.

“Covered Entity” shall have the meaning set forth in Section 15.21.

“Covered Party” shall have the meaning set forth in Section 15.21.

“CRT” shall mean Cedar Realty Trust, Inc., a Maryland corporation.

“CRT Operating Account” shall mean CRT’s primary operating account maintained at Manufacturers and Traders Trust Company, a New York State-chartered bank.

“CRT Preferred Stock” shall mean the Series B and Series C Preferred Stock of CRT.

“Daily Simple SOFR” means, for any day (a “SOFR Rate Day”), a rate per annum (rounded in accordance with the Administrative Agent’s customary practice) equal to the greater of (A) SOFR for the day (such day, the “SOFR Determination Day”) that is five (5) SOFR Business Days (or such other period as determined by the Administrative Agent based on then prevailing market conventions) prior to (i) if such SOFR Rate Day is a SOFR Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a SOFR Business Day, the SOFR Business Day immediately preceding such SOFR Rate Day, in each case, as and when SOFR for such SOFR Rate Day is published by the Daily Simple SOFR Administrator on the SOFR Administrator’s Website and (B) the Floor. If by 5:00 pm (New York City time) on the second (2nd) SOFR Business Day immediately following any SOFR Determination Day, SOFR in respect of such SOFR Determination Day has not been published on the SOFR Administrator’s Website and a Benchmark Replacement Date with respect to Daily Simple SOFR has not occurred, then SOFR for such SOFR Determination Day will be SOFR as published in respect of the first preceding SOFR Business Day for which such SOFR was published on the SOFR Administrator’s Website; provided, that any SOFR determined pursuant to this sentence shall be utilized for purposes of calculation of Daily Simple SOFR for no more than three (3) consecutive SOFR Rate Days. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower.

“Daily Simple SOFR Loan” means each Loan bearing interest at a rate based upon Daily Simple SOFR.

“Debt” shall mean, with respect to any Person, without duplication, as of the date of determination, (i) all indebtedness of such Person for borrowed money, (ii) all indebtedness of such Person for the deferred purchase price of property or services (other than property and services purchased, and expense accruals and deferred compensation items arising, in the ordinary course of business, which exclusion shall include obligations incurred in connection with tenant improvements, tenant allowances and other capital expenditures), (iii) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments (other than performance, surety and appeal bonds arising in the ordinary course of business), (iv) all indebtedness of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (v) all obligations of such Person under leases which have been, or should be, in accordance with generally accepted accounting principles, recorded as capital leases, to the extent required to be so recorded, (vi) all reimbursement, payment or similar obligations of such Person, contingent or otherwise, under acceptance, letter of credit or similar facilities (other than letters of credit in support of trade obligations or in connection with workers’ compensation, unemployment insurance, old-age pensions and other social security benefits in the ordinary course of business), (vii) net obligations under any Permitted Swap Contract not entered into as a hedge against existing Debt, in an amount equal to the Swap Termination Value thereof, (viii) any Guarantee of any indebtedness or other obligation of any Person, either directly or indirectly, of indebtedness described in clauses (i) through (vii), and (ix) all Debt referred to in clauses (i) through (viii) above secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) any Lien, security interest or other charge or encumbrance upon or in property (including, without limitation, accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Debt. For the purposes of the calculation of the Financial Covenants, Debt of any entity in which a Person owns an ownership interest shall be calculated on its Pro Rata Share of such Debt, unless such Person has delivered a guaranty or other indemnity in connection with such Debt creating a greater proportionate liability, in which event, such greater liability shall apply.

“Debtor Relief Laws” shall mean the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default” shall have the meaning set forth in Section 10.1.

“Default Property” shall have the meaning set forth in Section 3.4.

“Default Rate” shall mean an interest rate equal to (i) the Base Rate plus (ii) the Applicable Margin, if any, applicable to Base Rate Loans plus (iii) three percent (3.0%) per annum; provided, however, that with respect to a SOFR Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Margin) otherwise applicable to such Loan plus three percent (3.0%) per annum.

“Default Release” shall have the meaning set forth in Section 3.4.

“Default Right” shall have the meaning set forth in Section 15.21.

“Defaulting Lender” shall mean Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a governmental authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such governmental authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to the Borrower and each Lender.

“Designated Jurisdiction” means, at any time, any country, territory or region which is, or whose government is, the subject or target of any comprehensive territorial Sanctions.

“Designated Loan Parties” shall mean, individually and/or collectively, as the context may require, the Borrower, CRT and each Collateral Property Owner.

“Distribution” shall mean, with respect to any Person, that such Person has paid a dividend or returned any equity capital to its stockholders, members or partners or made any other distribution, payment or delivery of property (other than common stock or partnership or membership interests of such Person) or cash to its stockholders, members or partners as such, or redeemed, retired, purchased or otherwise acquired, directly or indirectly, for a consideration any shares of any class of its capital stock or any membership or partnership interests (or any options or warrants issued by such Person with respect to its capital stock or membership or partnership interests), or shall have permitted any of its Subsidiaries to purchase or otherwise acquire for a consideration any shares of any class of the capital stock or any membership or partnership interests of such Person (or any options or warrants issued by such Person with respect to its capital stock or membership or partnership interests). Without limiting the foregoing, “Distributions” with respect to any Person shall also include all cash payments made by such Person with respect to any equity compensation plan or any similar plans.

“Division and Divide” shall each refer to a division of a limited liability company into two or more newly formed or existing limited liability companies pursuant to a plan of division or otherwise, including, pursuant to the Delaware Limited Liability Company Act.

“Dollars” shall mean lawful money of the United States.

“Domestic Lending Office” means, initially, the office of each Lender designated as such on Schedule 1.1 hereto; thereafter, such other office as such Lender, if any, located within the United States that will be making or maintaining Base Rate Loans.

“EBITDA” shall mean for any Person the sum of (i) net income (or loss), plus (ii) actual interest paid or payable respecting all Debt to the extent included as an expense in the calculation of net income (or loss), plus (iii) total Tax Expenses to the extent included as an expense in the calculation of net income (or loss), plus (iv) total depreciation and amortization expense, to the extent included as an expense in the calculation of net income (or loss), plus (v) losses from extraordinary items, nonrecurring items, asset sales, write-ups or forgiveness of debt, to the extent included as an expense in the calculation of net income, minus (vi) gains from extraordinary items, nonrecurring items, asset sales, write-ups or forgiveness of debt, to the extent included as income in the calculation of net income, adjusted (vii) for the elimination of straight line rents, all of the foregoing as determined in accordance with GAAP, as appropriate, minus (viii) to the extent not deducted in calculating net income (or loss), Ground Lease Payments (except to the extent of any portion of such payment which is treated as a payment under a capital lease in accordance with GAAP). Without limiting the generality of the foregoing, in determining EBITDA, net income shall include as income, Rent Loss Proceeds.

“EEA Financial Institution” shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a Subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” shall mean any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Electronic Copy” shall have the meaning set forth in Section 15.13.

“Electronic Signature” shall have the meaning set forth in Section 15.13.

“Eligible Assignee” shall mean any Person that meets the requirements to be an assignee under Section 13.3.2 (including the requirements or limitations set forth in Sections 13.3.2(c), (e) and (f)), subject to such consents, if any, as may be required under Section 13.3.2.

“Environmental Indemnity Agreement” shall mean that certain Environmental Indemnity Agreement, dated as of the date hereof, by Borrower, WHLR, CRT and each Collateral Property Owner in favor of Administrative Agent, for the ratable benefit of each Lender, as the same may be amended, restated, supplemented or otherwise updated or modified from time to time.

“Environmental Legal Requirements” shall have the meaning set forth in the Environmental Indemnity Agreement.

“Environmental Report” shall mean, each of the environmental reports listed on Schedule 6.14.3 hereto.

“Equity Pledge” shall mean that certain Pledge and Security Agreement of even date herewith granted by Borrower in favor of Administrative Agent, for the benefit of the Lenders, granting a security interest in the Borrower’s equity interests in Cedar-Fieldstone SPE, LLC and Cedar-Fieldstone Marketplace, LP as security for the Obligations.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder. Section references to ERISA are to ERISA, as in effect at the date of this Agreement and any subsequent provisions of ERISA, amendatory thereof, supplemental thereto or substituted therefor.

“ERISA Affiliate” shall mean each person (as defined in Section 3(9) of ERISA) which together with either Borrower or a Loan Party would be deemed to be a “single employer” (i) within the meaning of Section 414(b), (c), (m) or (o) of the Code or (ii) as a result of either Borrower or a Loan Party being or having been a general partner of such person.

“Erroneous Payment” shall have the meaning set forth in Section 13.2.6(a).

“Erroneous Payment Deficiency Assignment” has the meaning assigned to it in Section 13.2.6(d).

“Erroneous Payment Return Deficiency” has the meaning assigned to it in Section 13.2.6(d).

“Erroneous Payment Subrogation Rights” has the meaning assigned to it in Section 13.2.6(d).

“Escrow Account” means the Cash Collateral Account maintained by the Borrower with the Administrative Agent for the deposit of certain funds to be used for funding tenant improvements, leasing commissions, capital expenditures, and taxes and insurance in accordance with Section 7.30.2.

“EU Bail-In Legislation Schedule” shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

“Event of Default” shall have the meaning set forth in Section 10.1.

“Event of Loss” shall mean, with respect to any Collateral Property, any of the following: (a) any loss or destruction of, or damage to, such Collateral Property; or (b) any actual condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, of such Collateral Property, or confiscation of such Collateral Property or the requisition of such Collateral Property by a Governmental Agency or any Person having the power of eminent domain, or any voluntary transfer of such Collateral Property or any portion thereof in lieu of any such condemnation, seizure or taking.

“Excluded Taxes” shall mean, with respect to the Administrative Agent, any Lender, or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) taxes imposed or taxes that are Other Connection Taxes, (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Borrower is located, (c) any backup withholding tax that is required by the Code to be withheld from amounts payable to a Lender that has failed to comply with Sections 2.8.5(b)(i), (d) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 13.2.4), any United States withholding tax that (i) is required to be imposed on amounts payable to such Foreign Lender pursuant to the Laws in force at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax or (ii) is attributable to such Foreign Lender’s failure or inability (other than as a result of a Change in Law) to comply with clause (ii) of Section 2.8.5(b), (e) any tax attributable to a failure or inability to comply with Section 2.8.5(c), and (f) any U.S. federal withholding taxes imposed under FATCA.

“FATCA” shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof.

“FCPA” means the United States Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

“Federal Funds Effective Rate” shall mean, for any day, the greater of (a) the rate per annum (rounded upward to the nearest one-hundredth of one percent (1/100 of 1%) announced by the Federal Reserve Bank of New York on such day as being the weighted average of the rates on overnight federal funds transactions arranged by federal funds brokers on the previous trading day, as computed and announced by such Federal Reserve Bank in substantially the same manner as such Federal Reserve Bank computes and announces the weighted average it refers to as the “Federal Funds Effective Rate” or zero percent (0%) per annum.

“Fee Letter” shall mean that certain amended and restated fee letter, dated as of August 22, 2022, by and between the Borrower and the Administrative Agent.

“Fieldstone Marketplace Property” shall mean the Individual Property owned by Cedar-Fieldstone Marketplace, LP and known as Fieldstone Market Place, located at 500/900 Kings Highway, New Bedford, MA.

“Financial Covenants” shall mean those covenants of the Borrower set forth in Sections 7.18, 7.19, 7.20 and 7.21.

“Fiscal Year” shall mean each twelve month period commencing on January 1 and ending on December 31.

“Fixed Charges” shall mean, without duplication, the aggregate of the Pro Rata Share for CRT of all (a) Interest Expenses (excluding any interest expenses required to be capitalized under GAAP), (b) regularly scheduled principal amortization payments (other than any final “balloon” payments due at maturity) on all Debt of the Consolidated CRT Entities and the Unconsolidated CRT Entities, (c) all contracted Permitted Distributions, (d) any portion of a payment under a lease which is treated as a payment under a capital lease in accordance with GAAP), and (e) Tax Expenses for the Consolidated CRT Entities and the Unconsolidated CRT Entities, all of the foregoing as determined in accordance with GAAP.

“Fixed Charge Ratio” shall mean, for each Calculation Period, the ratio of CRT’s (a) Combined EBITDA to (b) Fixed Charges.

“Floor” means a rate of interest equal to 0% per annum.

“Foreign Lender” shall mean any Lender that is not a United States person within the meaning of Section 7701(a)(30) of the Code.

“Formation Documents” shall mean, singly and collectively, the partnership agreements, joint venture agreements, limited partnership agreements, limited liability company or operating agreements and certificates of limited partnership and certificates of formation, articles (or certificate) of incorporation and by-laws and any similar agreement, document or instrument of any Person, as amended subject to the terms and provisions hereof.

“Fund” shall mean any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“GAAP” shall mean generally accepted accounting principles in the United States of America.

“Governmental Authority” shall mean the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Ground Lease” shall mean that certain Ground Lease dated May 17, 1972, between Raymond P. Olson, Herbert R. Olson and Norman E. Olson (“Original Ground Landlord”) and Robert S. Carlson (“Carlson”), as amended and supplemented by (i) that certain Lease and Separate Rent Agreement Amendment dated September 18, 1978, between Herbert R. Olson and Norman E. Olson (“Second Ground Landlord”) and Southington Center Associates (“Southington”), (ii) that certain Amendment to Separate Rent Agreement dated August 1982, between Second Ground Landlord and Southington, (iii) that certain Amendment to Separate Rent Agreement Amending Rent as of March 14, 1987 dated September, 1987 between Second Ground Landlord and Southington '84 Associates, a New Jersey general partnership (“Southington '84”), (iv) that certain Amendment to Separate Rent Agreement Amending Rent as of March 14, 1992 dated April 9, 1992 between Second Ground Landlord and Southington '84, (v) that certain Amendment to Separate Rent Agreement Amending Rent as of March 14, 1997 dated July 25, 1997 between Herbert R. Olson and Estate of Norman E. Olson and Southington '84, (vi) that certain Amendment to Separate Rent Agreement Amending Rent as of March 14, 2002 dated August 14, 2002, between Prior Landlord and Southington '84, (vii) that certain Ground Lease Amendment dated August, 2005 between Prior Landlord and Tenant, and (viii) that certain Amendment to Ground Lease Rents dated June 25, 2012, as the same may have further been or may further be amended, restated, supplemented or otherwise modified from time to time.

“Ground Lease Payments” shall mean the base rent payments made by Cedar Southington Plaza, LLC under the Ground Lease.

“Guarantee” shall mean, as to any Person, any (a) any obligation, contingent (but only to the extent required to be included in a company’s financial statements pursuant to GAAP) or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Debt or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Debt or other obligation of the payment or performance of such Debt or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Debt or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Debt or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Debt or other obligation of any other Person, whether or not such Debt or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Debt to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guaranty” shall mean that certain Guaranty Agreement, dated as of the date hereof, by each Guarantor in favor of Administrative Agent for the ratable benefit of the Lenders, as the same may be amended, restated, supplemented or otherwise updated or modified from time to time.

“Guarantor” or “Guarantors” shall mean CRT, WHLR, and each Collateral Property Owner.

“Hazardous Materials” shall mean and include asbestos, mold, flammable materials, explosives, radioactive substances, polychlorinated biphenyls, radioactive substances, other carcinogens, oil and other petroleum products, pollutants or contaminants that could be a detriment to the environment, and any other hazardous or toxic materials, wastes, or substances which are defined, determined or identified as such in any past, present or future federal, state or local laws, rules, codes or regulations, or any judicial or administrative interpretation of such laws, rules, codes or regulations, but excluding substances of kinds and in amounts ordinarily and customarily used or stored in properties similar to the Collateral Properties for the purposes of cleaning or other maintenance or operations and otherwise in compliance with all Environmental Laws.

“Implied Debt Service” shall mean the annual amount of principal and interest payable on a hypothetical loan in an amount equal to the outstanding principal balance of the Loan, based upon a twenty (20) year direct reduction monthly amortization schedule and a per annum interest rate equal to the greater of (a) seven (7.0%) and (b) the yield on the U.S. Treasury Ten-Year note plus three (3.0%).

“Implied Debt Service Coverage Ratio” shall mean as of each Calculation Date, the ratio of (i) the aggregate of (a) Adjusted Net Operating Income for all Collateral Properties for the Calculation Period ending on the subject Calculation Date, to (ii) Implied Debt Service; such calculation and results to be as verified by the Administrative Agent.

“Indemnified Taxes” shall mean Taxes (other than Excluded Taxes) imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Loan Document.

“Indemnitee” shall have the meaning set forth in Section 15.9.2.

“Individual Property” and “Individual Properties” shall mean, from time to time, all real estate property owned or ground leased by any Consolidated CRT Entity or any Unconsolidated CRT Entity, together with all improvements, fixtures, equipment, and personalty relating to such property.

“Information” shall have the meaning set forth in Section 15.20.

“Insurance/Taking Release Conditions” shall mean as to any Event of Loss, the following conditions: (a) no Event of Default shall have occurred and be continuing; (b) the Collateral Property and the use thereof after the Repair Work will be in compliance with, and permitted under, all applicable Laws; and (c) such Event of Loss does not materially impair access to the Collateral Property.

“Interest Expense” shall mean the sum of the Pro Rata Share of the aggregate actual interest expense (whether expensed or capitalized) paid or payable respecting all Debt by the Consolidated CRT Entities and the Unconsolidated CRT Entities.

“Interest Payment Date” means (a) with respect to any Base Rate Loan or any Daily Simple SOFR Loan, the last day of each calendar month, and (b) with respect to any Term SOFR Loan, the last day of each calendar month and the last day of each Interest Period applicable to the Borrowing of which such Loan is a part.

“Interest Period” means, with respect to each Term SOFR Borrowing, a period of one, three or six months as selected by the Borrower; provided, however, that (i) the initial Interest Period for any Borrowing of a SOFR Loan shall commence on the date of such Borrowing (the date of a Borrowing resulting from a conversion or continuation shall be the date of such conversion or continuation) and each Interest Period occurring thereafter in respect of such Borrowing shall commence on the first day after the last day of the next preceding Interest Period; (ii) if any Interest Period begins on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period, such Interest Period shall end on the last Business Day of such calendar month; (iii) if any Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; provided, however, that if any Interest Period would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the next preceding Business Day; (iv) no Interest Period for any SOFR Loan may be selected that would end after the Maturity Date; and (v) if, upon the expiration of any Interest Period, the Borrower has failed to (or may not) elect a new Interest Period to be applicable to the respective Borrowing of SOFR Loans as provided above, the Borrower shall be deemed to have elected to convert such Borrowing to Base Rate Loans effective as of the expiration date of such current Interest Period.

“Interest Rate Agreement” means an Interest Rate Protection Product purchased by the Borrower.

“Interest Rate Protection Product” means an interest rate hedging product, such as an interest rate cap or swap.

“Investment” shall mean the acquisition of any real property or tangible personal property or of any stock or other security, any loan, advance, bank deposit, money market fund, contribution to capital, extension of credit (except for accounts receivable arising in the ordinary course of business and payable in accordance with customary terms), or purchase or commitment or option to purchase or otherwise acquire real estate or tangible personal property or stock or other securities of any party or any part of the business or assets comprising such business, or any part thereof.

“KeyBank” shall have the meaning set forth in the Preamble.

“Knowledge” or “knowledge” shall mean, with respect to any Loan Party, the actual knowledge of any Authorized Officer of such Loan Party. Notwithstanding the foregoing, such named parties and their successors are not parties to this Agreement and under no circumstances shall have any liability for a breach of any representation, warranty, covenant or agreement.

“Late Charge” shall have the meaning set forth in Section 2.3.14.

“Laws” shall mean, collectively, all Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities applicable to any Collateral or any Loan Party, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case having the force of law.

“Lease” shall mean any lease relative to all or any portion of a Collateral Property.

“Lenders” shall have the meaning set forth in the Preamble.

“Lenders’ Consultant” shall have the meaning set forth in Section 7.26.1.

“Lending Office” shall mean, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“Leverage Ratio” shall mean the quotient (expressed as a percentage) resulting from dividing (i) the aggregate of all Debt of the Consolidated CRT Entities and the Unconsolidated CRT Entities by (ii) the Total Asset Value.

“Lien” shall mean any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or transfer, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and mechanic’s, materialmen’s and other similar liens and encumbrances.

“Licenses and Permits” shall mean all licenses, permits, authorizations and agreements issued by or agreed to by any governmental authority or by a private party, and including, but not limited to, building permits, occupancy permits and such special permits, variances and other relief as may be required pursuant to Laws which may be applicable to any Collateral Property.

“Liquidation Proceeds” shall mean amounts received by the Administrative Agent and/or the Lenders in the exercise of the rights and remedies under the Loan Documents (including, but not limited to, all rents, profits and other proceeds received by the Administrative Agent and/or the Lenders from the liquidation of, or exercising rights upon the occurrence of an Event of Default relative to, any Collateral, but not including any amount bid at a foreclosure sale or on behalf of the Administrative Agent or otherwise credited to the Borrower in, any deed-in-lieu of foreclosure or similar transaction).

“Loan” shall have the meaning set forth in Section 2.1.

“Loan Agreement” shall have the meaning set forth in the Preamble.

“Loan Documents” shall mean, this Agreement, the Notes, each Mortgage, each Assignment of Leases and Rents, the Collateral Assignment of Contracts, the Equity Pledge, the Guaranty, the WHLR Guaranty, the Environmental Indemnity Agreement, each Assignment of Interest Rate Protection Agreement (if any), and any other documents, instruments, or agreements heretofore or hereafter executed to further evidence or secure the Loan or any obligation of payment thereof or performance of Borrower’s or Guarantor’s obligations in connection with the transaction contemplated hereunder and any Interest Rate Agreement for the Loan, each as amended, restated, replaced, or otherwise modified from time to time.

“Loan Party” and “Loan Parties” shall mean, singly and collectively, the Borrower and the Guarantors.

“Loan Percentage” shall mean, with respect to each Lender, the percentage set forth on Schedule 1.1 hereto as such Lender’s percentage of the aggregate Loans to Borrower, as the same may be changed from time to time in accordance with the terms of this Agreement.

“MAI Appraiser” means an MAI member with an appropriate level of professional experience appraising commercial properties in the respective area(s) of the applicable Individual Property(ies) and otherwise qualified pursuant to the applicable Laws.

“Major Event of Loss” shall mean, with respect to any Collateral Property, both (1) any of the following: (a) any loss or destruction of, or damage to, such Collateral Property such that either (x) the repairs and restoration thereof cannot be completed, in the reasonable judgment of the Lenders’ Consultant and if there is no Lenders’ Consultant, an independent architect or engineer retained by the Borrower, within nine (9) months after the occurrence of such loss, damage or destruction or (y) rendering more than fifty percent (50%) of the of the leasable area of such Collateral Property unusable for the purposes conducted thereon immediately prior to such loss, destruction or damage, as reasonably determined by the applicable Lenders’ Consultant and if there is no Lenders’ Consultant, an independent architect or engineer retained by the Borrower; or (b) any actual condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, of such Collateral Property, or confiscation of such Collateral Property or the requisition of such Collateral Property by a Governmental Agency or any Person having the power of eminent domain, or any voluntary transfer of such Collateral Property or any portion thereof in lieu of any such condemnation, seizure or taking, rendering more than fifty percent (50%) of the leasable area of such Collateral Property unusable for the purposes conducted thereon immediately prior to action, as reasonably determined by the Lenders’ Consultant and if there is no Lenders’ Consultant, an independent architect or engineer retained by the Borrower, and (2) the Administrative Agent does not elect under Section 14.3.3 to make Net Proceeds with respect to such Event of Loss available for Repair Work.

“Mandatory Principal Payment” shall have the meaning set forth in Section 2.3.8.

“Material Adverse Effect” shall mean a material adverse effect on (i) the business, assets, operations or financial or other condition of the Designated Loan Parties, taken as a whole, (ii) the ability of the Loan Parties, taken as a whole, to perform any material Obligations or to pay any Obligations which it is or they are obligated to pay in accordance with the terms hereof or of any other Loan Document, (iii) the rights of, or benefits available to, the Administrative Agent and/or any of the Lenders under any Loan Document, or (iv) any Lien given to Administrative Agent and/or any of the Lenders on any material portion of the Collateral or the priority of any such Lien.

“Maturity Date” shall have the meaning set forth in Section 2.2.1.

“Maximum Rate” shall have the meaning set forth in Section 15.2.

“Merger Agreement” shall mean that certain Agreement and Plan of Merger, dated as of March 2, 2022, by and among Wheeler Real Estate Investment Trust, Inc., WHLR Merger Sub Inc., WHLR OP Merger Sub LLC, CRT and Borrower, as the same may have been or may further be amended, restated, supplemented or otherwise modified from time to time.

“Merger Consideration” shall have the meaning set forth in the Merger Agreement.

“Mortgage” shall mean individually and/or collectively, as the context may require, with respect to each Collateral Property, that certain first priority Mortgage/Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated the date hereof, executed and delivered by Borrower as security for the Loan and encumbering such Collateral Property, as the same may be amended, restated, supplemented or otherwise updated or modified from time to time.

“Net Operating Income” shall mean, calculated for the prior four quarters, (i) net operating income generated by an Individual Property for such period (i.e., gross operating income, inclusive of any rent loss insurance, less expenses (including Ground Lease Payments (except to the extent of any portion of such payment which is treated as a payment under a capital lease in accordance with GAAP) and exclusive of debt service, capital expenditures and vacancy allowances and before depreciation and amortization), determined in accordance with GAAP, as generated by, through or under Leases, and (ii) all other income arising from direct operations of or licenses or operating agreements for any part of the Individual Property determined on a GAAP basis. For purposes hereof, all rental income shall be adjusted for straight line rents. Borrower shall provide the Administrative Agent with all information and materials required by the Administrative Agent necessary for the determination of Net Operating Income. If any Leases are scheduled to expire during such period of determination, no rents or other amounts payable under such Leases with respect to any portion of such period occurring after such scheduled expiration date shall be included in the determination of Net Operating Income for such period. If any Leases are scheduled to commence (and rent and occupancy pursuant thereto are also scheduled to commence) during such period of determination, the rents and other amounts payable under such Leases with respect to any period occurring after the scheduled commencement date shall be included in the determination of Net Operating Income for such period.

“Net Proceeds” shall mean (i) the net amount of all insurance proceeds received under any insurance policies other than Rent Loss Proceeds as a result of the occurrence of an Event of Loss described in clause (a) of the definition of Event of Loss with respect to any Collateral Property, after deduction of the reasonable costs and expenses (including, but not limited to reasonable counsel fees), if any, in collecting the same, or (ii) the net amount of all awards and payments received with respect to the occurrence of an Event of Loss described in clause (b) of the definition of Event of Loss, after deduction of the reasonable costs and expenses (including, but not limited to reasonable counsel fees), if any, in collecting the same, whichever the case may be.

“Obligations” shall mean without limitation, all and each of the following, whether now existing or hereafter arising:

(a) Any and all direct and indirect liabilities, debts, and obligations of the Borrower or any Loan Party to the Administrative Agent or any Lender under or arising out of the Loan Documents, each of every kind, nature, and description.

(b) Each obligation to repay any loan, advance, indebtedness, note, obligation, overdraft, or amount now or hereafter owing by the Borrower or any Loan Party to the Administrative Agent or any Lender under or arising out of the Loan Documents, whether or not any of such are liquidated, unliquidated, primary, secondary, secured, unsecured, direct, indirect, absolute, contingent, or of any other type, nature, or description, or by reason of any cause of action which the Administrative Agent or any Lender may hold against the Borrower or any Loan Party.

(c) All notes and other obligations of the Borrower or any Loan Party now or hereafter assigned to or held by the Administrative Agent or any Lender under or arising out of the Loan Documents, each of every kind, nature, and description.

(d) All interest, fees, and charges and other amounts which may be charged by the Administrative Agent or any Lender to the Borrower or any Loan Party and/or which may be due from the Borrower or any Loan Party to the Administrative Agent or any Lender from time to time under or arising out of the Loan Documents.

(e) All actual out-of-pocket costs and expenses incurred or paid by the Administrative Agent or any Lender in respect of any agreement relating to the Loan Documents between the Borrower or any Loan Party and the Administrative Agent or any Lender or instrument furnished by the Borrower or any Loan Party to the Administrative Agent or any Lender (including, without limitation, costs of collection, attorneys’ reasonable fees, and all court and litigation costs and expenses) in connection with the Loan.

(f) Any and all covenants of the Borrower or any Loan Party to or with the Administrative Agent or any Lender and any and all obligations of the Borrower or any Loan Party to act or to refrain from acting in accordance with any agreement between the Borrower or any Loan Party and the Administrative Agent or any Lender or instrument furnished by the Borrower or any Loan Party to the Administrative Agent or any Lender in connection with the Loan.

(g) Any and all Erroneous Payment Subrogation Rights.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Officer’s Certificate” shall mean a certificate delivered to the Administrative Agent by the Borrower, a Borrower Subsidiary, or a Guarantor, as the case may be respectively, which is signed by an authorized senior officer or signatory of such Person.

“Operating Account” and “Operating Accounts” shall have the respective meanings set forth in Section 7.30.3.

“Other Connection Taxes” shall mean, with respect to any Payment Recipient, taxes imposed as a result of a present or former connection between such Payment Recipient and the jurisdiction imposing such tax (other than any such connection resulting from such Payment Recipient having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or any other Loan Document).

“Other Taxes” shall mean all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document except any such taxes that are Other Connection Taxes imposed with respect to an assignment.

“Participant” shall have the meaning set forth in Section 13.3.4.

“Participant Register” shall have the meaning set forth in Section 13.3.4.

“Payment Recipient” shall have the meaning set forth in Section 13.2.6(a).

“PBGC” shall mean the Pension Benefit Guaranty Corporation established pursuant to Section 4002 of ERISA, or any successor thereto.

“Permitted Debt” shall have the meaning set forth in Section 8.4.

“Permitted Distributions” shall mean (a) the payment of the Merger Consideration or as otherwise contemplated by the Merger Agreement and any Distribution by the Borrower to WHLR in connection therewith, and (b) so long as no Event of Default exists and is continuing, or would be created thereby, any Distributions in respect of the CRT Preferred Stock; provided, however, that from and after the Closing Date (i) the CRT Preferred Stock’s dividend rate shall not increase, and (ii) no additional or incremental preferred limited partnership interests or preferred stock, respectively, shall be issued by the Borrower or CRT whether by expansion of the current series or issuance of a new series.

“Permitted Investments” shall mean CRT’s investment in the Borrower and the Borrower’s investment in the Collateral Properties.

“Permitted Liens” shall have the meaning set forth in Section 8.2.

“Permitted Swap Contract” shall mean any Swap Contract entered into in accordance with the terms and provisions of Section 8.17.

“Permitted Transfer” means:

(a) any Permitted Lien;

(b) a transfer by devise or descent or by operation of law upon the death of an individual having a legal or beneficial ownership or economic interest in any Loan Party; and

(c) one or a series of transfers, of the legal or beneficial interests in any Person that does not result in a Change of Control.

“Person” shall mean any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” shall mean any multiemployer or single-employer plan as defined in Section 4001 of ERISA that is subject to Title IV of ERISA, which is maintained or contributed to by (or to which there is an obligation to contribute of) any Loan Party or any ERISA Affiliate, including each such Plan for the five year period immediately following the latest date on which such Loan Party or an ERISA Affiliate maintained, contributed to or had an obligation to contribute to such Plan.

“Platform” shall have the meaning set forth in Section 7.2.13.

“Pro Rata Share” shall mean a calculation based on the percentage of the Capital Stock of or other equity interest in any Person owned, directly or indirectly, by the Borrower and/or CRT.

“Public Lender” shall have the meaning set forth in Section 7.2.13.

“QFC” shall have the meaning set forth in Section 15.21.

“QFC Credit Support” shall have the meaning set forth in Section 15.21.

“Register” shall have the meaning set forth in Section 13.3.3.

“REIT” shall mean a “real estate investment trust” as such term is defined in Section 856 of the Code.

“Related Part(y)ies” shall mean, with respect to any Person, such Person’s Affiliates, and the partners, members, shareholders, directors, officers, employees, agents, trustees and advisors of such Person and of such Person’s Affiliates.

“Release Conditions” shall have the meaning set forth in Section 3.2.1.

“Release Price” shall mean the greater of (a) such amount as is necessary for the Borrower to remain in compliance with the Financial Covenants after giving effect to the subject transaction, (b) the net proceeds (after payment of customary closing costs reasonably approved by the Administrative Agent) of the subject sale or refinancing, (c) for any sale, an amount equal to 80% of the Appraised Value of the applicable Collateral Property, or (d) for any refinancing, 100% of the Allocated Loan Amount of the applicable Collateral Property.

“Release Request” shall have the meaning set forth in Section 3.2.1.

“Relevant Governmental Body” means the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto.

“Rent Loss Proceeds” shall mean the proceeds received under any rent loss or business interruption insurance policies.

“Rent Rolls” shall mean the rent rolls attached hereto as Exhibit G.

“Repair Work” shall have the meaning set forth in Section 14.1.

“Reportable Event” shall mean an event described in Section 4043(c) of ERISA with respect to a Plan other than those events as to which the 30-day reporting notice period is waived under Section 4043 of ERISA has been waived by PBGC regulation.

“Required Lenders” shall mean, as of any date of determination, Lenders holding in the aggregate greater than 50% of the Total Outstandings.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Sanctioned Person” means any Person that is (i) listed on OFAC’s List of Specially Designated Nationals and Blocked Persons, (ii) otherwise the subject or target of Sanctions, to the extent U.S. persons are prohibited from engaging in transactions with such a Person, and (iii) deemed a target of Sanctions by virtue of being fifty percent (50%) or greater owned or controlled by a Person described in clause (i) or (ii) above.

“Sanction(s)” means any sanction administered or enforced by the United States government (including, without limitation, OFAC), the United Nations Security Council, the European Union, or Her Majesty’s Treasury or other relevant sanctioning authority that has jurisdiction over CRT or any of its Subsidiaries, in each case, solely to the extent applicable to CRT or any of its Subsidiaries.

“Security Documents” shall mean each of the Loan Documents evidencing the creation and/or perfection of a Lien or security interest in the Collateral in favor of Administrative Agent.

“SOF” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“SOFR Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“SOFR Determination Date” has the meaning specified in the definition of “Daily Simple SOFR”.

“SOFR Index Adjustment” means for any calculation with respect to a Daily Simple SOFR Loan or a Term SOFR Loan, a percentage per annum as set forth below for the applicable Type of such Loan and (if applicable) Interest Period therefor:

Loan Type and Tenor	Percentage
<u>Daily Simple SOFR Loan:</u>	0.10%
<u>Term SOFR Loan Interest Period:</u>	
One month	0.10%
Three months	0.10%
Six months	0.10%

“SOFR Lending Office” means, initially, the office of each Lender designated as such on Schedule 1.1 hereto; thereafter, such other office of such Lender, if any, located within the United States that will be making or maintaining SOFR Loans.

“SOFR Loan” means each Loan bearing interest at a rate based upon (a) Adjusted Term SOFR (other than pursuant to clause (iii) of the definition of “Base Rate”) or (b) Adjusted Daily Simple SOFR.

“SOFR Rate Day” has the meaning specified in the definition of “Daily Simple SOFR”.

“Stabilized Properties” shall mean the Properties listed on Schedule SA.

“State” shall mean the State or Commonwealth in which the subject of such reference or any part thereof is located.

“Statement” shall have the meaning set forth in Section 15.17.

“Subsidiary” shall mean, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, limited liability company, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person.

“Supported QFC” shall have the meaning set forth in Section 15.21.

“Swap Contract” shall mean (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any confirmations relating to the foregoing transactions and any Master Agreements related thereto, including, without limitation, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”).

“Swap Termination Value” shall mean, with respect to the Borrower or a Borrower Subsidiary, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s) to be payable by the Borrower or such Subsidiary.

“Tax Expenses” shall mean tax expense (if any) attributable to income and franchise taxes based on or measured by income, whether paid or accrued.

“Taxes” shall mean all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Borrowing” means the incurrence of Term Loans consisting of one Type of Term Loan by the Borrower from all of the Lenders on a *pro rata* basis on a given date (or resulting from Conversions or Continuations on a given date), having in the case of SOFR Loans the same Interest Period.

“Term Facility” shall mean that certain senior term loan facility provided by Lenders to the Borrower in an amount equal to \$130,000,000.00 in accordance with the terms and conditions herein, as such amount may be adjusted pursuant to the terms of this Agreement.

“Term Facility Loans” shall mean the loans made by the Lenders as evidenced by, among other things, the Register.

“Term SOFR” means for any calculation with respect to a Term SOFR Loan, the greater of (A) the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “Lookback Day”) that is two SOFR Business Days prior to the first day of such Interest Period (and rounded in accordance with the Administrative Agent’s customary practice), as such rate is published by the Term SOFR Administrator and (B) the Floor; provided, however, that if as of 5:00 p.m. (New York City time) on any Lookback Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding SOFR Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding SOFR Business Day is not more than three SOFR Business Days prior to such Lookback Day, and for any calculation with respect to a Base Rate Loan, the Term SOFR Reference Rate for a tenor of one month on the day that is two SOFR Business Days prior to the date the Base Rate is determined, subject to the proviso provided above.

“Term SOFR Administrator” means CME (or a successor administrator of the Term SOFR Reference Rate, as selected by the Administrative Agent in its reasonable discretion).

“Term SOFR Borrowing” means a Borrowing comprised of Term SOFR Loans.

“Term SOFR Loan” means each Loan bearing interest at a rate based upon Adjusted Term SOFR (other than pursuant to clause (iii) of the definition of Base Rate).

“Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.

“Term Facility Loans” shall mean the loans made by the Lenders as evidenced by, among other things, the Register.

“Total Asset Value” shall mean the aggregate of:

(a) The Aggregate Appraised Value of all Individual Properties; plus

(b) For all unrestricted cash and cash equivalent investments, restricted cash held by a qualified intermediary, and escrows owned by the Consolidated CRT Entities and the Unconsolidated CRT Entities, the Pro Rata Share of the Book Value as of the Calculation Date of such assets; plus

(c) Deposits corresponding to outstanding letters of credit.

“Total Outstandings” shall mean on any date the aggregate outstanding principal amount of the Loans under the Term Facility after giving effect to any borrowings and prepayments or repayments of said Loans occurring on such date.

“Treasury Rate” shall mean, as of the date of any calculation or determination, the latest published rate for United States Treasury Notes or Bills (but the rate on Bills issued on a discounted basis shall be converted to a bond equivalent) as published weekly in the Federal Reserve Statistical Release H.15(519) of Selected Interest Rates in an amount which approximates (as determined by Administrative Agent) the amount (i) approximately comparable to the portion of the Loan to which the Treasury Rate applies for the Interest Period, or (ii) in the case of a prepayment, the amount prepaid and with a maturity closest to the original maturity of the installment which is prepaid in whole or in part.

“Type” shall mean, with respect to any Loan, its character as a Base Rate Loan or a SOFR Loan, and with respect to any SOFR Loan, its character as a Term SOFR Loan or a Daily Simple SOFR Loan.

“UCC” or the “Uniform Commercial Code” shall mean the Uniform Commercial Code in effect in the State of New York, provided, that as same relates to a Collateral Property, the UCC shall mean the Uniform Commercial Code as adopted in such jurisdiction.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“Unconsolidated CRT Entity” or “Unconsolidated CRT Entities” shall mean each Person as to which the Borrower and/or CRT own, directly or indirectly, any Capital Stock, but which is not a Consolidated Subsidiary.

“United States” and “U.S.” shall each mean the United States of America.

“U.S. Special Resolution Regimes” shall have the meaning set forth in Section 15.21.

“Value-Add Properties” shall mean the Collateral Properties other than the Stabilized Properties.

“WHLR” shall mean Wheeler Real Estate Trust, Inc., a Maryland corporation.

“WHLR Guaranty” shall mean that certain Guaranty Agreement, dated as of the date hereof, by WHLR in favor of Administrative Agent for the ratable benefit of the Lenders, as the same may be amended, restated, supplemented or otherwise updated or modified from time to time.

“Wholly-Owned Subsidiary” shall mean, with respect to any Person, any other Person as to which one-hundred (100%) percent of the Capital Stock thereof is owned, directly or indirectly, by such Person.

“Write-Down and Conversion Powers” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.2 Other Interpretive Provisions.

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Formation Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns subject to restrictions on assignments as set forth in this Agreement, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such Law and any reference to any Law or regulation shall, unless otherwise specified, refer to such Law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including,” the words “to” and “until” each mean “to but excluding,” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) The interest rate on Loans denominated in Dollars may be determined by reference to a benchmark rate that is, or may in the future become, the subject of regulatory reform or cessation. The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Base Rate, Daily Simple SOFR, Adjusted Daily Simple SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Base Rate, Daily Simple SOFR, Adjusted Daily Simple SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Base Rate, Daily Simple SOFR, Adjusted Daily Simple SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Base Rate, Daily Simple SOFR, Adjusted Daily Simple SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service. The Administrative Agent will, in keeping with industry practice, continue using its current rounding practices in connection with the Base Rate, Daily Simple SOFR, Adjusted Daily Simple SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR. In connection with the use or administration of Daily Simple SOFR and Term SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Administrative Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Daily Simple SOFR and Term SOFR.

1.3 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the financial statements required by Section 7.2.1, except as otherwise specifically prescribed herein.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

1.4 Rounding.

Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number). For example purposes only, in calculating the Fixed Charge Ratio, the calculation shall initially result in three numbers right of the decimal point. If the last number is four or less, the total number shall be rounded down. If the last number is 5 or more, the total number shall be rounded up.

1.5 Times of Day.

Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

2. LOAN PROVISIONS.

2.1 General Loan Provisions. On the Closing Date, each Lender agrees to make a term loan (each, a "Loan") to the Borrower in accordance with such Lender's Loan Percentage, which Loans: (i) shall be advanced in full on the Closing Date in the entire amount of each Lender's Loan Percentage of the Term Facility; (ii) once prepaid or repaid, may not be reborrowed; (iii) may, except as set forth herein, at the option of the Borrower, be incurred and maintained as, or converted into, Loans that are Base Rate Loans or SOFR Loans, in each case denominated in Dollars; and (iv) shall be repaid in accordance with Section 2.3.7.

2.2 Term of Loan.

2.2.1 Term Facility. The Loans shall be for a term commencing on the Closing Date and ending on August 22, 2023 or such earlier date as the Loans are accelerated pursuant to the terms of Section 11.1.1 of this Agreement (the “Maturity Date”).

2.2.2 Intentionally Omitted.

2.3 Interest Rate and Payment Terms. The Loan shall be payable as to interest and principal in accordance with the provisions of this Agreement. This Agreement also provides for interest at a Default Rate, Late Charges and fees. All payments for the account of Lenders shall be applied to the respective accounts of the Lenders in accordance with each Lender’s Loan Percentage. Any and all interest rate selection and conversion provisions in this Agreement are to be administered by the Administrative Agent and to be allocated on a pro rata basis to the portion of the balance held by each Lender based upon such Lender’s Loan Percentage.

2.3.1 Borrower’s Options. Principal amounts outstanding under the Loan shall bear interest at the following rates, at Borrower’s selection, subject to the conditions and limitations provided for in this Agreement: (i) the Base Rate plus the Applicable Margin, (ii) the Daily Simple SOFR Rate plus the Applicable Margin, or (ii) the Term SOFR Rate plus the Applicable Margin. Borrower’s right to select pricing options shall cease upon the occurrence and during the continuation of any Event of Default.

2.3.2 Conversion Options. Borrower may elect from time to time to convert any of its outstanding Loans to a Loan of another Type by delivering to the Administrative Agent a Conversion Request and such Loans shall thereafter bear interest as a Base Rate Loan, a Daily Simple SOFR Loan, or a Term SOFR Loan, as applicable, subject to the terms of this Agreement.

2.3.3 Conversion Request. (i) The Borrower shall have the right, subject to the terms and conditions of this Loan Agreement, to (i) convert all or a portion of the outstanding principal amount of Loans of one Type made to it into one or more other Types of Loans that can be made to it pursuant to this Agreement, and (ii) continue a Loan of Term SOFR Loans at the end of the applicable Interest Period as a new Loan of Term SOFR Loans with a new Interest Period; provided, however, (i) that any conversion of Term SOFR Loans into Base Rate Loans shall be made on, and only on, the last day of an Interest Period for such Term SOFR Loans, and (ii) during the existence of an Event of Default, the Loan may not be converted to another type of Loan, or Term SOFR Loans may not be continued as Term SOFR Loans at the end of the applicable Interest Period, without the consent of the Required Lenders.

(ii) Each continuation or conversion of a Loan shall be made upon notice in the form provided for below provided by the Borrower to the Administrative Agent at its Lending Office not later than (i) in the case of each continuation of or conversion into a Term SOFR Loan or conversion to a Daily Simple SOFR Loan, prior to 11:00 A.M. (local time at its Lending Office) at least three Business Days' prior to the date of such continuation or conversion, and (ii) in the case of each Conversion to a Base Rate Loan, prior to 11:00 A.M. (local time at its Lending Office) on the proposed date of such Conversion. Each such request shall be made by an Authorized Officer of the Borrower delivering a Conversion Request or by telephone (to be confirmed immediately in writing by delivery by a Responsible Officer of the Borrower of a Conversion Request), and in any event each such request shall be irrevocable and shall specify (A) the Borrowings to be continued or converted, (B) the date of the continuation or conversion (which shall be a Business Day), and (C) if applicable, the Interest Period or, in the case of a continuation, the new Interest Period. Without in any way limiting the obligation of the Borrower to confirm in writing any telephonic notice permitted to be given hereunder, the Administrative Agent may act prior to receipt of written confirmation without liability upon the basis of such telephonic notice believed by the Administrative Agent in good faith to be from a Responsible Officer of the Borrower entitled to give telephonic notices under this Credit Agreement on behalf of the Borrower. In each such case, the Administrative Agent's record of the terms of such telephonic notice shall be conclusive absent manifest error.

2.3.4 If No Notice. If (a) the Borrower fails to select an interest rate option with respect to any Term SOFR Loan in accordance with the foregoing at least three (3) SOFR Business Days prior to the last day of the applicable Interest Period of such outstanding Term SOFR Loan, on the last day of the applicable Interest Period all outstanding principal amounts of the applicable SOFR Loan shall be deemed converted to a Base Rate Loan.

2.3.5 Telephonic Notice. Without any way limiting the Borrower's obligation to confirm in writing any telephonic notice, the Administrative Agent may act without liability upon the basis of telephonic notice believed by the Administrative Agent in good faith to be from the Borrower prior to receipt of written confirmation. In each case the Borrower hereby waives the right to dispute the Administrative Agent's record of the terms of such telephonic Conversion Request in the absence of manifest error.

2.3.6 Limits On Options. Each SOFR Loan shall be in a minimum amount of \$1,000,000 or a whole multiple of \$250,000 in excess thereof and each Base Rate Loan shall be in a minimum amount of \$100,000 or a whole multiple of \$100,000 in excess thereof. At no time shall there be outstanding a total of more than six (6) SOFR Loans outstanding at any time.

2.3.7 Payment and Calculation of Interest. The outstanding principal amount of each Term Loan made by each Lender shall bear interest at a fluctuating rate per annum that shall at all times be equal to (i) during such periods as such Term Loan is a Base Rate Loan, the Base Rate plus the Applicable Margin in effect from time to time, (ii) during such periods as such Term Loan is a Daily Simple SOFR Loan, Adjusted Daily Simple SOFR plus the Applicable Margin in effect from time to time and (iii) during such periods as such Term Loan is a Term SOFR Loan, the relevant Adjusted Term SOFR for such Term SOFR Loan for the applicable Interest Period plus the Applicable Margin, in each case, as in effect from time to time. All interest for each Interest Period shall be payable in arrears on the applicable Interest Payment Date until the principal together with all interest and other charges payable with respect to the Loan shall be fully paid. All computations of interest for Base Rate Loans shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.3.11, bear interest for one day. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding, under any Debtor Relief Law.

2.3.8 Mandatory Principal Payments. If, on any day, the Total Outstandings exceed the amount necessary to maintain compliance with Section 7.18 or Section 7.21 below, then the Borrower shall make a principal payment in the amount of such excess to Administrative Agent within ten (10) Business Days of written demand from the Administrative Agent (a "Mandatory Principal Payment"); with such payment being applied to the principal balances due hereunder in such fashion as the Borrower may designate. For the avoidance of doubt, no spread maintenance fee or other prepayment fee or penalty shall be due in connection with any Mandatory Principal Prepayment.

2.3.9 Prepayment. Any Loan or any portion thereof may be prepaid in full or in part at any time upon two (2) Business Days revocable prior written notice to the Administrative Agent subject to the payment of, with respect to SOFR Loans, any applicable Breakage Fee. Amounts prepaid hereunder may not be reborrowed under any circumstances. For the avoidance of doubt, no spread maintenance fee or other prepayment fee or penalty (other than any Breakage Fee) shall be due in connection with any repayment or prepayment of any Loan.

2.3.10 Maturity. At the Maturity Date, all accrued interest, principal and other charges due with respect to the Loans shall be due and payable in full and the principal balance and such other charges, including unpaid interest, shall, at the option of the Administrative Agent, continue to bear interest thereafter at the Default Rate until so paid.

2.3.11 Method of Payment; Date of Credit; Administrative Agent's Clawback.

(a) General. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Loan Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder, stating that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for the Loan to be made by such Lender as provided in the foregoing provisions of this Section 2, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the Loan set forth in Section 5 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for the Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for the Loan in any particular place or manner.

2.3.12 Billings. The Administrative Agent may submit monthly billings reflecting payments due; however, any changes in the interest rate which occur between the date of billing and the due date may be reflected in the billing for a subsequent month. Neither the failure of the Administrative Agent to submit a billing nor any error in any such billing shall excuse the Borrower from the obligation to make full payment of all the Borrower's payment obligations when due.

2.3.13 Default Rate.

(a) If any Event of Default has occurred and is continuing pursuant to Section 10.1.1, the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(b) In the sole discretion of the Administrative Agent or upon the request of the Required Lenders, while any other Event of Default exists, the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(c) Accrued and unpaid interest on past due amounts (excluding interest on past due interest) shall be due and payable within ten (10) Business Days of written demand therefor from Administrative Agent to Borrower.

2.3.14 Late Charges. The Borrower shall pay a late charge (herein, the “Late Charge”) equal to three percent (3%) of the amount of any regularly scheduled interest payment which is not paid within ten (10) days of the due date thereof. Late charges are: (a) payable in addition to, and not in limitation of, the Default Rate, (b) intended to compensate the Administrative Agent and the Lenders for administrative and processing costs incident to late payments, (c) are not interest, and (d) shall not be subject to refund or rebate or credited against any other amount due.

2.3.15 Breakage Fee. The Borrower shall pay to the Administrative Agent, for the ratable benefit of the Lenders, immediately upon request and notwithstanding contrary provisions contained in any of the Loan Documents, such amounts as shall, in the conclusive judgment of the Administrative Agent (in the absence of manifest error), compensate the Administrative Agent and the Lenders for the loss, cost or expense which it may reasonably incur as a result of (i) any payment or prepayment, under any circumstances whatsoever, whether voluntary or involuntary, of all or any portion of a Term SOFR Loan on a date other than the last day of the applicable Interest Period of such Term SOFR Loan, (ii) the conversion, for any reason whatsoever, whether voluntary or involuntary, of any Term SOFR Loan to any other applicable interest rate on a date other than the last day of the applicable Interest Period, including as a result of Section 2.6.10, (iii) the failure of all or a portion of a Loan which was to have borne interest at the Term SOFR Rate pursuant to the request of the Borrower to be made under the Loan Agreement (except as a result of any act or omission of Administrative Agent or a Lender), or (iv) the failure of the Borrower to borrow in accordance with any request submitted by it for a Term SOFR Loan or (v) replacement of the Term SOFR Rate with a Benchmark Replacement, including prepayment of the Loan while the Benchmark Replacement is in effect. Such amounts payable by the Borrower shall be equal to any out-of-pocket administrative costs actually incurred plus any amounts required to compensate for any out-of-pocket loss, cost or expense incurred by reason of the liquidation or redeployment of deposits or other funds acquired by the Administrative Agent or any Lender to fund or maintain a Term SOFR Loan (herein, collectively, the “Breakage Fee”). A certificate from a Lender provided to the Borrower by the Administrative Agent setting forth in reasonable detail the calculation and amount of its Breakage Fee shall be conclusive absent manifest error.

2.3.16 Borrower Information. The parties understand that the applicable interest rate for the Borrower's Obligations and certain fees set forth herein may be determined and/or adjusted from time to time based upon certain financial ratios and/or other information to be provided or certified to the Lenders by Borrower (the "Borrower Information"). If it is subsequently determined that any such Borrower Information was incorrect (for whatever reason, including without limitation because of a subsequent restatement of earnings by the Borrower) at the time it was delivered to the Administrative Agent, and if the applicable interest rate or fees calculated for any period were different than they should have been had the correct information been timely provided, then, such interest rate and such fees for such period shall be automatically recalculated using correct Borrower Information. The Administrative Agent shall promptly notify Borrower in writing of any additional interest and fees due because of such recalculation, and the Borrower shall pay such additional interest or fees due to the Administrative Agent, for the account of each Lender, within five (5) Business Days of receipt of such written notice. Borrower shall receive a credit or refund of any overpayment promptly after such determination. Any recalculation of interest or fees required by this provision shall survive the termination of this Agreement, and this provision shall not in any way limit any of the Administrative Agent's or any Lender's other rights under this Agreement

2.4 Loan Fees.

2.4.1 Loan Fees. The Borrower shall pay the Administrative Agent for the account of the parties specified therein the various fees in accordance with the Fee Letter.

2.4.2 Intentionally Omitted.

2.4.3 Payment of Fees Generally. All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution, in the case of facility fees and participation fees, to the Lenders. Except as otherwise provided herein or in the Fee Letter, fees paid under this Agreement shall not be refundable under any circumstances.

2.5 Intentionally Omitted.

2.6 Additional Provisions Related to Interest Rate Selection.

2.6.1 Increased Costs. If any Change in Law shall:

(a) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the SOFR Rate);

(b) subject any Lender to any tax (other than Indemnified Taxes and Excluded Taxes) with respect to this Agreement or any SOFR Loan made by it;

or

(c) impose on any Lender any other material condition, cost or expense affecting this Agreement or SOFR Loan made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of maintaining any SOFR Loan, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, promptly upon request of such Lender, the Borrower will pay to such Lender, such additional amount or amounts as will compensate such Lender, for such additional costs incurred or reduction suffered. A certificate from a Lender provided to the Borrower by the Administrative Agent setting forth such amounts together with calculations thereof in reasonable detail shall be conclusive absent manifest error.

2.6.2 Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity ratios or requirements has or would have the effect of reducing the rate of return on such Lender's capital or liquidity or on the capital or liquidity of such Lender's holding company, if any, as a consequence of this Agreement, or the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time (and in any event within twenty (20) days) the Borrower will pay to such Lender, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered. A certificate from a Lender provided to the Borrower by the Administrative Agent setting forth such amounts together with calculations thereof shall be conclusive absent manifest error.

2.6.3 Illegality. Notwithstanding any other provision of this Agreement, if any Change in Law shall make it unlawful, or any central bank or Governmental Authority shall assert by directive, guideline or otherwise, that it is unlawful, for any Lender to maintain a SOFR Loan, and such Lender, without cost or expense, cannot hold or administer its Loan from an office where maintaining a SOFR Loan can be accomplished, then, on written notice thereof and demand by the Administrative Agent to the Borrower, (a) the obligation of the Administrative Agent to continue any Loan as SOFR Loan shall terminate and (b) at the end of the applicable Interest Period, the Borrower shall convert all principal outstanding under this Agreement into Base Rate Loans.

2.6.4 Intentionally Omitted.

2.6.5 Base Rate Loans. Each Base Rate Loan shall continue as a Base Rate Loan until the Maturity Date, unless sooner converted, in whole or in part, to a SOFR Loan, subject to the limitations and conditions set forth in this Agreement.

2.6.6 Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than six months prior to the date that such Lender notifies the Borrower of the change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

2.6.7 Mitigation.

(a) Designation of a Different Lending Office. If any Lender requests compensation under this Section 2.6, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8, then such Lender shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Sections 2.8, 2.6.1 or 2.6.2, as the case may be, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Sections 2.6.1 or 2.6.2, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8, the Borrower may replace such Lender in accordance with Section 13.2.4.

2.6.8 Survival. All of the Borrower's obligations under this Section 2.6 shall survive repayment of all other Obligations hereunder and resignation of the Administrative Agent.

2.6.9 Taxes. Notwithstanding anything herein to the contrary, no additional amounts shall be payable by Borrower under this Section 2.6 with respect to Taxes on any amounts payable under the Loan Documents, which shall be governed by the provisions of Section 2.8 hereof.

2.6.10 Temporary Inability to Determine Rates. If (A) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that Adjusted Daily Simple SOFR or Adjusted Term SOFR cannot be determined pursuant to the definition thereof or (B) the Required Lenders determine that for any reason in connection with any conversion of a SOFR Loan or a continuation thereof that Adjusted Daily Simple SOFR or Adjusted Term SOFR for any requested Interest Period with respect to a proposed SOFR Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, and the Required Lenders have provided notice of such determination to the Administrative Agent, in each case of (A) and (B), on or prior to the first day of any Interest Period, the Administrative Agent will promptly so notify the Borrower and each Lender. Upon notice thereof by the Administrative Agent to the Borrower, (i) any obligation of the Lenders to make or continue the applicable SOFR Loans or to convert Base Rate Loans to SOFR Loans shall be suspended (to the extent of the affected Interest Periods) until the Administrative Agent revokes such notice (and the Administrative Agent agrees to promptly revoke such notice upon cessation of the conditions referred to in (A) or (B) above and (ii) if such determination affects the calculation of the Base Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate without reference to clause (iii) of the definition of “Base Rate” until the Administrative Agent revokes such notice. Upon receipt of such notice, (i) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of any applicable SOFR Loans (to the extent of the affected SOFR Loans or affected Interest Periods) or, failing that, the Borrower will be deemed to have converted any such request into a request for a conversion to Base Rate Loans in the amount specified therein and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into Base Rate Loans at the end of the applicable Interest Period. Upon any such conversion, the Borrower shall also pay accrued interest on the amount so converted, together with any additional amounts required pursuant to Section 2.3.15. If the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that “Adjusted Term SOFR” cannot be determined pursuant to the definition thereof on any given day, the interest rate on Base Rate Loans shall be determined by the Administrative Agent without reference to clause (iii) of the definition of “Base Rate” until the Administrative Agent revokes such determination.

2.6.11 Permanent Inability to Determine Rates; Benchmark Replacement Settlement

(a) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, the Administrative Agent and the Borrower may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment to all Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No replacement of the then-current Benchmark with a Benchmark Replacement pursuant to this Section 2.6.11(a) will occur prior to the applicable Benchmark Transition Start Date. Unless and until a Benchmark Replacement is effective in accordance with this clause (i), all Loans shall be converted into Base Rate Loans in accordance with the provisions of Section 2.6.10 above.

(b) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(c) Notices: Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of the implementation of any Benchmark Replacement and the effectiveness of any Conforming Changes. The Administrative Agent will notify the Borrower and the removal or reinstatement of any tenor of a Benchmark. Any determination, decision or election that may be made by the Administrative Agent or Lenders pursuant to this Section 2.6.11(a), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 2.6.11(a).

(d) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if any then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion in consultation with the Borrower or (B) the administrator of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks, then the Administrative Agent, in consultation with the Borrower, may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable, non-representative, non-compliant or non-aligned tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks for a Benchmark (including a Benchmark Replacement), then the Administrative Agent, in consultation with the Borrower, may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor..

(e) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for the applicable SOFR Loan of, conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Loan of or conversion to Base Rate Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon Adjusted Term SOFR (or then-current Benchmark) will not be used in any determination of Base Rate.

2.7 Acknowledgement and Consent to Bail-In of an Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

2.7.1 Application. The application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder that may be payable to it by any party hereto that is an Affected Financial Institution; and

2.7.2 Effect. The effects of any Bail-in Action on any such liability, including, if applicable:

(a) a reduction in full or in part or cancellation of any such liability;

(b) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(c) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

2.8 Taxes.

2.8.1 Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(a) Any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document (including, without limitation, each Guaranty) shall, to the extent permitted by applicable Laws, be made free and clear of and without reduction or withholding for any Taxes. If, however, applicable Laws require a Loan Party or the Administrative Agent to withhold or deduct any Tax, such Tax shall be withheld or deducted in accordance with such Laws as determined by such Loan Party or the Administrative Agent, as the case may be, upon the basis of the information and documentation to be delivered pursuant to Section 2.8.5 below.

(b) If the Borrower or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to Section 2.8.5 below (unless the Administrative Agent is not a “United States person” within the meaning of Section 7701(a)(30) of the Code, in which case Borrower shall withhold or make such deductions as are determined by the Borrower to be required based on the information and documentation it has received pursuant to Section 2.8.5 below), (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code (unless the Administrative Agent is not a “United States person” within the meaning of Section 7701(a)(30) of the Code, in which case Borrower shall timely pay the full amount withheld and deducted to the relevant Governmental Authority in accordance with the Code), and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by the Borrower shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent or Lender, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

2.8.2 Payment of Other Taxes by the Borrower. Without limiting the provisions of Section 2.8.1 above, the Borrower shall timely pay, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes to the relevant Governmental Authority in accordance with applicable Laws.

2.8.3 Tax Indemnifications.

(a) Without limiting the provisions of Sections 2.8.1 or 2.8.2 above, the Borrower shall, and does hereby, indemnify the Administrative Agent and each Lender, and shall make payment in respect thereof within twenty (20) days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) withheld or deducted by the Borrower or the Administrative Agent or paid by the Administrative Agent or such Lender, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of any such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(b) Without limiting the provisions of Sections 2.8.1 or 2.8.2 above, each Lender shall, and does hereby, indemnify the Borrower and the Administrative Agent, and shall make payment in respect thereof within twenty (20) days after written demand therefor, against any and all Taxes and any and all related losses, claims, liabilities, penalties, interest and expenses (including the fees, charges and disbursements of any counsel for the Borrower or the Administrative Agent) incurred by or asserted against the Borrower or the Administrative Agent by any Governmental Authority as a result of the failure by such Lender to deliver, or as a result of the inaccuracy, inadequacy or deficiency of, any documentation required to be delivered by such Lender to the Borrower or the Administrative Agent pursuant to Section 2.8.5. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (b). The agreements in this clause (b) shall survive the resignation and/or replacement of the Administrative Agent in accordance with the terms and conditions of this Agreement, any assignment of rights by, or the replacement of, a Lender in accordance with the terms and conditions of this Agreement, and the repayment, satisfaction or discharge of all other Obligations.

2.8.4 Evidence of Payments. Upon request by the Borrower or the Administrative Agent, as the case may be, after any payment of Taxes by the Borrower or the Administrative Agent to a Governmental Authority as provided in this Section 2.8, the Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Law to report such payment or other evidence of such payment reasonably satisfactory to the Borrower or the Administrative Agent, as the case may be.

2.8.5 Status of Lenders; Tax Documentation.

(a) Each Lender shall deliver to the Borrower and to the Administrative Agent, at the time or times prescribed by applicable Laws or when reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Laws or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit the Borrower or the Administrative Agent, as the case may be, to determine (A) whether or not payments made hereunder or under any other Loan Document are subject to Taxes, (B) if applicable, the required rate of withholding or deduction, and (C) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Lender by the Borrower pursuant to this Agreement or otherwise to establish such Lender's status for withholding tax purposes in the applicable jurisdiction.

(b) Without limiting the generality of the foregoing, if the Borrower is resident for tax purposes in the United States,

(i) Any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the Borrower and the Administrative Agent executed originals of Internal Revenue Service Form W-9 or such other documentation or information prescribed by applicable Laws or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent, as the case may be, to determine whether or not such Lender is subject to backup withholding or information reporting requirements; and

(ii) Each Foreign Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of withholding tax with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(A) Executed originals of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(B) Executed originals of Internal Revenue Service Form W-8ECI,

(C) Executed originals of Internal Revenue Service Form W-8IMY and all required supporting documentation,

(D) In the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a “bank” within the meaning of section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of the Borrower within the meaning of section 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Code and (y) executed originals of Internal Revenue Service Form W-8BEN, or

(E) Executed originals of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in United States Federal withholding tax together with such supplementary documentation as may be prescribed by applicable Laws to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made.

(c) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.8.5(c), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

(d) Each Lender shall promptly (A) notify the Borrower and the Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (B) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid any requirement of applicable Laws of any jurisdiction that the Borrower or the Administrative Agent make any withholding or deduction for taxes from amounts payable to such Lender.

2.8.6 Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. If the Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes (including any tax credit in lieu of a refund) as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses actually incurred by the Administrative Agent or such Lender, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Borrower, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender, as the case may be, in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This Section shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

2.9 Defaulting Lenders.

2.9.1 Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Laws:

(a) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and in Section 13.4.1.

2.9.2 Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article XI or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 12.2 shall be applied at such time or times as may be reasonably determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, {RESERVED}; *third*, {RESERVED}; *fourth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *sixth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this Section 2.9.2 shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

2.9.3 Defaulting Lender Cure. If Borrower and Administrative Agent agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as Administrative Agent may determine to be necessary to cause the Loans to be held on a pro rata basis by the Lenders in accordance with their Loan Percentages, whereupon that Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while that Lender was a Defaulting Lender; and provided, further, that, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

3. SECURITY FOR THE LOAN AND RELEASE OF PROPERTIES.

3.1 Security. The Loan together with interest thereon and all other charges and amounts payable by, and all other obligations of, the Borrower to the Administrative Agent and/or each of the Lenders, whenever incurred, direct or indirect, absolute or contingent, arising under or with respect to this Agreement, the Security Documents, or any other Loan Document, together with all other Obligations, shall be secured by the Collateral in accordance with the terms and conditions set forth in this Agreement and in the other Loan Documents.

3.2 Release on Payment in Full. Upon payment in full of the outstanding principal balance of the Loan in accordance with the terms and provisions of the Note and this Agreement and the other Loan Documents, Administrative Agent shall release the Lien of each Mortgage, the Equity Pledge, and the other Loan Documents and the Borrower and each other Loan Party shall be released from all obligations under the Loan Documents (except those obligations that expressly survive such release), in each case not theretofore released.

3.3 Removal of Individual Property as a Collateral Property - Borrower. From time to time during the term of this Agreement following (a) Borrower's written request to release a Collateral Property (a "Release Request") and (b) satisfaction of the Release Conditions, the Administrative Agent shall (i) release such Collateral Property (and in the case of the Fieldstone Marketplace Property, release the Lien of the Equity Pledge) and all related Collateral (in the case of the Fieldstone Marketplace Property, including, without limitation, the equity interests secured by the Equity Pledge) from all Liens in favor of the Administrative Agent, for the ratable benefit of the Lenders, (ii) release the subject Collateral Property Owner from the Guaranty by executing a Release of Guaranty in the form of Exhibit B to the Guaranty, (iii) terminate any assignments made by such Collateral Property Owner in favor of Administrative Agent, and (iv) shall, to the extent such Collateral Property Owner does not own any other Collateral Property, release such Collateral Property Owner from all obligations under the Loan Documents and such Collateral Property Owner shall no longer be a Loan Party for the purposes of this Agreement and the other Loan Documents and shall no longer have any obligations under the Loan Documents; provided, however, any such release by the Administrative Agent shall not be deemed to terminate or release such Collateral Property Owner from any obligation or liability under any Loan Document which specifically by its terms is stated to survive said release or the payment in full of the Obligations. In connection with such a release, Administrative Agent agrees to deliver (x) a UCC-3 Financing Statement termination or amendment releasing Administrative Agent's security interest in the collateral pledged to Administrative Agent relating to each such Collateral Property Owner, and (y) such other instruments executed by Administrative Agent as may be reasonably requested by Borrower to evidence the release or cancellation of each such Collateral Property Owner from its obligations under the Loan Documents. The "Release Conditions" are the following:

3.3.1 **Stabilized Properties.** With respect to Stabilized Properties only, the release of such Stabilized Property shall be subject to the written approval of the Administrative Agent, except in the case of a Casualty/Condemnation Release or a Default Release.

3.3.2 **Financial Covenant Compliance.** Upon release of the subject Collateral Property, the Financial Covenants shall remain satisfied and the applicable Release Price shall be paid.

3.3.3 **No Default or Event of Default Upon Release.** No material Default or Event of Default shall exist under this Agreement or the other Loan Documents at the time of any such release, except for any material Default or Event of Default which is cured or remedied by the removal of such Individual Property from being a Collateral Property.

3.3.4 Sale or Refinance. In connection with the release of a Value-Add Property, such Value-Add Property is the subject of an arms-length sale or refinancing, except in the case of a Casualty/Condemnation Release or a Default Release.

3.3.5 Payment of Fees. The Borrower shall pay or reimburse the Administrative Agent for all reasonable out-of-pocket legal fees and expenses and other reasonable out-of-pocket costs and expenses actually incurred by Administrative Agent in connection with the release.

If Borrower makes a Release Request, but fails to satisfy all of the applicable Release Conditions, such Collateral Property shall remain a Collateral Property hereunder unless Administrative Agent agrees otherwise in writing.

3.4 Default Release. Notwithstanding the requirements of Section 3.3 to the contrary, in the event Administrative Agent has delivered a notice to Borrower of a non-monetary Event of Default which relates specifically to a Collateral Property (a "Default Property") and Borrower has exercised commercially reasonable efforts to cure such Event of Default and is unable to cure such Event of Default and (ii) such Event of Default is not the result of the willful misconduct or bad faith actions of Borrower or any of its Affiliates and such Event of Default relates solely to the Default Property, then Borrower shall have the right to obtain a release of the Default Property (a "Default Release") in accordance with Section 3.3 hereof (and in the case of the Fieldstone Marketplace Property, the release of the Lien of the Equity Pledge), but without satisfaction of (a) in the case of a Stabilized Property, the requirement to obtain Administrative Agent's written consent or (b) the requirement that any release be pursuant to an arm's length sale or refinance.

4. CONTINUING AUTHORITY OF AUTHORIZED OFFICERS.

The Administrative Agent and each of the Lenders are authorized to rely upon the continuing authority of the Authorized Officers with respect to all matters pertaining to the Loan and the Loan Documents including, but not limited to, the selection of interest rates. Such authorization may be changed only upon written notice to Administrative Agent accompanied by evidence, reasonably satisfactory to Administrative Agent, of the authority of such Authorized Officer giving such notice and such notice shall be effective not sooner than five (5) Business Days following receipt thereof by Administrative Agent. The Authorized Officers as of the Closing Date (to be effective from and after the closing of the merger contemplated by the Merger Agreement), are as set forth on Schedule 4.

5. CONDITIONS PRECEDENT.

5.1 Closing Loan and Funding of the Loan. It shall be a condition precedent of Lenders' obligation to close the Loan and fund the Term Facility that each of the following conditions precedent be satisfied in full, unless waived by the Lenders at or prior to the date of this Agreement (the "Closing Date"):

5.1.1 Satisfactory Loan Documents. On the Closing Date, each of the Loan Documents shall be satisfactory in form, content and manner of execution and delivery to the Administrative Agent and the Administrative Agent's counsel, and all Loan Documents shall be in full force and effect.

5.1.2 Closing Compliance Certificate. The Borrower shall have provided to the Administrative Agent a Closing Compliance Certificate (the “Closing Compliance Certificate”) set forth as Exhibit F hereto or in such other form reasonably acceptable to the Administrative Agent.

5.1.3 Intentionally Omitted.

5.1.4 Validity and Sufficiency of Security Documents. The Security Documents shall create a valid lien on, or security interest in, the Collateral, as applicable, and:

(a) The Subsidiary Guarantors shall have delivered to the Administrative Agent (i) Mortgages and Assignments of Leases and Rents with respect to each Collateral Property (except for the Fieldstone Marketplace Property, with respect to which the Administrative Agent shall be granted the Equity Pledge) in the proper form for recording in the applicable filing office for the county where such Collateral Property is located and (ii) UCC-1 financing statements in the proper form for filing in the secretary of state’s office in the state of formation of such Subsidiary Guarantor applicable filing office for the county where such Collateral Property is located. The recordation of the Mortgages, the Assignment of Leases and Rents, and the UCC-1 filings shall not be a condition precedent hereunder if the Administrative Agent has received gap title insurance acceptable to the Administrative Agent; and

(b) on or prior to the Closing Date, the Administrative Agent shall have received the results of a UCC, tax lien and judgment search as may be reasonably requested by the Administrative Agent with respect to the Borrower and any other Loan Parties, and the results of such search shall indicate there are no judgments which the Administrative Agent shall reasonably determine in good faith could reasonably be expected to have a Material Adverse Effect or Liens not permitted under the Loan Documents or to be satisfied with the proceeds of the initial Loan Advance or otherwise permitted by the Administrative Agent.

5.1.5 Company Material Adverse Effect. The absence of any occurrence of a material adverse change in the business, financial condition, assets or results of operations of the Borrower or in CRT that, individually or in the aggregate, has had or would reasonably be expected to have a Company Material Adverse Effect (as defined in the Merger Agreement).

5.1.6 Formation Documents and Entity Agreements. On the Closing Date, the Administrative Agent shall have received a certificate of an Authorized Officer of each Loan Party (or the manager or general partner of such Loan Party, as applicable) certifying (a) as to resolutions of such Loan Party authorizing and approving the transactions contemplated by the Loan Documents, and the execution and delivery thereof by such Loan Party in respect of the documents to which it is a party on its own behalf, or as a general partner or manager of such Loan Party, in respect of any of the Loan Documents, (b) as to signatures and incumbency of all Authorized Officers of such Loan Party (or the manager or general partner of such Loan Party, as applicable) executing documentation on behalf of such entity or on behalf of such Loan Party, in connection with the transactions contemplated by the Loan Documents, (c) that the Formation Documents of such Loan Party delivered on the Closing Date have been duly executed, delivered and filed (to the extent required by applicable Laws) and are or remain, as applicable, in full force and effect and unmodified except as stated therein as of the date of such certificate (and annexing copies thereof with respect to the Formation Documents delivered on the Closing Date) and (d) the good standing certificates of such Loan Party for (i) its state of formation and (ii) such other good standing certificates where the conduct of such Loan Party’s business and ownership of its assets requires such qualification unless the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect on such Loan Party.

5.1.7 Intentionally Omitted.

5.1.8 Compliance With Financial Covenants. The Lenders shall have received from the Administrative Agent the Closing Compliance Certificate or other evidence reflecting the Borrower's compliance with the Financial Covenants and the terms and conditions hereof after giving effect to this Agreement and the other Loan Documents.

5.1.9 Collateral Property Due Diligence. The Administrative Agent shall have received and completed a review of such due diligence as the Administrative Agent may reasonably require with respect to any Collateral Property, consistent with customary commercial lending practices for full recourse loans secured by properties of a similar nature as the Collateral Properties.

5.1.10 Condition of Property. There shall have been no unrepaired or unrestored damage or destruction by fire or otherwise to any of the real or tangible personal property comprising or intended to comprise the Collateral Properties that would reasonably be expected to have a Material Adverse Effect.

5.1.11 Insurance. The Borrower shall have provided to the Administrative Agent with respect to each Collateral Property, the Borrower, each other Loan Party and the Collateral evidence of: (i) insurance coverage which meets the property, hazard, and other insurance requirements set forth on Schedule 5.1.11 of this Loan Agreement to the satisfaction of Administrative Agent; and (ii) payment of the premiums for such insurance in accordance with the requirements set forth in Section 7.5.1.

5.1.12 Intentionally Omitted.

5.1.13 Legal and other Opinions. The Administrative Agent shall have received and approved legal opinion letters (such approval not to be unreasonably, withheld, conditioned, or delayed) from counsel representing the Borrower and the other Loan Parties which meet Administrative Agent's legal opinion requirements and covering such matters incident to the transactions contemplated herein as the Administrative Agent may reasonably request that are customary for full recourse commercial loans secured by properties of a similar nature as the Collateral Properties.

5.1.14 Beneficial Ownership Certification. (i) Upon the reasonable written request of any Lender made at least ten (10) Business Days prior to the Closing Date, Borrower shall have provided to such Lender the documentation and other information so requested in connection with applicable “know your customer” and anti-money-laundering rules and regulations, including the PATRIOT Act, in each case at least two (2) days prior to the Closing Date (or such shorter time as any such Lender shall agree); and (ii) at least two (2) days prior to the Closing Date (or such shorter time as any such Lender shall agree), any Loan Party that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation shall deliver a Beneficial Ownership Certification in relation to such Loan Party.

5.1.15 Merger. The prior or simultaneous consummation in all material respect of the transactions contemplated by the Merger Agreement.

Notwithstanding the foregoing, Agent and Lenders agree that the funding of the Loan shall evidence the satisfaction (or waiver by each Lender) of all of the conditions precedent set forth in this Article 5.

6. REPRESENTATIONS AND WARRANTIES.

To induce the Lenders to enter into this Agreement and to make the Loan, the Borrower represents and warrants to the Administrative Agent and each Lender that on and as of the Closing Date, after giving effect to the transactions contemplated by the Merger Agreement:

6.1 Formation. Each Loan Party has been duly formed and is validly existing and in good standing as a corporation, partnership or limited liability company, as the case may be, under the laws of the State of its formation. Each Loan Party has the requisite corporate, partnership or limited liability company power and authority, as applicable, to own its assets and conduct its businesses as currently conducted and owned, and to enter into and perform its obligations under each Loan Document to which it is a party. Each Loan Party is in good standing and authorized to do business in each jurisdiction where the ownership of its assets and/or the conduct of its business requires such qualification except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect. No Loan Party is an EEA Financial Institution.

6.2 Proceedings; Enforceability. Each Loan Party has taken all requisite corporate, partnership or limited liability company action, as applicable, to authorize the execution, delivery and performance by such Loan Party of the Loan Documents to which it is a party. Each Loan Document which is required to be executed and delivered on the Closing Date has been duly authorized, executed and delivered and constitutes the legal, valid and binding obligation of each Loan Party thereto, enforceable against each such Loan Party in accordance with its respective terms except to the extent that the enforceability thereof may be limited by applicable Debtor Relief Laws and to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

6.3 Conflicts. Neither the execution, delivery and performance of the Loan Documents by the Loan Parties nor compliance by any Loan Party with the terms and provisions thereof, (a) will contravene any provision of any Law or any order, writ, injunction or decree of any court or Governmental Authority having jurisdiction over the Borrower, the Property or any Loan Party, (b) will conflict with or result in any breach of any of the terms, covenants, conditions of, or constitute a default under, or result in the creation or imposition (or the obligation to create or impose) of any Lien upon any of the property or assets of any Loan Party pursuant to the terms of any indenture, mortgage, deed of trust, credit agreement or loan agreement or any other agreement, contract or instrument to which any Loan Party is a party or by which it or any of its properties or assets is bound or to which it may be subject which would reasonably be expected to result in a Material Adverse Effect, or (c) will violate any provision of any Formation Document of any Loan Party.

6.4 Ownership and Taxpayer Identification Numbers. All of the partners, owners, stockholders, and members, respectively and as may be applicable, of each Loan Party (other than the Borrower, CRT and WHLR) are listed in Schedule 6.4 (as such may be updated from time to time). Set forth on Schedule 6.4 (as such may be updated from time to time) is the correct and legal name, tax identification number(s) and state of incorporation or organization of the Borrower, CRT, WHLR and each other Loan Party and whether such Loan Party owns a Collateral Property. Each Collateral Property Owner is a Wholly-Owned Subsidiary of the Borrower. The information included in each Beneficial Ownership Certification is true and correct in all material respects (on and as of the date delivered).

6.5 Litigation. Other than as set forth on Schedule 6.5 hereof or as disclosed to Administrative Agent in the search results delivered to Administrative Agent prior to the Closing Date, to the Borrower's Knowledge there are no actions, suits or proceedings at law or in equity or by or before any Governmental Authority or other agency or regulatory authority by any entity (private or governmental) pending or, to the Borrower's Knowledge, threatened with respect to the Loan, the transactions contemplated in the Loan Documents, any Designated Loan Party, or any Borrower Subsidiary, which are not fully covered (subject to deductibles) by an insurance policy issued by a reputable and financially viable insurance company, or, to the extent not so covered, would reasonably be expected to (a) materially adversely affect a Collateral Property or (b) have a Material Adverse Effect.

6.6 Information. All factual information furnished by or on behalf of the Borrower or any Loan Party to the Administrative Agent and/or any of the Lenders (including, without limitation, all information contained in the Loan Documents) for purposes of or in connection with this Agreement, the other Loan Documents or any transaction contemplated herein or therein is, and all other such factual information hereafter furnished by or on behalf of the Borrower or any Loan Party to the Administrative Agent and/or any of the Lenders will be, true and accurate in all material respects on the date as of which such information is dated or certified and not incomplete by omitting to state any fact necessary to make such information not misleading in any material respect at such time in light of the circumstances under which such information was provided. There is no material fact of which Borrower presently has Knowledge, which has not been disclosed to the Administrative Agent, which would reasonably be expected to have a Material Adverse Effect.

6.7 Taxes. All Loan Parties have made all required tax filings and are not delinquent in the payment of any federal, state and local taxes, assessments, impositions or other governmental charges applicable to them and/or their respective assets, except to the extent same are being contested in a manner which complies with the requirements of Section 9.1, or would not reasonably be expected to have a Material Adverse Effect.

6.8 Financial Information. The consolidated financial statements of CRT and the consolidating financial statements of the Borrower and each Borrower Subsidiary delivered to the Administrative Agent by Borrower present fairly the (a) financial condition of CRT and its Subsidiaries and the Borrower and the Borrower Subsidiaries, as applicable, as of the dates of such statements and (b) results of operations for the periods covered thereby. Since the dates of the relevant financial statements, no change has occurred which would reasonably be expected to have a Material Adverse Effect. All financial statements of CRT, the Borrower, the Borrower Subsidiaries, or any other Loan Party hereafter furnished to the Administrative Agent or any of the Lenders shall be true, accurate and complete in all material respects and shall fairly present the financial condition of CRT, the Borrower, the Borrower Subsidiaries and/or respective Loan Party, as applicable, as of the date thereof.

6.9 Control Provisions. The Borrower controls, directly or indirectly, and without the requirement for consent of any other Person (other than CRT), the management of each Collateral Property Owner, subject to (a) "major decision" consent or approval rights of the limited partners, shareholders or non-managing members or representative bodies or advisory bodies of the Persons that directly and indirectly own the Borrower and (b) the contractual rights of any property manager of one or more Collateral Property(ies).

6.10 Formation Documents. Borrower has delivered or caused to be delivered to the Administrative Agent true and complete copies of all Formation Documents of the Loan Parties, and all amendments thereto.

6.11 Bankruptcy Filings. No Loan Party is contemplating either a filing of a petition under any Debtor Relief Laws or the liquidation under any Debtor Relief Laws of all or a major portion of its assets or property, and the Borrower has no knowledge of any Person contemplating the filing of any such petition against any Loan Party.

6.12 Investment Company. No Loan Party is an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

6.13 [Reserved].

6.14 Collateral Properties.

6.14.1 Licenses and Permits. To Borrower's Knowledge, the Collateral Property Owners possess such Licenses and Permits issued by the appropriate federal, state, or local regulatory agencies or bodies necessary to own and operate each Collateral Property, except where the failure to possess any such License or Permit would not reasonably be expected to have a Material Adverse Effect. To Borrower's Knowledge, the Collateral Property Owners are in material compliance with the terms and conditions of all such Licenses and Permits, except where the failure so to comply would not, singly or in the aggregate, reasonably be expected to have a Material Adverse Effect. To Borrower's Knowledge, all of the Licenses and Permits are valid and in full force and effect, except where the invalidity of such Licenses and Permits or the failure of such Licenses and Permits to be in full force and effect would not reasonably be expected to have a Material Adverse Effect. To Borrower's Knowledge, neither the Borrower nor any of the Collateral Property Owners has received any written notice of proceedings relating to the revocation or modification of any such Licenses and Permits which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would reasonably be expected to result in a Material Adverse Effect.

6.14.2 Ownership. (a) The Collateral Property Owners have either (i) fee simple title to the Collateral Properties or (ii) a leasehold estate interest in the Collateral Properties, as set forth in Schedule 6.14.2; in the case of each of the foregoing clauses (i) and (ii), subject to the Permitted Liens; (b) the interest of the Collateral Property Owners in the Collateral Properties are not, to Borrower's Knowledge, subject to any Liens other than Permitted Liens, (c) neither the Borrower, CRT, nor any of the Collateral Property Owners has received written notice of the assertion of any material valid claim by anyone adverse to any Loan Party's ownership, or leasehold rights in and to any Collateral Property that would reasonably be expected to have a Material Adverse Effect and (d) no Person has an option or right of first refusal to purchase all or part of any Collateral Property or any interest therein which has not been waived (except as disclosed in Schedule 6.14.2).

6.14.3 Environmental Matters. To Borrower's Knowledge, except to the extent (i) the failure of the following to be true would not reasonably be expected to have a Material Adverse Effect or (ii) disclosed in an Environmental Report or otherwise disclosed in writing to Administrative Agent prior to the Closing Date, (a) each Collateral Property is free of any Hazardous Materials in violation of any Environmental Laws applicable to such property; (b) none of the Collateral Property Owners nor any Loan Party has received any written notice of a claim under or pursuant to any Environmental Legal Requirements applicable to a Collateral Property or under common law pertaining to Hazardous Materials on or originating from any Collateral Property and (c) none of the Collateral Property Owners or any Loan Party has received any written notice from any Governmental Authority claiming any material violation of any Environmental Legal Requirements that is uncured or unremediated.

6.14.4 Leases. Except to the extent set forth in the tenant estoppel certificates delivered to Administrative Agent prior to the Closing Date, and except to the extent the failure of the following to be true would not result in a Material Adverse Effect, to Borrower's Knowledge, (a) with respect to the Collateral Properties, each Lease set forth in the Rent Rolls was in full force and effect as of the date of such rent roll (except as set forth on such rent roll or as may have been previously disclosed by or on behalf of Borrower to Administrative Agent), (b) none of the Collateral Property Owners is in default after notice and the expiration of all applicable cure periods in the performance of any material obligation under any Lease and the Borrower has no Knowledge of any circumstances which, with the passage of time or the giving of notice, or both, would constitute a material event of default by any Collateral Property Owner under any of the Lease, (c) to the Borrower's knowledge, no tenant is in default after notice and the expiration of all applicable cure periods in the performance of any material obligation under any Lease, (d) to the Borrower's Knowledge, there are no actions, voluntary or involuntary, pending against any tenant under a Lease under any Debtor Relief Laws, and (e) none of the Leases and none of the rents or other amounts payable thereunder has been assigned, pledged or encumbered by any of the Collateral Property Owners or any other Person, except with respect to the Lien in favor of the Administrative Agent on behalf of the Lenders securing the repayment of Obligations.

6.14.5 Ground Lease. Except to the extent set forth in the estoppel certificate from the ground lessor delivered to Administrative Agent in connection with the Loan, and except to the extent the failure of the following to be true would not result in a Material Adverse Effect, to Borrower's Knowledge, (a) the Ground Lease is valid, binding and in full force and effect as against the applicable Collateral Property Owner and, to the Borrower's knowledge, the other party thereto, (b) none of applicable Collateral Property Owner's interest in the Ground Lease is subject to any pledge, lien, assignment, license or other agreement granting to any third party any interest therein, (c) no payments under the Ground Lease are delinquent, and to the Knowledge of the Borrower, there does not exist under the Ground Lease any default after notice and expiration of all applicable cure periods in the performance of any material obligation under the Ground Lease, and (d) the identity of each ground lessor under the Ground Lease and whether each such ground lessor is an Affiliate of any Loan Party are set forth in Schedule 6.14.5.

6.14.6 Casualty/Condemnation. To Borrower's Knowledge, as of the Closing Date no Collateral Property is the subject of any pending material condemnation proceeding or has suffered any material loss or casualty which has not been restored.

6.14.7 Property Condition. To Borrower's Knowledge and except as set forth in any tenant estoppel letter, property condition report or engineering report delivered to Administrative Agent, as of the Closing Date each Collateral Property is in good condition and repair, with no material deferred maintenance currently pending with respect to any Collateral Property.

6.15 Margin Regulations; Use of Proceeds. The Loan Parties are not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System of the United States), or extending credit for the purpose of purchasing or carrying margin stock. The proceeds of the Loan shall be used solely and exclusively as provided in Section 8.13. No portion of the proceeds of the Loan shall be used directly or indirectly, and whether immediately, incidentally or ultimately (a) except as permitted by Section 8.13, to purchase or carry any margin stock or to extend credit to others for the purpose thereof or to repay or refund indebtedness previously incurred for such purpose, or (b) for any purpose which would violate or be inconsistent with the provisions of Regulations T, U and X of the Board of Governors of the Federal Reserve System.

6.16 Insurance. The Collateral Properties are insured by insurers of recognized financial responsibility against such losses and risks in compliance with the requirements of Section 7.5.1 below.

6.17 Deferred Compensation and ERISA. Neither the Borrower nor any other Loan Party or any ERISA Affiliate maintains any employee pension benefit plan (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA nor maintains any employee welfare benefit plan (as defined in Section 3(1) of ERISA) that primarily provides for health and welfare benefits to retired employees or other former employees (other than as required by Section 601 *et seq.* of ERISA).

6.18 Anti-Corruption; OFAC; Designated Jurisdictions.

6.18.1 Anti-Corruption. In the last five years, the Loan Parties have conducted their respective businesses in compliance in all material respects with applicable Anti-Corruption Laws.

6.18.2 OFAC; Designated Jurisdictions. None of the Loan Parties, any of their respective Subsidiaries, or, to the Knowledge of WHLR or the Borrower, any Related Party thereof, is (i) a Sanctioned Person, (ii) located, organized or resident in a Designated Jurisdiction or (iii) is or has been (within the previous five (5) years) engaged in any transaction with any Sanctioned Person or any Person who is located, organized or resident in any Designated Jurisdiction to the extent that such transactions violated Sanctions in place at the time of such transactions. The proceeds from the Loan have not been and will not be used directly or, to the Knowledge of Borrower, indirectly, or has otherwise been or will be made available directly or, to the Knowledge of Borrower, indirectly, to fund any activity or business in any Designated Jurisdiction or to fund any activity or business with any Sanctioned Person, in each case in violation of applicable Sanctions, or in any other manner that will result in a violation of applicable Sanctions by any Loan Party or Subsidiary thereof, or the imposition on any Lender, the Arranger, or the Administrative Agent, of Sanctions. Neither the making of the Loans hereunder nor the use of proceeds thereof will violate the Act, the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or successor statute thereto. The Borrower and its Subsidiaries are in compliance in all material respects with the Act, to the extent the Act is applicable to Borrower and its Subsidiaries.

6.19 No Default. There is no Default on the part of the Borrower or any of the other Loan Parties under this Agreement or any of the other Loan Documents and no event has occurred and is continuing which could constitute a Default under any Loan Document.

6.20 Governmental Authorizations; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person that has not been obtained or delivered is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document.

6.21 Qualification as a REIT. To Borrower's Knowledge, (a) CRT qualified as a REIT under the provisions of the Code, as applicable, for its fiscal year ended December 31, 2010, and has remained qualified from December 31, 2010 through the date hereof, (b) all appropriate federal income tax returns for the fiscal years through December 31, 2021 have been filed by CRT with the IRS and no previously filed return has been examined and reported on by the IRS, (c) CRT has not incurred any liability for excise taxes pursuant to Section 4981 of the Code and (d) CRT is organized in conformity with the requirements for qualification as a REIT pursuant to Sections 856 through 860 of the Code, and CRT's proposed method of operation consistent with CRT's business and the business activities contemplated by this Agreement will enable it to meet the requirements for qualification and taxation as a REIT under the Code. WHLR qualified as a REIT under the provisions of the Code, as applicable, for its fiscal year ended December 31, 2021, and has remained qualified from December 31, 2021 through the date hereof. All appropriate federal income tax returns for the fiscal years through December 31, 2021 have been filed by WHLR with the IRS and no previously filed return has been examined and reported on by the IRS. WHLR has not incurred any liability for excise taxes pursuant to Section 4981 of the Code. WHLR is organized in conformity with the requirements for qualification as a REIT pursuant to Sections 856 through 860 of the Code, and WHLR's proposed method of operation consistent with WHLR's business and the business activities contemplated by this Agreement will enable it to meet the requirements for qualification and taxation as a REIT under the Code.

6.22 Compliance with Laws. Each Loan Party is in compliance in all material respects with the requirements of all Laws applicable to it or to its properties, except in such instances in which (a) such requirement of Law is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

6.23 Property Matters.

6.23.1 **Rent Roll.** To Borrower's Knowledge, except for discrepancies which would not reasonably be expected to have a Material Adverse Effect, the Rent Roll is true, complete and accurate in all material respects as of the date of such rent roll.

6.23.2 **Collateral Properties.** Set forth on Schedule 6.14.2 is a list of each Collateral Property with detail indicating the owner of each Collateral Property and the location of each Collateral Property.

6.24 Solvency. After giving effect to the transactions contemplated hereby, (a) each of the Borrower, WHLR and CRT is solvent and is able to pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, and (b) the fair saleable value of each Loan Party's assets, measured on a going concern basis, exceeds all probable liabilities, including those to be incurred pursuant to this Agreement. After giving effect to the transactions contemplated hereby, (x) the Collateral Property Owners are solvent (provided that for the purpose of this representation, the Collateral Property Owners' assets and liabilities shall be considered on an collective basis and not individually) and are able to pay their collective debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, and (b) the fair saleable value of the Collateral Property Owners' collective assets, measured on a going concern basis, exceeds all of the Collateral Property Owners' collective probable liabilities, including those to be incurred pursuant to this Agreement. After giving effect to the transactions contemplated hereby, none of the Loan Parties (i) has unreasonably small capital in relation to the business in which it is or proposes to be engaged or (ii) has incurred, or believes that it will incur debts beyond its ability to pay such debts as they become due; provided that nothing contained in subclause (i) shall require any equity holder to make any capital contribution to comply with such subclause (i) or otherwise. In executing the Loan Documents and consummating the transactions contemplated hereby, none of the Loan Parties intends to hinder, delay or defraud either present or future creditors or other Persons to which one or more of the Loan Parties is or will become indebted.

6.25 Beneficial Ownership Material. The information included in the Beneficial Ownership Certification is true and correct in all material respects (on and as of the date delivered).

7. AFFIRMATIVE COVENANTS.

So long as any Loan or other Obligation (other than those Obligations that survive the repayment in full of the Loans) hereunder shall remain unpaid or unsatisfied, the Borrower shall, and shall cause, with respect to Sections 7.3, 7.4, 7.7, 7.8, 7.10 (other than Section 7.10(a) with respect to WHLR), inclusive and Section 7.28, each Loan Party to:

7.1 Notices. Within five (5) Business Days after obtaining actual Knowledge thereof, notify the Administrative Agent in writing (and the Administrative Agent shall thereafter promptly notify the Lenders) of the occurrence of any act, event or condition which constitutes an Event of Default under any of the Loan Documents. Any notification delivered pursuant to this Section 7.1 shall include a written statement of any remedial or curative actions, if applicable, which the Borrower proposes to undertake and/or to cause any of other Loan Parties to cure or remedy such Event of Default.

7.2 Financial Statements; Reports; Officer's Certificates. Furnish or cause to be furnished to the Administrative Agent (and the Administrative Agent shall thereafter promptly furnish copies of same to the Lenders) from time to time, the following financial statements, reports, certificates, and other information, all in form and manner of presentation reasonably acceptable to the Administrative Agent:

7.2.1 Annual Statements. As soon as available and in any event no later than ninety (90) days after the close of each Fiscal Year, the Consolidated statements of financial condition of CRT, as at the end of such Fiscal Year and the related Consolidated statement of income and retained earnings and statement of cash flows for such Fiscal Year, in each case, commencing with the Fiscal Year ending December 31, 2022, setting forth comparative figures for the preceding fiscal year and certified by the Chief Financial Officer or Chief Accounting Officer of CRT and audited by a qualified audit firm and containing an opinion from the auditor not subject to any "going concern" or like qualification, such financial statements to include and to be supplemented by such detail and supporting data and schedules as the Administrative Agent may from time to time reasonably determine. Notwithstanding the foregoing, delivery to Lender of a copy of the annual audit report filed by CRT with the Securities and Exchange Commission shall satisfy the foregoing requirements.

7.2.2 Periodic Statements. As soon as available and in any event no later than sixty (60) days after the close of each fiscal quarter, (i) the Consolidated statement of financial condition of CRT, as at the end of such quarterly period, (ii) the related Consolidated statement of income and retained earnings (for the current quarter and on a year to date basis), and (iii) the Consolidated statement of cash flows (on a year to date basis), in each case commencing with the fiscal quarter ending June 30, 2022, setting forth comparative figures for the related periods in the prior Fiscal Year, internally prepared in accordance with GAAP, consistently applied, subject to normal year-end audit adjustments, all in form and manner of presentation reasonably acceptable to the Administrative Agent, such financial statements to be certified by the Chief Financial Officer or Chief Accounting Officer of CRT and to include and to be supplemented by such detail and supporting data and schedules as the Administrative Agent may from time to time reasonably request, together with consolidating income statements for the Borrower and each Borrower Subsidiary.

7.2.3 Collateral Property Reports. Quarterly and annually, upon delivery of each of the financial statements required pursuant to Sections 7.2.1 and 7.2.2, above, the following financial statements for each of the Collateral Property Owners internally prepared by the Borrower and certified by the Borrower to be true, accurate and complete in all material respects: (a) to the extent not included in the deliveries under Sections 7.2.1 or 7.2.2, an operating statement showing all calculation necessary to determine Adjusted Net Operating Income on a property by property basis, including, without limitation, the results of operation for the current quarter and on a year-to-date basis for the period just ended and, annually, an operating statement for the year just ended; and (b) in the form customarily used by the Borrower, a detailed, current rent roll of the subject Collateral Property, containing such details as the Administrative Agent may reasonably request.

7.2.4 SEC Reports. Within ten (10) days after being received, copies of all correspondence from the SEC, other than routine non-substantive general communications from the SEC.

7.2.5 Compliance Certificates. Quarterly and annually, upon delivery of each of the financial statements required pursuant to Sections 7.2.1 and 7.2.2 above, (a) a Compliance Certificate in form of Exhibit C, annexed hereto, together with an Officer's Certificate from the Chief Financial Officer or Chief Accounting Officer of Borrower providing and otherwise certifying (i) the compliance or non-compliance by the Borrower with the Financial Covenants, including such supporting detail as is reasonably deemed necessary by the Administrative Agent to verify the calculations incorporated therein, (ii) a report containing, to the extent not included in the deliveries under Sections 7.2.1, 7.2.2, or 7.2.3 for all Individual Properties, a summary listing of all Net Operating Income, revenues, rent roll, mortgage Debt, if any, the Borrower's ownership interest therein, and, in addition, for each Individual Property acquired during the quarter just ended, the cost basis and the amount and terms of any assumed Debt, (iii) a certification that the financial statements fairly present in all material respects the Consolidated financial condition of CRT and that no Default or Event of Default has occurred and is continuing, or if it is, a statement as to the nature thereof; (iv) a listing of all filings by the Borrower or CRT with the SEC, including, without limitation, full copies of CRT's 10-Q and 10-K filings; and (v) any material change in accounting policies required by GAAP or financial reporting practices by any Loan Party or their Subsidiaries.

7.2.6 Data Requested. Within a reasonable period of time and from time to time, such other financial data or information as the Administrative Agent may reasonably request and that Borrower already has in its possession (or can obtain with commercially reasonable efforts and at no cost and expense to the Borrower other than de minimis expenses) with respect to the Collateral Properties, the Borrower, and/or the other Loan Parties including, but not limited to, operating statements, balance sheets, rent rolls, aged receivables, aged payables, leases, budgets, forecasts, reserves, cash flow projections, deposit accounts, mortgage information, physical condition of the Collateral Properties and pending lease proposals.

7.2.7 Tax Returns. Upon the Administrative Agent's request, copies of all federal and state tax returns of the Borrower and the other Loan Parties.

7.2.8 [Reserved.]

7.2.9 [Reserved.]

7.2.10 [Reserved.]

7.2.11 [Reserved.]

7.2.12 [Reserved.]

7.2.13 Notice of Litigation. Other than actions, suits or proceedings set forth on Schedule 6.5 hereof or as disclosed to Administrative Agent in the search results delivered to Administrative Agent prior to the Closing Date, within ten (10) Business Days after an Authorized Officer obtains written notice of any pending or threatened (in writing) action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency or regulatory authority by any entity (private or governmental) relating in any way to the Loan, the transactions contemplated in the Loan Documents (including, without limitation, with regard to all Distributions), or the transactions contemplated in any documentation executed in connection therewith, or the Borrower or any other Designated Loan Party or any Collateral Property, which is not fully covered (subject to deductibles) by an insurance policy issued by a reputable and financially viable insurance company, or, to the extent not so covered, which would reasonably be expected to have a Material Adverse Effect or a material adverse effect on a Collateral Property.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arranger will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks, Syndtrak or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that so long as the Borrower or CRT or WHLR is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arranger and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 15.20); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Administrative Agent and the Arranger shall be entitled to treat and shall treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform that is not designated "Public Side Information." Notwithstanding the foregoing, (i) the Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC" and (ii) no Public Lender shall be permitted to withhold, condition or delay its approval or consent to any matter hereunder based solely on such Public Lender's failure or refusal to receive and/or review non-Public Borrower Materials.

7.3 Existence. (a) Preserve, renew and keep in full force and effect (i) the partnership, limited liability company or corporate existence, as applicable, of each Loan Party and (ii) the material rights, licenses, permits and franchises of each Loan Party, (b) comply with all Laws and other Laws applicable to it and its assets, business and operations, the non-compliance with which would reasonably be expected to have a Material Adverse Effect, (c) to the extent applicable, at all times maintain, preserve and protect all material franchises and trade names and all the remainder of its property used or useful in the conduct of its business, and (d) keep and cause each Loan Party to keep, its assets in good working order and repair, ordinary wear and tear and damage by casualty or taking by condemnation excepted, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto.

7.4 Payment of Taxes. Duly pay and discharge, before the same shall become overdue, all taxes, assessments, impositions, and other governmental charges payable by it or with respect to the Collateral Properties, to the extent that same are not paid by the tenants under the respective Leases; provided, however, the failure of any Designated Loan Party to pay such taxes, assessments, impositions, or other governmental charges shall not constitute a Default or Event of Default as long as same are being contested in a manner which complies with the requirements of Section 9.1.

7.5 Insurance.

7.5.1 Insurance. Borrower shall at all times maintain or cause the appropriate Person to maintain in full force and effect the following insurance: (i) the Collateral Properties shall be insured by insurers of recognized financial responsibility against such losses and risks in compliance with the requirements set forth in Schedule 5.1.11 hereto, and (ii) all other assets of the Borrower and the Borrower Subsidiaries shall be insured with such insurance as is reasonable and usual for Persons conducting business operations similar to those of the Borrower and in compliance with the terms of any secured financing with respect thereto.

Without limiting the generality of the insurance requirements set forth herein, only if commercially available at commercially reasonable rates (in an amount reasonably consistent with the amount of such insurance generally obtained by companies engaging in real estate business operations of a similar size and nature as that of the Borrower) either (i) the insurance policies required hereunder shall not exclude Terrorism Coverage, or (ii) excess or blanket coverage with respect thereto shall be provided, which excess or blanket coverage must be in an amount, from an insurer, and in accordance with terms and conditions reasonably acceptable to the Administrative Agent. As used above, "Terrorism Coverage" shall mean insurance for acts of terror or similar acts of sabotage; provided, that, for so long as the Terrorism Risk Insurance Act of 2002, as extended and modified by the Terrorism Risk Insurance Program Reauthorization Act of 2019 (as the same may have been and may be further modified, amended, or extended, "TRIPRA") (i) remains in full force and effect and (ii) continues to cover both foreign and domestic acts of terror, the provisions of TRIPRA shall determine what is deemed to be included within this definition of "Terrorism Coverage." Notwithstanding the foregoing, whether or not TRIPRA or subsequent statute, extension, or reauthorization is in effect, Borrower shall be required to carry terrorism insurance throughout the term of the Loan as required by the preceding sentence; provided, however, if TRIPRA (or such subsequent statute, extension or reauthorization) is not in effect Borrower shall not be required to pay annual premiums in excess of the TC Cap (defined below) in order to obtain the Terrorism Coverage (but Borrower shall be obligated to purchase the maximum amount of Terrorism Coverage available with funds equal to the TC Cap). As used above, "TC Cap" shall mean an amount equal to two (2) times the premium for a separate "Special Form" or "All Risks" policy or equivalent policy insuring only the Properties on a stand-alone basis at the time that any Terrorism Coverage is excluded from any applicable policy.

All insurance premiums shall be paid, at Borrower's option either annually in advance or in installments when due, and Administrative Agent shall be provided with evidence of such payment of insurance premiums (or evidence of the relevant installment payment) prior to each renewal or replacement of such coverages.

7.6 Inspection. Permit the Administrative Agent and the Lenders and its/their agents, representatives and employees to inspect the Collateral Properties, and any and all other assets of the Borrower, at reasonable hours upon reasonable notice, subject to the rights of tenants therein. The Borrower shall be responsible for the reasonable costs incurred by the Administrative Agent of such inspections if an Event of Default is in existence but all other costs of such inspections shall be borne by the Lenders. Borrower shall have the right to have its representative present at all inspections.

7.7 Loan Documents. Observe, perform and satisfy all the terms, provisions, covenants and conditions to be performed by it under, and to pay when due all costs, fees and expenses, and other Obligations to the extent required under, the Loan Documents.

7.8 Further Assurances. Execute and deliver to the Administrative Agent such documents, instruments, certificates, assignments and other writings, and do such other acts, necessary or desirable in the reasonable judgment of the Administrative Agent, for the better and more effective carrying out of the intents and purposes of this Agreement and the other Loan Documents, provided that same do not increase the obligations, or decrease the rights, of any of the Loan Parties other than to a de minimis extent.

7.9 Books and Records. Maintain and keep in accordance with GAAP (or such other accounting basis reasonably acceptable to the Administrative Agent), proper and accurate books, records and accounts reflecting all of the financial affairs of the Borrower and such other Loan Parties and the Borrower Subsidiaries and all items of income and expense in connection with their respective business and operations and in connection with any services, equipment or furnishings provided in connection with the operation of the business of the Borrower, the other Loan Parties, and the Borrower Subsidiaries, whether such income or expense is realized thereby or by any other Person. The Administrative Agent shall have the right during the continuance of an Event of Default, during normal business hours and upon reasonable notice, to examine such books, records and accounts at the office of the Person maintaining such books, records, correspondence, and accounts and to make such copies or extracts thereof as the Administrative Agent shall desire at the Administrative Agent's cost and expense. The Borrower shall give the Administrative Agent notice within fifteen (15) Business Days' notice of any change in the location of its financial records from the address specified at the beginning of this Agreement. The Administrative Agent may discuss the financial and other affairs of the Borrower, the other Loan Parties, and Borrower Subsidiaries with any of its Affiliates, and any accountants hired by the Borrower, it being agreed that the Administrative Agent and each of the Lenders shall use reasonable efforts not to divulge information obtained from such examination to others except as required by applicable Laws and in connection with administering the Loan, enforcing its rights and remedies under the Loan Documents and in the conduct, operation and regulation of its banking and lending business (which may include, without limitation, the transfer of the Loan to the extent permitted by the terms of this Agreement). Any assignee or transferee of the Loan, co-lender, or any holder of a participation interest in the Loan shall deal with such information in the same manner and in connection with any subsequent transfer of its interest in the Loan or of further participation interests therein.

7.10 Business and Operations. (a) Continue to engage in the type of businesses, acquisition, sale, financing, development and operation of retail properties and usual and customary uses incidental to such retail activities presently conducted by them as of the Closing Date, respectively, and (b) be qualified to do business and in good standing under the Laws of each jurisdiction, and otherwise to comply with all Laws, as and to the extent the same are required for the ownership, maintenance, management and operation of the assets of such Person except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect.

7.11 Title. (a) Warrant and defend (i) the title to each item of Collateral owned by such Person and every part thereof, subject only to Permitted Liens, (ii) the validity and priority of the Liens and security interests held by the Administrative Agent pursuant to the Loan Documents, in each case against the claims of all Persons whomsoever, and (iii) the title to and in the Collateral Properties, and (b) if the Borrower or the other Loan Parties fail to defend any claim (by any person other than Agent or any Lender) against any material item of Collateral, the Borrower and the other Designated Loan Parties shall be responsible, jointly and severally, to reimburse the Administrative Agent for any out-of-pocket costs or expenses (including reasonable attorneys' fees and court costs) actually incurred by the Administrative Agent in defending against such claim.

7.12 Estoppel. Within ten (10) Business Days after a request therefor from the Administrative Agent, which request shall not be made by the Administrative Agent more than once each Fiscal Year, furnish to the Administrative Agent a statement, duly acknowledged and certified, setting forth (a) the amount then owing by the Borrower in respect of the Obligations, (b) the date through which interest on the Loan has been paid, (c) any offsets, counterclaims, credits or defenses to the payment by any Loan Party to the Obligations of which the Borrower has Knowledge and (d) whether any written notice of Default from the Administrative Agent to the Borrower or any of the other Loan Parties is then outstanding and acknowledging that this Agreement and the other Loan Documents are in full force and effect and unmodified, or if modified, giving the particulars of such modification.

7.13 ERISA. As soon as possible and, in any event, within ten (10) days after any Loan Party, Borrower Subsidiary, or any ERISA Affiliate knows of the occurrence of any of the following which would reasonably be expected to have a Material Adverse Effect, deliver to the Administrative Agent a certificate of an executive officer of the Borrower setting forth details as to such occurrence and the action, if any, that the Borrower or other applicable Loan Party, Borrower Subsidiary ERISA Affiliate is required or proposes to take, together with any notices required or proposed to be given to or filed with or by the Borrower, a Loan Party, a Borrower Subsidiary, an ERISA Affiliate, the PBGC, a Plan participant or the Plan administrator with respect thereto: (a) that a Reportable Event has occurred; (b) that any Plan has been deemed to be in "at risk status" (as defined in Section 430(i)(4) of the Code); (c) that the minimum required contribution (as defined in Section 430(a) of the Code) to a Plan has not been timely made; (d) that a Plan has been or may be terminated, reorganized, partitioned or declared insolvent under Title IV of ERISA; (e) that proceedings may be or have been instituted to terminate or appoint a trustee to administer a Plan; (f) that a proceeding has been instituted pursuant to Section 515 of ERISA to collect a delinquent contribution to a Plan; or (g) that the Borrower, Loan Party, Borrower Subsidiary, or ERISA Affiliate will or may incur any liability (including any indirect, contingent, or secondary liability) to or on account of the termination of or withdrawal from a Plan under Section 4062, 4063, 4064, 4069, 4201, 4204 or 4212 of ERISA or with respect to a Plan under Section 401(a)(29), 4971, 4975 or 4980 of the Code or Section 409 or 502(i) or 502(l) of ERISA. Upon the request of the Administrative Agent, the Borrower shall (or as applicable shall cause the other Loan Parties, ERISA Affiliates and Borrower Subsidiaries to) deliver to the Administrative Agent a complete copy of the annual report (Form 5500) of each Plan required to be filed with the Department of Labor. In addition to any certificates or notices delivered to the Administrative Agent pursuant to the first sentence hereof, copies of any material notices received by the Borrower, a Loan Party, a Borrower Subsidiary, or any ERISA Affiliate with respect to any Plan shall be delivered to the Administrative Agent no later than ten (10) days after the date such notice has been received by the Borrower, Loan Party or Borrower Subsidiary or ERISA Affiliate, as applicable.

7.14 Interest Rate Protection Products. If Borrower obtains an Interest Rate Protection Product, Borrower shall (a) deliver to Agent a first priority collateral assignment (each such assignment, as the same may be amended, restated, replaced or otherwise modified from time to time, an “Assignment of Interest Rate Protection Agreement”) by the Borrower to the Administrative Agent, for the ratable benefit of the Lenders, with respect to any and all such Interest Rate Protection Products purchased or to be purchased by Borrower in connection with the Loan, as additional security for the Loan, (b) provide the Administrative Agent with any additional documentation requested by the Administrative Agent and reasonably available to Borrower in order to confirm or perfect such security interest during the term of the Loan, and (c) if the Interest Rate Protection Product is from a party other than the Administrative Agent, use commercially reasonable efforts to deliver to the Administrative Agent the consent of the counterparty under such Interest Rate Protection Product to such collateral assignment. Borrower shall not pledge an interest in Borrower, or any Collateral, to secure any Interest Rate Protection Product purchased from a third party.

7.15 Costs and Expenses. Pay all costs and expenses as required by Section 15.9.1.

7.16 Appraisals

7.16.1 Appraisal. Upon the occurrence of an Event of Default, the Administrative Agent shall have the right at its option to order an Appraisal of one or more of the Collateral Properties prepared at the Administrative Agent’s direction by an appraiser selected by the Administrative Agent, after notice to the Borrower.

7.16.2 Costs of Appraisal. The Borrower shall pay for the costs of each Appraisal and each updated Appraisal requested by the Administrative Agent only while an Event of Default shall be in existence.

7.17 Indemnification. At all times, both before and after repayment of the Loan, at its sole cost and expense defend, indemnify, exonerate and save harmless the Administrative Agent and each of the Lenders and all those claiming by, through or under the Administrative Agent and each of the Lenders as required by Section 15.9.2.

7.18 Collateral Leverage. Maintain a Collateral Pool Leverage Ratio as determined as of each Calculation Date of not more than fifty-five percent (55%).

7.19 Leverage Ratio. Maintain a Leverage Ratio as determined as of each Calculation Date of not more than sixty percent (60%). The Leverage Ratio covenant shall be tested by the Administrative Agent as of each Calculation Date, such calculation and results to be verified by the Administrative Agent.

7.20 Fixed Charge Ratio. Maintain a Fixed Charge Ratio as determined as of each Calculation Date of not less than 1.20:1. The Fixed Charge Ratio covenant shall be tested by the Administrative Agent as of each Calculation Date with results based upon the results for the most recent Calculation Period, such calculation and results to be verified by the Administrative Agent.

7.21 Implied Debt Service Coverage Ratio. Maintain an Implied Debt Service Coverage Ratio as determined as of each Calculation Date of not less than 1.45:1. The Implied Debt Service Coverage Ratio shall be tested by the Administrative Agent as of each Calculation Date with results based upon the results of the most recent Calculation Period, such calculations and results to be verified by the Administrative Agent.

7.22 Intentionally Omitted.

7.23 Intentionally Omitted.

7.24 Replacement Documentation. Upon receipt of an affidavit of an officer of the Administrative Agent as to the loss, theft, destruction or mutilation of the Note or any other loan document which is not of public record, and, in the case of any such loss, theft, destruction or mutilation, upon surrender and cancellation of such Note or other loan document and, if such Note or other loan document is lost, stolen or destroyed and, accordingly, is not surrendered to Borrower, the delivery of an indemnity from Administrative Agent or the applicable Lender in favor of Borrower, the Borrower will issue, in lieu thereof, a replacement Note or other loan document in the same principal amount thereof and otherwise of like tenor.

7.25 Maintenance of REIT Status. Each of WHLR and CRT shall engage in such business activities, and shall refrain from engaging in such activities, so as to continue to meet the requirements for qualification and taxation as a REIT under the Code. Each of WHLR and CRT shall at all times remain listed and traded on the New York Stock Exchange, Nasdaq or any other nationally or internationally recognized stock or securities exchange.

7.26 The Lenders' Consultants.

7.26.1 Right to Employ. The Borrower agrees that the Administrative Agent shall have the right to employ on its behalf and on behalf of the Lenders, its own personnel, or one or more engineers, architects, environmental advisors, scientists, accountants, and attorneys to act as an advisor to the Administrative Agent and the Lenders in connection with the Loan (each of which shall be a "Lenders' Consultant").

7.26.2 Functions. The functions of a Lenders' Consultant shall include, without limitation: (i) inspection and physical review of any Collateral Property; (ii) review and analysis of environmental matters (which shall not include invasive testing unless an Event of Default is in existence and subject to the terms of the Environmental Indemnity); (iii) review and analysis of financial and legal matters; and (iv) providing usual inspection and review services for any Repair Work.

7.26.3 Payment. The reasonable actual out-of-pocket costs and fees of the Lenders' Consultants shall be paid by the Borrower within thirty (30) days of the Borrower receiving a bill from Administrative Agent therefor, provided, however that the costs and fees of any Lenders' Consultants shall be borne by the Lenders unless an Event of Default shall exist or as otherwise expressly provided to the contrary herein.

7.26.4 Access. Subject to the rights of tenants under Leases, the Borrower shall cause the Collateral Property Owners to provide the Lenders' Consultants with reasonable access to all Collateral Properties (which shall not include invasive testing).

7.26.5 No Liability. Neither the Administrative Agent nor any Lender shall have liability to the Borrower, any Loan Party, or third party on account of: (i) services performed by the Lenders' Consultant; or (ii) any failure or neglect by the Lenders' Consultant to properly perform services, so long as Administrative Agent was not grossly negligent in selecting such Lender's Consultant. The Borrower shall have no rights under or relating to any agreement, report, or similar document prepared by the Lenders' Consultant for the Administrative Agent or the Lenders. No Lenders' Consultant shall have liability to the Borrower, any Loan Party, or third party on account of: (x) services performed by such Lenders' Consultant; or (y) any failure or neglect by such Lenders' Consultant to properly perform services, except for its gross negligence or willful misconduct.

7.27 Payment of Obligations. Pay and discharge as the same shall become due and payable, all lawful claims which, if unpaid, would by Law become a Lien upon its property (other than Permitted Liens and claims being contested in good faith by appropriate proceedings diligently conducted).

7.28 Compliance with Laws. Conduct its business (a) in compliance in all material respects with applicable Anti-Corruption Laws and applicable anti-money laundering laws; and (b) in compliance in all material respects with the requirements of all other Laws applicable to it or to its business or property, except in such instances in which (i) such requirement of Law is being contested in good faith by appropriate proceedings diligently conducted or (ii) the failure to comply therewith would not reasonably be expected to have a Material Adverse Effect.

7.29 RESERVED.

7.30 Cash Collateral Accounts and Collections.

7.30.1 Each Cash Collateral Account has been established by the Borrower pursuant to the terms hereof. Upon the occurrence of any Event of Default hereunder, all amounts in a Cash Collateral Account may be applied by the Administrative Agent to the Obligations.

7.30.2 On the Closing Date, the Borrower has deposited into the Escrow Account an amount equal to \$6,965,770.00. The Escrow Account is subject to the sole dominion, control and discretion of the Administrative Agent, its authorized agents or designees, subject to the terms of the Loan Documents. Neither Borrower nor any other party shall have the right of withdrawal with respect to the Escrow Account, except in accordance with the provisions of, and for the purposes stated in, this Section 7.30.2. So long as no Event of Default shall have occurred and be continuing, amounts on deposit in the Escrow Account may be applied to fund (i) tenant improvements and leasing commissions, capital expenditures and taxes and insurance due and payable at any time through the Maturity Date and (ii) Permitted Distributions. The Borrower may, no more frequently than on a monthly basis, request that the Administrative Agent release a portion of the funds in the Escrow Account to be used for tenant improvements and leasing commissions, capital expenditures, taxes and insurance, Permitted Distributions and, to the extent the proceeds in the Escrow Account exceed the Borrower's and Subsidiary Guarantor's projected expenses for tenant improvements, leasing commissions, capital expenditures and taxes and insurance due and payable through the Maturity Date (as reasonably estimated by Administrative Agent), to pay or prepay the Obligations, including, the outstanding principal balance of the Loan. Provided that no Event of Default or material Default is then continuing, Administrative Agent shall release such funds within ten (10) Business Days after written request therefor from Borrower. In connection with such request, the Borrower shall submit to the Administrative Agent applicable documentation to evidence the use of such requested funds for such permitted uses. Any remaining balance of the Escrow Account shall be promptly paid over to the Borrower upon the payment in full of the Obligations.

7.30.3 Until the Loan shall be repaid in full, all cash flow from each Collateral Property shall be deposited in the applicable Collateral Property Owner's operating account (each an "Operating Account" and, collectively, the "Operating Accounts") maintained at certain financial institutions. So long as no Event of Default shall be continuing, Borrower may utilize funds in the operating and deposit accounts solely for: (i) the payment of the Obligations; (ii) operating expenses of the Collateral Properties; (iii) payment of property management fees and overhead expenses in accordance with the Borrower's budget as reasonably approved by the Administrative Agent; (iv) payment of Permitted Distributions, and (v) such other expenses as may be reasonably approved by Administrative Agent. On each Business Day, the Borrower shall cause any funds (in excess of any applicable minimum balance required by the applicable deposit account bank) contained in each Collateral Property Owner's Operating Account to be transferred to the CRT Operating Account. On each Interest Payment Date any excess funds the CRT Operating Account after the payment of items (i) through (v) above for the prior month, to the extent in excess of \$1,000,000.00, shall be deposited in the Escrow Account.

8. NEGATIVE COVENANTS.

So long as any Loan or other Obligation (other than those Obligations that survive the repayment in full of the Loans) hereunder shall remain unpaid or unsatisfied, the Borrower shall not, nor shall it permit any other Loan Party to directly or indirectly:

8.1 No Changes to the Borrower and other Loan Parties. With respect to WHLR, CRT, the Borrower and the Borrower's Subsidiaries only, without the prior written consent of the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed after not less than thirty (30) days' prior written notice (with reasonable particularity of the facts and circumstances attendant thereto): (a) change its jurisdiction of organization (with any change to a jurisdiction outside the United States requiring approval of the Required Lenders in their reasonable discretion), (b) change its organizational structure or type (with any change which would result in a Change of Control requiring approval of the Required Lenders in their reasonable discretion), (c) change its legal name, or (d) change the organizational number (if any) assigned by its jurisdiction of formation or its federal employment identification number (if any). Notwithstanding the foregoing, nothing herein shall be construed as prohibiting or restricting a Permitted Transfer, subject in each instance to the provisions of Section 15.19.

8.2 Restrictions on Liens. With respect to CRT, the Borrower and the Borrower's Subsidiaries only, create, incur, assume or suffer to exist any Lien upon or with respect to any property or assets (real or personal, tangible or intangible, including, without limitation, the Collateral Properties), whether now owned or hereafter acquired, or sell any such property or assets subject to an understanding or agreement, contingent or otherwise, to repurchase such property or assets (including sales of accounts receivable with recourse) or assign any right to receive income or permit the filing of any financing statement under the UCC or any other similar notice of Lien under any similar recording or notice statute, or grant rights with respect to, or otherwise encumber or create a security interest in, such property or assets or any portion thereof or any other revenues therefrom or the proceeds payable upon the sale, transfer or other disposition of such property or asset or any portion thereof, or permit or suffer any such action to be taken, except the following (singly and collectively, "Permitted Liens"):

8.2.1 Permitted Debt. Liens to secure Permitted Debt, provided that (x) the Borrower will be in compliance with the Financial Covenants considering the consequences of the granting of any such Lien and (y) no such Lien shall be secured by any Collateral Property, the direct ownership interest in any Collateral Property Owner or the Borrower, or any other assets of any Collateral Property Owner (except as otherwise permitted with respect to personal property liens pursuant to Section 8.2.4 below);

8.2.2 Tax Liens. Liens for taxes, assessments or other governmental charges not yet delinquent or which are being diligently contested in good faith and by appropriate proceedings, if (a) to the extent such contest concerns a Collateral Property, reasonable reserves in an amount not less than the tax, assessment or governmental charge being so contested shall have been established in a manner reasonably satisfactory to the Administrative Agent or deposited in cash (or cash equivalents) with the Administrative Agent to be held during the pendency of such contest, or such contested amount shall have been duly bonded in accordance with applicable Law, (b) no imminent risk of sale, forfeiture or loss of any interest in any Collateral Property or any part thereof arises during the pendency of such contest and (c) such contest could not reasonably be expected to have a Material Adverse Effect;

8.2.3 Judgment Liens. Liens in respect of property or assets imposed by Law, which do not secure Debt, such as judgment Liens (provided such judgment Liens do not cause the occurrence of an Event of Default under Section 10.1), carriers', warehousemen's, material men's and mechanics' liens and other similar Liens arising in the ordinary course of business, (a) which, except for such judgment Liens, do not in the aggregate have, and would not reasonably be expected to have, a Material Adverse Effect, and (b) which, except for such judgment Liens, are fully bonded or are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the property or assets subject to any such Lien;

8.2.4 Personal Property Liens. Liens relating to personal property financing leases entered into in the ordinary course of business with respect to equipment, fixtures, furniture, furnishings and similar assets;

8.2.5 Intentionally Omitted;

8.2.6 Easements, etc. Liens in connection with easements, rights-of-way, zoning restrictions and other similar encumbrances affecting real property which, in the aggregate, do not impose material financial obligations on the Borrower or any Loan Party, and which do not, in the aggregate, materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of such property or the Loan Party that owns such property;

8.2.7 Title Matters. Liens and other matters of record noted on any title insurance policy for a Collateral Property delivered to the Administrative Agent, with the Administrative Agent having received the title insurance policies delivered for the Collateral Properties as of the Closing Date; and

8.2.8 With Consent. Any other Liens for which the Administrative Agent's prior written consent has been obtained.

8.3 Consolidations, Mergers, Sales of Assets, Issuance and Sale of Equity. (a) With respect to any Loan Party, dissolve, terminate or liquidate, (b) with respect to CRT, Borrower and the Collateral Property Owners only, without the prior written consent of the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed, and except as contemplated by the Merger Agreement, consolidate with or merge with or into any other Person, (c) with respect to CRT, the Borrower and their Subsidiaries only, issue, sell, lease, transfer or assign to any Persons or otherwise dispose of (whether in one transaction or a series of transactions) any portion of its assets (whether now owned or hereafter acquired), including, without limitation, any securities, membership or partnership interests, or other interests of any kind in Borrower or any Borrower Subsidiary (including by way of Division), directly or indirectly (whether by the issuance of rights of, options or warrants for, or securities convertible into, any such security, membership or partnership interests or other interests of any kind), (d) with respect to CRT, the Borrower and their Subsidiaries only, permit another Person to merge with or into it, (e) with respect to CRT, the Borrower and their Subsidiaries only, acquire all or substantially all the capital stock, membership or partnership interests or assets of any other Person; or (f) with respect to CRT, the Borrower and their Subsidiaries only, take any action which could have the effect, directly or indirectly, of diluting the economic interest of any CRT or Borrower in any other Loan Party or Borrower Subsidiary; except the following:

8.3.1 Transfers. Transfers pursuant to or permitted under the Loan Documents and other agreements in favor of the Administrative Agent for the ratable benefit of the Lenders, including, without limitation, Permitted Transfers;

8.3.2 Non-Loan Parties. Any such dissolution, liquidation, or termination which does not involve a Loan Party;

8.3.3 Loan Parties. With the prior written consent of the Administrative Agent and the Required Lenders, such consent shall not be unreasonably withheld or delayed, any consolidation, merger, or issuance so long as the Borrower is a surviving entity, provided that (a) the Borrower will be in compliance with the Financial Covenants considering the consequences of such event, (b) no such event shall cause a Change of Control, and (c) each Collateral Property Owner will continue to be a Wholly-Owned Subsidiary of the Borrower;

8.3.4 Collateral Properties. Sales or refinancings of any Collateral Property, provided the Release Conditions are satisfied with respect thereto;

8.3.5 Leases. Leases of all or any portion of any Collateral Property;

8.3.6 Property Transfers. Sales, transfers, assignments, leases or other dispositions of other assets of the Borrower, any Loan Party or any Borrower Subsidiary which do constitute Collateral Properties; provided that the Borrower will be in compliance with the Financial Covenants considering the consequences of any such sale;

8.3.7 Ordinary Course. Sales or dispositions in the ordinary course of business of worn, obsolete or damaged items of personal property or fixtures which are suitably replaced;

8.3.8 With Consent. Transactions, whether outright or as security, for which the Administrative Agent's, the Required Lenders' or the Lenders', as applicable, prior written consent has been obtained to the extent such approval is required under this Agreement;

8.3.9 Permitted Investments. In connection with a Permitted Investment;

8.3.10 Merger of Loan Parties. Mergers of and between Loan Parties that are otherwise restricted pursuant to Section 8.3(b) or (d), provided (a) WHLR, the Borrower and CRT shall at all times remain surviving entities, and (b) the Administrative Agent receives ten (10) Business Days prior written notice of the proposed merger; and

8.3.11 Merger Agreement. Any merger, dissolution, liquidation, or termination contemplated by the Merger Agreement.

8.4 Restrictions on Debt. With respect to CRT, the Borrower and their Subsidiaries, (a) create, incur or assume any Debt, or make any voluntary prepayments of any Debt in respect of which it is an obligor, (b) enter into, acquiesce, suffer or permit any amendment, restatement or other modification of the documentation evidencing and/or securing any Debt under which it is an obligor or (c) increase the amount of any Debt existing as of the Closing Date; except with respect to the following (singly and collectively, "Permitted Debt"):

8.4.1 Debt under this Agreement. The Obligations;

8.4.2 Individual Property Debt. Debt of Borrower, CRT and/or any Borrower Subsidiary (other than any Loan Party) that is secured by mortgage, deed of trust or similar security instrument on an Individual Property other than a Collateral Property, provided that the Borrower will be in compliance with the Financial Covenants considering the consequences of the incurrence of such Debt;

8.4.3 Ordinary Course. Debt incurred in the ordinary course of business for the purchase of goods or services which are payable, without interest, within ninety (90) days of billing;

8.4.4 Personal Property Leases. Debt under leases of the type described in Section 8.2.4; and

8.4.5 Other Debt. Debt, whether secured or unsecured, of a type not contemplated by any of the foregoing, for which Required Lenders' prior written consent has been obtained.

8.5 Other Business. With respect to CRT, the Borrower and their Subsidiaries, enter into any line of business or make any material change in the nature of its business, purposes or operations, or undertake or participate in activities other than the continuance of its present business except (x) as otherwise specifically permitted by this Agreement or the other Loan Documents or (y) as would not reasonably be expected to have a Material Adverse Effect.

8.6 Change of Control. With respect to any of the Loan Parties, permit or otherwise suffer to occur any Change of Control.

8.7 Forgiveness of Debt. With respect to CRT, the Borrower and their Subsidiaries, voluntarily cancel or otherwise forgive or release any Debt owed to it by any Person, except for (a) adequate consideration, (b) settlement of lease obligations of tenants or other obligations or liabilities in the Borrower's reasonable business judgment or (c) as otherwise would not reasonably be expected to have a Material Adverse Effect.

8.8 Affiliate Transactions. With respect to CRT, the Borrower and their Subsidiaries, enter into, or be a party to, any transaction with any Person which is an Affiliate of any Loan Party, except transactions (a) involving the offering or sale of a Person's equity interests on an arm's length basis, or (b) entered into in the ordinary course of business and on terms which are not materially less favorable to such Loan Party or Borrower Subsidiary than would be obtained in a comparable arm's-length transaction with an unrelated third party, provided that this Section 8.8 shall not apply to transactions entirely between and among Loan Parties or entirely between and among Borrower Subsidiaries that are not Loan Parties and shall not apply to any property management, leasing, construction management or other agreement existing as of the Closing Date and disclosed to Administrative Agent or any other transactions approved by Administrative Agent.

8.9 ERISA. With respect to any of the Loan Parties, establish or be obligated to contribute to any Plan.

8.10 Bankruptcy Filings. With respect to any of the Loan Parties, file a petition under any Debtor Relief Laws for the liquidation of all or a major portion of its assets or property.

8.11 Investment Company. With respect to any of the Loan Parties, become an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

8.12 [Reserved].

8.13 Use of Proceeds. With respect to any of the Loan Parties, permit the proceeds of the Loan, or any other accommodation at any time made hereunder, to be used for any purpose which entails a violation of, or is inconsistent with, Regulation T, U or X of the Board, any applicable anti-money laundering law or Anti-Corruption Law, or for any purpose other than to (a) repay certain existing indebtedness of the Borrower, (b) deposit the funds in the Escrow Account that are required to be deposited on the Closing Date and to otherwise provide working capital to the Borrower, CRT, and the Borrower Subsidiaries, (c) provide funds for acquisitions, development, capital expenditures, and refinancing of real estate properties by the Borrower, CRT, and the Borrower Subsidiaries, (d) pay certain closing and transactional costs as approved by the Administrative Agent, (e) for other lawful REIT purposes, or (f) to pay the Merger Consideration or as otherwise contemplated by the Merger Agreement.

8.14 Distributions. With respect to CRT, the Borrower and their Subsidiaries, authorize, declare, or pay any Distributions on behalf of the Borrower (including by way of a Division), except for Permitted Distributions.

8.15 Restrictions on Investments. With respect to CRT, the Borrower and their Subsidiaries, make or permit to exist or to remain outstanding any Investment except which are in:

- (a) marketable direct or guaranteed general obligations of the United States of America which mature within one year from the date of purchase;
- (b) bank deposits, certificates of deposit and banker's acceptances, or other obligations in or of the Lenders or banks located within and chartered by the United States of America or a state and having assets of over \$500,000,000;
- (c) the Borrower's Subsidiaries (both Subsidiaries as of the date hereof and any other Person that becomes a Borrower Subsidiary), subject in all instances to the terms of this Agreement; and
- (d) Permitted Investments.

8.16 Negative Pledges, Etc. With respect to CRT, the Borrower and their Subsidiaries, enter into any agreement subsequent to the Closing Date (other than a Loan Document) which (a) prohibits the creation or assumption of any Lien upon any of the Collateral Properties, or (b) specifically prohibits the amendment or other modification of this Agreement or any other Loan Document.

8.17 Swap Contracts. With respect to CRT, the Borrower and their Subsidiaries, enter into any Swap Contract, unless (i) such Swap Contract was entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation, (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party other than normal setoff or netting rights, and (iii) such Swap Contract (x) was entered into by such Person that is an "eligible contract participant" (as such term is defined in the Commodity Exchange Act and determined after giving effect to any applicable keepwell, support or other agreement for the benefit of such Person in accordance with the Commodity Exchange Act and applicable CFTC Regulations) and (y) is otherwise in compliance with all applicable Laws, including, without limitation, the Commodity Exchange Act and all applicable CFTC Regulations.

9. SPECIAL PROVISIONS.

9.1 Legal Requirements. Any Designated Loan Party may contest in good faith any claim, demand, levy or assessment under any Laws by any Person or entity if: (i) the contest is based upon a material question of Law or fact raised by the Designated Loan Party in good faith; (ii) such Designated Loan Party properly commences and thereafter diligently pursues the contest; (iii) the contest will not materially impair the ability to ultimately comply with the contested Law should the contest not be successful; (iv) if the contest concerns a Collateral Property or a Collateral Property Owner, reasonable reserves in an amount necessary to undertake and pay for such contest and any corrective or remedial action then or thereafter reasonably likely to be necessary shall have been established in a manner reasonably satisfactory to the Administrative Agent or deposited in cash (or cash equivalents) with the Administrative Agent to be held during the pendency of such contest, or such contested amount shall have been duly bonded in accordance with applicable Law; (v) no Event of Default exists; (vi) intentionally omitted; (vii) no imminent risk of sale, forfeiture or loss of any interest in any Collateral Property or any part thereof arises during the pendency of such contest; and (viii) such contest could not reasonably be expected to have a Material Adverse Effect. For the avoidance of doubt, nothing herein shall restrict the right of WHLR or any Affiliate thereof other than a Designated Loan Party to contest any claim, demand, levy or assessment under any Laws.

9.2 Payment of Obligations. Upon the payment in full of the Obligations, in immediately available funds, including, without limitation, all unreimbursed costs and expenses of the Administrative Agent and of each Lender for which the Borrower is responsible (but excluding any contingent indemnity or reimbursement obligations, and the termination of this Agreement, the Administrative Agent shall execute and deliver such documents and termination statements as the Borrower or any other Loan Party reasonably requests to evidence such termination. However, such termination by the Administrative Agent shall not be deemed to terminate or release any Person from any obligation or liability under the Loan Documents which specifically by its terms survives the payment in full of the Obligations.

10. EVENTS OF DEFAULT.

The following provisions deal with Defaults, Events of Default, notice, grace and cure periods, and certain rights of the Administrative Agent and the Lenders following an Event of Default.

10.1 Default and Events of Default. The term “Default” as used herein or in any of the other Loan Documents shall mean any fact or circumstance which constitutes, or upon the lapse of time, or giving of notice, or both, could constitute, an Event of Default. The occurrence of any of the following events, continuing uncured beyond any applicable grace, notice or cure period, respectively, shall constitute an event of default (“**Event of Default**”). Upon the occurrence of any Event of Default described in **Section 10.1.8**, any and all Obligations shall become due and payable without any further act on the part of the Administrative Agent. Upon the occurrence of any other Event of Default, the Administrative Agent may, and upon the request of the Required Lenders shall, declare that any and all Obligations shall become immediately due and payable.

10.1.1 Failure to Pay the Loan. The failure by the Borrower to pay when due any principal of, interest on, or fees in respect of, any Loan, and the specific grace period, if any, allowed for the default in question in Section 10.2 or elsewhere in this Agreement or in the Security Documents or any other Loan Document shall have expired without such default having been cured.

10.1.2 Failure to Make Other Payments. The failure by the Borrower to pay when due (or upon demand, if payable on demand) any payment Obligation other than any payment Obligation on account of the principal of, or interest on, or fees in respect of, the Loan, and the specific grace period, if any, allowed for the default in question in Section 10.2 or elsewhere in this Agreement or in the Security Documents or any other Loan Document shall have expired without such default having been cured provided, however, it shall not be a Default or an Event of Default if there are sufficient funds in the Escrow Account available to pay the applicable payment Obligation when due, all conditions precedent to the disbursement of such amount are satisfied and Administrative Agent fails to disburse such amount.

10.1.3 Security Documents and Loan Documents. Any other default in the performance of any term or provision of the Security Documents or of any of the other Loan Documents, or a breach, or other failure to satisfy, any other term, provision, condition or warranty under the Security Documents or of any of the other Loan Documents, and the specific grace period, if any, allowed for the default in question in Section 10.2 or elsewhere in this Agreement or in the Security Documents or in any other Loan Document shall have expired without such default having been cured provided, however, it shall not be a Default or an Event of Default if the breach in question consists of, or was triggered by, the failure to make any payment and there are sufficient funds in the Escrow Account available to pay such amount when due, all conditions precedent to the disbursement of such amount are satisfied and Administrative Agent fails to disburse such amount.

10.1.4 Default under Other Agreements. (i) The Borrower, CRT or any other Subsidiary (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Debt or Guarantee (including amounts owing to all creditors under any combined or syndicated credit arrangement but excluding the Debt hereunder) in excess of \$13,000,000.00, or (B) fails to observe or perform any other agreement or condition relating to any such Debt or Guarantee in excess of \$13,000,000.00 or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is (1) to cause the holder or holders of such Debt or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise) at any time, or (2) an offer to repurchase, prepay, defease or redeem the outstanding principal amount of such Debt to be made at any time, prior to its stated maturity, or (3) Guarantees securing the outstanding principal amount of such Debt to become payable at any time or (4) cash collateral in respect thereof to be demanded at any time; or (ii) there occurs under any Swap Contract in excess of \$13,000,000.00 an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which the Borrower, CRT or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which the Borrower, CRT or any other Subsidiary is an Affected Party (as so defined).

10.1.5 Representations and Warranties. If any representation or warranty made by the Borrower or by any of the other Loan Parties in the Loan Documents was untrue or misleading in any material respect as of the date made, including, without limitation, all representations and warranties made as of the Closing Date in Article 6 herein and the specific grace period, if any, allowed for the default in question in Section 10.2 or elsewhere in this Agreement or in the Security Documents or in any other Loan Documents shall have expired without such default having been cured.

10.1.6 Affirmative Covenants. The breach of any covenant contained in Article 7 herein, including, without limitation, the Financial Covenants, and the specific grace period, if any, allowed for the default in question in Section 10.2 or elsewhere in this Agreement or in the Security Documents or in any other Loan Documents shall have expired without such default having been cured; provided, however, it shall not be a Default or an Event of Default if the breach in question consists of, or was triggered by, the failure to make any payment and there are sufficient funds in the Escrow Account available to pay such amount when due, all conditions precedent to the disbursement of such amount are satisfied and Administrative Agent fails to disburse such amount.

10.1.7 Negative Covenants. The breach of any covenant contained in Article 8 herein and the specific grace period, if any, allowed for the default in question in Section 10.2 or elsewhere in this Agreement or in the Security Documents or in any other Loan Documents shall have expired without such default having been cured.

10.1.8 Financial Status and Insolvency. Any Loan Party shall: (i) admit in writing in a pleading filed in a legal proceeding (other than in a legal proceeding filed by or on behalf of any Lender) to its inability to pay its debts generally as they become due; (ii) file a petition in bankruptcy or a petition to take advantage of any insolvency act; (iii) make an assignment for the benefit of creditors; (iv) consent to the appointment of a receiver, liquidator or trustee of itself or of the whole or any substantial part of its properties or assets (other than at the request of Administrative Agent or any Lender); (v) file a petition or answer seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Federal Bankruptcy laws or any other applicable Law; (vi) have a court of competent jurisdiction enter an order, judgment or decree appointing a receiver, liquidator or trustee of a Loan Party, or of the whole or any substantial part of the property or assets of a Loan Party, and such order, judgment or decree shall remain unvacated or not set aside or unstayed for ninety (90) days; (vii) have a petition filed against it seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Federal Bankruptcy laws or any other applicable Law and such petition shall remain undismissed or unbonded for ninety (90) days; (viii) have, under the provisions of any other Law for the relief or aid of debtors, any court of competent jurisdiction assume custody or control of a Loan Party or of the whole or any substantial part of its property or assets and such custody or control shall remain unterminated or unstayed for ninety (90) days; or (ix) have an attachment or execution levied against any substantial portion of the property of a Loan Party or against any portion of a Collateral Property which is not discharged or dissolved by a bond within sixty (60) days. For the avoidance of doubt, appointment of a receiver or a Person functioning in a similar capacity for any properties owned directly or indirectly by the Loan Parties that are not Collateral Properties shall not constitute a Default or an Event of Default.

10.1.9 Loan Documents. (a) Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all Obligations, ceases to be in full force and effect and the specific grace period, if any, allowed for the default in question in Section 10.2 or elsewhere in this Agreement or in the Security Documents or any other Loan Document shall have expired without such default having been cured, (b) any Loan Party contests in any manner the validity or enforceability of any Loan Document, or (c) other than as expressly permitted hereunder or thereunder or in connection with a payment in full of the Loan, any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document.

10.1.10 Judgments. One or more judgments or decrees in an aggregate amount in excess of \$1,000,000, shall be entered against Borrower or any Loan Party involving a liability (not paid or fully covered (subject to deductibles) by a reputable and solvent insurance company) and such judgments and decrees either shall be final and non-appealable or shall not be vacated, discharged or stayed or bonded pending appeal for any period of sixty (60) consecutive days.

10.1.11 ERISA. (a) If (i) any Plan shall be deemed to be in “at risk status” (as defined in Section 430(i)(4) of the Code), (ii) any Plan shall have had or is likely to have a trustee appointed to administer such Plan, (iii) any Plan is, shall have been or is likely to be terminated or to be the subject of a distress termination proceeding under ERISA, (iv) a minimum required contribution (as defined in Section 430(a) of the Code) for a Plan has not been timely made, (v) a Loan Party or any ERISA Affiliate has incurred or is likely to incur a liability to or on account of a Plan under Section 409, 502(i), 502(l), 515, 4062, 4063, 4064, 4069, 4201, 4204 or 4212 of ERISA or Section 401(a)(29), 4971, 4975 or 4980 of the Code, or (vi) a Loan Party has incurred or is likely to incur liabilities pursuant to one or more employee welfare benefit plans (as defined in Section 3(l) of ERISA) that primarily provide health and welfare benefits to retired employees or other former employees (other than as required by Section 601 *et seq.* of ERISA) and any of the foregoing would reasonably be expected to have a Material Adverse Effect; (b) if there shall result from any event or events described in clauses (a)(i), (a)(ii), (a)(iii), (a)(iv) or (a)(v) of this Section 10.1.11 the imposition of a lien, the granting of a security interest, or a liability or a material risk of incurring a liability which would reasonably be expected to have a Material Adverse Effect; or (c) if any such lien, security interest or liability is imposed or granted and, individually, and/or in the aggregate, in the reasonable opinion of the Administrative Agent would reasonably be expected to have a Material Adverse Effect.

10.1.12 Change of Control. If a Change of Control shall occur.

10.1.13 Generally. A default by the Borrower in the performance of any term, provision or condition of this Agreement to be performed by the Borrower, or a breach, or other failure to satisfy, any other term provision, condition, covenant or warranty under this Agreement and such default remains uncured beyond any applicable specific grace period provided for in this Agreement or in any Security Document or any other Loan Document, including, without limitation, as set forth in Section 10.2 below.

10.2 Grace Periods and Notice. As to each of the foregoing events the following provisions relating to grace periods and notice shall apply:

10.2.1 No Notice or Grace Period. There shall be no grace period and no notice provision with respect to the payment of principal at maturity and/or in connection with a Mandatory Principal Prepayment (except as provided in Section 2.3.8) and no grace period and no notice provision with respect to defaults related to the voluntary filing of bankruptcy or reorganization proceedings or an assignment for the benefit of creditors, or subject to Sections 10.2.3, 10.2.4 and 10.2.5, with respect to a breach of warranty or representation under Article 6, or, subject to Sections 10.2.3 and 10.2.5 with respect to the breach of any of the affirmative covenants set forth in Article 7 (unless a grace or cure period is specifically provided for therein) or, subject to Sections 10.2.3, and 10.2.5, with respect to the breach of any of the negative covenants set forth in Article 8.

10.2.2 Nonpayment of Interest. As to the nonpayment of interest there shall be a three (3) Business Day grace period without any requirement of notice from the Administrative Agent.

10.2.3 Other Monetary Defaults. All other monetary defaults shall have a five (5) Business Day grace period following written notice from the Administrative Agent.

10.2.4 Nonmonetary Defaults Capable of Cure. As to non-monetary Defaults which are reasonably capable of being cured or remedied, unless there is a specific shorter or longer grace period provided for in this Loan Agreement or in another Loan Document, there shall be a thirty (30) day grace period following such Default; provided that if such Default would reasonably require more than thirty (30) days to cure or remedy, such longer period as requested by the Borrower but in no event longer than ninety (90) days following such Default.

10.2.5 Collateral Property Defaults. As to any non-monetary Defaults which are capable of being cured or remedied by the removal of any Individual Property or Individual Properties from being Collateral Properties, there shall be a thirty (30) day grace period following such Default for the Borrower to cure or remedy such Default by causing such Individual Properties to be removed from being Collateral Properties by being released from the Lien of the Loan Documents in accordance with Section 3.4 hereof.

11. REMEDIES.

11.1 Remedies. Upon the occurrence and during the continuance of an Event of Default, whether or not the Obligations evidenced by this Agreement shall be due and payable or the Administrative Agent shall have instituted any action for the enforcement of the Loan Documents, the Administrative Agent may in its sole and absolute discretion, and shall upon the direction of the Required Lenders, in addition to any other remedies which the Administrative Agent may have hereunder or under the other Loan Documents, or otherwise, and not in limitation thereof:

11.1.1 Accelerate Debt. Declare the Obligations immediately due and payable (provided that in the case of a voluntary petition in bankruptcy filed by Borrower or an involuntary petition in bankruptcy filed against Borrower (after expiration of the grace period, if any, set forth in Section 10.1.8), such acceleration shall be automatic).

11.1.2 Pursue Remedies. Pursue any and all remedies provided for hereunder, under any one or more of the other Loan Documents, and/or otherwise.

11.2 Distribution of Liquidation Proceeds. Subject to the terms and conditions of this Agreement, the Administrative Agent shall distribute all Liquidation Proceeds in the order and manner set forth below:

First: To the Administrative Agent, towards any fees and any expenses for which the Administrative Agent is entitled to reimbursement under this Agreement or the other Loan Documents not theretofore paid to the Administrative Agent.

Second: To all applicable Lenders in accordance with their proportional share based upon their respective Loan Percentages until all Lenders have been reimbursed for all fees and expenses which such Lenders have previously paid to the Administrative Agent and not theretofore paid to such Lenders.

Third: Pari passu, to all applicable Lenders in accordance with their proportional share based upon their respective Loan Percentages until all Lenders have been paid in full all principal and interest due to such Lenders under the Loan, with each Lender applying such proceeds for purposes of this Agreement first against the outstanding principal balance due to such Lender under the Loan and then to accrued and unpaid interest due under the Loan.

Fourth: To all applicable Lenders in accordance with their proportional share based upon their respective Loan Percentages until all Lenders have been paid in full all other amounts due to such Lenders under the Loan Documents including, without limitation, any costs and expenses incurred directly by such Lenders to the extent such costs and expenses are reimbursable to such Lenders by the Borrower under the Loan Documents.

Fifth: To the Borrower or such third parties as may be entitled to claim Liquidation Proceeds.

11.3 Power of Attorney. For the purpose of exercising the rights granted by this Article 11, as well as any and all other rights and remedies of Administrative Agent under the Loan Documents, the Borrower hereby irrevocably constitutes and appoints the Administrative Agent its true and lawful attorney-in-fact, with full power to substitute any successor Administrative Agent permitted by this Agreement, upon and following any Event of Default which is continuing, to execute, acknowledge and deliver any instruments and to do and perform any acts in the name and on behalf of the Borrower, in each case which the Borrower is obligated under the Loan Documents to execute, acknowledge and deliver, or to do and perform, as applicable, but has failed to do so after written demand by Administrative Agent. In connection with the foregoing power of attorney, the Borrower hereby grants unto the Administrative Agent (acting through any of its officers) full power to do any and all things necessary or appropriate in connection with the exercise of such powers as fully and effectually as the Borrower might or could do, hereby ratifying all that said attorney shall do or cause to be done by virtue of this Agreement. The foregoing power of attorney shall not be affected by any disability or incapacity suffered by the Borrower and shall survive the same. All powers conferred upon the Administrative Agent by this Agreement, being coupled with an interest, shall be irrevocable until this Agreement is terminated by a written instrument executed by a duly authorized officer of the Administrative Agent.

12. SECURITY INTEREST AND SET-OFF.

12.1 Security Interest. The Borrower and each Collateral Property Owner hereby grants to the Administrative Agent and each of the Lenders, (a) a continuing lien, security interest and right of setoff (with setoff being subject to Section 12.2) as security for all of the Obligations, upon and against all Collateral Accounts and any related deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Administrative Agent or any of the Lenders or any of their respective successors and assigns, or in transit to any of them and (b) a continuing lien and security interest in each Operating Account as security for all of the Obligations.

12.2 Set-Off/Sharing of Payments. If any Event of Default occurs and is continuing, any such deposits, balances or other sums credited by or due from Administrative Agent or any of the Lenders, or from any of their respective Affiliates, to the Borrower may to the fullest extent not prohibited by applicable Law at any time or from time to time, without regard to the existence, sufficiency or adequacy of any other collateral, and without notice or compliance with any other condition precedent now or hereafter imposed by statute, rule of law or otherwise, all of which are hereby waived, be set off, appropriated and applied by the Administrative Agent against any or all of Borrower's Obligations that are then due and payable. Within five (5) Business Days of making any such set off, appropriation or application, the Administrative Agent agrees to notify the Borrower thereof, provided the failure to give such notice shall not affect the validity of such set off or appropriation or application. ANY AND ALL RIGHTS TO REQUIRE THE ADMINISTRATIVE AGENT OR ANY OF THE LENDERS TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF THE BORROWER, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

12.3 Right to Freeze. The Administrative Agent and each of the Lenders shall also have the right, at its option, upon the occurrence and during the continuance of any Event of Default, to freeze, block or segregate any such deposits, balances and other sums so that the Borrower or Collateral Property Owner, as applicable, may not access, control or draw upon the same.

12.4 Additional Rights. The rights of the Administrative Agent, the Lenders and each of their respective Affiliates under this Article 12 are in addition to, and not in limitation of, other rights and remedies, including other rights of set off, which the Administrative Agent or any of the Lenders may have.

13. THE ADMINISTRATIVE AGENT AND THE LENDERS.

13.1 Rights, Duties and Immunities of the Administrative Agent.

13.1.1 Appointment of Administrative Agent. Each of the Lenders hereby irrevocably appoints KeyBank to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Section 13.1 (other than Sections 13.1.10, and as may be limited by Sections 13.2.4 and 13.3.2) are solely for the benefit of the Administrative Agent and the Lenders, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions or be bound by such provisions.

13.1.2 No Other Duties, Etc. Anything herein to the contrary notwithstanding, neither the Arranger nor any other titled agents shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

13.1.3 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

13.1.4 Exculpatory Provisions.

(a) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing (but subject to Section 13.1.4(b)), the Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(b) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary), or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.2 and 13.4.1 or (ii) in the absence of its own (or its officers', directors', employees', agents', attorneys in fact or Affiliates') gross negligence or willful misconduct.

(c) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article 5 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

13.1.5 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of the Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of the Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

13.1.6 Notice of Default. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower or a Lender.

13.1.7 Lenders' Credit Decisions. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

13.1.8 Administrative Agent's Reimbursement and Indemnification. The Lenders agree to reimburse and indemnify the Administrative Agent, ratably in proportion to their respective Loan Percentages, for (i) any amounts not reimbursed by the Borrower for which the Administrative Agent is entitled to reimbursement by the Borrower under this Loan Agreement or the other Loan Documents, (ii) any other expenses incurred by the Administrative Agent on behalf of the Lenders in connection with the preparation, execution, delivery, administration, amendment, waiver and/or enforcement of this Loan Agreement and the other Loan Documents, and (iii) any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Administrative Agent in any way relating to or arising out of this Loan Agreement or the other Loan Documents or any other document delivered in connection therewith or any transaction contemplated thereby, or the enforcement of any of the terms hereof or thereof, provided that no Lender shall be liable for any of the foregoing to the extent that they arise from the gross negligence or willful misconduct of the Administrative Agent. If any indemnity furnished to the Administrative Agent for any purpose shall, in the opinion of the Administrative Agent, be insufficient or become impaired, the Administrative Agent may call for additional indemnity and cease, or not commence, to do the action indemnified against until such additional indemnity is furnished.

13.1.9 Administrative Agent in its Individual Capacity. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower, CRT or any Borrower Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

13.1.10 Successor Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with and, if such appointment is prior to the occurrence and continuation of an Event of Default, with the prior approval of, the Borrower, such approval not to be unreasonably withheld or delayed, to appoint a successor, which successor shall be (a) a Lender hereunder, and (b) a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, at the direction and with the consent of the Borrower, on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Section and Section 15.9 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

13.1.11 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loan and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable out-of-pocket expenses actually incurred, and disbursements and advances actually made, by the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.4, and 15.9) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same.

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable out-of-pocket expenses actually incurred, and disbursements and advances actually made, by the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.4 and 15.9.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

13.1.12 Collateral and Guaranty Matters. The Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release or assign any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon payment in full of all Obligations (other than contingent indemnification obligations), (ii) that is (1) sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document or (2) refinanced or to be refinanced as permitted hereunder or under any other Loan Document, or (iii) subject to Section 13.4.1, if approved, authorized or ratified in writing by the Required Lenders;

(b) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted hereunder; and

(c) to release any Guarantor from its obligations under the Guaranty, the Environmental Indemnity Agreement and the other Loan Documents if such Person ceases to be a Subsidiary or an owner of a Collateral Property as a result of a transaction permitted hereunder.

Upon request by the Administrative Agent at any time, the Required Lenders will promptly confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty, the Environmental Indemnity Agreement and the other Loan Documents pursuant to this Section 13.1.12.

13.2 Respecting Loans and Payments.

13.2.1 Adjustments. If, after the Administrative Agent has paid each Lender's proportionate share of any payment received or applied by the Administrative Agent in respect of the Loan and other Obligations, that payment is rescinded or must otherwise be returned or paid over by the Administrative Agent, whether pursuant to any Debtor Relief Law, sharing of payments clause of any loan agreement or otherwise, such Lender shall, at the Administrative Agent's request, promptly return its proportionate share of such payment or application to the Administrative Agent, together with such Lender's proportionate share of any interest or other amount required to be paid by the Administrative Agent with respect to such payment or application.

13.2.2 Setoff. If any Lender (including the Administrative Agent), acting in its individual capacity, shall exercise any right of setoff against a deposit balance or other account of the Borrower held by such Lender on account of the obligations of the Borrower under this Loan Agreement, such Lender shall remit to the Administrative Agent all such sums received pursuant to the exercise of such right of setoff, and the Administrative Agent shall apply all such sums for the benefit of all of the Lenders hereunder in accordance with the terms of this Loan Agreement.

13.2.3 Distribution by the Administrative Agent. If in the opinion of the Administrative Agent distribution of any amount received by it in such capacity hereunder or under any of the other Loan Documents might involve any liability, it may refrain from making distribution until its right to make distribution shall have been adjudicated by a court of competent jurisdiction or has been resolved by the mutual consent of all Lenders. In addition, the Administrative Agent may request full and complete indemnity, in form and substance satisfactory to it, prior to making any such distribution. If a court of competent jurisdiction shall adjudge that any amount received and distributed by the Administrative Agent is to be repaid, each Person to whom any such distribution shall have been made shall either repay to the Administrative Agent its proportionate share of the amount so adjudged to be repaid or shall pay over to the same in such manner and to such Persons as shall be determined by such court.

13.2.4 Removal or Replacement of a Lender. If any Lender requests compensation under Sections 2.6.1 or 2.6.2, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8, or if any Lender is a Defaulting Lender, then in addition to, and not in limitation of, the rights and remedies that may be available to the Borrower at law or in equity, the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 13.3), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

- (a) The Administrative Agent shall be paid the assignment fee specified in Section 13.3.2(d);

(b) Such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 2.3.15) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) In the case of any such assignment resulting from a claim for compensation under Sections 2.6.1 or 2.6.2 or payments required to be made pursuant to Section 2.8, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) Such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

13.2.5 Holders. The Administrative Agent may deem and treat the Lender designated in the Register as the proportionate owner of such interest in the Obligations for all purposes hereof unless and until a written notice of the assignment, transfer or endorsement thereof, as the case may be, shall have been filed with the Administrative Agent. Any request, authority or consent of any Person or entity who, at the time of making such request or giving such authority or consent, is the holder of any designated interest in the Obligations shall be conclusive and binding on any subsequent holder, transferee or endorsee, as the case may be, of such interest in the Obligations.

13.2.6 Erroneous Payments.

(a) If the Administrative Agent (x) notifies a Lender, or any Person who has received funds on behalf of a Lender (any such Lender or other recipient, a “Payment Recipient”) that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an “Erroneous Payment”) and (y) demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and such Lender shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender or any Person who has received funds on behalf of a Lender hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) in each case:

(i) (A) in the case of immediately preceding clauses (x) or (y), an error shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of such error) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 13.2.6(b).

(c) Each Lender hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender from any source, against any amount due to the Administrative Agent under immediately preceding clause (a) or under the indemnification provisions of this Agreement.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with immediately preceding clause (a), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an “Erroneous Payment Return Deficiency”), upon the Administrative Agent’s notice to such Lender at any time, (i) such Lender shall be deemed to have assigned its Loans with respect to which such Erroneous Payment was made in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans, the “Erroneous Payment Deficiency Assignment”) at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an electronic platform approved by Administrative Agent as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent, (ii) the Administrative Agent as the assignee Lender shall be deemed to acquire the Erroneous Payment Deficiency Assignment, (iii) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement which shall survive as to such assigning Lender and (iv) the Administrative Agent may reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. The Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment in accordance with, and subject to the terms and conditions of, this Agreement, and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, each party hereto agrees that, except to the extent that the Administrative Agent has sold a Loan (or portion thereof) acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether the Administrative Agent may be equitably subrogated, the Administrative Agent shall be contractually subrogated to all the rights and interests of the applicable Lender under the Loan Documents with respect to each Erroneous Payment Return Deficiency (the “Erroneous Payment Subrogation Rights”).

(e) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Loan Party for the purpose of making such Erroneous Payment; *provided* that this Section 13.2.6 shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including without limitation waiver of any defense based on “discharge for value” or any similar doctrine

(g) Each party’s obligations, agreements and waivers under this Section 13.2.6 shall survive the resignation or replacement of the Administrative Agent in accordance with the terms and conditions of this Agreement, any transfer of rights or obligations by, or the replacement of, a Lender in accordance with the terms and conditions of this Agreement, and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

13.3 Assignments by Lenders.

13.3.1 Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 13.3.2, (ii) by way of participation in accordance with the provisions of Section 13.3.4, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 13.3.6 (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 13.3.6 and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

13.3.2 Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Loans at the time owing to it); provided that any such assignment must satisfy each of the following conditions:

(a) Minimum Amounts.

(i) in the case of an assignment of the entire remaining amount of the assigning Lender’s Loans at the time owing to it or in the case of an assignment to a Lender (other than a Defaulting Lender), an Affiliate of a Lender (other than a Defaulting Lender) or an Approved Fund, no minimum amount need be assigned; and

(ii) in any case not described in Section 13.3.2(a)(i), the aggregate amount of the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if “Trade Date” is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(b) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Agreement with respect to the Loans assigned.

(c) Required Consents. The assigning Lender shall have obtained:

(i) the prior written consent of the Borrower, unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; and

(ii) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed), unless such assignment is to a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender.

(d) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

- (e) No Assignment to Borrower. No such assignment shall be made to CRT, the Borrower or any of the Borrower's Affiliates or Subsidiaries.
- (f) No Assignment to Natural Persons. No such assignment shall be made to a natural Person.
- (g) Defaulting Lender. No such assignment shall be made to a Defaulting Lender.
- (h) Sanctioned Person. No such assignment shall be made to a Sanctioned Person.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 13.2.3, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.8, 2.6.1, 2.6.2, 2.3.15, and 15.9 with respect to facts and circumstances occurring prior to the effective date of such assignment and subject to any liabilities accruing prior to the effective date of such assignment. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender and if the assigning Lender has not assigned all of its interest in the Loan, a new Note to the assigning Lender; provided that (i) such new Note shall be dated the effective date of such Assignment and Acceptance and shall be otherwise in the form of Exhibit B and (ii) the assigning Lender covenants to return any outstanding Note to the Borrower or to provide a lost note indemnity in lieu thereof. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

13.3.3 Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, in the absence of manifest error, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

13.3.4 Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person or CRT or the Borrower or any of the Borrower's or CRT's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 13.4.1 that affects such Participant. Subject to Section 13.3.5, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.8 (subject to the requirements and limitations therein, including the requirements under Section 2.8.5; it being understood that the documentation required under Section 2.8.5 shall be delivered to the participating Lender), 2.6.1, 2.6.2 and 2.3.15 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 13.3.2; provided that such Participant agrees to be subject to the provisions of Section 2.6.7 as if it were a Lender and had acquired its interest by assignment pursuant to Section 13.3.2. To the extent permitted by Law, each Participant also shall be entitled to the benefits of Section 12.2 as though it were a Lender, provided such Participant agrees to be subject to Section 12.2 as though it were a Lender.

Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Loans, or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Loan or other obligation under any Loan Document is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

13.3.5 Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Sections 2.8, 2.3.15, 2.6.1 or 2.6.2 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent, provided in no instance shall the Borrower's Obligations be increased as a result thereof. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.8 unless the Borrower is notified of the participation sold to such Participant and such Participant complies with Section 2.8.5 as though it were a Lender (it being understood that the documentation required under Section 2.8.5 shall be delivered to the participating Lender).

13.3.6 Certain Pledges. Any Lender may at any time pledge all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge to secure obligations to a Federal Reserve Bank; provided that no such pledge or foreclosure with respect to any such pledge shall release such Lender from any of its obligations hereunder or substitute any such pledgee for such Lender as a party hereto.

13.4 Administrative Matters

13.4.1 Amendment, Waiver, Consent, Etc. Except as otherwise provided herein or as to any term or provision hereof which specifically provides for the consent or approval of the Administrative Agent, the Required Lenders and/or the Lenders, as applicable, no term or provision of this Loan Agreement or any other Loan Document may be changed, waived, discharged or terminated, nor may any consent required or permitted by this Loan Agreement or any other Loan Document be given, unless such change, waiver, discharge, termination or consent receives the written approval of the Required Lenders; provided that, no such waiver and no such amendment, waiver, supplement, modification or release shall:

(a) postpone any date fixed by this Agreement or any other Loan Document for any payment or mandatory prepayment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby,

(b) amend, modify or waive any provision of this Section 13.4 without the written consent of each Lender,

(c) reduce the principal of, or the rate of interest specified herein on, any Loan, or (subject to clause (iv) of the proviso at the end of this Section 13.4.1) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate,

(d) change the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder without the written consent of each Lender,

(e) extend or increase the Loans of any Lender without the written consent of such Lender,

(f) release or waive any guaranty of the Obligations or indemnifications provided in the Loan Documents except to the extent the release of the Guarantor is permitted by this Agreement (in which case such release may be made by the Administrative Agent acting alone) without the written consent of each Lender;

(g) require or accept any Collateral for the benefit of the Lenders other than on a pro rata basis, without the written consent of each Lender;

(h) require or accept one or more guarantees for the benefit of the Lenders other than on a pro rata basis, without the written consent of each Lender;
or

(i) change Section 11.2 or Section 12.2 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;

and, provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (ii) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Loans of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

13.4.2 Deemed Consent or Approval. With respect to any requested amendment, waiver, consent or other action which requires the approval of the Required Lenders or all of the Lenders, as the case may be, in accordance with the terms of this Loan Agreement, or if the Administrative Agent is required hereunder to seek, or desires to seek, the approval of the Required Lenders or all of the Lenders, as the case may be, prior to undertaking a particular action or course of conduct, the Administrative Agent in each such case shall provide each Lender with written notice of any such request for amendment, waiver or consent or any other requested or proposed action or course of conduct, accompanied by such detailed background information and explanations as may be reasonably necessary to determine whether to approve or disapprove such amendment, waiver, consent or other action or course of conduct. The Administrative Agent may (but shall not be required to unless so requested by the Borrower) include in any such notice, printed in capital letters or boldface type, a legend substantially to the following effect:

“THIS COMMUNICATION REQUIRES IMMEDIATE RESPONSE. FAILURE TO RESPOND WITHIN TEN (10) CALENDAR DAYS FROM THE RECEIPT OF THIS COMMUNICATION SHALL CONSTITUTE A DEEMED APPROVAL BY THE ADDRESSEE OF THE ACTION REQUESTED BY THE BORROWER OR THE COURSE OF CONDUCT PROPOSED BY THE ADMINISTRATIVE AGENT AND RECITED ABOVE”,

and if (and only if) the foregoing legend is included by the Administrative Agent in its communication, a Lender shall be deemed to have approved or consented to such action or course of conduct for all purposes hereunder if such Lender fails to object to such action or course of conduct by written notice to the Administrative Agent within ten (10) calendar days of such Lender’s receipt of such notice.

13.4.3 Loan Party Reliance. Notwithstanding anything to the contrary contained in this Agreement or any of the other Loan Documents, each Lender agrees that Administrative Agent shall be the sole party from whom Borrower and the other Loan Parties shall be required to seek any consent or approval under the Loan Documents (provided that Borrower acknowledges that as between Administrative Agent and the Lenders, Administrative Agent shall be obligated to comply with the requirements of Sections 13.4.1 and 13.4.2 above, but the Loan Parties may rely on any consent, approval or waiver granted by Administrative Agent, and any amendment to any Loan Documents entered into by Administrative Agent, and that same shall be binding on each Lender, without the Loan Parties having any obligation to verify that Administrative Agent has complied with the requirements set forth in Sections 13.14.1 or 13.14.2 above).

14. CASUALTY AND TAKING.

14.1 Casualty or Taking; Obligation To Repair. In the event of the occurrence of an Event of Loss as to any Collateral Property, the Borrower shall give prompt written notice thereof to the Administrative Agent and proceed with reasonable diligence, in full compliance with all Laws and the other requirements of the Loan Documents, to repair, restore, rebuild or replace the affected Collateral Property, to the extent reasonably practical, to its condition immediately prior to such Event of Loss (each, the “Repair Work”).

14.2 Adjustment of Claims. All insurance claims or condemnation or similar awards related to a Collateral Property shall be adjusted or settled by the Borrower, at the Borrower’s sole cost and expense; provided that (i) if the amount of Net Proceeds from such adjustment or settlement exceeds the Casualty/Condemnation Threshold, such adjustment or settlement shall be subject to the Administrative Agent’s prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed, (ii) if the amount of Net Proceeds from such adjustment or settlement is reasonably expected (as determined by Borrower) to exceed Casualty/Condemnation Threshold, the Administrative Agent shall have the right to participate in such adjustment or settlement, and (iii) if any Event of Default exists under any of the Loan Documents, the Administrative Agent shall have the right to adjust, settle, and compromise such claims without the approval of the Borrower

14.3 Payment and Application of Insurance Proceeds and Condemnation Awards.

14.3.1 Insurance Proceeds. Except as otherwise provided for herein, all Net Proceeds resulting from a casualty or condemnation of a Collateral Property shall be paid to the Administrative Agent and either (a) be applied to the Obligations or (b) released, in whole or in part, to pay for the actual cost of the Repair Work (collectively, "Cost To Repair"), in each case, subject to and in accordance with Sections 14.3.2 and 14.3.3, as applicable. If any Net Proceeds for a Collateral Property are received directly by any Loan Party, such Loan Party shall hold such Net Proceeds in trust for the Administrative Agent and shall promptly deliver such Net Proceeds in kind to the Administrative Agent. Notwithstanding any other term or provision of this Agreement, all Net Proceeds related to any Individual Property which is not a Collateral Property that are received by Administrative Agent shall be promptly released to the Borrower, without the Borrower having to satisfy the conditions of Sections 14.3 and 14.4 hereof.

14.3.2 Release of Funds. Notwithstanding the terms and provisions hereof, with respect to any Collateral Property, if the Net Proceeds do not exceed Casualty/Condemnation Threshold and the Insurance/Taking Release Conditions have been satisfied, the Administrative Agent shall release the Net Proceeds to the applicable Collateral Property Owner to pay for the actual Cost to Repair and the applicable Loan Party shall commence and diligently prosecute to completion, the Repair Work relative to the subject Collateral Property, with any excess being retained by the applicable Loan Party.

14.3.3 Conditions. Notwithstanding the terms and provisions hereof, with respect to any Collateral Property, if either (i) the Net Proceeds are greater than Casualty/Condemnation Threshold or (ii) the Net Proceeds do not exceed Casualty/Condemnation Threshold, but the Insurance/Taking Release Conditions have not been satisfied with respect to such Event of Loss, the Administrative Agent shall release so much of the Net Proceeds as may be required to pay for the actual Cost To Repair in accordance the limitations and procedures set forth in Section 14.4, if the following conditions are satisfied in a manner reasonably acceptable to the Administrative Agent:

(a) no (i) material Default or (ii) Event of Default shall have occurred and be continuing under the Loan Documents;

(b) in the Administrative Agent's good faith, reasonable judgment, such Net Proceeds together with any additional funds as may be deposited with and pledged to the Administrative Agent, on behalf of the Lenders, are sufficient to pay for the Cost To Repair. In order to make this determination, the Administrative Agent shall be furnished by the Borrower with an estimate of the Cost to Repair accompanied by an independent architect's or engineer's certification as to such Cost to Repair and appropriate plans and specifications for the Repair Work;

(c) the subject Event of Loss was not a Major Event of Loss;

(d) the Administrative Agent in the exercise of its reasonable discretion, shall have determined that all rents from Leases of the subject Collateral Property which are to abate pursuant to their terms are to be payable to the Collateral Property Owner, subject to deductibles, if any, permitted pursuant to the insurance policies to be maintained pursuant to this Agreement, from Rent Loss Proceeds; and

(e) in the Administrative Agent's good faith, reasonable, judgment, the Repair Work can reasonably be completed on or before the time required under applicable Laws.

On each date on which Administrative Agent actually receives a distribution of Net Proceeds and is not required to disburse such Net Proceeds to Borrower for the Repair Work pursuant to Section 14.3.2 above or this Section 14.3.3 and Administrative Agent elects not to disburse such Net Proceeds to Borrower for the Repair Work, Administrative Agent shall apply such Net Proceeds to the outstanding principal balance of the Loan in an amount equal to 100% of such Net Proceeds (a "Net Proceeds Prepayment"). If any such Net Proceeds Prepayment shall be equal to or greater than 60% of the Allocated Loan Amount of the affected Individual Property, Borrower shall have the right to release the affected Individual Property (a "Casualty Condemnation Release") in accordance with Section 3.3 hereof, but without the satisfaction of the requirements of Section 3.3(d). For the avoidance of doubt, no spread maintenance fee or other prepayment fee or penalty shall be due in connection with any Net Proceeds Prepayment or Casualty/Condemnation Release.

14.4 Conditions To Release of Insurance Proceeds. If the Administrative Agent elects or is required to release insurance proceeds in an amount in excess of the Casualty/Condemnation Threshold, the Administrative Agent may impose reasonable conditions on such release which shall include, but not be limited to, the following:

(a) Prior written approval by the Administrative Agent, which approval shall not be unreasonably withheld or delayed of plans, specifications, cost estimates, contracts and bonds for the Repair Work;

(b) Waivers of lien, architect's and/or engineer's certificates, and other evidence of costs, payments and completion as the Administrative Agent may reasonably require;

(c) The funds shall be released upon final completion of the Repair Work, unless the Borrower requests earlier funding, in which event partial monthly disbursements equal to the costs of the work completed (minus the Casualty Retainage) prior to the certification by the applicable Lender's Consultant and if there is no Lender's Consultant, an independent architect or engineer retained by the Borrower, that the Repair Work is completed, and then upon final completion of the Repair Work as certified by such Lender's Consultant or independent architect or engineer, and the receipt by the Administrative Agent of satisfactory evidence of payment and release of all liens, the balance of the funds shall be released. The term "Casualty Retainage" shall mean (x) until the Repair Work is 50% completed, an amount equal to 10% of the costs of the work completed, and (y) from and after the date on which the Repair Work is 50% completed, an amount equal to 5% of the costs of the work completed;

(d) Determination by the Administrative Agent that the undisbursed balance of such Net Proceeds on deposit with the Administrative Agent, together with additional funds deposited for the purpose, shall be at least sufficient to pay for the remaining Cost To Repair, free and clear of all liens and claims for liens;

(e) All work shall be capable of being completed in a manner that complies in all material respects with the Laws applicable to the construction of the Improvements; and

(f) The absence of any material Event of Default under any Loan Documents.

14.5 Consultants. If the Net Proceeds paid in connection with any Event of Loss are in excess of the Casualty/Condemnation Threshold, then the Administrative Agent shall have the right to hire, at the reasonable cost and expense of the Borrower, a Lender's Consultant to assist the Administrative Agent in the determination of the satisfaction of the conditions provided for herein for the release of the Net Proceeds, to pay the Costs to Repair and to periodically inspect the status of the construction of any Repair Work.

14.6 Final Payments. In the event that the Administrative Agent makes any Net Proceeds available to any Loan Party for the payment of Costs to Repair as provided for herein, upon the completion of the Repair Work as certified by the applicable Lender's Consultant and if there is no Lender's Consultant, an independent architect or engineer retained by the Borrower, and receipt by the Administrative Agent of satisfactory evidence of payment and release of all liens (or that any liens are being contested in accordance with the terms of this Agreement), any excess Net Proceeds still held by the Administrative Agent shall be remitted by the Administrative Agent to the Borrower provided that no Event of Default shall have occurred and be continuing.

14.7 Lease Provisions. The terms and provisions of this Article 14 shall be subject to the terms and provisions of the Ground Lease, any Lease and any condominium documents, reciprocal easement agreements, or any similar encumbrances as to which the applicable Individual Property is subject, including, without limitation, with respect to the use and disbursement of Net Proceeds (subject, in the case of a Lease, to any subordination and non-disturbance agreement entered into between the tenant under such Lease and the Administrative Agent).

14.8 No Default. The Administrative Agent acknowledges that provided that no Event of Default has occurred and is continuing, all Rent Loss Proceeds shall be payable to the Borrower or the applicable Loan Party.

15. GENERAL PROVISIONS.

15.1 Notices.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower or the Administrative Agent, to the address, electronic mail address or telephone number specified for such Person on Schedule 15.1; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to a Lender hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Section 2 if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent or the Borrower otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower’s or the Administrative Agent’s transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Borrower, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrower and the Administrative Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities Laws.

(e) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Conversion Request) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as reasonably understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

15.2 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

15.3 [Reserved].

15.4 [Reserved].

15.5 Parties Bound. The provisions of this Agreement and of each of the other Loan Documents shall be binding upon and inure to the benefit of the Borrower and the Administrative Agent and each of the Lenders and their respective successors and assigns, except as otherwise prohibited by this Agreement or any of the other Loan Documents.

This Agreement is a contract by and among the Borrower, the Administrative Agent and each of the Lenders for their mutual benefit, and no third Person shall have any right, claim or interest against either Administrative Agent, any of the Lenders or the Borrower by virtue of any provision hereof.

15.6 Governing Law; Consent to Jurisdiction; Mutual Waiver of Jury Trial.

15.6.1 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

15.6.2 SUBMISSION TO JURISDICTION. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK LOCATED WITHIN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENTS, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH 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 AGREEMENT OR IN ANY OTHER LOAN DOCUMENTS SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENTS AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

15.6.3 WAIVER OF VENUE. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENTS IN ANY COURT REFERRED TO IN SECTION 15.6.2. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

15.6.4 SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 15.1. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

15.6.5 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

15.7 Survival. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied (but shall not be deemed to be remade at any point unless expressly provided for herein). Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf, except to the extent that Administrative Agent or any Lender has actual knowledge that such representation or warranty was not true and correct when made.

15.8 Cumulative Rights. All of the rights of the Administrative Agent and the Lenders hereunder and under each of the other Loan Documents and any other agreement now or hereafter executed in connection herewith or therewith, shall be cumulative and may be exercised singly, together, or in such combination as Administrative Agent may determine in its sole good faith judgment.

15.9 Expenses; Indemnity; Damage Waiver.

15.9.1 Costs and Expenses. The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and Arranger (including the reasonable out-of-pocket fees, charges and disbursements of counsel for the Administrative Agent and Arranger), in connection with the syndication of the Loan, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all reasonable out-of-pocket expenses incurred by the Administrative Agent (including the reasonable out-of-pocket fees, charges and disbursements of any counsel for the Administrative Agent), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

15.9.2 Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender, and each Related Party of any of the foregoing Persons, (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee, but excluding special, indirect, consequential and punitive damages, as opposed to direct or actual damages other than to the extent actually payable by an Indemnitee to a third party), incurred by any Indemnitee or asserted against any Indemnitee by any third party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) the use of the proceeds of the Loan, or (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of any Indemnitee or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee’s obligations hereunder or under any other Loan Document, if the Borrower or such other Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

15.9.3 Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required hereunder Sections 15.9.1 or 15.9.2 to be paid by it to the Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender’s Loan Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this Section 15.9.3 are subject to the provisions of Section 12.2.

15.9.4 Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, and the Administrative Agent and each Lender shall not assert, and hereby waives any claim against a Loan Party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof, with the exception of any such damages claimed against the Administrative Agent or any Lender by a third party as to which the Administrative Agent and each Lender has a right of indemnification from the Borrower under Section 15.9.2. No Indemnitee referred to in Section 15.9.2 above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from a claim described in clause (x) or (y) of Section 15.9.2.

15.9.5 Payments. All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.

15.9.6 Survival. The agreements in this Section shall survive the resignation of the Administrative Agent, the replacement of any Lender, and the repayment, satisfaction or discharge of all the other Obligations with respect to events occurring prior to the foregoing.

15.10 Regarding Consents. Except to the extent expressly provided herein, any and all consents to be made hereunder by the Administrative Agent, Required Lenders, or Lenders shall be in the discretion of the Party to whom consent rights are given hereunder.

15.11 Obligations Absolute. Except to the extent prohibited by applicable Law which cannot be waived or otherwise provided in the Loan Documents, in the event that more than one Loan Party shall be party to any Loan Document or more than one Designated Loan Party shall be party to any Swap Contract that is with the Administrative Agent or any Lender as the counterparty, the Obligations of such Loan Parties or Designated Loan Parties, as applicable, under such Loan Document or Swap Contract shall be joint and several. Except as otherwise provided in the Loan Documents or to the extent prohibited by applicable Law that cannot be waived, the obligations of the Loan Parties under the Loan Documents shall be, absolute, unconditional and irrevocable and shall be paid strictly in accordance with the terms of the Loan Documents and Swap Contracts under all circumstances whatsoever, including, without limitation, the existence of any claim, set off, defense or other right which Borrower or any Loan Party may have at any time against the Administrative Agent or any of the Lenders whether in connection with the Loan, any Swap Contract or any unrelated transaction.

15.12 Table of Contents, Title and Headings. Any Table of Contents, the titles and the headings of sections are not parts of this Loan Agreement or any other Loan Document and shall not be deemed to affect the meaning or construction of any of its or their provisions.

15.13 Counterparts. This Agreement and any consent, waiver, amendment, supplement or other modification hereto, may be executed in counterparts and by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. This Agreement and each of the other Loan Documents may be delivered by facsimile transmission, by electronic mail, or by other electronic transmission, in portable document format (.pdf), facsimile format, or other electronic format, all with the same force and effect as if the same was a fully executed and delivered original counterpart. Each party to this Agreement and the other Loan Documents (a) agrees that it will be bound by its own Electronic Signature (as such term is defined immediately below), (b) accepts the Electronic Signature of each other party to this Agreement, and (c) agrees that such Electronic Signatures shall be the legal equivalent of manual signatures. The term “Electronic Signature” means (i) the signing party’s manual signature on a signature page, converted by the signing party (or its agent) to facsimile or digital form (such as a .pdf file) and received from the customary email address or customary facsimile number of the signing party (or its counsel or representative), or other mutually agreed-upon authenticated source; or (ii) the signing party’s digital signature executed using a mutually agreed-upon digital signature service provider and digital signature process. The Administrative Agent may, at its option, create one or more copies of this Agreement and any other Loan Document (other than the Note) in an electronic form (“Electronic Copy”), which shall be deemed created in the ordinary course of the Administrative Agent’s business, and (other than the Note) destroy the original paper document. The Administrative Agent may also require that any such documents and signatures be confirmed by a manually signed original thereof; provided, however, that the failure to request or deliver the same shall not limit the effectiveness of any permitted facsimile, portable document format (.pdf), electronic record or Electronic Signature. The words “execution,” “executed,” “signed,” “signature,” and words of like import in this paragraph shall, for the avoidance of doubt, be deemed to include Electronic Signatures and the use and keeping of records in electronic form, each of which shall have the same legal effect, validity and enforceability as manually executed signatures and the use of paper records and paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, state laws based on the Uniform Electronic Transactions Act, the New York State Electronic Signatures and Records Act, the Illinois Electronic Commerce Security Act, or any other similar state law.

15.14 Satisfaction of Commitment Letter. The Loan being made pursuant to the terms hereof and of the other Loan Documents is being made in satisfaction of Administrative Agent’s and each of the Lenders’ obligations under the Commitment Letter. The terms, provisions and conditions of this Agreement and the other Loan Documents supersede the provisions of the Commitment Letter.

15.15 Time Of the Essence. Time is of the essence of each provision of this Agreement and each other Loan Document.

15.16 No Oral Change. This Loan Agreement and each of the other Loan Documents may only be amended, terminated, extended or otherwise modified by a writing signed by the party against which enforcement is sought (except no such writing shall be required for any party which, pursuant to a specific provision of any Loan Document, is required to be bound by changes without such party’s assent). In no event shall any oral agreements, promises, actions, inactions, knowledge, course of conduct, course of dealings or the like be effective to amend, terminate, extend or otherwise modify this Loan Agreement or any of the other Loan Documents.

15.17 Monthly Statements. While the Administrative Agent may issue invoices or other statements on a monthly or periodic basis (a “Statement”), it is expressly acknowledged and agreed that: (i) the failure of the Administrative Agent to issue any Statement on one or more occasions shall not affect the Borrower’s obligations to make payments under the Loan Documents as and when due; (ii) the inaccuracy of any Statement shall not be binding upon Lenders and so the Borrower shall always remain obligated to pay the full amount(s) required under the Loan Documents as and when due notwithstanding any provision to the contrary contained in any Statement; (iii) all Statements are issued for information purposes only and shall never constitute any type of offer, acceptance, modification, or waiver of the Loan Documents or any of Lenders’ rights or remedies thereunder; and (iv) in no event shall any Statement serve as the basis for, or a component of, any course of dealing, course of conduct, or trade practice which would modify, alter, or otherwise affect the express written terms of the Loan Documents.

15.18 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby, the Borrower and each other Loan Party acknowledges and agrees that: (i) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are arm's-length commercial transactions between the Borrower, each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent and the Arranger, on the other hand, and the Borrower and each other Loan Party is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); and (ii) the Administrative Agent and the Arranger have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Borrower and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Borrower and the other Loan Parties hereby waives and releases, to the fullest extent permitted by Law, any claims that it may have against the Administrative Agent and the Arranger with respect to any breach or alleged breach of agency or fiduciary duty. The Administrative Agent, each Lender and their respective affiliates may have economic interests that conflict with those of the Loan Parties, their stockholders and/or their affiliates.

15.19 Beneficial Ownership/USA PATRIOT Act. Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies the Borrower and each other Loan Party, which information includes the name and address of the Borrower and each other Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower and each other Loan Party in accordance with the Act. The Borrower shall, promptly following a written request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act and the Beneficial Ownership Regulation.

15.20 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates, auditors, consultants and to its and its Affiliates' respective partners, directors, officers, employees, agents, trustees, advisors and representatives to the extent such parties require such information in connection with the transactions contemplated by this Agreement (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the written consent of the Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than a Loan Party or an Affiliate of a Loan Party. In addition, each of the Administrative Agent and the Lenders may disclose the existence of this Agreement and the information about this Agreement to service providers to the Administrative Agent and the Lenders in connection with the administration and management of this Agreement and the other Loan Documents.

For purposes of this Section, “Information” means all information received from the Borrower, any Subsidiary or any other Loan Party relating to the Borrower, any Subsidiary, or any other Loan Party or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent and the Lenders acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

15.21 Acknowledgment Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, “QFC Credit Support”, and each such QFC, a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 15.21 the following terms have the following meanings:

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Covered Entity” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

[The balance of this page is intentionally left blank]

IN WITNESS WHEREOF this Agreement has been duly executed and delivered as of the date first written above.

BORROWER:

CEDAR REALTY TRUST PARTNERSHIP, L.P.,
a Delaware limited partnership

By: Cedar Realty Trust, Inc., a Maryland corporation, its general partner

By: /s/ Jennifer Bitterman

Name: Jennifer Bitterman

Title: Chief Financial Officer

[Signature page to Loan Agreement]

ADMINISTRATIVE AGENT:

KEYBANK NATIONAL ASSOCIATION

By: /s/ Tom Schmitt

Name: Tom Schmitt

Title: Senior Relationship Manager

[Signature page to Loan Agreement]

LENDER:

KEYBANK NATIONAL ASSOCIATION

By: /s/ Tom Schmitt

Name: Tom Schmitt

Title: Senior Relationship Manager

[Signature page to Loan Agreement]
