As filed with the Securities and Exchange Commission on September 1, 2023

Registration No. 333-

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

FORM S-11
FOR REGISTRATION UNDER THE SECURITIES ACT OF 1933
OF SECURITIES OF CERTAIN REAL ESTATE COMPANIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXPLANATORY NOTE

The Registrant previously filed a registration statement on Form S-3 (File No. 333-213294), which the Securities and Exchange Commission declared effective on September 6, 2016, and a registration statement on Form S-11, as amended (File No. 333-256699), which the Securities and Exchange Commission declared effective on July 21, 2021, registering shares of Series D Cumulative Convertible Preferred Stock (the "Series D Preferred Stock"). After September 21, 2023, the Series D Preferred Stock will become redeemable at the option of its holders (the "Series D Preferred Holders"); the Series D Preferred Stock is convertible at any time at the option of the Series D Preferred Holders. This Registration Statement registers shares of the Registrant's common stock, par value $0.01, issuable upon redemption and conversion of the Series D Preferred Stock.

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

SUBJECT TO COMPLETION
PRELIMINARY PROSPECTUS DATED SEPTEMBER 1, 2023

PROSPECTUS

Wheeler Real Estate Investment Trust, Inc.

101,100,000 Shares of Common Stock

This prospectus relates to the issuance from time to time by Wheeler Real Estate Investment Trust, Inc. (the "Company," "our", "we" or "us") of up to **101,100,000** shares of our common stock, par value $0.01 ("Common Stock").

After September 21, 2023 (the "Series D Redemption Eligibility Date"), the holders (the "Series D Preferred Holders") of outstanding shares of our Series D Cumulative Convertible Preferred Stock (the "Series D Preferred Stock") will have the right, at their option, to require us to redeem their Series D Preferred Stock (the "Redemption") at a redemption price of $25.00 per share, plus the amount of all accrued but unpaid dividends to and including the redemption date (the "Redemption Price"). The Redemption Price is payable by us, at our option, in cash or in equal value of shares of Common Stock, or in any combination of cash and shares of Common Stock.The Company intends to settle redemptions of Series D Preferred Stock in shares of Common Stock.

Further, the Series D Preferred Stock is convertible, in whole or in part, at any time, at the option of the Series D Preferred Holders, into shares of Common Stock at a conversion price of $169.60 per share of Common Stock (a "Conversion").

For purposes of estimating the number of shares of Common Stock covered by this Prospectus, we included: (a) 100,000,000 shares, representing approximately 325% of the number of shares of Common Stock issuable upon the Redemption, determined as if all outstanding shares of the Series D Preferred Stock were redeemed in full on the first redemption date (which will occur on October 5, 2023) at a Redemption Price of $25.00 per share plus an amount equal to all accrued but unpaid dividends to and including such redemption date (and assuming, for the purpose of calculating such estimated number of shares, the price per share of Common Stock equal to $4.05 representing the volume weighted average of the closing sales price ("VWAP") for the ten consecutive trading days immediately preceding the date of this Prospectus); plus (b) 1,100,000 shares, representing approximately 150% of the number of shares of Common Stock issuable upon conversion of the Series D Preferred Stock determined as if all outstanding shares of the Series D Preferred Stock were converted in full at a conversion price of $169.60 per share of Common Stock.

Because the shares of our Common Stock covered by this Prospectus are to be issued upon the Redemption and Conversion of the Series D Preferred Stock, we will not receive any proceeds from the issuance of shares of Common Stock upon the Redemption and Conversion of the Series D Preferred Stock.

Our Common Stock is listed on the Nasdaq Capital Market under the symbol "WHLR". As of the close of business on August 31, 2023, 980,857 shares of Common Stock were issued and outstanding. On August 31, 2023, the last reported sales price of Common Stock was $3.91 per share.

Investing in our Common Stock involves a high degree of risk. You should review carefully the risks and uncertainties described under the heading "*Risk Factors*" beginning on page 4 of this Prospectus, and under similar headings in any amendments or supplements to this Prospectus.

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

The date of this Prospectus is [●], 2023.

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ABOUT THIS PROSPECTUS

This Prospectus forms part of a Registration Statement that we filed with the Securities and Exchange Commission ("SEC") and that includes exhibits that provide more detail of the matters discussed in this Prospectus. You should read this Prospectus and the related exhibits filed with the SEC, together with the additional information described under the headings "*Where You Can Find More Information*" on page 70 and "*Incorporation by Reference*" on page 71 before making your investment decision.

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

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

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Prospectus contains forward-looking statements that are subject to risks and uncertainties. These forward-looking statements are not historical facts but are the intent, belief or current expectations of our management based on its knowledge and understanding of our business and industry. Forward-looking statements are typically identified by the use of terms such as "may," "will," "should," "potential," "predicts," "anticipates," "expects," "intends," "plans," "believes," "seeks," "estimates," or the negative of such terms and variations of these words and similar expressions. These statements are not guarantees of future performance and are subject to risks, uncertainties and other factors, some of which are beyond our control, are difficult to predict and could cause actual results to differ materially from those expressed or forecasted in the forward-looking statements.

Factors that could cause actual results to differ materially from any forward-looking statements made in this Prospectus include:

- the adverse effect any future pandemic, endemic or outbreak of infectious disease, and mitigation efforts to control their spread;
- the use of and demand for retail space;
- general and economic business conditions, including those affecting the ability of individuals to spend in retail shopping centers and/or the rate and other terms on which we are able to lease our properties;
- tenant bankruptcies;
- the state of the U.S. economy generally, or specifically in the Southeast, Mid-Atlantic and Northeast where our properties are geographically concentrated;
- consumer spending and confidence trends;
- availability, terms and deployment of capital;
- anticipated substantial dilution of our common stock, and steep declines in its stock price,after the Series D Redemption Eligibility Date that may result from the Redemption;
- the degree and nature of our competition;
- changes in governmental regulations, accounting rules, tax rates and similar matters;
- adverse economic or real estate developments in our markets of South Carolina, Georgia, Virginia, Pennsylvania, North Carolina, Massachusetts, New Jersey, Florida, Connecticut, Kentucky, Tennessee, Alabama, Maryland, West Virginia, and Oklahoma;
- the ability and willingness of the Company's tenants and other third parties to satisfy their obligations under their respective contractual arrangements with the Company;
- the ability and willingness of the Company's tenants to renew their leases with the Company upon expiration, the Company's ability to re-lease its properties on the similar or better terms in the event of nonrenewal or in the event the Company exercises its right to replace an existing tenant, and obligations the Company may incur in connection with the replacement of an existing tenant;
- litigation risks;
- increases in the Company's financing and other costs as a result of changes in interest rates and other factors;
- the Company's ability to maintain its listing on the Nasdaq Capital Market;
- the effects of the one-for-ten reverse stock split of our Common Stock, which we refer to as the "Reverse Stock Split", on the trading market of our Common Stock;
- inability to successfully integrate the acquisition of Cedar Realty Trust, Inc. ("Cedar");

- changes in our ability to obtain and maintain financing;

- damage to the Company's properties from catastrophic weather and other natural events, and the physical effects of climate change;
- information technology security breaches;
- the Company's ability and willingness to maintain its qualification as a REIT;
- the ability of our operating partnership, Wheeler REIT, L.P. (the "Operating Partnership"), and each of our other partnerships and limited liability companies to be classified as partnerships or disregarded entities for federal income tax purposes;
- the impact of e-commerce on our tenants' business; and
- inability to generate sufficient cash flows due to market conditions, competition, uninsured losses, changes in tax or other applicable laws.

The risks and uncertainties included here are not exhaustive. Other sections of this Prospectus, including "*Risk Factors*" on page 4, include additional factors that could affect our business and financial performance. Moreover, we operate in a rapidly changing and competitive environment. New risk factors emerge from time to time, and it is not possible for management to predict all such risk factors.

Further, it is not possible to assess the effect of all risk factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. Given these risks and uncertainties, investors should not place undue reliance on forward-looking statements as a prediction of actual results. In addition, we disclaim any obligation to update any forward-looking statements to reflect events or circumstances that occur after the date of this Prospectus.

PROSPECTUS SUMMARY

This summary contains basic information about us and does not contain all of the information that you should consider before investing. You should read this entire Prospectus carefully, including the section entitled "Risk Factors" beginning on page 4 and our financial statements and the notes thereto incorporated by reference in this Prospectus, before making an investment decision.

We effected a one-for-ten Reverse Stock Split, effective as of 5:00 p.m., Eastern Standard Time, on August 17, 2023.The Reverse Stock Split applied to all of the outstanding shares of Common Stock and therefore did not affect any particular stockholder's relative ownership percentage of shares of Common Stock, except for de minimis changes resulting from the payment of cash in lieu of fractional shares.

Unless the context otherwise requires or indicates, references to the "Company", "we", "our" or "us" refers to Wheeler Real Estate Investment Trust, Inc., a Maryland corporation, together with its consolidated subsidiaries, including the Operating Partnership, a Virginia limited partnership of which we are the sole general partner.

Overview

Wheeler Real Estate Investment Trust, Inc., a Maryland corporation, is a fully integrated, self-managed commercial real estate investment company that owns, leases and operates income-producing retail properties with a primary focus on grocery-anchored centers. We have targeted competitively protected properties located within developed areas, commonly referred to as in-fill, that possess minimal competition risk and are surrounded by communities that have strong demographics and dynamic, diversified economies that will continue to generate jobs and future demand for commercial real estate.

As of June 30, 2023, we own a portfolio consisting ofseventy-five retail shopping centers and four undeveloped properties, totaling 8,172,535 leasable square feet which is 92.6% leased (our "operating portfolio"), and four undeveloped land parcels totaling approximately 61 acres. The properties are geographically located in the Mid-Atlantic, Southeast and Northeast, which markets represented approximately 45%, 40% and 15%, respectively, of the total annualized base rent of the properties in its portfolio as of June 30, 2023.

Our corporate office is located at 2529 Virginia Beach Boulevard, Virginia Beach, Virginia 23452. Our telephone number is (757) 627-9088. Our registrar, stock transfer agent, redemption agent and conversion agent (the "Agent") is Computershare, Inc. The Agent may be contacted at 480 Washington Blvd, Jersey City, NJ 07310 or through its website, www.computershare.com.

Reverse Stock Split

On August 17, 2023, the Company effected the Reverse Stock Split. At the market open on August 18, 2023, the Common Stock began trading on the Nasdaq Capital Market on a split-adjusted basis under a new CUSIP number. As a result of the Reverse Stock Split, the number of outstanding shares of Common Stock was reduced to approximately 980,857 shares based on the shares of Common Stock outstanding as of August 17, 2023. The Reverse Stock Split did not affect the relative voting or other rights that accompany the shares of Common Stock, except to the extent that it results from a stockholder receiving cash in lieu of fractional shares. There was no change to the number of authorized shares of the Common Stock as a result of the Reverse Stock Split. Pursuant to the Maryland General Corporation Law ("MGCL"), stockholder approval was not required to effect the Reverse Stock Split, and it was approved solely by the Company's Board of Directors (the "Board of Directors").

Except as otherwise provided or where the context otherwise requires, all share and per share information and conversion prices appearing in this Prospectus have been adjusted to give effect to the Reverse Stock Split. However, our Annual Report on Form 10-K for the year ended December 31, 2022 filed with the SEC on March 2, 2023, any subsequent quarterly report on Form 10-Q, and all other documents incorporated by reference into this Prospectus that were filed prior to August 18, 2023, do not give effect to the Reverse Stock Split.

The Reverse Stock Split was effected to help the Company regain compliance with the minimum bid price requirement set forth in Nasdaq Listing Rule 5550(a)(2) (the "Bid Price Rule") for continued listing.

Redemption of Series D Preferred Stock

Under the Company's Articles Supplementary relating to the Series D Preferred Stock (the "Series D Articles Supplementary"), after the Series D Redemption Eligibility Date, the Series D Preferred Holders will have the right, at their option, to require the Company to redeem any or all of their shares of Series D Preferred Stock.

The Company intends to settle redemptions of Series D Preferred Stock in the shares of Common Stock covered by this Prospectus.

Stockholders seeking redemption of their Series D Preferred Stock will be required to complete the Holder Redemption Notice and the Stock Ownership Statement and send the two forms to the Company and the Agent. The Redemption Price for any Redemption Notice and Stock Ownership Statement received on or before the 25th day of any month (and after the 25th day of the previous month) will be paid on the 5th day of the following month or, if such date is not a business day, on the next succeeding business day (which date is referred to in this Prospectus as the "Holder Redemption Date"). Delivery of Common Stock will be made as soon as possible after the Holder Redemption Date in accordance with customary settlement cycles.

The number of shares of Common Stock to be issued per share of Series D Preferred Stock will be equal to the quotient obtained by dividing (i) the sum of the $25.00 liquidation preference per share of Series D Preferred Stock plus an amount equal to all accrued and unpaid dividends thereon to and including the Holder Redemption Date (unless the Holder Redemption Date is after a dividend record date of December 30th, March 30th, June 30th or September 30th (each, a "Dividend Record Date") and prior to the corresponding dividend payment date of January 15th, April 15th, July 15th or October 15th (each, a "Dividend Payment Date"), in which case no additional amount for such accrued and unpaid dividend payment shall be included in this sum) by (ii) the VWAP per share of Common Stock for the ten consecutive trading days immediately preceding, but not including, the Holder Redemption Date as reported on the Nasdaq Capital Market.

Conversion of Series D Preferred Stock

Under the Series D Articles Supplementary, the Series D Preferred Stock is convertible, in whole or in part, at any time, at the option of the Series D Preferred Holders, into authorized but previously unissued Common Stock at the currently effective conversion price of $169.60 per share of Common Stock, subject to adjustment. Conversion of shares of the Series D Preferred Stock may be effected by delivering to the Agent such shares, together with written notice of conversion and other required documentation. Each conversion will be deemed to have been effected on the date immediately following the next Dividend Record Date after which written notice of conversion and other required documentation will have been surrendered and notice will have been received by the Company. Fractional shares of Common Stock will not be issued upon conversion but, in lieu thereof, the Company will pay a cash adjustment based on the closing price of the Common Stock on the trading day immediately preceding the conversion date.

The Issuance

Issuer:	Wheeler Real Estate Investment Trust, Inc.
Common Stock covered by this Prospectus	We are registering the issuance from time to time by us of up to **101,100,000** shares of Common Stock issuable upon the Redemption and Conversion of the Series D Preferred Stock. For purposes of estimating the number of shares of Common Stock covered by this Prospectus, we included: (a) 100,000,000 shares, representing approximately 325% of the number of shares of Common Stock issuable upon the Redemption, determined as if all outstanding shares of the Series D Preferred Stock were redeemed in full on the first Holder Redemption Date (which will occur on October 5, 2023) at a Redemption Price of $25.00 per share plus an amount equal to all accrued but unpaid dividends to and including such Holder Redemption Date (and assuming, for the purpose of calculating such estimated number of shares, the price per share of Common Stock equal to $4.05 representing the VWAP for the ten consecutive trading days immediately preceding the date of this Prospectus); plus (b) 1,100,000 shares, representing approximately 150% of the number of shares of Common Stock issuable upon Conversion of the Series D Preferred Stock determined as if all outstanding shares of the Series D Preferred Stock were converted in full at a conversion price of $169.60 per share of Common Stock.
Common Stock to be outstanding after this issuance	100,980,857 shares of Common Stock (assuming full Redemption of the Series D Preferred Stock as stated above), or 2,080,857 shares of Common Stock (assuming full Conversion of the Series D Preferred Stock as stated above), as applicable. The number of shares of Common Stock shown above to be outstanding after this issuance is based on the 980,857 shares outstanding as of August 31, 2023, after the Reverse Stock Split was effective on August 17, 2023.
Use of proceeds	Because the shares of our Common Stock covered by this Prospectus are to be issued upon the Redemption and Conversion of the Series D Preferred Stock, we will not receive any proceeds from the issuance of shares of Common Stock upon the Redemption or Conversion of the Series D Preferred Stock.
Risk factors	This investment involves a high degree of risk. See "*Risk Factors*" for a discussion of factors which you should consider carefully before making an investment decision.

Listing	Our Common Stock trades on the Nasdaq Capital Market under the symbol “WHLR”.

RISK FACTORS

Risk Factor Summary

- We effected a Reverse Stock Split which may adversely impact the market price of our Common Stock.
- The Reverse Stock Split may not have the desired effect on our Common Stock price, and we can provide no assurance that we will be able to comply with the continued listing requirements of the Nasdaq Capital Market over time and that our Common Stock will continue to be listed on the Nasdaq Capital Market.
- Our portfolio of properties is dependent upon regional and local economic conditions and is geographically concentrated in the Southeast, Mid-Atlantic and Northeast, which may cause us to be more susceptible to adverse developments in those markets than if we owned a more geographically diverse portfolio.
- The issuance of a substantial amount of our Common Stock as a result of the Redemption and Conversion of the Series D Preferred Stock will result in substantial dilution of Common Stock and could cause a steep decline in its stock price.
- The majority of our properties are retail shopping centers and depend on anchor stores or major tenants to attract shoppers and could be adversely affected by the loss of, or a store closure by, one or more of these tenants.
- We may be unable to renew leases, lease vacant space or re-let space as leases expire, thereby increasing or prolonging vacancies, which could adversely affect our financial condition, results of operations, cash flow and per share trading price of our securities.
- Our growth depends on external sources of capital that are outside of our control and may not be available to us on commercially reasonable terms or at all, which could limit our ability, among other things, to meet our capital and operating needs.
- Our performance and value are subject to risks associated with real estate assets and the real estate industry, including local oversupply, reduction in demand or adverse changes in financial conditions of buyers, sellers and tenants of properties, which could decrease revenues or increase costs, which would adversely affect our financial condition, results of operations, cash flow, and the per share trading price of our securities.
- We may incur significant costs complying with various federal, state and local laws, regulations and covenants that are applicable to our properties.
- Our Board of Directors may change our investment and financing policies without stockholder approval and we may become more highly leveraged, which may increase our risk of default under our debt obligations.
- We are a holding company with no direct operations and, as such, we rely on funds received from our Operating Partnership to pay liabilities, and the interests of our stockholders will be structurally subordinated to all liabilities and obligations of our Operating Partnership and its subsidiaries.

Risks Related to Our Common Stock

Our Common Stock is listed on the Nasdaq Capital Market. We can provide no assurance that we will be able to comply with the continued listing requirements of the Nasdaq Capital Market over time and that our Common Stock will continue to be listed on the Nasdaq Capital Market.

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

On August 17, 2023, we effected a one-for-ten Reverse Stock Split of our Common Stock. Following the Reverse Stock Split,the closing bid price of the Common Stock closed above $1.00 for ten consecutive business days from and including August 18, 2023 through August 31, 2023.

On September 1, 2023, we received written confirmation from Nasdaq notifying us that the Company had regained compliance with the Bid Price Rule.

There can be no assurance that we will be able to maintain compliance with the continued listing requirementof the Nasdaq Capital Market. If we fail to maintain compliance with any such continued listing requirements, there can also be no assurance that our Common Stock will not be delisted from the Nasdaq Capital Market in the future. If we fail to maintain compliance, Nasdaq may take steps to delist our Common Stock. If such delisting should occur, it would likely have a negative effect on the value of an investment in our Common Stock and would impair an investor’s ability to sell or purchase our Common Stock when desired. In the event of a delisting, we can provide no assurance that any action taken by us to restore compliance with listing requirements would allow our Common Stock to become listed again, stabilize the market price or improve the liquidity of our Common Stock, prevent our Common Stock from dropping below the Nasdaq minimum bid price requirement, or prevent future non-compliance with the continued listing requirements of the Nasdaq Capital Market.

The reverse stock split may decrease the liquidity of the shares of our Common Stock and could lead to a decrease in our overall market capitalization.

The liquidity of the shares of our Common Stock may be affected adversely by the Reverse Stock Split given the reduced number of shares of our Common Stock that are outstanding following the Reverse Stock Split. The Reverse Stock Split had the effect of increasing the per share trading price of our Common Stock but there is no assurance that the trading price of our Common Stock after the Reverse Stock Split will remain constant in proportion to the reduction in the number of shares of Common Stock outstanding before the Reverse Stock Split. The history of reverse stock splits for other companies is varied, particularly because some investors may view a reverse stock split negatively. We cannot predict the impact of the Reverse Stock Split on the trading price of our Common Stock. Our total market capitalization after the Reverse Stock Split may be lower than our total market capitalization before the Reverse Stock Split.

The effective increase in the number of shares of our Common Stock available for issuance as a result of the Reverse Stock Split could result in further dilution to our existing stockholders.

The Reverse Stock Split alone had no effect on our authorized capital stock, and the total number of authorized shares remains the same as before the Reverse Stock Split. The Reverse Stock Split increased the number of shares of our Common Stock available for issuance by decreasing the number of shares of our Common Stock issued and outstanding. The additional available shares are available for issuance from time to time at the discretion of our Board of Directors when opportunities arise, without further stockholder action or the related delays and expenses, except as may be required for a particular transaction by law, the rules of any exchange on which our securities may then be listed, or other agreements or restrictions. Any issuance of additional shares of our Common Stock would increase the number of outstanding shares of our Common Stock and (unless such issuance was pro-rata among existing stockholders) the percentage ownership of existing stockholders would be diluted accordingly. In addition, any such issuance of additional shares of our Common Stock could have the effect of diluting the earnings per share and book value per share of outstanding shares of our Common Stock.

The issuance of a substantial amount of our Common Stock as a result of the Redemption and Conversion will result in substantial dilution of Common Stock and could cause a steep decline in its stock price.

We cannot predict if, when, and how many Series D Preferred Holders will effect the Redemption or Conversion. Issuance of Common Stock as a result of Redemption and Conversion could result in substantial dilution to our existing stockholders and could cause our Common Stock price to steeply decline.

Adjustment to the conversion price of our 7.00% Subordinated Convertible Notes due 2031, if it occurs as a result of the Redemption, will cause further dilution of Common Stock.

Our 7.00% Subordinated Convertible Notes due 2031 (the "Notes") are convertible, in whole or in part, at any time, at the option of their holders, into shares of Common Stock at a conversion price of $62.50 per share of Common Stock (the "Note Conversion Price") (0.4 common shares for each $25.00 of principal amount of the Notes being converted); provided that if after the Series D Redemption Eligibility Date, the Series D Preferred Holders have required us to redeem (payable in cash or stock) in the aggregate at least 100,000 shares of the Series D Preferred Stock, then the Note Conversion Price will be adjusted to the lower of (i) 55% of the Conversion Price or (ii) a 45% discount to the lowest price at which any Series D Preferred Stock was converted by a Series D Preferred Holder into Common Stock. Issuance of additional Common Stock as a result of such adjustment to the Note Conversion Price could result in further dilution to our existing stockholders.

Our Common Stock ranks junior to the Series A Preferred Stock ("Series A Preferred Stock"), Series B Convertible Preferred Stock ("Series B Preferred Stock") and Series D Preferred Stock with respect to amounts payable in the event of our liquidation, dissolution or winding up.

Our newly issued Common Stock will rank junior to our Series A Preferred Stock, Series B Preferred Stock, and Series D Preferred Stock with respect to the amounts payable in the event of our liquidation, dissolution or winding up. This means that, until the holders of our Series A Preferred Stock, holders of our Series B Preferred Stock, and the Series D Preferred Stock Holders have been paid their liquidation preference in full, no payment will be made to any holder of Common Stock upon the liquidation, dissolution or winding up of the Company. As a result, the value of your investment in our Common Stock may suffer if sufficient funds are not available to first satisfy our obligations to the holders of Series A Preferred Stock, Series B Preferred Stock, and Series D Preferred Stock Holders in the event of our liquidation, dissolution or winding up.

Risks Related to Our Liquidity

Our ability to service all of our indebtedness depends on many factors beyond our control, and if we cannot generate enough cash to service our indebtedness, we may be forced to take other actions to satisfy our obligations under our indebtedness, which may not be successful.

Our ability to make scheduled payments on or to refinance our obligations with respect to our debt depends on our financial condition and operating performance, which is subject to prevailing economic and competitive conditions and to certain financial, business and other factors beyond our control. We may not be able to maintain a level of cash flows from operating activities and future borrowings sufficient to permit us to pay the principal, premium, if any, and interest on our indebtedness. If we are unable to service our debt, we will have to take actions such as reducing or delaying capital investments, selling assets, restructuring or refinancing our debt or seeking additional equity capital, which may be restricted by the terms of our credit agreements. We also may not be able to, if required, effect these actions on commercially reasonable terms, or at all. Because of these and other factors beyond our control, we may be unable to pay the principal, premium, if any, interest or other amounts in our indebtedness.

Our level of debt and the limitations imposed on us by our debt agreements could have significant adverse consequences.

As of June 30, 2023, the Company had approximately $488 million of indebtedness outstanding, which may expose us to the risk of default under our debt obligations. As of June 30, 2023, approximately $376 million of $488 million of our outstanding indebtedness is guaranteed by our Operating Partnership, and we may incur additional debt to finance future acquisition and development activities. Payments of principal and interest on borrowings may leave us with insufficient cash resources to operate our properties or to pay the dividends currently contemplated or necessary to maintain our REIT qualification. Our level of debt and the limitations imposed on us by our debt agreements could have significant adverse consequences, including the following:

- our cash flow may be insufficient to meet our required principal and interest payments;
- we may be unable to borrow additional funds as needed or on favorable terms, which could, among other things, adversely affect our ability to meet operational needs;
- we may be unable to refinance our indebtedness at maturity or the refinancing terms may be less favorable than the terms of our original indebtedness;
- we may be forced to dispose of one or more of our properties, possibly on unfavorable terms or in violation of certain covenants to which we may be subject;
- we may violate financial covenants in our loan documents, which would entitle the lenders to accelerate our debt obligations; and
- our default under any loan with cross-default provisions could result in a default on other indebtedness.

If any one of these events were to occur, our financial condition, results of operations, cash flow and per share trading price of our securities could be adversely affected. Furthermore, foreclosures could create taxable income without accompanying cash proceeds, which could hinder our ability to meet the REIT distribution requirements imposed by the U.S. Internal Revenue Code of 1986, as amended (the "Code").

Risks Related to Our General Business Operations

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

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

The majority of our properties are retail shopping centers and depend on anchor stores or major tenants to attract shoppers and could be adversely affected by the loss of, or a store closure by, one or more of these tenants.

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

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

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

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

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

As of June 30, 2023, leases representing approximately 0.7% of the square footage and approximately 0.8% of the annualized base rent of the properties in our total portfolio are month-to-month leases or will expire through December 31, 2023, and an additional 9.1% of the square footage of the properties in our total portfolio was available. We cannot assure you that leases will be renewed or that our properties will be re-let at net effective rental rates equal to or above the current average net effective rental rates or that substantial rent abatements, tenant improvements, early termination rights or below-market renewal options will not be offered to attract new tenants or retain existing tenants. If the rental rates for our properties decrease, our existing tenants do not renew their leases or we do not re-let a significant portion of our available space and space for which leases will expire, our financial condition, results of operations, cash flow and per share trading price of our securities could be adversely affected.

We may be unable to identify and complete acquisitions of properties that meet our criteria, which may impede our growth.

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

- we may incur significant costs and divert management attention in connection with evaluating and negotiating potential acquisitions, including ones that we are subsequently unable to complete;

- even if we enter into agreements for the acquisition of properties, these agreements are subject to conditions to closing, which we may be unable to satisfy; and
- we may be unable to finance the acquisition on favorable terms or at all.

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

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

these acquisitions.

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

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

- Acquisitions and our ability to successfully operate the properties we acquire in such acquisitions may be exposed to the following significant risks:
- even if we are able to acquire a desired property, competition from other potential acquirers may significantly increase the purchase price;
- we may acquire properties that are not accretive to our results upon acquisition, and we may not successfully manage and lease those properties to meet our expectations;
- our cash flow may be insufficient to meet our required principal and interest payments or make expected distributions;
- we may spend more than budgeted amounts to make necessary improvements or renovations to acquired properties;
- we may be unable to quickly and efficiently integrate new acquisitions, particularly acquisitions of portfolios of properties, into our existing operations, and as a result our results of operations and financial condition could be adversely affected;
- market conditions may result in higher than expected vacancy rates and lower than expected rental rates; and
- we may acquire properties subject to liabilities and without any recourse, or with only limited recourse, with respect to unknown liabilities such as liabilities for cleanup of undisclosed environmental contamination, claims by tenants, vendors or other persons dealing with the former owners of the properties, liabilities incurred in the ordinary course of business and claims for indemnification by general partners, directors, officers and others indemnified by the former owners of the properties.

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

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

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

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

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

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

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

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

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

Subject to maintaining our qualification as a REIT, we may enter into hedging transactions to protect us from the effects of interest rate fluctuations on floating rate debt. We currently do not have any hedges in place. Our hedging transactions may include entering into interest rate cap agreements or interest rate swap agreements. These agreements involve risks, such as the risk that such arrangements would not be effective in reducing our exposure to interest rate changes or that a court could rule that such an agreement is not legally enforceable. In addition, interest rate hedging can be expensive, particularly during periods of rising and volatile interest rates. Hedging could reduce the overall returns on our investments. Failure to hedge effectively against interest rate changes could materially adversely affect our financial condition, results of operations, cash flow and per share trading price of our securities. In addition, while such agreements would be intended to lessen the impact of rising interest rates on us, they could also

expose us to the risk that the other parties to the agreements would not perform, we could incur significant costs associated with the settlement of the agreements or that the underlying transactions could fail to qualify as highly-effective cash flow hedges under generally accepted accounting principles in the United States of America.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

restrictions could limit our ability to sell an asset at a time, or on terms, that would be favorable absent such restrictions.

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

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

- unsuccessful development or redevelopment opportunities could result in direct expenses to us;

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

These risks could result in substantial unanticipated delays or expenses and, under certain circumstances, could prevent completion of development or redevelopment activities once undertaken, any of which could have an adverse effect on our financial condition, results of operations, cash flow, service our substantial indebtedness, the issuance of Common Stock, and the trading price of our securities.

Our success depends upon our retaining and recruiting key personnel.

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

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

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

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

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

- general market conditions;
- the market’s perception of our growth potential;
- our current debt levels;
- our current and expected future earnings;
- our cash flow and cash distributions; and
- the market price per share of our securities.

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

distributions to our stockholders necessary to maintain our qualification as a REIT.

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

The terms of our Series D Preferred Stock require us to maintain a certain level of asset coverage. More specifically, we are required to maintain an asset coverage percentage of at least 200% on the last business day of each calendar quarter. This percentage is calculated by dividing (i) our total assets plus accumulated depreciation, plus accumulated amortization minus our total liabilities and indebtedness as reported in our financial statements (exclusive of the book value of any outstanding shares of term preferred stock or preferred stock providing for a fixed mandatory redemption date or maturity date ("Redeemable and Term Preferred Stock") by (ii) the aggregate liquidation preference, plus an amount equal to all accrued and unpaid dividends, of the outstanding shares of our Series D Preferred Stock and any outstanding shares of Redeemable and Term Preferred Stock. If we fail to satisfy the Asset Coverage Ratio (as defined in Note 8 to the consolidated financial statements of our 2022 Annual Report on Form 10-K), we must cure the failure during the period that expires at the close of business on the date that is 30 calendar days following the filing date of our Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as applicable, for that quarter. If we fail to cure the failure prior to the Asset Coverage Cure Date (as defined in Note 8 to the consolidated financial statements of our 2022 Annual Report on Form 10-K), the terms of our Series D Preferred Stock require us to redeem, within 90 calendar days of the Asset Coverage Cure Date, shares of Redeemable and Term Preferred Stock, which may include Series D Preferred Stock, at least equal to the lesser of (i) the minimum number of shares of Redeemable and Term Preferred Stock that will result in us having an Asset Coverage Ratio of at least 200% and (ii) the maximum number of shares of Redeemable and Term Preferred Stock that can be redeemed solely out of funds legally available for such redemption.

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

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

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

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

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

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

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

- Responding to proxy contests is costly and time-consuming, is a significant distraction for our board of directors, management and employees, and diverts the attention of our board of directors and senior management from the pursuit of our business strategy, which could adversely affect our results of operations and financial condition;

- Perceived uncertainties as to our future direction, our ability to execute on our strategy, or changes to the composition of our Board of Directors or senior management team, including our CEO, may lead to the perception of a change in the direction of our business, instability or lack of continuity which may be exploited by our competitors, and may result in the loss of potential business opportunities and make it more difficult to attract and retain qualified personnel and business partners;

- The expenses for legal and advisory fees and administrative and associated costs incurred in connection with responding to proxy contests and any related litigation may be substantial; and

- We may choose to initiate, or may become subject to, litigation as a result of the proxy contests or matters arising from the proxy contests, which would serve as a further distraction to our Board of Directors, management and employees and would require us to incur significant additional costs.

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

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

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

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

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

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

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

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

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

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

Risks Related to the Real Estate Industry

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

property damage or health concerns arise.

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

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

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

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

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

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

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

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

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

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

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

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

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

In addition, federal and state laws and regulations, including laws such as the ADA and the Fair Housing Amendment Act of 1988 (the "FHAA"), impose further restrictions on our properties and operations. Under the ADA and the FHAA, all public accommodations must meet federal requirements related to access and use by disabled persons. Some of our properties may currently be in non-compliance with the ADA or the FHAA. If one or more of the properties in our portfolio is not in compliance with the ADA, the FHAA or any other regulatory requirements, we may be required to incur additional costs to bring the property into compliance and we might incur governmental fines or the award of damages to private litigants. In addition, we do not know whether existing requirements will change or whether future requirements will require us to make significant unanticipated expenditures that will adversely impact our financial condition, results of operations and cash flow.

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

We have 4 undeveloped parcels of land. The risks inherent in owning land increase as demand or rental rates for office, retail or multifamily properties decreases. Real estate markets are uncertain, and as a result, the value of undeveloped land can fluctuate depending on prospective uses or intended developments. In addition, carrying costs, can be significant and can result in losses or reduced profitability. If there are subsequent changes in the fair value of our undeveloped land parcels that cause us to determine that the fair value of our undeveloped land parcels is less than their carrying basis reflected in our financial statements plus estimated costs to sell, we may be required to take future impairment charges which would reduce our net income and could materially and adversely affect our results of operations.

Risks Related to Our Organization Structure

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

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

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

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

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

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

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

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

- actual receipt of an improper benefit or profit in money, property or services (and then only for the value of the benefit or profit received); or
- a judgment or final adjudication adverse to a director or offer based upon a finding of active and deliberate dishonesty by the director or officer that was material to the cause of action adjudicated.

Accordingly, in the event that actions taken in good faith by any of our directors or officers impede the performance of our company, your ability to recover damages from such director or officer will be limited.

Further, we have entered into separate indemnification agreements with each of our directors and officers. As a result, you and we may have more limited rights against our directors or officers than might otherwise exist under common law, which could reduce your and our recovery from these persons if they act in a manner that causes us to incur losses.

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

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

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

Our Charter and bylaws contain provisions that may delay or prevent a change of control transaction.

Our Charter contains 9.8% ownership limits. For the purpose of preserving our REIT qualification, our Charter prohibits direct or constructive ownership by any person of more than (i) 9.8% of the total number or value (whichever is more restrictive) of the outstanding shares of our Common Stock, or (ii) 9.8% of the value of the outstanding shares of any classes or series of stock, of the Company, unless our Board of Directors grants a waiver.

Our Charter's constructive ownership rules are complex and may cause stock owned actually or constructively by a group of related individuals and/or entities to be deemed to be constructively owned by one individual or entity. As a result, the acquisition of less than 9.8% of any class or series of our stock by an individual or entity could nevertheless cause that individual or entity to own constructively in excess of 9.8% of a class or series of outstanding stock, and thus be subject to our Charter's ownership limit. Any attempt to own or transfer shares of our stock in excess of the ownership limit without the consent of our Board of Directors will be void, and could result in the shares being automatically transferred to a charitable trust.

Our bylaws require a stockholder who desires to nominate a person for election to our Board of Directors and/or to make proposals to be considered at an annual meetings of stockholders to comply with strict notice requirements. These bylaw provisions could make it more difficult for a stockholder's director nominee to be elected or for such stockholder's proposal to be voted on at an annual meeting.

Our Charter permits our Board of Directors to issue shares of stock without stockholder approval and to create and issue a class or series of common stock or preferred stock without stockholder approval.

Our Charter empowers our Board of Directors, without stockholder approval, to issue authorized shares of stock and to amend our Charter from time to time to increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class or series that the Company has authority to issue. In addition, our Charter authorizes our Board of Directors to classify and reclassify authorized but unissued shares of stock of any class or series of stock by setting, fixing, eliminating, or altering in any one or more respects the preferences, rights, voting powers, restrictions and qualifications of, dividends on, and redemption, conversion, exchange, and other rights of, such stock. Our Board of Directors could use these powers to issue shares of stock having terms favorable to management or to a person or persons affiliated with or otherwise friendly to management. The issuance of any such classes or series of stock could have the effect of delaying or preventing a change of control transaction that might otherwise be in the best interests of our stockholders.

Certain provisions of Maryland law could inhibit changes in control.

Certain provisions of the MGCL may have the effect of inhibiting a third party from making a proposal to acquire us or impeding a change of control that could provide our stockholders with the opportunity to realize a premium over the then-prevailing market price of our Common Stock, including:

- "business combination" provisions that, subject to limitations, prohibit certain business combinations between us and an "interested stockholder" (defined generally as any person who beneficially owns 10% or more of the voting power of our outstanding voting stock), or an affiliate thereof, for five years after the most recent date on which the stockholder becomes an interested stockholder, and thereafter imposes special appraisal rights and supermajority voting requirements on these combinations; and

- "control share" provisions that provide that holders of "control shares" of our company (defined as voting shares which, when aggregated with all other shares owned or controlled by the stockholder, entitle the stockholder to exercise one of three increasing ranges of voting power in electing directors) acquired in a "control share acquisition" (defined as the direct or indirect acquisition of ownership or control of issued and outstanding "control shares") have no voting rights except to the extent approved by our stockholders by the affirmative vote of at least two-thirds of all the votes entitled to be cast on the matter, excluding all interested shares.

The statute permits various exemptions from its provisions, including business combinations that are exempted by a board of directors prior to the time that the "interested stockholder" becomes an interested stockholder.

Risks Related to Our Acquisition of Cedar Realty Trust, Inc.

We may be unable to integrate Cedar successfully or realize expected synergies or other benefits.

Our recently completed acquisition of Cedar has placed significant demands on our management and our operational and financial resources. Acquisitions involve numerous risks, including:

- difficulties in assimilating and integrating the operations, technologies and properties acquired;

- the diversion of management's attention from other business concerns;

- current operating and financial systems and controls may be inadequate to deal with the growth;

- the risk of not realizing all of the anticipated operational efficiencies or other anticipated strategic and financial benefits of the merger within the expected timeframe or at all;

- potential unknown liabilities and unforeseen increased expenses associated with the acquisition, and

- performance shortfalls as a result of the diversion of management's attention caused by completing the acquisition and integrating the companies' operations.

For all these reasons, it is possible that the Cedar integration process could result in the distraction of our management, the disruption of the ongoing business, or inconsistencies in the combined operations, any of which could adversely affect the ability of the Company to achieve the anticipated benefits of the acquisition, or could otherwise adversely affect the business and financial results of the Company.

Risks Related to Our Status as a REIT

Failure to qualify as a REIT could have significant adverse consequences to us.

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

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

Any such corporate tax liability could be substantial and would reduce our cash available for, among other things, our operations and payments on our debt obligations. In addition, our failure to qualify as a REIT also could impair our ability to expand our business and raise capital, which could further impact our ability to make payments on our debts.

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

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

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

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

Maintaining our status as a REIT may require us to engage in transactions at unfavorable times under unfavorable terms.

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

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

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

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

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

To qualify as a REIT, we must continually satisfy tests concerning, among other things, the nature and diversification of our assets, the sources of our income, the ownership of our stock, and the amounts we distribute to our stockholders. We may be required to liquidate or forgo otherwise attractive investments to satisfy the asset and income tests or to qualify under certain statutory relief provisions. We also may be required to make distributions to stockholders at disadvantageous times or when we do not have funds readily available for distribution. Accordingly, satisfying the REIT requirements could have an adverse effect on our business results, profitability and ability to execute our business plan. Moreover, if we are compelled to liquidate our investments to meet any of these asset, income or distribution tests, to redeem the Series D Preferred Stock, or to repay obligations to our lenders, we may be unable to comply with one or more of the requirements applicable to REITs or may be subject to a 100% tax on any resulting net gain if such sales constitute prohibited transactions.

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

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

SELECTED FINANCIAL DATA

Reverse Stock Split

On August 17, 2023, we effected the Reverse Stock Split. In connection with the Reverse Stock Split, the total number of authorized shares and the par value per share of the Common Stock remained unchanged at 200,000,000 and $0.01 per share, respectively. Our audited consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2022 filed with the SEC on March 2, 2023 and our unaudited condensed consolidated financial statements included in our Quarterly Reports on Form 10-Q filed with the SEC on May 9, 2023 and August 8, 2023 that are incorporated by reference into this Prospectus are presented without giving effect to the Reverse Stock Split. Except as otherwise provided or where the context otherwise requires, share numbers in this Prospectus reflect the Reverse Stock Split of our Common Stock.

The following selected financial data has been derived from our audited consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2022 and our unaudited condensed consolidated interim financial statements for the quarterly periods ended March 31, 2023 and June 30, 2023 included in our Quarterly Reports on Form 10-Q, as adjusted to reflect the Reverse Stock Split for all periods presented. Our historical results are not indicative of the results that may be expected in the future and results of interim periods are not indicative of the results for the entire year.

AS REPORTED

			AS ADJUSTED FOR 1-FOR-10 REVERSE STOCK SPLIT	
	Years Ended December 31,		**Years Ended December 31,**	
(in thousands, except per share amounts)	**2022**	**2021**	**2022**	**2021**
Net income (loss) attributable to Wheeler REIT common stockholders	(21,510)	(13,240)	(21,510)	(13,240)
Net income (loss) per share, basic	(2.20)	(1.36)	(22.04)	(13.63)
Net income (loss) per share, diluted	(2.20)	(1.36)	(22.04)	(13.63)
Weighted average number of shares outstanding, basic	9,760,704	9,711,944	976,070	971,194
Weighted average number of shares outstanding, diluted	9,760,704	9,711,944	976,070	971,194
Common shares outstanding at the period end	9,793,957	9,720,532	979,396	972,053

	For the Three Months ended March 31, (unaudited)		**For the Three Months ended March 31, (unaudited)**	
	2022	**2021**	**2022**	**2021**
Net income (loss) attributable to Wheeler REIT common stockholders	(6,844)	(1,933)	(6,844)	(1,933)
Net income (loss) per share, basic	(0.70)	(0.20)	(7.04)	(1.99)
Net income (loss) per share, diluted	(0.70)	(0.20)	(7.04)	(1.99)
Weighted average number of shares outstanding, basic	9,720,589	9,704,638	972,059	970,464
Weighted average number of shares outstanding, diluted	9,720,589	9,704,638	972,059	970,464
Common shares outstanding at the period end	9,723,093	9,706,738	972,309	970,674

AS REPORTED

AS ADJUSTED FOR 1-FOR-10 REVERSE STOCK SPLIT

	For the Three Months ended June 30, (unaudited)		For the Three Months ended June 30, (unaudited)	
	2022	2021	2022	2021
Net income (loss) attributable to Wheeler REIT common stockholders	(2,316)	(4,605)	(2,316)	(4,605)
Net income (loss) per share, basic	(0.24)	(0.47)	(2.38)	(4.74)
Net income (loss) per share, diluted	(0.24)	(0.47)	(2.38)	(4.74)
Weighted average number of shares outstanding, basic	9,734,755	9,707,711	973,476	970,771
Weighted average number of shares outstanding, diluted	9,734,755	9,707,711	973,476	970,771
Common shares outstanding at the period end	9,792,713	9,710,414	979,271	971,041

	For the Six Months ended June 30, (unaudited)		For the Six Months ended June 30, (unaudited)	
	2022	2021	2022	2021
Net income (loss) attributable to Wheeler REIT common stockholders	(9,160)	(6,538)	(9,160)	(6,538)
Net income (loss) per share, basic	(0.94)	(0.67)	(9.42)	(6.74)
Net income (loss) per share, diluted	(0.94)	(0.67)	(9.42)	(6.74)
Weighted average number of shares outstanding, basic	9,727,711	9,706,183	972,771	970,618
Weighted average number of shares outstanding, diluted	9,727,711	9,706,183	972,771	970,618
Common shares outstanding at the period end	9,792,713	9,710,414	979,271	971,041

	For the Three Months ended September 30, (unaudited)		For the Three Months ended September 30, (unaudited)	
	2022	2021	2022	2021
Net income (loss) attributable to Wheeler REIT common stockholders	(6,504)	828	(6,504)	828
Net income (loss) per share, basic	(0.66)	0.09	(6.64)	0.85
Net income (loss) per share, diluted	(0.66)	0.09	(6.64)	0.85
Weighted average number of shares outstanding, basic	9,792,815	9,713,125	979,282	971,313
Weighted average number of shares outstanding, diluted	9,792,815	9,713,125	979,282	971,313
Common shares outstanding at the period end	9,793,494	9,713,787	979,349	971,379

AS REPORTED

	For the Nine Months ended September 30, (unaudited)		AS ADJUSTED FOR 1-FOR-10 REVERSE STOCK SPLIT For the Nine Months ended September 30, (unaudited)	
	2022	2021	2022	2021
Net income (loss) attributable to Wheeler REIT common stockholders	(15,664)	(5,699)	(15,664)	(5,699)
Net income (loss) per share, basic	(1.61)	(0.59)	(16.07)	(5.87)
Net income (loss) per share, diluted	(1.61)	(0.59)	(16.07)	(5.87)
Weighted average number of shares outstanding, basic	9,749,651	9,708,588	974,965	970,859
Weighted average number of shares outstanding, diluted	9,749,651	9,708,588	974,965	970,859
Common shares outstanding at the period end	9,793,494	9,713,787	979,349	971,379

	For the Three Months ended March 31, (unaudited)	For the Three Months ended March 31, (unaudited)
	2023	2023
Net income (loss) attributable to Wheeler REIT common stockholders	(5,365)	(5,365)
Net income (loss) per share, basic	(0.55)	(5.48)
Net income (loss) per share, diluted	(0.55)	(5.48)
Weighted average number of shares outstanding, basic	9,794,026	979,403
Weighted average number of shares outstanding, diluted	9,794,026	979,403
Common shares outstanding at the period end	9,800,211	980,021

	For the Three Months ended June 30, (unaudited)	For the Three Months ended June 30, (unaudited)
	2023	2023
Net income (loss) attributable to Wheeler REIT common stockholders	(6,231)	(6,231)
Net income (loss) per share, basic	(0.64)	(6.36)
Net income (loss) per share, diluted	(0.64)	(6.36)
Weighted average number of shares outstanding, basic	9,800,211	980,021
Weighted average number of shares outstanding, diluted	9,800,211	980,021
Common shares outstanding at the period end	9,800,211	980,021

AS REPORTED

	For the Six Months ended June 30, (unaudited) 2023	AS ADJUSTED FOR 1-FOR-10 REVERSE STOCK SPLIT For the Six Months ended June 30, (unaudited) 2023
Net income (loss) attributable to wheeler REIT common stockholders	(11,596)	(11,596)
Net income (loss) per share, basic	(1.18)	(11.84)
Net income (loss) per share, diluted	(1.18)	(11.84)
Weighted average number of shares outstanding, basic	9,797,136	979,714
Weighted average number of shares outstanding, diluted	9,797,136	979,714
Common shares outstanding at the period end	9,800,211	980,021

USE OF PROCEEDS

Because the shares of our Common Stock covered by this Prospectus are to be issued upon the Redemption or Conversion of the Series D Preferred Stock, the Company will not receive any proceeds from the issuance of shares of Common Stock upon the Redemption or Conversion of the Series D Preferred Stock.

POLICIES AND OBJECTIVES WITH RESPECT TO CERTAIN ACTIVITIES

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

Disposition Policy

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

Financing Policies

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

- our leverage levels across the portfolio;
- the purchase price of our investments to be acquired with debt financing;
- impact on financial covenants;
- cost of debt;
- loan maturity schedule;
- the estimated market value of our investments upon refinancing; and
- the ability of particular investments, and our Company as a whole, to generate cash flow to cover expected debt service.

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

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

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

In addition, if we do not have sufficient cash available, we may need to borrow to meet taxable income distribution requirements under the Code. No assurances can be

given that we will obtain additional financings or, if we do, what the amount and terms will be. Our failure to obtain future financing under favorable terms could adversely impact our ability to execute our business strategy. In addition, we may selectively pursue debt financing on our individual properties and debt investments.

Equity Capital Policies

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

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

On June 8, 2023, we paid down $0.6 million of the Notes through an open market purchase of 23,784 units totaling $1.2 million.

We have not engaged in trading, underwriting or agency distribution or sale of securities of other issuers and do not intend to do so.

Conflict of Interest Policy

Our governing documents do not restrict any of our directors, officers, stockholders or affiliates from having a pecuniary interest in an investment or transaction in which we have an interest or from conducting, for their own account, business activities of the type we conduct. Our Code of Business Conduct and Ethics (the "Code of Conduct") contains a Conflicts of Interest policy that provides that our officers, directors and employees are expected to avoid any situation in which their personal interests conflict, or have the appearance of conflicting, with those of the Company. Further, the Conflicts of Interest policy prohibits our officers, directors and employees from obtaining loans from the Company and from working for a competitor as a consultant or board member.

Our Conflicts of Interest policy also provides that a conflict of interest may occur when an officer, director or employee has an ownership or financial interest in another business organization that is doing business with the Company or when such person has an interest in a transaction in which the Company is a participant. These transactions are characterized as "Related Person Transactions". Our Code of Conduct Compliance Officer must be made aware of each such transaction so that such officer can make a judgment as to its appropriateness. The Related Person Transactions Committee of the Board of Directors has the authority to determine if a Related Person Transaction constitutes an impermissible conflict of interest.

In addition, our directors also are subject to provisions of Maryland law that address transactions between Maryland corporations and our directors or other entities in which our directors have a material financial interest. Such transactions may be voidable under Maryland law, unless certain safe harbors are met.

Reporting Policies

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

Investment Policies

Investment in Real Estate or Interests in Real Estate

Our investment objectives are to increase cash flow from operations, achieve sustainable long-term growth and maximize stockholder value. We have not established a specific policy regarding the relative priority of these investment objectives. For a discussion of our properties and our acquisition and other strategic objectives, see "Our Company" and Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations," of the Company's 2022 Annual Report on Form 10-K.

We intend to continue to acquire retail properties in secondary and tertiary markets, with a particular emphasis on grocery-anchored retail centers. Future investment activities will be focused on our target markets, but will not be limited to any specific geographic area or to a specified percentage of our assets. While we may diversify in terms of property locations, size and market or submarket, we do not have any limit on the amount or percentage of our assets that may be invested in any one property or any one geographic area. We intend to engage in such future investment or development activities in a manner that is consistent with our qualification as a REIT for U.S. federal income tax purposes. We do not have a specific policy to acquire assets primarily for capital gain or primarily for income. In addition, we may purchase or lease income-producing commercial and other types of properties for long-term investment, expand and improve the properties we presently own or other acquired properties, or sell such properties, in whole or in part, when circumstances warrant.

We may participate with third parties in property ownership, through limited liability partnerships or other types of co-ownership if we determine that doing so would be the most effective means of owning or acquiring properties. We do not expect, however, to enter into limited liability partnership or other partnership arrangement to make an investment that would not otherwise meet our investment policies. We also may acquire real estate or interests in real estate in exchange for the issuance of Common Stock, preferred stock or options to purchase stock.

Equity investments in acquired properties may be subject to existing mortgage financing and other indebtedness or to new indebtedness which may be incurred in connection with acquiring or refinancing these investments.

Securities of or Interests in Persons Primarily Engaged in Real Estate Activities and Other Issuers

Our investment objectives are to maximize the cash flow of our investments and acquire investments with growth potential. Subject to the asset tests and gross income tests necessary for REIT qualification, we may invest in securities of other REITs, other entities engaged in real estate activities, or securities of other issuers, including in entities that are not engaged in real estate activities.

For a discussion of our investments in entities that are not engaged in real estate activities, see "Investment Securities – Related Party" in the Company's Quarterly Report on Form 10-Q filed with the SEC on August 8, 2023. On September 1, 2023, the Company subscribed for an additional investment in the amount of $3.5 million for limited partnership interests in Stilwell Activist Investments, L.P., a limited partnership formed in the State of Delaware. This additional investment was approved by the Company's Related Person Transactions Committee.

We do not currently have any policy limiting the types of entities in which we may invest or the proportion of assets to be so invested, whether through acquisition of an entity's common stock, limited liability or partnership interests, interests in another REIT or entry into a joint venture.

Policies with Respect to Other Activities

At all times, we intend to make investments in such a manner as to qualify as a REIT, unless because of circumstances or changes in the Code or the applicable Treasury Regulations our Board of Directors determines that it is no longer in our best interest to qualify as a REIT. We have not made any loans to third parties, although we may make loans to third parties in the future. We intend to make our real estate and other investments in such a way that we will not be treated as an investment company under the Investment Company Act.

OUR COMPANY

Overview

Wheeler Real Estate Investment Trust, Inc. (the "Trust", the "REIT", the "Company", "we", "our" or "us") is a Maryland corporation formed on June 23, 2011. The Trust serves as the general partner of the Operating Partnership which was formed as a Virginia limited partnership on April 5, 2012. Substantially, all of our assets are held by, and all of our operations are conducted through, our Operating Partnership. At June 30, 2023, the Company owned 99.05% of the Operating Partnership. The Company is a fully-integrated, self-managed commercial real estate investment company that owns, leases and operates income-producing retail properties with a primary focus on grocery-anchored centers.

On August 22, 2022, the Company completed a merger transaction with Cedar Realty Trust, Inc. ("Cedar" or "CDR"). As a result of the merger, the Company acquired all of the outstanding shares of Cedar's common stock, which ceased to be publicly traded on the New York Stock Exchange ("NYSE"). Cedar's outstanding 7.25% Series B Preferred Stock and 6.50% Series C Preferred Stock remain outstanding and continue to trade on the NYSE. Each outstanding share of common stock of Cedar and outstanding common unit of Cedar Realty Trust Partnership, L.P., the operating partnership of Cedar, held by persons other than Cedar immediately prior to the merger were cancelled and converted into the right to receive a cash payment of $9.48 per share or unit. As a result, Cedar became a subsidiary of the REIT.

On August 17, 2023, the Company effected the Reverse Stock Split. At the market open on August 18, 2023, the Common Stock began trading on the Nasdaq Capital Market on a split-adjusted basis under a new CUSIP number. As a result of the Reverse Stock Split, the number of outstanding shares of Common Stock was reduced to approximately 980,857 shares based on the shares of Common Stock outstanding as of August 17, 2023. The Reverse Stock Split did not affect the relative voting or other rights that accompany the shares of Common Stock, except to the extent that it results from a stockholder receiving cash in lieu of fractional shares. There was no change to the number of authorized shares of the Common Stock as a result of the Reverse Stock Split. Pursuant to the MGCL, stockholder approval was not required to effect the Reverse Stock Split, and it was approved solely by the Board of Directors.

For additional information on recent business developments, see Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations", of the Company's 2022 Annual Report on Form 10-K.

Our corporate office is located at 2529 Virginia Beach Boulevard, Virginia Beach, Virginia 23452. Our telephone number is (757) 627-9088. Our registrar and stock transfer agent is Computershare Trust Company, N.A. and may be contacted at 150 Royall Street, Suite 101, Canton, MA 02021 or their website, www.computershare.com.

Portfolio

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

The Company's portfolio of properties is dependent upon regional and local economic conditions. As of June 30, 2023, we own a portfolio consisting of seventy-nine properties, including seventy-five retail shopping centers, totaling 8,172,535 leasable square feet which is 92.6% leased (our "operating portfolio"), and four undeveloped land parcels totaling approximately 61 acres. The properties are geographically located in the Mid-Atlantic, Southeast and Northeast, which markets represented approximately 45%, 40% and 15%, respectively, of the total annualized base rent of the properties in its portfolio as of June 30, 2023.

No tenant represents greater than approximately 10% of the Company's annualized base rent or 10% of gross leasable square footage. The top 10 tenants account for 23.6% or $17.64 million of annualized base rent and 26.3% or 2.15 million of gross leasable square footage at June 30, 2023.

For a detailed description of our properties, see Part I, Item 2, "Properties", of the Company's 2022 Annual Report on Form 10-K.

Human Capital Management

Information About our Executive Officers

Andrew Franklin, age 42, was appointed as Chief Executive Officer ("CEO") and President in October 2021. He previously served as Interim Chief Executive Officer since July 2021, Chief Operating Officer since February 2018, and Senior Vice President of Operations since January 2017. Mr. Franklin has over twenty-three years of commercial real estate experience. Mr. Franklin is responsible for overseeing the property management, lease administration, and leasing divisions of our growing portfolio of commercial assets. Prior to joining the Company, Mr. Franklin was a partner with Broad Reach Retail Partners where he ran the day-to-day operations of the company, managing the leasing team as well as overseeing the asset, property and construction management of the portfolio with assets totaling $50 million. Mr. Franklin is a graduate of the University of Maryland, with a Bachelor of Science degree in Finance.

Crystal Plum, age 41, was appointed as Chief Financial Officer ("CFO") in February 2020. She most recently served as the Vice President of Financial Reporting and Corporate Accounting for the Company from March 2018 to February 2020 and as Director of Financial Reporting for the Company from September 2016 to March 2018. Prior to that time, she served as Manager at Dixon Hughes Goodman LLP from September 2014 to August 2016 and as Supervisor at Dixon Hughes Goodman LLP from 2008 to September 2014. Ms. Plum has experience reviewing and performing audits, reviews, compilations and tax engagements for a diverse group of clients, as well as banking experience. Ms. Plum is a Certified Public Accountant and has a Bachelor of Science degree in Business Administration - Accounting and Finance from Old Dominion University.

Our Team and Talent

As of June 30, 2023, we have 48 full-time employees. We seek to hire experienced leaders and team members and offer competitive wage and benefit programs. Employees are offered flexibility to meet personal and family needs, which was further expanded when the COVID-19 pandemic began. In addition to medical insurance support, the Company offers wellness programs including free short and long term disability insurance, free basic life insurance policy with accidental death and dismemberment coverage, employee assistance programs that include emotional health support, gym memberships, volunteer time off and tuition assistance. Tuition assistance includes assistance to learn a new language as the Company identifies opportunities to better serve a diverse tenant base.

Business Objectives and Investment Strategy

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

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

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

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

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

- ***Recycling and sensible management of capital structure.*** We intend to sell non-income producing land parcels utilizing sales proceeds to deleverage the balance sheet. In addition, we intend to monetize assets to redeploy the capital to further deleverage and strengthen the balance sheet. In 2021, we sold two land parcels, two properties and an out parcel for a total of $11.51 million net proceeds which were used to reduce outstanding indebtedness. In 2022, thus far we have sold one property for a total of $1.79 net proceeds which were used to reduce outstanding indebtedness. Additional properties may be slated for disposition based upon management's periodic review of our portfolio, and the determination by our Board of Directors.

- **Strategy for Integrating Cedar Assets.** Through integrations of both software and personnel, the increased scale will allow the company to maximize efficiencies both at the property and corporate level. Focusing on our core model of necessity, service and convenience-based retailers, the Cedar assets complement our existing portfolio, further diversifying our tenant credit profiles and micro-market risks.

Company Website Access and SEC Filings

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

Additionally, we make available free of charge through our website http://www.whlr.us our most recent Annual Report on Form 10-K, including our audited consolidated financial statements, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports as soon as reasonably practicable after we electronically file or furnish such materials to the SEC. In addition, we have posted the Charters of our Asset Liability Committee, Audit Committee, Compensation Committee, Executive Committee, Governance and Nominating Committee, Litigation Committee, Related Person Transactions Committee, and Series D Redemption Facilitation Committee, as well as our Insider Trading Policy, Code of Conduct, and Corporate Governance Principles, all under separate headings. The content of our website is not incorporated by reference into this Registration Statement on Form S-11 or in any other report or document we file with the SEC, and any references to our website is intended to be inactive textual references only.

Governmental Regulations Affecting Our Properties

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

Competition

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

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

Climate

Some of our properties could be subject to potential natural or other disasters. In addition, we may acquire properties that are located in areas that are subject to natural disasters, such as earthquakes and droughts. Properties could also be affected by increases in the frequency or severity of tornadoes, hurricanes or other storms, whether such increases are caused by global climate changes or other factors. The occurrence of natural disasters or severe weather conditions can increase investment costs to repair or replace damaged properties, increase operating costs, increase future property insurance costs, and/or negatively impact the tenant demand for lease space. If insurance is unavailable to us, or is unavailable on acceptable terms, or if our insurance is not adequate to cover business interruption or losses from such events, our earnings, liquidity and/or capital resources could be adversely affected. While several of our properties are located in areas that have experienced hurricanes, tornados, severe rain storms, or snow during the past two years, there has been no substantial damage or change in operations related to weather events.

Information Technology and Cyber Security

The Company depends on the proper functioning, availability and security of its information systems, including financial, data processing, communications and operating systems. Several information systems are software applications provided by third parties. Our business is at risk from and may be impacted by cybersecurity attacks, including attempts to gain unauthorized access to our confidential data, and other electronic security breaches. Such cyber attacks can range from individual attempts to gain unauthorized access to our information technology systems to more sophisticated security threats. While we employ a number of measures to prevent, detect and mitigate these threats, there is no guarantee such efforts will be successful in preventing a cyber attack. A cybersecurity attack could compromise the confidential information of our employees, tenants and vendors. A successful attack could disrupt and otherwise adversely affect our business operations.

The Company has incorporated cybersecurity coverage in its insurance policies; however, there is no assurance that the insurance the Company maintains will cover all cybersecurity breaches or that policy limits will be sufficient to cover all related losses. The Company is not aware of any information security breaches over the last two years.

Insurance

The Company carries comprehensive liability, fire, extended coverage, business interruption and rental loss insurance covering all of the properties in its portfolio under an insurance policy, in addition to other coverages, such as trademark and pollution coverage that may be appropriate for certain of its properties. Additionally, the Company carries a directors', officers', entity and employment practices liability insurance policy that covers such claims made against the Company and its directors and officers. The Company believes the policy specifications and insured limits are appropriate and adequate for its properties given the relative risk of loss, the cost of the coverage and industry practice; however, its insurance coverage may not be sufficient to fully cover losses.

Dividend Policy

In March 2018, the Board of Directors suspended the payment of dividends on our Common Stock. The Board of Directors also suspended the quarterly dividends on shares of our Series A Preferred Stock, Series B Preferred Stock and Series D Preferred Stock, beginning with the three months ended December 31, 2018. Dividends were suspended to retain cash flow to pay operating expenses and reduce debt. On November 3, 2021, common stockholders of the Company voted to amend the Charter to remove the cumulative dividend rights of the Series A Preferred Stock and Series B Preferred Stock. Additionally, as the Company has failed to pay cash dividends on the outstanding Series D Preferred Stock, the annual dividend rate on the Series D Preferred Stock has increased to 10.75%; commencing on the first day after the first missed quarterly payment, January 1, 2019 and will continue until such time as the Company has paid all accumulated and unpaid dividends on the Series D Preferred Stock in full. As a result of the dividend suspension on the Series A Preferred Stock, Series B Preferred Stock and Series D Preferred Stock, no dividends may be declared or paid on the Common Stock until all accumulated accrued and unpaid dividends on the Preferred Stocks have been declared and paid in full.

DESCRIPTION OF SECURITIES

The following descriptions are summaries of the material terms of our Charter and bylaws relating to our capital securities. The documents that constitute our Charter and our bylaws are included as exhibits to the registration statement on Form S-11 of which this Prospectus forms a part. Because these descriptions are only summaries, they do not contain all the information that may be important to you. For a complete description of the matters set forth in this section, you should refer to our Charter and bylaws and to the applicable provisions of Maryland law.

General

Our Charter provides that we may issue a maximum of 200,000,000 shares of common stock, $0.01 par value per share, and 15,000,000 shares of preferred stock, without par value per share. There was no change to the number of authorized shares of the Common Stock as a result of the Reverse Stock Split. Our Charter authorizes the Board of Directors, with the approval of a majority of the entire Board of Directors and without any action by our stockholders, to amend our Charter to increase or decrease the aggregate number of authorized shares of stock or the number of authorized shares of any class or series of our stock and to classify and reclassify any authorized but unissued shares of any class or series stock. As of August 29, 2023, and after the Reverse Stock Split was effective on August 17, 2023, 980,857 shares of our common stock, 562 shares of our Series A Preferred Stock, 3,379,142 shares of our Series B Preferred Stock and 3,379,946 shares of our Series D Preferred Stock were issued and outstanding. Our Operating Partnership purchased 71,343 shares of the Series D Preferred Stock on September 22, 2020 from an unaffiliated investor in a privately negotiated transaction. We consider these shares to be retired and they are reflected as such in our consolidated financial statements.

Under Maryland law, stockholders generally are not personally liable for our debts or obligations solely as a result of their status as stockholders.

As of August 29, 2023, and after the Reverse Stock Split was effective on August 17, 2023, there were outstanding 13,566 units of our Operating Partnership, with each unit exchangeable for one share of our Common Stock, or, at our option, the cash value of one share of our common stock.

Common Stock

We are registering the issuance of up to **101,100,000** shares of Common Stock (assuming full Redemption and Conversion of the Series D Preferred Stock). The following description of the Common Stock sets forth the general terms and provisions of the Common Stock. The statements below describing the Common Stock are in all respects subject to and qualified in their entirety by reference to the applicable provisions of our Charter and bylaws. Subject to the preferential rights of any other class or series of stock and to the provisions of our Charter regarding the restrictions on ownership and transfer of our stock, holders of shares of our Common Stock are entitled to receive dividends and other distributions on such shares if, as and when authorized by the Board of Directors out of assets legally available therefor and declared by us and to share ratably in the assets of our company legally available for distribution to our stockholders in the event of our liquidation, dissolution or winding up after payment or

establishment of reserves for all known debts and liabilities of our company.

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

Subject to the provisions of our Charter regarding the restrictions on ownership and transfer of our stock and except as may otherwise be specified in the terms of any class or series of our Common Stock, each outstanding share of our Common Stock entitles the holder to one vote with respect to each matter on which the holders of Common Stock are entitled to vote, including the election of directors. There is no cumulative voting in the election of our directors. Directors are elected by a plurality of all of the votes cast in the election of directors.

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

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

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

On August 31, 2023, the closing price of our Common Stock reported on the Nasdaq Capital Market was $3.91 per share.

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

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

Series A Preferred Stock

Holders of Series A Preferred Stock have the right to receive, only when and as authorized by the Board of Directors and declared by the Company, out of funds legally available for the payment of dividends, cash dividends, at a rate of 9% per annum of the $1,000 liquidation preference per share. The Series A Preferred Stock has no redemption rights. The Company has the right to redeem the shares of Series A Preferred Stock, on a *pro rata* basis, at any time at a redemption price of $1,030 per share, plus all declared and unpaid dividends. Upon any voluntary or involuntary liquidation, dissolution or winding up of the Company, the holders of shares of the Series A Preferred Stock shall be entitled to be paid out of our assets a liquidation preference of $1,000 per share plus an amount equal to any declared and unpaid dividends. The Series A Preferred Stock has no maturity date and will remain outstanding indefinitely unless subject to a mandatory or voluntary conversion as described above. Holders of the Series A Preferred Stock have no voting rights except as provided by law.

Series B Preferred Stock

Holders of Series B Preferred Stock have the right to receive, only when and as authorized by the Board of Directors and declared by the Company, out of funds legally available for the payment of dividends, cash dividends, at a rate of 9% per annum of the $25 liquidation preference per share. The Series B Preferred Stock has no redemption rights. However, the Series B Preferred Stock is subject to a mandatory conversion once the 20-trading day volume-weighted average closing price of our Common Stock exceeds $580 per share; once this weighted average closing price is met, each share of our Series B Preferred Stock will automatically convert into shares of our Common Stock at a conversion price equal to $400.00 per share. In addition, holders of our Series B Preferred Stock also have the option, at any time, to convert shares of our Series B Preferred Stock into shares of our Common Stock at a conversion price of $400.00 per share of Common Stock. Upon any voluntary or involuntary liquidation, dissolution or winding up of the Company, the holders of shares of the Series B Preferred Stock shall be entitled to be paid out of our assets a liquidation preference of $25.00 per share plus an amount equal to any declared and unpaid dividends. The Series B Preferred Stock has no maturity date and will remain outstanding indefinitely unless subject to a mandatory or voluntary conversion as described above. Holders of Series B Preferred Stock have no voting rights except as provided by law.

Series D Preferred Stock

Until September 21, 2023, the Series D Preferred Holders are entitled to receive cumulative cash dividends at a rate of 8.75% per annum of the $25.00 liquidation preference per share, which is equivalent to the fixed annual amount of $2.1875 per share (the "Initial Rate"). Commencing on September 21, 2023, the Series D Preferred Holders will be entitled to cumulative cash dividends at an annual dividend rate of the Initial Rate increased by 2% of the liquidation preference per share, which shall increase by an additional 2% of the liquidation preference per share on each subsequent anniversary thereafter, subject to a maximum annual dividend rate of 14%. Dividends are payable quarterly in arrears on or before each Dividend Payment Date of each year.

The Company may at its option redeem the Series D Preferred Stock for cash at a Redemption Price of $25.00 per share, plus an amount equal to all accrued and unpaid dividends, if any, to and including the Redemption Date.

After the Series D Redemption Eligibility Date, the Series D Preferred Holders will have the right, at their option, to require the Company to redeem any or all of their shares of Series D Preferred Stock. Redemptions can be made at the Redemption Price payable in cash or in equal value of shares of Common Stock, or in any combination thereof, at the Company's option.

The number of shares of Common Stock to be issued per share of Series D Preferred Stock will be equal to the quotient obtained by dividing (i) the sum of the $25.00 liquidation preference per share of Series D Preferred Stock plus an amount equal to all accrued and unpaid dividends thereon to and including the Holder Redemption Date (unless the Holder Redemption Date is after the Dividend Record Date and prior to the corresponding Dividend Payment Date, in which case no additional amount for such accrued and unpaid dividend payment shall be included in this sum) by (ii) the VWAP per share of Common Stock for the ten consecutive trading days immediately preceding, but not including, the Holder Redemption Date as reported on the Nasdaq Capital Market.

The Series D Preferred Stock Holders may convert shares of their Series D Preferred Stock at any time into shares of the Common Stock at a conversion price of $169.60 per share of Common Stock.

The Series D Preferred Stock requires the Company to maintain asset coverage of at least 200%. If we fail to maintain asset coverage of at least 200% calculated by determining the percentage value of (i) our total assets plus accumulated depreciation and accumulated amortization minus our total liabilities and indebtedness as reported in our financial statements prepared in accordance with GAAP (exclusive of the book value of any Redeemable and Term Preferred Stock (defined below)) over (ii) the aggregate liquidation preference, plus an amount equal to all accrued and unpaid dividends, of outstanding shares of our Series D Preferred Stock and any outstanding shares of term preferred stock or preferred stock providing for a fixed mandatory redemption date or maturity date (collectively referred to as "Redeemable and Term Preferred Stock") on the last business day of any calendar quarter ("Asset Coverage Ratio"), and such failure is not cured by the close of business on the date that is 30 calendar days following the filing date of our Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as applicable, for that quarter, or the "Asset Coverage Cure Date", then we will be required to redeem, within 90 calendar days of the Asset Coverage Cure Date, shares of Redeemable and Term Preferred Stock, which may include Series D Preferred Stock, at least equal to the lesser of (i) the minimum number of shares of Redeemable and Term Preferred Stock that will result in us having an Asset Coverage Ratio of at least 200% and (ii) the maximum number of shares of Redeemable and Term Preferred Stock that can be redeemed solely out of funds legally available for such redemption. In connection with any redemption for failure to maintain the Asset Coverage Ratio, we may, in our sole option, redeem any shares of Redeemable and Term Preferred Stock we select, including on a non-pro rata basis. We may elect not to redeem any Series D Preferred Stock to cure such failure as long as we cure our failure to meet the Asset Coverage Ratio by or on the Asset Coverage Cure Date. If shares of Series D Preferred Stock are to be redeemed for failure to maintain the Asset Coverage Ratio, such shares will be redeemed solely in cash at a redemption price equal to $25.00 per share plus an amount equal to all accrued but unpaid dividends, if any, on such shares (whether or not declared) to and including the redemption date.

Dividends on the Series D Preferred Stock cumulate from the end of the most recent dividend period for which dividends have been paid. Dividends on the Series D Preferred Stock cumulate whether or not (i) we have earnings, (ii) there are funds legally available for the payment of such dividends and (iii) such dividends are authorized by the Board of Directors or declared by us. Dividends on the Series D Preferred Stock do not bear interest. Beginning with the fourth quarter 2018 dividend, the Company suspended the Series D Preferred Stock dividend. As such, since January 2019, the Company's Series D Preferred Stock has been accruing unpaid dividends at a rate of 10.75% per annum of the $25.00 liquidation preference per share of Series D Preferred Stock, or at $2.6875 per share per annum.

In general, Series D Preferred Holders have no voting rights. However, if dividends on the Series D Preferred Stock are in arrears for six or more consecutive quarterly periods, the number of directors on the Board of Directors will automatically be increased by two, and holders of shares of the Series D Preferred Stock and the holders of shares of Parity Preferred Stock (as defined in Series D Articles Supplementary) upon which like voting rights have been conferred and are exercisable (voting together as a single class) will be entitled to vote, at a special meeting called upon the written request of the holders of at least 20% of such stock or at our next annual meeting and at each subsequent annual meeting of stockholders, for the election of two additional directors to serve on the Board of Directors (the "Series D Preferred Directors"), until all unpaid dividends on such Series D Preferred Stock and Parity Preferred Stock, if any, have been paid or declared and a sum sufficient for the payment thereof set apart for payment. The Series D Preferred Directors will be elected by a plurality of the votes cast in the election. The Board of Directors is not permitted to fill the vacancies on the Board of Directors as a result of the failure of the holders of 20% of the Series D Preferred Stock and Parity Preferred Stock to deliver such written request for the election of the Series D Preferred Directors. In addition, the Series D Preferred Holders have the right to vote on the issuance of capital stock ranking senior to the Series D Preferred Stock, and on certain amendments or alterations to, or the repeal of, the Charter, including certain changes to the terms of the Series D Preferred Stock. Any such action requires the affirmative vote or consent of the holders of two-thirds of the shares of Series D Preferred Stock issued and outstanding.

RESTRICTIONS ON OWNERSHIP AND TRANSFER

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

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

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

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

- such waiver will not cause or allow five or fewer individuals to actually or beneficially own more than 49% in value of the aggregate of the outstanding shares of all classes and series of our stock; and

- subject to certain exceptions, the person does not and will not own, beneficially or constructively, an interest in a tenant of ours (or a tenant of any entity owned in whole or in part by us) that would cause us to constructively own more than a 9.8% interest (as set forth in Section 856(d)(2)(B) of the Code) in such tenant.

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

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

Our Charter further prohibits:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BUSINESS COMBINATIONS

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

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

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

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

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

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

CONTROL SHARE ACQUISITIONS

The MGCL provides that holders of "control shares" of a Maryland corporation acquired in a "control share acquisition" have no voting rights with respect to any control shares except to the extent approved by the affirmative vote of at least two-thirds of the votes entitled to be cast in the election of directors, generally, excluding shares of stock in a corporation in respect of which any of the following persons is entitled to exercise or direct the exercise of the voting power of such shares in the election of directors: (1) the person who made or proposes to make a control share acquisition, (2) an officer of the corporation or (3) an employee of the corporation who is also a director of the corporation. "Control shares" are voting shares of stock that, if aggregated with all other such shares of stock previously acquired by the acquirer or in respect of which the acquirer is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquirer to exercise voting power in electing directors within one of the following ranges of voting power:

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

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

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

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

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

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

SUBTITLE 8 OF TITLE 3 OF THE MGCL

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

- a classified board;
- A two-thirds vote requirement for removing a director;
- a requirement that the number of directors be fixed only by vote of the directors;
- a requirement that a vacancy on the board be filled only by the remaining directors and for the remainder of the full term of the class of directors in which the vacancy occurred; or
- a prohibition against stockholders calling a special meeting of stockholders unless they are entitled to cast at least a majority of all votes entitled to be cast at that meeting.

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

PLAN OF DISTRIBUTION

We are registering the issuance by us from time to time of up to **101,100,000** shares of Common Stock issuable upon the Redemption and Conversion of the Series D Preferred Stock. No broker, dealer or underwriter has been engaged in connection with soliciting the Redemption or Conversion, and no commission or other compensation will be paid to any such person in connection with the Redemption and Conversion. Redemption and Conversion will be effected in accordance with the Series D Articles Supplementary, as follows:

- Stockholders seeking redemption of their Series D Preferred Stock will be required to complete the Holder Redemption Notice and the Stock Ownership Statement and send the two forms to the Company and the Agent. The Redemption Price for any Redemption Notice and Stock Ownership Statement received on or before the 25th day of any month (and after the 25th day of the previous month) will be paid on the following month's Holder Redemption Date. Delivery of Common Stock will be made as soon as possible after the Holder Redemption Date in accordance with customary settlement cycles.

The Holder Redemption Notice and the Stock Ownership Statement should be sent to the following addresses:

Regular Mail Delivery:
Computershare
Attn: Corp Action
Voluntary
PO Box 43011
Providence, RI 02940-3011

OR

Overnight Mail Delivery:
Computershare
Attn: Corp Action
Voluntary
150 Royall Street
Suite V
Canton, MA 02021

AND

With a copy to:
Wheeler Real Estate Investment
Trust, Inc.
Attention: Investor Relations
2529 Virginia Beach Blvd.
Virginia Beach, Virginia 23452
investorrelations@whlr.us

A medallion guarantee stamp will be required on the Holder Redemption Notice that is mailed to the Agent. A medallion guarantee stamp will not be required on the copy of the Holder Redemption Notice that is mailed or e-mailed to the Company.

- Conversion of the Series D Preferred Stock may be effectedat the option of a Series D Preferred Holderby delivering shares of the Series D Preferred Stock, together with written notice of conversion and other required documentation, to the Agent. Each conversion will be deemed to have been effected on the date immediately following the next Dividend Record Date after which written notice of conversion and other required documentation will have been surrendered and notice will have been received by the Company.

We will pay all customary fees and expenses of the Agent related to the Redemption and Conversion. We estimate that our total expenses in connection with the Redemption and Conversion will be approximately $460,000.

The foregoing summary of the Redemption and Conversion terms of the Series D Articles Supplementary does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Series D Articles Supplementary, a copy of which is attached as Exhibit 3.2 to the Registration Statement of which this Prospectus is a part and is incorporated by reference herein.

MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following is a summary of the material U.S. federal income tax consequences related to(i) the Redemption or Conversion of Series D Preferred Stock for Common Stock and (ii) the ownership and disposition of Common Stock acquired pursuant to a Redemption or Conversion of Series D Preferred Stock. This discussion applies only to holders that hold Series D Preferred Stock or Common Stock, as applicable, as capital assets for U.S. federal income tax purposes. For purposes of this section under the heading "Material U.S. Federal Income Tax Considerations," references to the "Company," "we," "our" and "us" mean only Wheeler Real Estate Investment Trust, Inc. and not its subsidiaries or other lower-tier entities, except as otherwise required by the context. However, our subsidiary, Cedar, like the Company, has also elected to be taxed as a REIT. To the extent that the discussion below relates to the tax requirements for, and consequences of, qualifying as a REIT, it also applies to Cedar's election to be taxed as a REIT.

This discussion does not describe all of the tax consequences that may be relevant to you in light of your particular circumstances, including the alternative minimum tax, the Medicare tax on certain investment income, the tax consequences to accrual-method taxpayers who are required under Section 451(b) of Code to recognize income for U.S. federal income tax purposes no later than when such income is taken into account in applicable financial statements and the different consequences that may apply if you are subject to special rules that apply to certain types of investors, such as:

- banks, financial institutions or financial services entities;
- subchapter S corporations;
- governments or agencies or instrumentalities thereof;
- regulated investment companies and other REITs;
- U.S. expatriates or former long-term residents of the United States;
- insurance companies;
- broker-dealers;
- taxpayers subject to mark-to-market tax accounting rules;

- tax-exempt organizations, except to the extent discussed below under "*—Federal Income Tax Considerations of the Ownership and Disposition of our Common Stock—U.S. Federal Income Tax Considerations to Tax Exempt Holders of the Ownership and Disposition of Common Stock*";
- passive foreign investment companies or controlled foreign corporations;
- persons who are not citizens or residents of the United States (except to the limited extent discussed below);
- persons holding our securities as part of a "straddle," hedge, integrated transaction or similar transaction;
- investors that have a principal place of business or "tax home" outside the United States;
- investors whose functional currency is not the United States dollar; and
- persons who receive our securities through the exercise of employee stock options or otherwise as compensation.

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

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

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

When we use the term "Non-U.S. Holder," we mean a beneficial owner of shares of our Series D Preferred Stock or Common Stock, as applicable who, for U.S.

federal income tax purposes, is neither a U.S. Holder nor a partnership or other pass-through entity for U.S. federal income tax purposes.

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

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

We urge you to consult your own tax advisor regarding the specific tax consequences to you of redeeming or converting Series D Preferred Stock for Common Stock, and owning and disposing of the Common Stock acquired pursuant to a Redemption or Conversion of Series D Preferred Stock, and of both our election and Cedar's election to be taxed as a REIT. Specifically, we urge you to consult your own tax advisor regarding the federal, state, local, foreign, and other tax consequences of such ownership and election and regarding potential changes in applicable tax laws.

Taxation of Our Company

General

The Company and Cedar have each elected to be taxed as a REIT under Sections 856 through 860 of the Code commencing with their taxable years ended December 31, 2012 and December 31, 2017, respectively. We believe that both the Company and Cedar have been organized and have been operated in a manner that has allowed each of them to qualify for taxation as a REIT under the Code commencing with taxable years ended December 31, 2012 and December 31, 2017, respectively, and each of the Company and Cedar intend to conduct operations as to qualify as a REIT in the future.

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

- First, we will be required to pay tax at regular corporate rates on taxable income, including net capital gain, that we do not distribute to our stockholders during, or within a specified time period after, the calendar year in which the income is earned.

- Second, if we have (1) net income from the sale or other disposition of "foreclosure property" held primarily for sale to customers in the ordinary course of business or (2) other nonqualifying income from foreclosure property, we will be required to pay tax at the highest corporate rate on this income. To the extent that income from foreclosure property is otherwise qualifying income for purposes of the 75% gross income test described under "*Taxation of Our Company —Income Tests*" on page 53, this tax is not applicable.

- Third, if we fail to satisfy the 75% gross income test or the 95% gross income test, each as described under "*Taxation of Our Company —Income Tests*" on page 53 and nonetheless continue to qualify as a REIT because we meet other requirements, we will pay a 100% tax on (1) the gross income attributable to the greater of the amount by which we fail the 75% and 95% gross income tests, multiplied by (2) a fraction intended to reflect our profitability.

- Fourth, we will be required to pay a 100% tax on any net income from prohibited transactions. Prohibited transactions are, in general, sales or other taxable dispositions of property, other than foreclosure property, held primarily for sale to customers in the ordinary course of business.

- Fifth, if we fail to satisfy any of the asset tests (other than a de minimis failure of the 5% asset test, the 10% value test, or the 10% vote test), as described under "*Taxation of Our Company—Asset Tests*" on page 55, due to reasonable cause and not due to willful neglect, and we nonetheless maintain our REIT qualification because of specified cure provisions, we will be required to pay a tax equal to the greater of $50,000 and the highest corporate tax rate multiplied by the net income generated by the nonqualifying assets that caused us to fail such test.

- Sixth, if we fail to satisfy any provision of the Code that would result in our failure to qualify as a REIT (other than a violation of the gross income tests or certain violations of the asset tests, as described below) and the violation is due to reasonable cause and not due to willful neglect, we may retain our REIT qualification but we will be required to pay a penalty of $50,000 for each such failure.

- Seventh, we will be required to pay a 4% excise tax to the extent we fail to distribute during each calendar year at least the sum of (1) 85% of our ordinary income for the year, (2) 95% of our capital gain net income for the year, and (3) any undistributed taxable income from prior periods.

- Eighth, if we acquire any asset from a corporation that is or has been a C corporation in a transaction in which our basis in the asset is determined by reference to the C corporation's basis in the asset, and we subsequently recognize gain on the disposition of the asset during the five-year period beginning on the date on which we acquired the asset, then we will be required to pay tax at the highest regular corporate tax rate on this gain to the extent of the excess of (1) the fair market value of the asset over (2) our adjusted basis in the asset, in each case determined as of the date on which we acquired the asset. The results described in this paragraph with respect to the recognition of gain assume that the C corporation will refrain from making an election to receive different treatment under applicable Treasury Regulations on its tax return for the year in which we acquire the asset from the C corporation.

- Ninth, any subsidiaries that are C corporations, including our Taxable REIT Subsidiaries ("TRSs"), such as Wheeler Real Estate LLC ("Wheeler Real Estate") and Wheeler Interests LLC ("Wheeler Interests"), generally will be required to pay U.S. federal corporate income tax on their earnings.

- Tenth, we will incur a 100% excise tax on certain transactions with a TRS that are not conducted on an arm's-length basis and we will incur such 100% excise tax if it is determined we have been undercharged for certain services provided by a TRS.

- Eleventh, we may elect to retain and pay income tax on our net capital gain. In that case, a stockholder would include its proportionate share of our undistributed net capital gain (to the extent we make a timely designation of such gain to the stockholder) in its income, would be deemed to have paid the tax that we paid on such gain, and would be allowed a credit for its proportionate share of the tax deemed to have been paid, and an adjustment would be made to increase the basis of the stockholder in our Common Stock.

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

1. that is managed by one or more trustees or directors;

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

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

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

5. that is beneficially owned by 100 or more persons;

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

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

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

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

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

The Company believes that it has been organized, has operated and has issued sufficient shares of Common Stock and preferred stock with sufficient diversity of ownership to allow the Company to satisfy conditions (1) through (8), inclusive, during the relevant time periods. In addition, our charter provides for restrictions regarding ownership and transfer of our shares that are intended to assist us in continuing to satisfy the share ownership requirements described in (5) and (6) above. A description of the share ownership and transfer restrictions relating to our stock is contained in the discussion in this Prospectus under the heading "*Restrictions on Ownership and Transfer*". These restrictions, however, may not ensure that we will, in all cases, be able to satisfy the share ownership requirements described in (5) and (6) above. If we fail to satisfy these share ownership requirements, except as provided in the next sentence, our status as a REIT will terminate. If, however, we comply with the rules contained in applicable Treasury Regulations that require us to ascertain the actual ownership of our shares and we do not know, or would not have known through the exercise of reasonable diligence, that we failed to meet the requirement described in condition (6) above, we will be treated as having met this requirement. See "*Taxation of Our Company—Failure to Qualify*" on page 58.

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

The Inflation Reduction Act, which was signed into law by President Biden on August 16, 2022, imposes a nondeductible one percent excise tax (the "Excise Tax") on certain stock repurchases by domestic public-traded companies taking place after December 31, 2022. Notably, the Excise Tax does not apply to stock repurchases made by REITs. So long as we maintain our qualification as a REIT, the Excise Tax should not apply to any repurchases of our common stock or preferred stock that occur on or after January 1, 2023.

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

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

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

We may from time to time own and operate certain properties through subsidiaries that we intend to be treated as "qualified REIT subsidiaries" under the Code. A corporation will qualify as our qualified REIT subsidiary if we own 100% of the corporation's outstanding stock and do not elect with the subsidiary to treat it as a TRS, as described below. A qualified REIT subsidiary is not treated as a separate corporation, and all assets, liabilities and items of income, gain, loss, deduction and credit of a

qualified REIT subsidiary are treated as assets, liabilities and items of income, gain, loss, deduction and credit of the parent REIT for all purposes under the Code, including all REIT qualification tests. Thus, in applying the federal tax requirements described in this discussion, any qualified REIT subsidiaries we own are ignored, and all assets, liabilities and items of income, gain, loss, deduction and credit of such corporations are treated as our assets, liabilities and items of income, gain, loss, deduction and credit. A qualified REIT subsidiary is not subject to U.S. federal income tax, and our ownership of the stock of a qualified REIT subsidiary will not violate the restrictions on ownership of securities, as described under "*Taxation of Our Company—Asset Tests*" on page 55.

Ownership of Interests in TRSs. We have three TRSs: Wheeler Real Estate, Wheeler Interests and Wheeler Development. Additionally, Cedar has two TRSs: Gold Star Realty, Inc., and CIF Loyal Plaza Associates Corp. Wheeler Real Estate is a real estate leasing, management and administration firm. Wheeler Interests is an acquisition and asset management firm. Wheeler Development is a development company that specializes in ground-up development, redevelopment of mature centers, phase two developments for existing centers and build-to-suit projects for selecting tenants. We may acquire securities in additional TRSs in the future. A TRS is a corporation other than a REIT or qualified REIT subsidiary in which a REIT directly or indirectly holds stock, and that has made a joint election with such REIT to be treated as a TRS. If a TRS owns more than 35% of the total voting power or value of the outstanding securities of another corporation, such other corporation will also be treated as a TRS. Other than some activities relating to lodging and health care facilities as more fully described under "*Taxation of Our Company—Income Tests*" beginning on page 53, a TRS may generally engage in any business, including the provision of customary or noncustomary services to tenants of its parent REIT. A TRS is subject to U.S. federal, state and local income tax as a regular C corporation. In addition, a TRS's deductions may be disallowed for business interest expense (even if paid to third parties) in excess of the sum of the TRS's business interest income and 30% of the adjusted taxable income of the business, which is its taxable income computed without regard to business interest income or expense, net operating losses or the pass-through income deduction (and for taxable years before 2022, excludes depreciation and amortization). A REIT's ownership of securities of a TRS is not subject to the 5% asset test, the 10% value test, or the 10% vote test as described below. See "*Taxation of Our Company—Asset Tests*" on page 55. Overall, no more than 20% (25% for taxable years ending on or before December 31, 2017) of the value of a REIT's assets may consist of stock or securities of one or more TRSs. Further, a 100% excise tax may apply to transactions between a TRS and its parent REIT or the REIT's tenants whose terms are not on an arm's-length basis.

Ownership of Subsidiary REITs. We recently acquired by merger with our wholly owned subsidiary 100% of the common stock of Cedar, a subsidiary REIT. Cedar is treated as a separate entity for U.S. federal income tax purposes. We are not treated as owning the assets of Cedar or recognizing the income of Cedar. Rather, Cedar is generally subject to U.S. federal income tax in the same manner as us and will be subject to the same gross income tests, asset tests and other REIT qualification requirements and considerations as are applicable to us.

The stock of Cedar, our subsidiary REIT, is a qualifying asset to us for the purpose of the 75% asset test so long as Cedar continues to qualify as a REIT for U.S. federal income tax purposes. See "*Taxation of Our Company—Asset Tests.*" Dividends received by us from Cedar are qualifying income to us for purposes of both the 75% and 95% gross income tests. See "*Taxation of Our Company—Income Tests.*"

Income Tests

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

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

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

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

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

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

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

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

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

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

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

Any dividends received from a REIT, including dividends derived by the Company from Cedar if Cedar qualifies as a REIT, will be qualifying income in the Company's hands for purposes of both the 95% and 75% income tests.

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

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

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

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

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

If Cedar were to fail to satisfy one or both of the 75% or 95% gross income tests for any taxable year, Cedar would be similarly entitled to these relief provisions.

It is not possible, however, to predict whether in all circumstances we would be entitled to the benefit of these relief provisions, or if Cedar would be entitled to the benefit of these relief provisions if it failed to satisfy one of the gross income tests. For example, if we fail to satisfy the gross income tests because nonqualifying income that we intentionally accrue or receive exceeds the limits on nonqualifying income, the IRS could conclude that our failure to satisfy the tests was not due to reasonable cause. If these relief provisions do not apply to a particular set of circumstances, we will not qualify as a REIT. As discussed in *Taxation of Our Company—General*" on page 49, even if these relief provisions apply, and we retain our status as a REIT, a tax would be imposed with respect to our nonqualifying income. A similar tax would be imposed on Cedar's nonqualifying income if the relief provisions apply to Cedar. We may not always be able to comply with the gross income tests for REIT qualification despite periodic monitoring of our income and Cedar's income.

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

Asset Tests.

At the close of each calendar quarter of our taxable year, we must also satisfy several tests relating to the nature and diversification of our assets. Our investment in Cedar is a qualifying asset because Cedar qualifies as a REIT. Cedar therefore must separately satisfy these same tests to continue to qualify as a REIT.

First, at least 75% of the value of our total assets must be represented by real estate assets, cash, cash items and government securities. For purposes of this test, the term "real estate assets" generally means real property (including interests in real property, interests in mortgages on real property, and personal property to the extent such personal property is leased in connection with real property and rents attributable to such personal property are treated as "rents from real property" as discussed above), debt

instruments issued by "publicly offered REITs," and shares (or transferable certificates of beneficial interest) in other REITs, as well as any stock or debt instrument attributable to the investment of the proceeds of a stock offering or a public offering of debt with a term of at least five years, but only for the one-year period beginning on the date the REIT receives such proceeds.

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

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

Fourth, of the investments included in the 25% asset class, and except for investments in other REITs, any qualified REIT subsidiaries and TRSs, the value of any one issuer's securities may not exceed 5% of the value of our total assets (the "5% asset test"), we may not own more than 10%, by value, of any one issuer's outstanding securities (the "10% value test") and we may not own more than 10% of the voting power of any one issuer (the "10% vote test"). Although the Company owns 100% of the common stock of Cedar, the Company's ownership of Cedar is not subject to the 5% asset test, 10% value test, and 10% vote test so long as Cedar continues to qualify as a REIT for U.S. federal income tax purposes. Certain types of securities we may own are disregarded as securities solely for purposes of the 10% value test, including, but not limited to, "straight debt," securities issued by a partnership that itself would satisfy the 75% income test if it were a REIT, any loan to an individual or an estate, any obligation to pay rents from real property and securities issued by certain governments and government instrumentalities. In addition, solely for purposes of the 10% value test, the determination of our interest in the assets of a partnership or limited liability company taxable as a partnership in which we own an interest will be based on our proportionate interest in any securities issued by the partnership or limited liability company, excluding for this purpose certain securities described in the Code.

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

The Company believes that its assets have allowed the Company to comply with the foregoing asset tests and intends to monitor compliance on an ongoing basis. Similarly, the Company believes that Cedar's assets have allowed Cedar to comply with the asset tests such that it continues to qualify as a REIT and an asset that is permissible for us to hold under the asset tests. However, independent appraisals have not been obtained to support the Company's conclusions as to the value of its assets or Cedar's assets. Moreover, values of some assets may not be susceptible to a precise determination, and values are subject to change in the future. Accordingly, there can be no assurance that the IRS will not disagree with the Company's determinations of value. If the IRS were to disagree with our determination of the value of certain of our assets, we could fail one or more of the foregoing asset tests, which could cause us to fail to qualify as a REIT unless we satisfied one of the cure provisions described below. Furthermore, if Cedar were to fail to qualify as a REIT for U.S. federal income tax purposes, the Company's ownership of Cedar may fail one or more of the 5% asset test, 10% value test and 10% vote test causing the Company to cease to qualify as a REIT unless we satisfied one of the cure provisions described below or, if Cedar's failure to qualify as a REIT were due to its failure to satisfy one or more of such tests, if Cedar satisfied one of the cure provisions described below.

If we fail to satisfy an asset test because we acquire nonqualifying securities or other property during a quarter, we may cure this failure by disposing of sufficient nonqualifying assets within 30 days after the close of that quarter. The Company believes that it has maintained and intends to maintain adequate records of the value of our assets to ensure compliance with the asset tests. If the Company fails to cure any noncompliance with the asset tests within the 30-day cure period, the Company would cease to qualify as a REIT unless the Company is eligible for certain relief provisions discussed below. Furthermore, if Cedar were to fail to qualify as a REIT for U.S. federal income tax purposes, the Company's ownership of Cedar may fail one or more of the 5% asset test, 10% value test, and 10% vote test causing the Company to cease to qualify as a REIT unless we satisfied one of the cure provisions described below.

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

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

Annual Distribution Requirements

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

- 90% of our "REIT taxable income"; and
- 90% of our after-tax net income, if any, from foreclosure property; minus
- the excess of the sum of certain items of non-cash income over 5% of our "REIT taxable income."

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

In addition, if we dispose of any asset we acquired from a corporation which is or has been a C corporation in a transaction in which our basis in the asset is determined by reference to the basis of the asset in the hands of that C corporation, within the five-year period following our acquisition of such asset, we would be required to distribute at

least 90% of the after-tax gain, if any, we recognized on the disposition of the asset, to the extent that gain does not exceed the excess of (a) the fair market value of the asset over (b) our adjusted basis in the asset, in each case, on the date we acquired the asset.

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

A special rule provides that for a distribution to be taken into account for purposes of the distribution requirement, the amount distributed must not have been preferential—i.e., every stockholder of the class of stock to which a distribution is made must have been treated the same as every other stockholder of that class, and no class of stock may have been treated other than according to its dividend rights as a class. This preferential dividend rule, however, does not apply to "publicly offered REITs." Accordingly, so long as we qualify as a "publicly offered REIT," this preferential dividend rule will not apply to us.

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

The annual distribution requirements discussed above also apply to Cedar. We believe that Cedar has made and will continue to make timely distributions sufficient to similarly satisfy these annual distribution requirements.

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

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

Like-Kind Exchanges

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

Failure to Qualify

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

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

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

We will include in our income our share of these partnership and limited liability company items for purposes of the various gross income tests, the computation of our REIT taxable income, and the REIT distribution requirements. Moreover, for purposes of the asset tests (other than the 10% value test), we will include our pro rata share of assets held by our Operating Partnership, including its share of its subsidiary partnerships and limited liability companies, based on our capital interests in each such entity. See "*Taxation of Our Company—Asset Tests*" on page 55.

Entity Classification. Our interests in our Operating Partnership and any subsidiary partnerships and limited liability companies involve special tax considerations, including the possibility that the IRS might challenge the status of these entities as partnerships (or disregarded entities). For example, an entity that would otherwise be

classified as a partnership for U.S. federal income tax purposes may nonetheless be taxable as a corporation if it is a "publicly traded partnership" and certain other requirements are met. A partnership or limited liability company would be treated as a publicly traded partnership if its interests are traded on an established securities market or are readily tradable on a secondary market or a substantial equivalent thereof, within the meaning of applicable Treasury Regulations. Interests in a partnership are not treated as readily tradable on a secondary market, or the substantial equivalent thereof, if all interests in the partnership were issued in one or more transactions that were not required to be registered under the Securities Act of 1933, as amended ("Securities Act"), and the partnership does not have more than 100 partners at any time during the taxable year of the partnership, taking into account certain ownership attribution and anti-avoidance rules (the "100 Partner Safe Harbor"). Our Operating Partnership may not qualify for the 100 Partner Safe Harbor. In the event that the 100 Partner Safe Harbor or certain other safe harbor provisions of applicable Treasury Regulations are not available, our Operating Partnership could be classified as a publicly traded partnership.

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

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

If our Operating Partnership or any of our other partnerships or limited liability companies were to be treated as a publicly traded partnership, it would be taxable as a corporation unless it qualified for the statutory "90% qualifying income exception." Under that exception, a publicly traded partnership is not subject to corporate-level tax if 90% or more of its gross income consists of dividends, interest, "rents from real property" (as that term is defined for purposes of the rules applicable to REITs, with certain modifications), gain from the sale or other disposition of real property, and certain other types of qualifying income. However, if any such entity did not qualify for this exception or was otherwise taxable as a corporation, it would be required to pay an entity-level tax on its income. In this situation, the character of our assets and items of gross income would change and could prevent us from satisfying the REIT asset tests and possibly the REIT income tests. See "*Taxation of Our Company—Asset Tests"* beginning on page 55 *and "Taxation of Our Company—Income Tests"* beginning on page 53. This, in turn, could prevent us from qualifying as a REIT. See "*Taxation of Our Company—Failure to Qualify*" beginning on page 58 for a discussion of the effect of our failure to meet these tests. In addition, a change in the tax status of our Operating Partnership or a subsidiary partnership or limited liability company might be treated as a taxable event. If so, we might incur a tax liability without any related cash payment.

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

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

Our Operating Partnership may, from time to time, acquire interests in property in exchange for interests in our Operating Partnership. In that case, the tax basis of these property interests generally carries over to the Operating Partnership, notwithstanding their different book (*i.e.*, fair market) value (this difference is referred to as a book-tax difference). The Partnership Agreement requires that income and loss allocations with respect to these properties be made in a manner consistent with Section 704(c) of the Code. Treasury Regulations issued under Section 704(c) of the Code provide partnerships with a choice of several methods of accounting for book-tax differences. Depending on the method we choose in connection with any particular contribution, the carryover basis of each of the contributed interests in the properties in the hands of our Operating Partnership (1) could cause us to be allocated lower amounts of depreciation deductions for U.S. federal income tax purposes than would be allocated to us if any of the contributed properties were to have a tax basis equal to its respective fair market value at the time of the contribution and (2) could cause us to be allocated taxable gain in the event of a sale of such contributed interests or properties in excess of the economic or book income allocated to us as a result of such sale, with a corresponding benefit to the other partners in our Operating Partnership. An allocation described in clause (2) above might cause us or the other partners to recognize taxable income in excess of cash proceeds in the event of a sale or other disposition of property, which might adversely affect our ability to comply with the REIT distribution requirements. See "*General—Requirements for Qualification as a REIT*" beginning on page 50 and "*Annual Distribution Requirements*" beginning on page 57.

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

U.S. Federal Income Tax Considerations of Redemption or Conversion of Series D Preferred Stock for Common Stock

The holders of our Series D Preferred Stock may convert their shares of Series D Preferred Stock at any time into shares of Common Stock at a conversion price of $169.60 per share of Common Stock. Beginning on and after September 21, 2023, the holders of the Series D Preferred Stock may, instead, cause the Company to redeem any or all of their shares of Series D Preferred Stock at a redemption price of $25.00 per share plus an amount equal to all accrued and unpaid dividends, if any, through and including the redemption date. The redemption price is payable, at our election, in cash, in Common Stock, or partly in Common Stock and partly in cash.

A Conversion of Series D Preferred Stock into Common Stock or a Redemption of Series D Preferred Stock solely in exchange for Common Stock (in each case whether or not an isolated transaction) is treated as a recapitalization, and therefore as a corporate reorganization, under Section 368(a)(1)(E) of the Code. Stockholders generally will not recognize gain or loss upon the Redemption or Conversion of Series D Preferred Stock entirely in exchange for our Common Stock. However, the lesser of

(1) the amount by which the fair market value of the Common Stock received in the Redemption or Conversion (determined immediately following the Redemption or Conversion) exceeds the issue price of the Series D Preferred Stock, or (2) the amount of accumulated and unpaid dividends, will be treated as a deemed distribution of property made by the Company. See "*U.S. Federal Income Tax Considerations to U.S. Holders of the Ownership and Disposition of our Common Stock —Distributions Generally*" beginning on page 62 and "*U.S. Federal Income Tax Considerations to Non-U.S. Holders of the Ownership and Disposition of our Common Stock—Distributions Generally*" beginning on page 64.

If a stockholder's Series D Preferred Stock is redeemed and we elect to pay the redemption price partly in Common Stock and partly in cash, that stockholder will realize gain or loss on the difference between (i) the sum of the cash and the fair market value of our Common Stock received and (ii) the stockholder's adjusted tax basis in the Series D Preferred Stock redeemed. Stockholders will not recognize any loss realized on the Redemption. If a stockholder realizes gain on a Redemption, the stockholder will be required to recognize that gain in an amount equal to the lesser of (a) the gain realized and (b) the amount of cash received, excluding cash attributable to a fractional share. Cash received in lieu of fractional shares will be treated as described in the next paragraph. Additionally, as discussed in the previous paragraph, the lesser of (1) the amount by which the fair market value of the Common Stock received in the Redemption (determined immediately following the Redemption or Conversion) exceeds the issue price of the Series D Preferred Stock redeemed, or (2) the amount of accumulated and unpaid dividends, will be treated as a deemed distribution of property made by the Company.

A stockholder's aggregate tax basis in our Common Stock received in a conversion or redemption of Series D Preferred Stock generally will equal the stockholder's adjusted tax basis in the converted or redeemed Series D Preferred Stock, increased by the amount of any income or gain recognized on the Redemption, and reduced, but not below zero, by the portion of adjusted tax basis allocated to any fractional share exchanged for cash. Cash received upon Redemption or Conversion in lieu of a fractional share generally will be treated as a payment made in a taxable exchange for such fractional share, and gain or loss will be recognized on the receipt of cash in an amount equal to the difference between the amount of cash received and the adjusted tax basis allocable to the fractional share deemed exchanged. Any gain or loss recognized will generally be long-term capital gain or loss to a U.S. Holder if the U.S. Holder has held the Series D Preferred Stock for more than one year at the time of Redemption or Conversion. If any portion of a Redemption or Conversion of Series D Preferred Stock is treated as a deemed distribution of property from the Company, then the rules applicable to distributions of property from the Company apply to in determining the stockholder's basis and holding period in the Common Stock received. See "*U.S. Federal Income Tax Considerations to U.S. Holders of the Ownership and Disposition of our Common Stock —Distributions Generally*" beginning on page 62 and "*U.S. Federal Income Tax Considerations to Non-U.S. Holders of the Ownership and Disposition of our Common Stock—Distributions Generally*" beginning on page 64. When a stockholder converts or redeems blocs of Series D Preferred Stock acquired at different times or where any portion of a Redemption or Conversion is treated as a deemed distribution of property from the Company, the stockholder's basis and holding period in Common Stock received in the Redemption or Conversion will depend on the stockholder's particular situation, and the stockholder should consult its own tax advisors regarding the basis and holding period of the Common Stock.

The application of the U.S. federal income tax laws to aRedemption or Conversion of Series D Preferred Stock is highly complex and, in certain cases, unsettled. Stockholders are urged to consult with their own tax advisors regarding the U.S. federal income tax consequences of any Redemption or Conversion of Series D Preferred Stock for Common Stock, or any subsequent transaction by which such holder exchanges the Common Stock received on a Redemption or Conversion of Series D Preferred Stock for cash or other property.

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

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

Distributions Generally.

Distributions of cash or other property (excluding, in most cases, distributions of our own stock) out of our current or accumulated earnings and profits will be treated as dividends and, other than with respect to capital gain dividends and certain amounts which have previously been subject to corporate level tax discussed below, will be taxable to our taxable U.S. Holders as ordinary income when actually or constructively received. See "—Tax Rates" below. For purposes of determining whether a distribution is made out of our current or accumulated earnings and profits, our earnings and profits will be allocated first to our preferred stock dividends and then to our Common Stock dividends. As long as we qualify as a REIT, these distributions will not be eligible for the dividends-received deduction in the case of U.S. Holders that are corporations or, except to the extent provided in "—Tax Rates" below, the preferential rates on qualified dividend income applicable to non-corporate U.S. Holders, including individuals. If a stockholder receives a distribution of property other than cash from the Company, the stockholder's initial federal income tax basis in that property generally will equal the property's fair market value on the date of the distribution and the stockholder's holding period will begin on the day after the distribution.

To the extent that we make distributions of cash or other property on our Common Stock in excess of our current and accumulated earnings and profits, these distributions will be treated first as a tax-free return of capital to a U.S. Holder. This treatment will reduce the U.S. Holder's adjusted tax basis in such shares of stock by the amount of the distribution, but not below zero. Distributions in excess of our current and accumulated earnings and profits and in excess of a U.S. Holder's adjusted tax basis in its shares will be taxable as capital gain. Such gain will be taxable as long-term capital gain if the shares have been held for more than one year. Dividends we declare in October, November, or December of any year and which are payable to stockholders of record as of a specified date in any of these months, and that are actually paid in January of the following year, will be treated as both paid by us and received by the stockholder on December 31 of the first year. U.S. Holders may not include in their own income tax returns any of our net operating losses or capital losses. Certain stock dividends, including dividends partially paid in our stock and partially paid in cash and any distributions of our common stock treated as a distribution of property as discussed above in "*U.S. Federal Income Tax Considerations of Redemption or Conversion of Series D Preferred Stock for Common Stock*," will be treated the same as if paid in cash or other property.

Capital Gain Dividends.

Dividends that we properly designate as capital gain dividends will be taxable to our U.S. Holders as a gain from the sale or disposition of a capital asset held for more than one year, to the extent that such gain does not exceed our actual net capital gain for the taxable year. U.S. Holders that are corporations may, however, be required to treat up to 20% of certain capital gain dividends as ordinary income.

Retention of Net Capital Gains.

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

- include its pro rata share of our undistributed net capital gains in computing its long-term capital gains in its return for its taxable year in which the last day of our taxable year falls, subject to certain limitations as to the amount that is includable;

- be deemed to have paid its share of the capital gains tax imposed on us on the designated amounts included in the U.S. Holder's income as long-term capital gain;
- receive a credit or refund for the amount of tax deemed paid by it;
- increase the adjusted basis of its stock by the difference between the amount of includable gains and the tax deemed to have been paid by it; and
- in the case of a U.S. Holder that is a corporation, appropriately adjust its earnings and profits for the retained capital gains in accordance with Treasury Regulations to be promulgated by the IRS.

Passive Activity Losses and Investment Interest Limitations.

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

Dispositions of our Common Stock.

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

Tax Rates.

The maximum tax rate for non-corporate taxpayers for (1) capital gains, including certain "capital gain dividends," is 20% (although depending on the characteristics of the assets which produced these gains and on designations which we may make, certain capital gain dividends may be taxed at a 25% rate) and (2) "qualified dividend income" is 20%. However, dividends payable by REITs are not eligible for the 20% tax rate on qualified dividend income, except to the extent that certain holding requirements have been met and the REIT's dividends are attributable to dividends received from taxable corporations (such as its TRSs) or to income that was subject to tax at the corporate/REIT level (for example, if it distributed taxable income that it retained and paid tax on in the prior taxable year) or to dividends properly designated by the REIT as "capital gain dividends." For taxable years beginning prior to 2026, individual stockholders are generally allowed to deduct 20% of the aggregate amount of ordinary dividends distributed by us (but not for purposes of the 3.8% Medicare tax described below), subject to certain complex limitations.

Medicare Tax on Unearned Income.

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

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

U.S. tax-exempt entities, including qualified employee pension and profit-sharing trusts and individual retirement accounts, generally are exempt from U.S. federal income taxation. They are subject, however, to taxation on their unrelated business taxable income ("UBTI"). While many investments in real estate generate UBTI, the IRS has issued a ruling that dividend distributions from a REIT to an exempt employee pension trust do not constitute UBTI. Based on that ruling, and provided that (1) an exempt employee pension trust has not held our common stock as "debt financed property" within the meaning of the Code (that is, where the acquisition or holding of the property is financed through a borrowing by the exempt employee pension trust) and (2) we do not, directly or through a partnership, hold REMIC residual interests or interests in a taxable mortgage pool that give rise to "excess inclusion income," dividend income from us and gain arising upon a sale of our Common Stock generally should not be UBTI, to an exempt employee pension trust, except as described below.

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

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

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

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

Distributions Generally.

Distributions of cash or other property (including certain stock dividends) that are neither attributable to gains from sales or exchanges by us of "United States real property interests" (as defined below) nor designated by us as capital gain dividends (except as described below) will be treated as dividends of ordinary income to the extent that they are made out of our current or accumulated earnings and profits. Such distributions ordinarily will be subject to withholding of U.S. federal income tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty, unless the distributions are treated as effectively connected with the conduct by the Non-U.S. Holder of a U.S. trade or business. Under certain treaties, however, lower withholding rates generally applicable to dividends do not apply to dividends from a REIT. Certain certification and disclosure requirements must be satisfied for a Non-U.S. Holder to be exempt from withholding under the effectively connected income exemption or to claim a lower

withholding tax rate under an applicable tax treaty. Dividends that are treated as effectively connected with a U.S. trade or business will generally not be subject to withholding but will be subject to U.S. federal income tax on a net basis at graduated rates, in the same manner as dividends paid to U.S. Holders are subject to U.S. federal income tax. Any such dividends received by a Non-U.S. Holder that is a corporation may also be subject to an additional branch profits tax at a 30% rate (applicable after deducting U.S. federal income taxes paid on such effectively connected income) or such lower rate as may be specified by an applicable income tax treaty.

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

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

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

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

Capital Gain Dividends and Distributions Attributable to a Sale or Exchange of U.S. Real Property Interests.

Distributions to a Non-U.S. Holder that we properly designate as capital gain dividends, other than those arising from the disposition of a USRPI, generally should not be subject to U.S. federal income taxation, unless:

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

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

Pursuant to FIRPTA, distributions to a Non-U.S. Holder that are attributable to gain from sales or exchanges by us of USRPIs, whether or not designated as capital gain dividends, will cause the Non-U.S. Holder to be treated as recognizing such gain as income effectively connected with a U.S. trade or business. Non-U.S. Holders would generally be taxed at the same rates applicable to U.S. Holders, subject to any applicable alternative minimum tax. We also will be required to withhold and to remit to the IRS 21% of any distribution to Non-U.S. Holders that is designated as a capital gain dividend. The amount withheld is creditable against the Non-U.S. Holder's U.S. federal income tax liability. However, any distribution with respect to any class of stock that is "regularly traded" on an established securities market located in the United States is not subject to FIRPTA, and therefore, not subject to the 21% withholding tax described above, if the Non-U.S. Holder did not own more than 10% of such class of stock at any time during the one-year period ending on the date of the distribution. We believe our Common Stock is "regularly traded" on an established securities market in the United States. In addition, any distribution to a Non-U.S. Holder that is a "qualified shareholder" or "qualified foreign pension fund" that holds REIT stock directly or indirectly (through one or more partnerships), as discussed below, is not subject to FIRPTA. Instead, such distributions will generally be treated as ordinary dividend distributions and subject to withholding in the manner described above with respect to ordinary dividends.

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

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

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

Retention of Net Capital Gains.

Although the law is not clear on the matter, it appears that amounts designated by us as retained net capital gains in respect of the stock held by stockholders generally should be treated with respect to Non-U.S. Holders in the same manner as actual distributions of capital gain dividends. Under that approach, the Non-U.S. Holders would be able to offset as a credit against their U.S. federal income tax liability resulting from their proportionate share of the tax paid by us on such retained net capital gains and to receive from the IRS a refund to the extent their proportionate share of such tax paid by us exceeds their actual U.S. federal income tax liability. If we were to designate any portion of our net capital gain as retained net capital gain, a Non-U.S. Holder should consult its tax advisor regarding the taxation of such retained net capital gain.

Sale of Common Stock.

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

Notwithstanding the foregoing, gain from the sale, exchange or other taxable disposition of our Common Stock not otherwise subject to FIRPTA will be taxable to a Non-U.S. Holder if either (a) the investment in our Common Stock is treated as effectively connected with the Non-U.S. Holder's U.S. trade or business or (b) the Non-U.S. Holder is a nonresident alien individual who is present in the United States for 183 days or more during the taxable year and certain other conditions are met. In addition, even if we are a domestically controlled qualified investment entity, upon disposition of our Common Stock (subject to the 10% exception applicable to "regularly traded" stock and exceptions for "qualified shareholders" and "qualified foreign pension funds" described herein), a Non-U.S. Holder may be treated as having gain from the sale or other taxable disposition of a USRPI if (1) the Non-U.S. Holder disposes of the Common Stock within a 30-day period preceding the ex-dividend date of a distribution, any portion of which, but for the disposition, would have been treated as gain from the sale or exchange of a USRPI and (2) acquires, or enters into a contract or option to acquire, or is deemed to acquire, other shares of that stock during the 61-day period beginning with the first day of the 30-day period described in clause (1).

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

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

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

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

Information Reporting and Backup Withholding

Dividends on our Common Stock, amounts treated as dividends with respect to aRedemption or Conversion of Series D Preferred Stock for Common Stock, and amounts treated as proceeds from the sale, exchange or redemption of Common Stock may be subject to information reporting to the IRS and possible U.S. backup withholding. Backup withholding will not apply, however, to payments made to a U.S. Holder who furnishes a correct taxpayer identification number and makes other required certifications, or who is otherwise exempt from backup withholding and establishes such exempt status. Payments made to a Non-U.S. Holder generally will not be subject to backup withholding if the Non-U.S. Holder provides certification of its foreign status, under penalties of perjury, on a duly executed applicable IRS Form W-8 or by otherwise establishing an exemption.

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

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

FATCA Withholding Taxes

Sections 1471 through 1474 of the Code and the Treasury Regulations and administrative guidance promulgated thereunder (commonly referred to as the "Foreign Account Tax Compliance Act" or "FATCA") generally impose withholding of 30% in certain circumstances on payments of dividends (including amounts treated as dividends with respect to the exchange of Series D Preferred Stock for Common Stock pursuant to a Redemption or Conversion) and, subject to the proposed Treasury Regulations discussed below, proceeds from sales or other disposition of our securities paid to "foreign financial institutions" (which is broadly defined for this purpose and includes investment vehicles) and certain other non-U.S. entities unless various U.S. information reporting and due diligence requirements (relating to ownership by U.S. persons of interests in or accounts with those entities) have been satisfied or an exemption applies (typically certified as to by the delivery of a properly completed IRS Form W-8BEN-E). If FATCA withholding is imposed, a beneficial owner that is not a foreign financial institution will be entitled to a refund of any amounts withheld by filing a U.S. federal income tax return (which may entail significant administrative burden). Foreign financial institutions located in jurisdictions that have an intergovernmental agreement with the United States governing FATCA may be subject to different rules. Similarly, interest, dividends and, subject to the proposed Treasury Regulations discussed below, proceeds from sales or other disposition in respect of our securities held by an investor that is a non-financial non-U.S. entity that does not qualify under certain exceptions generally will be subject to withholding at a rate of 30%, unless such entity either (i) certifies to us or the applicable withholding agent that such entity does not have any "substantial United States owners" or (ii) provides certain information regarding the entity's "substantial United States owners," which will in turn be provided to the U.S. Department of the Treasury. The U.S. Department of the Treasury has proposed regulations that eliminate the federal withholding tax of 30% applicable to the gross proceeds of a sale or other disposition of our securities. Withholding agents may rely on the proposed Treasury Regulations until final regulations are issued. Prospective investors should consult their tax advisors regarding the possible effects of FATCA on their investment in our securities.

Legislative or Other Actions Affecting REITs

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

Other Tax Consequences

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

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

LEGAL MATTERS

The validity of the Common Stock will be passed upon for us by Gordon Feinblatt LLC. Certain tax matters will be passed upon for us by Williams Mullen P.C.

EXPERTS

The historical consolidated financial statements of our Company as of December 31, 2022 and 2021 and for each of the two years in the period ended December 31, 2022 incorporated by reference in this Prospectus and in the Registration Statement have been so incorporated in reliance on the report of Cherry Bekaert LLP, an independent registered public accounting firm, incorporated herein by reference, given on the authority of such firm as experts on auditing and accounting.

WHERE YOU CAN FIND MORE INFORMATION

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

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

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

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

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

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

INCORPORATION BY REFERENCE

We have elected to "incorporate by reference" certain information into this Prospectus. By incorporating by reference, we are disclosing important information to you by referring you to documents we have filed separately with the SEC. The information incorporated by reference is deemed to be part of this Prospectus, except for information incorporated by reference that is superseded by information contained in this Prospectus. You can access documents that are incorporated by reference into this Prospectus at the website we maintain at http://www.whlr.us. There is additional information about us and our affiliates at our website, but unless specifically incorporated by reference

herein as described in the paragraphs below, the contents of that website are not incorporated by reference in or otherwise a part of this Prospectus.

The following documents previously filed with the SEC are incorporated by reference into this Prospectus, except for any document or portion thereof deemed to be "furnished" and not filed in accordance with SEC rules:

- Annual Report on Form 10-K filed with the SEC on March 2, 2023;
- Quarterly Reports on Form 10-Q filed with the SEC on May 9, 2023 and August 8, 2023;
- Current Reports on Form 8-K filed with the SEC on May 19, 2023, May 22, 2023, June 5, 2023, June 14, 2023, June 28, 2023, July 18, 2023, August 8, 2023, August 17, 2023 and September 1, 2023;
- Definitive Proxy Statement filed with the SEC on April 6, 2023;
- The description of Common Stock contained in Form 8-A, filed with the SEC on October 23, 2012, as amended on October 24, 2012; and
- The description of Series D Preferred Stock contained in Form 8-A, filed with the SEC on September 19, 2016.

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

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

The information relating to us contained in this Prospectus does not purport to be comprehensive and should be read together with the information contained in the documents incorporated by reference. In addition, such reports and documents may be found on our website at *www.whlr.us*.

Wheeler Real Estate Investment Trust, Inc.

101,100,000 Shares
Common Stock

PROSPECTUS
, 2023

PART II

Information Not Required In Prospectus

Item 31. Other Expenses of Issuance and Distribution.

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

Securities and Exchange Commission Registration Fee	$	42,392.34
Legal Fees and Expenses	$	365,000
Accounting Fees and Expenses		10,000
Miscellaneous Expenses		35,000
Total Expenses	$	452,392.34

Item 32. Sales to Special Parties.

Not applicable.

Item 33. Recent Sales of Unregistered Securities.

Not applicable.

Item 34. Indemnification of Directors and Officers.

The MGCL permits a Maryland corporation to include in its charter a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages except for liability resulting from (a) actual receipt of an improper benefit or profit in money, property or services (in which case liability is limited to the value of the benefit or profit actually received) or (b) active and deliberate dishonesty established by a judgment or final adjudication as being material to the cause of action. The charter of the Company expressly limits the personal liability of our directors and officers for money damages to the maximum extent permitted by Maryland law.

The charter of the Company provides that it has the power, to the maximum extent permitted by Maryland law, to obligate itself to indemnify and to pay or reimburse reasonable expenses in advance of final disposition of a proceeding to our present and former directors and officers, whether serving us or any other entity at our request, from and against any claim or liability to which such person may become subject or which such person may incur by reason of his or her service in any such capacity. The Company has exercised this power by adopting a bylaw that requires the Company, to the maximum extent permitted by Maryland law in effect from time to time, to indemnify and, without requiring a preliminary determination of the ultimate entitlement to indemnification, pay or reimburse reasonable expenses in advance of final disposition of a proceeding to our present and former directors and officers as provided above.

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

The Company maintains insurance for its directors and officers against certain liabilities, including liabilities under the Securities Act, under insurance policies, the premiums of which are paid by the Company. The effect of these insurance policies is to indemnify any directors or officers of the Company against expenses, judgments, attorneys' fees and other amounts paid in settlements incurred by a director or officer upon a determination that such person acted in accordance with the requirements of such insurance policy.

We have entered into indemnification agreements with each of our current directors and executive officers. These agreements require us to indemnify these individuals to the maximum extent permitted under Maryland law against liabilities that may arise by reason of their service to us, and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified upon our receipt of certain affirmations and undertakings. We also intend to enter into indemnification agreements with future directors and executive officers.

Item 35. Treatment of Proceeds from Stock Being Registered.

None.

Item 36. Financial Statements and Exhibits.

(a) Financial Statements. The financial statements set forth in the documents that are incorporated by reference as part of the Prospectus included in this Registration Statement are set forth in the section of the Prospectus entitled "*Incorporation by Reference.*"

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

Item 37. Undertakings.

(i) The undersigned registrant hereby undertakes:

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

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

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

(3) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

(B) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(C) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(D) That, for the purpose of determining liability under the Securities Act to any purchaser, each prospectus filed pursuant to Rule 424(b) as part of the registration statement relating to the offering, other than a registration statement relying on Rule 430B or other than a prospectus filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. *Provided*, *however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(E) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities, in a primary offering of securities pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(1) any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(2) any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(3) the portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(4) any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(ii) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions and otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

EXHIBIT INDEX

Exhibit No.	Description of Document
2.1	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).
2.2	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).
2.3	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. (Filed as an exhibit to Form 8-K, filed on August 25, 2022).
3.1	Articles of Amendment and Restatement of Wheeler Real Estate Investment Trust, Inc. filed with SDAT on August 5, 2016 (Filed as exhibit to Form 8-K, filed on August 8, 2016).
3.2	Articles Supplementary of Wheeler Real Estate Investment Trust, Inc. filed with SDAT on September 16, 2016 (Filed as exhibit to Form 8-K, filed on September 20, 2016).
3.3	Articles Supplementary of Wheeler Real Estate Investment Trust, Inc. filed with SDAT on December 1, 2016 (Filed as exhibit to Form 8-K, filed on December 5, 2016).
3.4	Articles of Amendment of Wheeler Real Estate Investment Trust, Inc., filed with SDAT on March 28, 2017 (Filed as exhibit to Form 8-K, filed on April 3, 2017).
3.5	Articles of Amendment of Wheeler Real Estate Investment Trust, Inc., filed with SDAT on March 28, 2017 (Filed as exhibit to Form 8-K, filed on April 3, 2017).
3.6	Articles of Amendment of Wheeler Real Estate Investment Trust, Inc. filed with SDAT on May 29, 2016 (Filed as exhibit to Form 8-K, filed on May 29, 2020).
3.7	Certificate of Correction of Articles Supplementary of Wheeler Real Estate Investment Trust, Inc. filed with SDAT on May 3, 2018 (Filed as exhibit to Form 8-K, filed on May 4, 2018).
3.8	Articles Supplementary of Wheeler Real Estate Investment Trust, Inc. filed with SDAT on July 8, 2021 (Filed as an exhibit to Form 8-K, filed on July 8, 2021).
3.9	Articles of Amendment of Wheeler Real Estate Investment Trust, Inc. filed with SDAT on November 5, 2021 (Filed as an exhibit to Form 8-K, filed on November 5, 2021).
3.10	Articles of Amendment of Wheeler Real Estate Investment Trust, Inc. filed with SDAT on November 29, 2021 (Filed as an exhibit to Form 8-K, filed on November 29, 2021).
3.11	Articles of Amendment of Wheeler Real Estate Investment Trust, Inc. filed with SDAT on August 16, 2023 (Filed as an exhibit to Form 8-K, filed on August 17, 2023).
3.12	Articles of Amendment of Wheeler Real Estate Investment Trust, Inc. filed with SDAT on August 16, 2023 (Filed as an exhibit to Form 8-K, filed on August 17, 2023)
3.13	Bylaws of Wheeler Real Estate Investment Trust, Inc., as amended (Filed as exhibit to Form 8-K, filed on May 29, 2020).
3.14	Amended and Restated Agreement of Limited Partnership of Wheeler REIT, L.P. (Filed as exhibit to Form S-11 (Registration No. 333-198245) filed on August 20, 2014 pursuant to the Securities Act of 1933).
3.15	Amendment to the Amended and Restated Agreement of Limited Partnership of Wheeler REIT, L.P. Designation of Series A Convertible Preferred Units (Filed as exhibit to Form 8-K, filed on April 15, 2015).
3.16	Amendment to the Amended and Restated Agreement of Limited Partnership of Wheeler REIT, L.P. Amended Designation of Series B Convertible Preferred Units (Filed as exhibit to Form 8-K, filed on July 15, 2016).
3.17	Amendment to the Amended and Restated Agreement of Limited Partnership of Wheeler REIT, L.P. Designation of Series D Cumulative Convertible Preferred Units (Filed as exhibit to Form 8-K, filed on September 20, 2016).
3.18	Amendment to the Amended and Restated Agreement of Limited Partnership of Wheeler REIT, L.P. Amended Designation of Additional Series D Cumulative Convertible Preferred Units (Filed as exhibit to Form 8-K, filed on December 5, 2016).
3.19	Amendment to the Amended and Restated Agreement of Limited Partnership of Wheeler REIT, L.P. (Filed as exhibit to Form 8-K, filed on September 5, 2019).
3.20	Amendment to the Amended and Restated Agreement of Limited Partnership of Wheeler REIT, L.P., dated December 22, 2020 (Filed as an exhibit to Form 8-K, filed on December 23, 2020).

3.21	Amendment to the Amended and Restated Agreement of Limited Partnership of Wheeler REIT, L.P, dated March 12, 2021 (Filed as an exhibit to Form 8-K, filed on March 12, 2021).
4.1	Form of Certificate of Common Stock of Wheeler Real Estate Investment Trust, Inc. *
4.2	Form of Certificate of Series B Preferred Stock of Wheeler Real Estate Investment Trust, Inc. (Filed as exhibit to Form S-11/A (Registration No. 333-194831) filed on April 23, 2014 pursuant to the Securities Act of 1933).
4.3	Form of Certificate of Series D Preferred Stock of Wheeler Real Estate Investment Trust, Inc. (Filed as exhibit to Form 8-K, filed on September 20, 2016).
4.4	Indenture, dated as of August 13, 2021 between Wheeler Real Estate Investment Trust Inc. and Wilmington Savings Fund Society, FSB., as trustee (including form of Note) (Filed as an exhibit to Form 8-K, filed on August 16, 2021).
4.5	Common Stock Purchase Warrant, dated December 22, 2020 (Filed as an exhibit to Form 8-K, filed on December 23, 2020).
4.6	Form of Common Stock Purchase Warrant, dated March 12, 2021 (Filed as an exhibit to Form 8-K, filed on March 12, 2021).
5.1	Opinion of Gordon Feinblatt LLC*
8.1	Opinion of Williams Mullen P.C. regarding certain tax matters (including consent)*

10.1	Wheeler Real Estate Investment Trust, Inc. 2015 Long-Term Incentive Plan (Filed as exhibit to Form 8-K, filed on June 8, 2015).
10.2	Amendment No. 1 to Wheeler Real Estate Investment Trust, Inc. 2015 Long-Term Incentive Plan*
10.3	Wheeler Real Estate Investment Trust, Inc. 2016 Long-Term Incentive Plan (Filed as exhibit to Form 8-K, filed on June 16, 2016).
10.4	Amendment No. 1 to Wheeler Real Estate Investment Trust, Inc. 2016 Long-Term Incentive Plan*
10.5	Employment Agreement with M. Andrew Franklin (Filed as exhibit to Form 8-K, filed on February 20, 2018)
10.6	Amended and Restated Employment Agreement, by and between Wheeler Real Estate Investment Trust, Inc. and Crystal Plum, dated as of August 13, 2021 (Filed as an exhibit to Form 8-K on August 17, 2021).
10.7	Tax Protection Agreement dated February 8, 2017 (Filed as exhibit to Form 8-K, filed on February 10, 2017)
10.8	Registration Rights Agreement dated December 22, 2020 (Filed as an exhibit to Form 8-K, filed on December 23, 2020)
10.9	Registration Rights Agreement dated March 12, 2021 (Filed as an exhibit to Form 8-K, filed on March 12, 2021)
10.10	Term Loan Agreement, dated as of June 17, 2022, between Guggenheim Real Estate, LLC and the Borrowers party thereto. (Filed as an exhibit to Form 8-K, filed on June 21, 2022).
10.11	Loan Agreement dated July 6, 2022, between Citi Real Estate Funding Inc and the Borrowers party thereto. (Filed as an exhibit to Form 8-K, filed on July 8, 2022).
10.12	Loan Agreement dated August 22, 2022, between KEYBANK NATIONAL ASSOCIATION and the Borrowers party thereto. (Filed as an exhibit to Form 8-K, filed on August 25, 2022).
10.13	Guaranty, dated August 22,2022, made by Wheeler Real Estate Investment Trust, Inc. (Filed as an exhibit to Form 8-K, filed on August 25, 2022)
10.14	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. (Filed as an exhibit to Form 8-K, filed on August 25, 2022).
10.15	Limited Recourse Indemnity Agreement made by Wheeler REIT, L.P. in favor of Guggenheim Real Estate, LLC as of October 28, 2022 (Filed as an exhibit to Form 8-K, filed on October 31, 2022).
10.16	Term Loan Agreement, dated as of October 28, 2022, between Guggenheim Real Estate, LLC and the Borrowers party thereto (Filed as an exhibit to Form 8-K, filed on October 31, 2022).
10.17	Loan Agreement, dated as of May 5, 2023, between Insurance Strategy Funding XXVIII, LLC and the Borrowers party thereto (Filed as an exhibit to Form 10-Q, filed on May 9, 2023).
10.18	Term Loan Agreement, dated as of May 18, 2023, between Guggenheim Real Estate, LLC and the Borrowers party thereto (Filed as an exhibit to Form 8-K, filed on May 19, 2023).
10.19	Form of Director and Officer Indemnification Agreement*
21.1	Subsidiaries of Wheeler Real Estate Investment Trust, Inc. *
23.1	Consent of Cherry Bekaert LLP *
23.2	Consent of Gordon Feinblatt LLC (included in Exhibit 5.1). *
23.3	Consent of Williams Mullen P.C. (included in Exhibit 8.1) *
24.1	Power of Attorney (included on Signature Page of Registration Statement).
107	Filing Fee Table*

* Filed herewith

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing this Form S-11 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Virginia Beach, State of Virginia, on September 1, 2023.

WHEELER REAL ESTATE INVESTMENT TRUST, INC.

By: /s/ M. Andrew Franklin
M. Andrew Franklin
Chief Executive Officer and President
(Principal Executive Officer)

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

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby makes, designates, constitutes and appoints M. Andrew Franklin and Crystal Plum, and each of them (with full power and authority to act without the other), his or her true and lawful attorneys-in-fact and agents, each with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments, including post-effective amendments, to this Registration Statement, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact and agents or their substitute or substitutes may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1933, this Registration Statement has been signed below by the following persons on behalf of the Company and in the capacities and on the dates indicated.

Name	Title	Date
/s/ M. Andrew Franklin M. Andrew Franklin	Chief Executive Officer and President(Principal Executive Officer)	September 1,2023
/s/ Crystal Plum Crystal Plum	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	September 1,2023
/s/ Stefani D. Carter Stefani D. Carter	Chair of the Board	September 1,2023
/s/ E.J. Borrack E.J. Borrack	Director	September 1,2023
/s/ Kerry G. Campbell Kerry G. Campbell	Director	September 1,2023
/s/ Saverio M. Flemma Saverio M. Flemma	Director	September 1,2023
/s/ Megan Parisi Megan Parisi	Director	September 1,2023
/s/ Joseph D. Stilwell Joseph D. Stilwell	Director	September 1,2023

WHLR
REAL ESTATE INVESTMENT TRUST
PO BOX 43004, Providence, RI 02940-3004

MR A SAMPLE
DESIGNATION (IF ANY)
ADD 1
ADD 2
ADD 3
ADD 4

CUSIP/IDENTIFIER
Holder ID
Insurance Value
Number of Shares
DTC
12345678 12345678901234 5

Certificate Numbers	Num/No.	Denom.	Total
1234567890/1234567890	1	1	1
1234567890/1234567890	2	2	2
1234567890/1234567890	3	3	3
1234567890/1234567890	4	4	4
1234567890/1234567890	5	5	5
1234567890/1234567890	6	6	6
Total Transaction			7

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ZQ|CERT#|COY|CLS|RGSTRY|ACCT#|TRANSTYPE|RUN#|TRANS#

COMMON STOCK
PAR VALUE $0.01

COMMON STOCK

Certificate Number
ZQ00000000

WHLR
REAL ESTATE INVESTMENT TRUST

Shares
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WHEELER REAL ESTATE INVESTMENT TRUST, INC.

INCORPORATED UNDER THE LAWS OF THE STATE OF MARYLAND

THIS CERTIFIES THAT

MR SAMPLE & MRS SAMPLE &
MR SAMPLE & MRS SAMPLE

SEE REVERSE FOR CERTAIN DEFINITIONS

CUSIP 963025 88 7

is the owner of

***ZERO HUNDRED THOUSAND
ZERO HUNDRED AND ZERO***

THIS CERTIFICATE IS TRANSFERABLE IN CITIES DESIGNATED BY THE TRANSFER AGENT, AVAILABLE ONLINE AT www.computershare.com

FULLY-PAID AND NON-ASSESSABLE SHARES OF THE COMMON STOCK OF

Wheeler Real Estate Investment Trust, Inc. (hereinafter called the "Company"), transferable on the books of the Company in person or by duly authorized attorney, upon surrender of this Certificate properly endorsed. This Certificate and the shares represented hereby, are issued and shall be held subject to all of the provisions of the Charter, as amended, and the By-Laws, as amended, of the Company (copies of which are on file with the Company and with the Transfer Agent), to all of which each holder, by acceptance hereof, assents. This Certificate is not valid unless countersigned and registered by the Transfer Agent and Registrar.

Witness the facsimile seal of the Company and the facsimile signatures of its duly authorized officers.

Chief Executive Officer and President

Secretary

WHEELER REAL ESTATE INVESTMENT TRUST, INC.
SEAL
2011
MARYLAND

DATED DD-MMM-YYYY

COUNTERSIGNED AND REGISTERED:
COMPUTERSHARE TRUST COMPANY, N.A.
TRANSFER AGENT AND REGISTRAR,

By _____
AUTHORIZED SIGNATURE

SECURITY INSTRUCTIONS ON REVERSE

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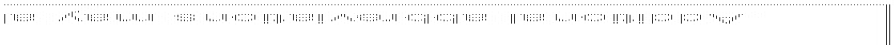

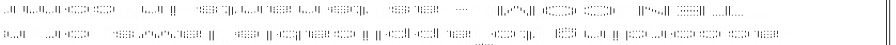

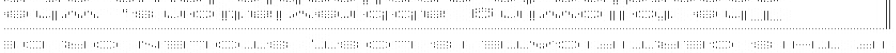

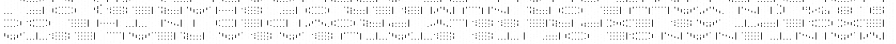

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IF THIS CERTIFICATE IS LOST, STOLEN OR DE

The following abbreviations, whe
according to applicable laws or re

TEN COM – as tenants in common

TEN ENT – as tenants by the e

JT TEN – as joint tenants wit
and not as tenants

Additional abbreviations may al

For value received, ____________________

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRES

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Dated: ____________________

Signature: ____________________

Signature: ____________________

Notice: The signature to t
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without alteration o

SECURITY INSTRUCTIONS:
THIS IS WATERMARKED PAPER. DO
WATERMARK. HOLD TO LIGHT TO VE

Exhibit 5.1

GORDON·FEINBLATT LLC
ATTORNEYS AT LAW

1001 FLEET STREET
SUITE 700
BALTIMORE, MARYLAND 21202-4346

September 1, 2023

Wheeler Real Estate Investment Trust, Inc.
2529 Virginia Beach Boulevard
Virginia Beach, VA 23452

Ladies and Gentlemen:

We are furnishing this opinion letter in accordance with the requirements of Item 601(b)(5) of Regulation S-K in connection with the Registration Statement on Form S-11 of Wheeler Real Estate Investment Trust, Inc., a Maryland corporation (the "Company"), filed with the U.S. Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), on the date hereof (the "Registration Statement") and the related prospectus contained in the Registration Statement (the "Prospectus") in connection with the Company's registration of 101,100,000 shares (the "Common Shares") of its common stock, par value $.01 per share (the "Common Stock"). The Company intends to issue the Common Shares to holders of shares (the "Series D Shares") of the Company's Series D Cumulative Convertible Preferred Stock, having no par value (the "Series D Preferred Stock"), if and when such holders exercise their rights to (i) convert such Series D Shares into Common Shares (each, a "Conversion") pursuant to Section 4 of Article FIRST of the Series D Articles Supplementary (as defined in Section I below) and/or (ii) have the Company redeem such Series D Shares after September 21, 2023 pursuant to Section 6 of Article FIRST of the Series D Articles Supplementary (each, a "Redemption").

I. Documents Reviewed

We have examined copies of the following documents (the "Documents"):

1. the Registration Statement and the Prospectus, each in the form in which it was filed with the Commission (collectively, the "Offering Documents");

2. Articles of Amendment and Restatement filed by the Company with the State Department of Assessments and Taxation of Maryland ("SDAT") on August 5, 2016 (the "Articles of Incorporation");

3. Articles Supplementary filed by the Company with SDAT on September 16, 2016, as corrected by the Certificate of Correction filed with SDAT on May 3, 2018;

4. Articles Supplementary filed by the Company with SDAT on November 15, 2016;

5. Articles Supplementary filed by the Company with SDAT on November 21, 2016;

6. Articles Supplementary filed by the Company with SDAT on December 1, 2016;

7. A first Articles of Amendment to the Articles of Incorporation filed by the Company with SDAT on March 28, 2017;

8. A second Articles of Amendment to the Articles of Incorporation filed by the Company with SDAT on March 28, 2017;

9. Articles of Amendment to the Articles of Incorporation filed by the Company with SDAT on May 29, 2020;

10. Articles Supplementary filed by the Company with SDAT on July 8, 2021 (together with the documents identified in Paragraphs 3, 4 and 6, the "Series D Articles Supplementary");

11. Articles of Amendment filed by the Company with SDAT on November 5, 2021;

12. Articles of Amendment filed by the Company with SDAT on November 29, 2021;

13. Articles of Amendment filed by the Company with SDAT on August 16, 2023 with effective time of 5:00 p.m. on August 17, 2023;

14. Articles of Amendment filed by the Company with SDAT on August 16, 2023 with effective time of 5:01 p.m. on August 17, 2023 (together with the documents identified in Items 2 through 13 of this Section I, the "Charter");

15. the Bylaws of the Company (the "Bylaws");

16. the certificate of good standing issued by SDAT on August 15, 2023 with respect to the Company;

17. the resolutions adopted by the Board of Directors of the Company on August 31, 2023 relating to certain matters referred to herein (the "Resolutions"); and

18. the Certificate of Secretary, dated as of the date hereof, issued to us by the Secretary of the Company with respect to certain factual matters relevant to this opinion letter.

II. Assumptions

In expressing the opinions set forth below, we have assumed, and so far as is known to us there are no facts inconsistent therewith, that:

1. all Documents submitted to us as originals are authentic;

2. all Documents submitted to us as certified or photostatic copies conform to the original documents;

3. all signatures on all such Documents are genuine;

4. all public records reviewed or relied upon by us or on our behalf are true and complete;

5. all statements and information contained in the Documents are true and complete;

6. each person who executed any of the Documents was authorized to do so;

7. each natural person who executed any of the Documents was legally competent to do so and had knowledge about all matters stated therein; and

8. there has been no oral or written modification of or amendment to any of the Documents, and there has been no waiver of any provision of any of the Documents, in connection with this opinion letter, by action or omission of the parties thereto or otherwise;

9. the Charter, the Bylaws, and the Resolutions will not have been amended or rescinded, and will be in full force and effect, at all times at which any Common Shares are offered or issued by the Company;

10. the Common Shares will, if and when issued, be issued in the manner stated in, and pursuant to, the Offering Documents;

11. upon the issuance of any Common Shares pursuant to a Conversion and/or a Redemption, the total number of shares of Common Stock issued and outstanding will not exceed the total number of shares of Common Stock that the Company is then authorized to issue under the Charter;

12. none of the Common Shares will be issued in violation of the restrictions on transfer and ownership set forth in Article VI of the Articles of Incorporation, as amended to date, and as the same may be amended in the future;

13. at the time of the issuance of any Common Shares, the Company or its transfer agent will record in the Company's stock ledger the name(s) of the persons to whom such shares are issued;

14. the Registration Statement, and any amendments thereto (including post-effective amendments), will have been declared effective by the Commission; and

15. the Company will remain duly organized, validly existing, and in good standing under the laws of the State of Maryland at the time any Common Shares are offered or issued by the Company.

As to any facts material to this opinion letter that we did not independently establish or verify, we have relied upon statements and representations of officers and other representatives of the Company and others.

III. Opinion

Based on the foregoing, and subject to the qualifications and assumptions set forth herein, it is our opinion that, if and when issued by the Company under the circumstances contemplated by the Offering Documents, the Common Shares will be duly authorized, validly issued, fully paid, and non-assessable.

IV. Qualifications

In addition to the assumptions set forth above, the opinion set forth herein is also subject to the following qualifications:

1. we are opining only as to the matters expressly set forth herein, and no opinion should be inferred as to any other matters;

2. the foregoing opinion is limited to the provisions of the Maryland General Corporation Law and the applicable provisions of the Maryland Declaration of Rights, each as currently in effect on the date hereof, and the reported judicial decisions interpreting these laws. We do not express any opinion herein concerning any other laws; and

3. the foregoing opinion is rendered as of the date first set forth above, and we undertake no obligation to advise you of any changes or any new developments, including, without limitation, changes in the facts set forth in the Documents and/or to any applicable laws, that might affect the opinion set forth herein.

We hereby consent to the filing of this opinion letter as an exhibit to the Registration Statement and to the use of the name of our firm therein. In issuing this opinion letter, we do not admit that we are within the category of persons whose consent is required by Section 7 of the Securities Act.

Sincerely,

/s/ Gordon Feinblatt LLC

WILLIAMS MULLEN

September 1, 2023

Wheeler Real Estate Investment Trust, Inc.
2529 Virginia Beach Blvd.
Suite 200
Virginia Beach, Virginia 23452

Re: Wheeler Real Estate Investment Trust, Inc. – REIT Opinion

Ladies and Gentlemen:

We have acted as federal tax counsel to Wheeler Real Estate Investment Trust, Inc., a Maryland corporation (the "Company"), in connection with the Company's filing of the registration statement on Form S-11, Registration No. 333-_____, dated September 1, 2023, as amended through the date hereof (the "Registration Statement"), with the Securities and Exchange Commission (the "Commission"). We understand that after September 21, 2023, each holder of the Company's Series D Cumulative Convertible Preferred Stock (the "Series D Preferred Stock") will have the right, at the option of such holder, to require the Company to redeem any or all of such holder's shares of the Series D Preferred Stock (a "Redemption"). As consideration for a Redemption, the Company may distribute to the redeeming holder cash, equal value of shares of the Company's common stock, $0.01 par value per share (the "Common Stock"), or any combination thereof, at the Company's option. We also understand that notwithstanding the right of each holder of Series D Preferred Stock to require a Redemption, the Series D Preferred Stock is convertible into Common Stock at any time before or after September 21, 2023, at the option of the holder (the "Conversion"). We understand that, under the Registration Statement, the Company is registering shares of Common Stock issuable upon each Redemption or Conversion. In connection with the registration of the shares of Common Stock, we are delivering to you our opinion as to certain matters related to the qualification of the Company as a real estate investment trust (a "REIT") within the meaning of Section 856(a) of the Internal Revenue Code of 1986, as amended (the "Code").

We have reviewed certain documents (collectively, the "Documents") that we have deemed necessary or appropriate as a basis for our opinions, including without limitation, (i) the organizational documents of the Company, (ii) the certificate, dated as of the date hereof, executed by a duly appointed officer of the Company setting forth certain factual representations (the "Officer's Certificate"), and (iii) certain schedules, memoranda, financial information, and such other records and documents, as we have deemed relevant or appropriate.

Qualifications and Limitations

We have based our opinions on the correctness of the following specific assumptions:

1. The Company, at all times, has been, and will continue to be, operated in accordance with the laws of the State of Maryland in the manner described in its organizational documents;

2. The board of directors of the Company has not revoked or otherwise terminated, and will not exercise its discretion under the charter of the Company and applicable law to authorize the Company to revoke or otherwise terminate, its REIT election pursuant to Section 856(g) of the Code;

3. Each of the statements made in the Officer's Certificate is true, correct, and complete without regard to any qualification as to knowledge or belief, and the Officer's Certificate has been executed by the appropriate and authorized officer of the Company;

4. Each of the Documents has been duly authorized, executed, and delivered; is authentic, if an original, or is accurate, if a copy; and has not been amended in any material respect;

5. The transactions contemplated by the Documents will be consummated in accordance with the terms thereof;

6. Any Documents that have not yet been executed will be finalized in substantially the same form as the versions that we have reviewed; and

7. Each Redemption and Conversion (and any other transactions in connection therewith) as set forth in the Documents will be consummated in accordance with the terms of the Documents.

Although we have made such inquiries and performed such investigations as we have deemed necessary to fulfill our professional responsibilities as counsel, we have not undertaken an independent investigation of all of the facts referred to in this letter or in the Documents. Consequently, we have relied on representations that the information presented in the Documents accurately and completely describes all material facts. No facts have come to our attention that would cause us to question the accuracy or completeness of the factual representations in the Documents. We have also assumed the correctness of the factual and legal matters set forth in the prior legal opinion letter received by the Company from Goodwin Proctor LLP to the effect that the Company's recently acquired subsidiary REIT, Cedar Realty Trust, Inc. ("Cedar Realty"), satisfied the requirements for qualification and taxation as a REIT for the taxable year ended December 31, 2021, and for all prior taxable periods.

For purposes of our opinions, we have not investigated or verified the accuracy of any of the representations, statements and covenants in the Documents or our assumptions or the ability of the Company and its subsidiaries to operate in compliance with such representations, statements or covenants or our assumptions. Differences between the actual ownership and operations of such entities and the prior, proposed and intended ownership and method of operations described in the Documents or our assumptions could result in U.S. federal income tax treatment of the Company that differs materially and adversely from the treatment described herein.

Our opinions represent our evaluation of statutory, regulatory, judicial, and administrative authorities existing as of the date hereof, any of which are subject to change at any time, potentially with retroactive effect. We undertake no responsibility to advise you of any legal developments arising after the date hereof or to supplement or otherwise revise our opinions to reflect any such developments.

Our advice on each legal issue addressed in this letter represents our opinion as to how that issue should be resolved were it to be considered by the highest court of the jurisdiction upon whose law our opinion on that issue is based. The manner in which any particular issue would be treated in any actual court case would depend, in part, on facts and circumstances particular to the case, and this letter is not intended to guarantee the outcome of any legal dispute that may arise in the future.

In rendering our opinions, we also have relied upon the Code and the Treasury regulations promulgated thereunder, published rulings of the Internal Revenue Service (the "IRS"), and other interpretations of the Code and the Treasury regulations by the courts and the IRS, all as they exist and are in effect as of the date hereof. Statutes, regulations, judicial decisions, and administrative interpretations are subject to change at any time; and, in some circumstances, with retroactive effect. A material change that is made after the date hereof in any of the foregoing bases for our opinions could affect our conclusions. We undertake no responsibility to advise you of any factual developments arising after the date hereof or to supplement or otherwise revise our opinions to reflect any such developments.

Our opinions are limited to the U.S. federal income tax matters addressed herein, and no other opinions are rendered with respect to other federal tax matters or to any issues raising under the tax laws of any other country, or any state or locality.

Our opinions are not binding on the IRS or any court, and there is no assurance or guarantee that the IRS or a court will agree with our conclusions.

Our opinions do not preclude the possibility that the Company may need to utilize one or more of the various "savings provisions" under the Code and the regulations thereunder that, if certain requirements are satisfied, would permit the Company to cure certain violations of the requirements for qualification and taxation as a REIT. Utilizing such savings provisions could require the Company to pay significant penalties or excise taxes and/or interest charges and/or make additional distributions to shareholders that the Company otherwise would not make.

Opinions

Based on the foregoing and subject to the limitations contained in this letter, we are of the opinion that:

1. commencing with its taxable year ended December 31, 2012, the Company has been organized and has operated in conformity with the requirements for qualification and taxation as a REIT under the Code, and the Company's proposed method of operation will enable the Company to continue to meet the requirements for qualification and taxation as a REIT under the Code; and

2. the statements in the Registration Statement under the heading "Material U.S. Federal Income Tax Considerations," to the extent that they constitute matters of law or legal conclusions with respect thereto, are correct in all material respects.

As described in the Registration Statement, qualification of the Company as a REIT will depend upon the satisfaction by the Company, through actual operating results, distribution levels, diversity of stock ownership and otherwise, of the applicable asset composition, source of income, shareholder distribution, record keeping and other requirements of the Code necessary for a corporation to qualify as a REIT. Accordingly, no assurance can be given that the actual results of the Company's operations for any taxable year will satisfy all such requirements. We do not undertake to monitor whether the Company actually will satisfy the various qualification tests.

We are providing this opinion letter to you solely in connection with the Registration Statement. This opinion letter speaks only as of the date hereof. Our opinions are limited to the matters expressly stated herein; no further opinion is implied or may be inferred beyond such matters. Except as provided in the next paragraph, this opinion letter may not be distributed, quoted in whole or in part or otherwise reproduced in any document, filed with any governmental agency, or relied upon by any other person for any other purpose (other than as required by law) without our express written consent.

We consent to the filing of this opinion letter as an exhibit to the Registration Statement and to the use of our name under the caption "Material U.S. Federal Income Tax Considerations" in the Registration Statement. In giving this consent, we do not hereby admit that we come within the category of persons whose consent is required under section 7 of the Securities Act of 1933, as amended (the "Securities Act"), or the rules or regulations of the Commission thereunder, nor do we thereby admit that we are experts with respect to any part of the Registration Statement within the meaning of the term "experts" as used in the Securities Act or the rules and regulations of the Commission promulgated thereunder.

/s/ WILLIAMS MULLEN

Exhibit 10.2

AMENDMENT NO. 1 to the
2015 LONG-TERM INCENTIVE PLAN
of
WHEELER REAL ESTATE INVESTMENT TRUST, INC.

August 17, 2023

This Amendment No. 1 (this "***Amendment***") to the 2015 Long-Term Incentive Plan (the "***Plan***") of Wheeler Real Estate Investment Trust, Inc. (the "***Company***") is hereby adopted by the Board of Directors of the Company (the "***Board***"), effective as of the date first referenced above.

WHEREAS, the Plan was adopted for and on behalf of the Company by the Board on April 1, 2015 andapproved by the stockholders of the Company on June 4, 2015; and

WHEREAS, as of the date first set forth above, the Company has effectuated a one-for-ten reverse stock split (the "***Reverse Split***") of the shares of the Company's common stock, par value $0.01 per share ("***Common Stock***"); and

WHEREAS, pursuant to Section 14 of the Plan, in the event of a stock dividend, stock split or combination of shares, spin-off, reclassification, recapitalization, merger or other change in the Company's capital stock (including, but not limited to, the creation or issuance to shareholders generally of rights, options or warrants for the purchase of common stock or preferred stock of the Company), the number and kind of shares of stock or securities of the Company to be issued under the Plan (under outstanding Awards and Awards (as defined in the Plan) to be granted in the future), the exercise price of options, and other relevant provisions shall be appropriately adjusted; and

WHEREAS, the Board wishes to amend the Plan to reflect the Reverse Split.

NOW, THEREFORE, BE IT RESOLVED,

1. Section 4 of the Plan is hereby amended to change the total number of shares of Common Stock reserved for issuance under the Plan from 1,000,000 to 100,000.

2. Sections 6(a), 7(a), 8(a) and 9(a) of the Plan are hereby amended to change the number of shares of Common Stock referenced in each respective Section from 200,000 to 20,000.

3. Except as modified herein, all terms and conditions of the Plan shall remain in full force and effect.

4. This Amendment shall be governed by the laws of Maryland, without reference to principles of conflict of law.

5. If any provision of this Amendment is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

Exhibit 10.4

AMENDMENT NO. 1 to the
2016 LONG-TERM INCENTIVE PLAN
of
WHEELER REAL ESTATE INVESTMENT TRUST, INC.

August 17, 2023

This Amendment No. 1 (this "***Amendment***") to the 2016 Long-Term Incentive Plan (the "***Plan***") of Wheeler Real Estate Investment Trust, Inc. (the "***Company***") is hereby adopted by the Board of Directors of the Company (the "***Board***"), effective as of the date first referenced above.

WHEREAS, the Plan was adopted for and on behalf of the Company by the Board on April 6, 2016 andapproved by the stockholders of the Company on June 15, 2016; and

WHEREAS, as of the date first set forth above, the Company has effectuated a one-for-ten reverse stock split (the "***Reverse Split***") of the shares of the Company's common stock, par value $0.01 per share ("***Common Stock***"); and

WHEREAS, pursuant to Section 14 of the Plan, in the event of a stock dividend, stock split or combination of shares, spin-off, reclassification, recapitalization, merger or other change in the Company's capital stock (including, but not limited to, the creation or issuance to shareholders generally of rights, options or warrants for the purchase of common stock or preferred stock of the Company), the number and kind of shares of stock or securities of the Company to be issued under the Plan (under outstanding Awards and Awards (as defined in the Plan) to be granted in the future), the exercise price of options, and other relevant provisions shall be appropriately adjusted; and

WHEREAS, the Board wishes to amend the Plan to reflect the Reverse Split.

NOW, THEREFORE, BE IT RESOLVED,

1. Section 4 of the Plan is hereby amended to change the total number of shares of Common Stock reserved for issuance under the Plan from 5,000,000 to 500,000.

2. Sections 6(a), 7(a), 8(a) and 9(a) of the Plan are hereby amended to change the number of shares of Common Stock referenced in each respective Section from 200,000 to 20,000.

3. Except as modified herein, all terms and conditions of the Plan shall remain in full force and effect.

4. This Amendment shall be governed by the laws of Maryland, without reference to principles of conflict of law.

5. If any provision of this Amendment is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

WHEELER REAL ESTATE INVESTMENT TRUST, INC.
FORM OF INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (this "**Agreement**"), effective as of [**DATE**] (the "**Effective Date**"), by and between Wheeler Real Estate Investment Trust, Inc., a Maryland corporation (the "**Company**"), and [**DIRECTOR/OFFICER**] ("**Indemnitee**").

WHEREAS, highly competent persons have become more reluctant to serve corporations as directors, officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation; and

WHEREAS, the Board of Directors of the Company (the "Board") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers, and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. Indemnitee may be entitled to indemnification pursuant to the Maryland General Corporation Law ("MGCL"). The MGCL expressly provides that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the Board, officers and other persons with respect to indemnification; and

WHEREAS, the uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining such persons; and

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company's stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future; and

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons and certain affiliates of such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified; and

WHEREAS, this Agreement is a supplement to and in furtherance of the charter and the bylaws of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder; and

WHEREAS, Indemnitee does not regard the protection available under the Company's charter, bylaws and insurance as adequate in the present circumstances, and may not be willing to serve as a director without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that Indemnitee be so indemnified.

NOW, THEREFORE, in consideration of Indemnitee's agreement to serve as a director after the date hereof, the parties hereto agree as follows:

Section 1. Definitions. For purposes of this Agreement:

(a) "**Bylaws**" means the bylaws of the Company, as they may be amended from time to time.

(b) "**Charter**" has, with respect to the Company, the meaning given such term by Section 1-101(f) of the MGCL and includes, without limitation, the Articles of Amendment and Restatement of the Company filed with the State Department of Assessments and Taxation of Maryland on August 5, 2016, as the same has to date been, and may in the future be, amended, restated, supplemented, and/or corrected.

(c) "**Company Status**" means the status of a Person who is or was a director, officer, employee, agent or fiduciary of the Company or any of its majority owned subsidiaries and the status of a Person who, while a director, officer, employee, agent or fiduciary of the Company or any of its majority owned subsidiaries, is or was serving at the request of the Company as a director, officer, partner, manager or fiduciary of another corporation, real estate investment trust, partnership, limited liability company, joint venture, trust, employee benefit plan or any other Enterprise.

(d) "**Control**" of an entity, shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such entity, whether through ownership of voting securities, by contract or otherwise.

(e) "**Disinterested Director**" means a director of the Company who is not, at the time, a party to the Proceeding in respect of which indemnification or advance of Expenses is sought by Indemnitee.

(f) "**Enterprise**" shall mean the Company and any other corporation, real estate investment trust, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise that Indemnitee is or was serving at the express written request of the Company as a director, officer, partner, manager or fiduciary.

(g) "**Expenses**" means all reasonable expenses, including, but not limited to, all attorneys' fees and costs, retainers, court or arbitration costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, participating, or being or preparing to be a witness in a Proceeding, or responding to, or objecting to, a request to provide discovery in any Proceeding. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond or other appeal bond or its equivalent.

(h) "**Independent Counsel**" means a law firm, or a member of a law firm, selected by the Company and acceptable to the Indemnitee, that is experienced in matters of business law. If, within twenty (20) days after submission by Indemnitee of a written demand for indemnification pursuant to Section 7(a) hereof, no Independent Counsel shall have been selected and agreed to by Indemnitee, either the Company or Indemnitee may petition a Chosen Court for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person so appointed shall act as Independent Counsel hereunder.

(i) "**Person**" means an individual, a corporation, a general or limited partnership, an association, a limited liability company, a governmental entity, a trust, a joint venture, a joint stock company or another entity or organization.

(j) "**Proceeding**" means any threatened, pending or completed claim, demand, action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other proceeding, whether civil, criminal, administrative or investigative (including on appeal), whether or not by or in the right of the Company, except one initiated by an Indemnitee pursuant to Section 9.

Section 2. Indemnification - General. The Company shall indemnify, and advance Expenses to, Indemnitee (a) as provided in this Agreement and (b) otherwise to the maximum extent permitted by Maryland law in effect on the Effective Date and as amended from time to time; provided, however, that no change in Maryland law shall have the effect of reducing the benefits available to Indemnitee hereunder based on Maryland law as in effect on the Effective Date. The rights of Indemnitee provided in this Section 2 shall include, without limitation, the rights set forth in the other sections of this Agreement, including any additional indemnification permitted by Section 2-418(g) of the MGCL.

Section 3. Proceedings Other Than Derivative Proceedings by or in the Right of the Company. Indemnitee shall be entitled to the rights of indemnification provided in this Section 3 if, by reason of Indemnitee's Company Status, Indemnitee is, or is threatened to be, made a party to any Proceeding, other than a derivative Proceeding by or in the right of the Company (or, if applicable, such other Enterprise at which Indemnitee is or was serving at the request of the Company). Pursuant to this Section 3, Indemnitee shall be indemnified against all judgments, penalties, fines and amounts paid in settlement and all Expenses incurred by Indemnitee or on Indemnitee's behalf in connection with a Proceeding by reason of Indemnitee's Company Status unless it is finally determined that such indemnification is not permitted by the MGCL.

Section 4. Derivative Proceedings by or in the Right of the Company.

(a) Indemnitee shall be entitled to the rights ofindemnification provided in this Section 4 if, by reason of Indemnitee's Company Status, Indemnitee is, or is threatened to be, made a party to any derivative Proceeding brought by or in the right of the Company (or, if applicable, such other Enterprise at which Indemnitee is or was serving at the request of the Company).

(b) Pursuant to this Section 4, Indemnitee shall be indemnified against all judgments, penalties, fines and amounts paid in settlement and all Expenses incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding unless it is finally determined that such indemnification is not permitted by the MGCL.

Section 5. Indemnification for Expenses of a Party Who is Partly Successful. Without limitation on Section 3 or Section 4, if Indemnitee is not wholly successful in any Proceeding covered by this Agreement, but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee under this Section 5 for all Expenses incurred by Indemnitee or on Indemnitee's behalf in connection with each successfully resolved claim, issue or matter, allocated on a reasonable and proportionate basis. For purposes of this Section 5 and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section 6. Advance of Expenses. The Company, without requiring a preliminary determination of Indemnitee's ultimate entitlement to indemnification hereunder, shall advance all Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding in which Indemnitee may be involved, or is threatened to be involved, including as a party, a witness or otherwise, by reason of Indemnitee's Company Status, within ten (10) days after the receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and shall be preceded or accompanied by a written affirmation by Indemnitee of Indemnitee's good faith belief that the standard of conduct necessary for indemnification by the Company as authorized by the MGCL has been met and a written undertaking by or on behalf of Indemnitee, in substantially the form of Exhibit A hereto or in such other form as may be required under applicable law as in effect at the time of the execution thereof, to reimburse the portion of any Expenses advanced to Indemnitee relating to claims, issues or matters in the Proceeding as to which it shall be finally determined that the standard of conduct has not been met and which have not been successfully resolved as described in Section 5. For the avoidance of doubt, the Company shall advance Expenses incurred by Indemnitee or on Indemnitee's behalf in connection with such a Proceeding pursuant to this Section 6 until it is finally determined that the Indemnitee is not entitled to indemnification under law in respect of such Proceeding. To the extent that Expenses advanced to Indemnitee do not relate to a specific claim, issue or matter in the Proceeding, such Expenses shall be allocated on a reasonable and proportionate basis. The undertaking required by this Section 6 shall be an unlimited general obligation by or on behalf of Indemnitee and shall be accepted without reference to Indemnitee's financial ability to repay such advanced Expenses and without any requirement to post security therefor. At Indemnitee's request, advancement of any such Expense shall be made by the Company's direct payment of such Expense instead of reimbursement of Indemnitee's payment of such Expense.

Section 7. Procedure for Determination of Entitlement to Indemnification.

(a) To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written demand therefor. The Corporate Secretary of the Company shall, promptly upon receipt of such a demand for indemnification, provide copies of the demand to the Board.

(b) Upon written request by Indemnitee for indemnification pursuant to the first sentence ofSection 7(a) of this Agreement, a determination, if required by applicable law, with respect to Indemnitee's entitlement thereto shall promptly be made in the specific case by one of the following three methods, which shall be at the election of the Board: (i) by a majority vote of the Disinterested Directors, even though less than a quorum, (ii) by a majority vote of a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum, or (iii) if there are no Disinterested Directors or if the Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to the Indemnitee.

(c) The Company shall pay the fees and expenses of Independent Counsel, if one is appointed, and shall agree to fully indemnify such Independent Counsel against any and all expenses, claims, liabilities and damages arising out of or relating to this Agreement or the Independent Counsel's engagement as such pursuant hereto.

Section 8. Presumptions and Effect of Certain Proceedings. (a) In making a determination with respect to entitlement to indemnification hereunder, the Person or Persons making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(b) It shall be presumed that Indemnitee has at all times acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence. Without limitation of the foregoing, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with

reasonable care by the Enterprise. In addition, the knowledge or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

(c) Neither the failure to make a determination pursuant to Section 7(b) as to whether indemnification is proper in the circumstances because Indemnitee has met any particular standard of conduct, nor an actual determination by the Company (including by its directors or Independent Counsel) pursuant to Section 7(b) that Indemnitee has not met such standard of conduct, shall be a defense to Indemnitee's claim that indemnification is proper in the circumstances or create a presumption that Indemnitee has not met any particular standard of conduct.

(d) The termination of any Proceeding by judgment, order, settlement, conviction, a plea of nolo contendere or its equivalent, or an entry of an order of probation prior to judgment, shall not in and of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not meet the standard of conduct required for indemnification. The Company acknowledges that a settlement or other disposition short of final judgment may be successful if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any Proceeding to which Indemnitee is a party is resolved in any manner other than by adverse judgment against Indemnitee (including, without limitation, settlement of such action, claim or proceeding with or without payment of money or other consideration), it shall be presumed that Indemnitee has been successful on the merits or otherwise in such Proceeding. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

Section 9. Remedies of Indemnitee. (a) If (i) a determination is made pursuant to Section 7(b) that Indemnitee is not entitled to indemnification under this Agreement, (ii) advance of Expenses is not timely made pursuant to Section 6, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 7(b) within thirty (30) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to Section 5 within ten (10) days after receipt by the Company of a written request therefor, or (v) payment of indemnification is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, Indemnitee shall (A) unless the Company demands arbitration as provided by Section 17, be entitled to an adjudication in a Chosen Court or (B) be entitled to seek an award in arbitration as provided by Section 17, in each case of Indemnitee's entitlement to such indemnification or advance of Expenses.

(b) In any judicial proceeding or arbitration commenced pursuant to this Section 9, the Company shall have the burden of proving, by a preponderance of the evidence, that Indemnitee is not entitled to indemnification or advance of Expenses, as the case may be. In the event that a determination shall have been made pursuant to Section 7(b) that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 9 shall be conducted in all respects as a de novo trial on the merits, and the Indemnitee shall not be prejudiced by reason of the adverse determination under Section 7(b).

(c) If a determination shall have been made pursuant to Section 7(b) that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 9, absent a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the demand for indemnification.

(d) In the event that Indemnitee, pursuant to this Section 9, seeks a judicial adjudication of or an award in arbitration as provided by Section 17 to enforce Indemnitee's rights under, or to recover damages for breach of, this Agreement by the Company, or to recover under any directors' and officers' liability insurance policies maintained by the Company, the Company shall indemnify Indemnitee against any and all Expenses incurred by Indemnitee in such judicial adjudication or arbitration and, if requested by Indemnitee, the Company shall (within ten (10) days after receipt by the Company of a written demand therefore) advance, to the extent not prohibited by law, any and all such Expenses.

(e) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 9 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such judicial proceeding or arbitration that the Company is bound by all the provisions of this Agreement.

(f) To the extent requested by Indemnitee and approved by the Board, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of the Indemnitee.

(g) Interest shall be paid by the Company to Indemnitee at the maximum rate allowed to be charged for judgments under the Courts and Judicial Proceedings Article of the Annotated Code of Maryland for amounts which the Company is obligated to pay from the date when such amount should have been paid to Indemnitee by the Company and ending on the date such payment is made to Indemnitee by the Company.

Section 10. Defense of the Underlying Proceeding. (a) Indemnitee shall notify the Company promptly upon being served with or receiving any summons, citation, subpoena, complaint, indictment, information, notice, request or other document relating to any Proceeding which may result in the right to indemnification or the advance of Expenses hereunder; provided, however, that the failure to give any such notice shall not disqualify Indemnitee from the right, or otherwise affect in any manner any right of Indemnitee, to indemnification or the advance of Expenses under this Agreement unless the Company's ability to defend in such Proceeding or to obtain proceeds under any insurance policy is materially and adversely prejudiced thereby, and then only to the extent the Company is thereby actually so prejudiced.

(b) Subject to the provisions of the last sentence of this Section 10(b) and of Section 10(c) below, the Company shall have the right to defend Indemnitee in any Proceeding which may give rise to indemnification hereunder; provided, however, that the Company shall notify Indemnitee of any such decision to defend within fifteen (15) days following receipt of notice of any such Proceeding under Section 10(a) above, and the counsel selected by the Company shall be reasonably satisfactory to Indemnitee. The Company shall not, without the prior written consent of Indemnitee, consent to the entry of any judgment against Indemnitee or enter into any settlement or compromise which (i) includes an admission of fault of Indemnitee, (ii) does not include, as an unconditional term thereof, the full release of Indemnitee from all liability in respect of such Proceeding, which release shall be in form and substance reasonably satisfactory to Indemnitee or (iii) has the actual or purported effect of extinguishing, limiting or impairing Indemnitee's rights hereunder. This Section 10(b) shall not apply to a Proceeding brought by Indemnitee under Section 9 above or Section 15.

(c) Notwithstanding the provisions of Section 10(b), if in a Proceeding to which Indemnitee is a party by reason of Indemnitee's Company Status, (i) Indemnitee reasonably concludes, based upon an opinion of counsel approved by the Company, which approval shall not be unreasonably withheld, that Indemnitee may

have separate defenses or counterclaims to assert with respect to any issue which may not be consistent with other defendants in such Proceeding, (ii) Indemnitee reasonably concludes, based upon an opinion of counsel approved by the Company, which approval shall not be unreasonably withheld, that an actual or apparent conflict of interest or potential conflict of interest exists between Indemnitee and the Company, or (iii) the Company fails to assume the defense of such Proceeding in a timely manner, Indemnitee shall be entitled to be represented by separate legal counsel of Indemnitee's choice, subject to the prior approval of the Company, which shall not be unreasonably withheld, at the expense of the Company. In addition, if the Company fails to comply with any of its obligations under this Agreement or in the event that the Company or any other Person takes any action to declare this Agreement void or unenforceable, or institutes any Proceeding to deny or to recover from Indemnitee the benefits intended to be provided to Indemnitee hereunder, Indemnitee shall have the right to retain counsel of Indemnitee's choice, at the expense of the Company (subject to Section 9(d)), to represent Indemnitee in connection with any such matter.

Section 11. Liability Insurance. (a) To the extent the Company maintains an insurance policy or policies providing liability insurance for any of its directors or officers, Indemnitee shall be covered by such policy or policies, in accordance with its or their terms, to the maximum extent of the coverage available for any Company director or officer during the Indemnitee's tenure as a director or officer and for a period of six (6) years thereafter.

(b) If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has directors' and officers' liability insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

(c) In the event of any payment by the Company under this Agreement the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee with respect to any insurance policy. Indemnitee shall take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights in accordance with the terms of such insurance policy. The Company shall pay or reimburse all expenses actually and reasonably incurred by Indemnitee in connection with such subrogation.

Section 12. Non-Exclusivity; Survival of Rights. (a) The rights of indemnification and advance of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Charter or the Bylaws, any agreement or a resolution of the shareholders entitled to vote generally in the election of directors or of the Board, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in Indemnitee's Company Status prior to such amendment, alteration or repeal. To the extent that a change in the MGCL permits greater indemnification than would be afforded currently under the Charter, Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable or payable or reimbursable as Expenses hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

Section 13. Binding Effect. (a) The indemnification and advance of Expenses provided by, or granted pursuant to, this Agreement shall be binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), shall continue as to an Indemnitee who has ceased to be a director or executive officer of the Company or a director, officer, partner, member or manager of another Enterprise which such Person is or was serving at the request of the Company, and shall inure to the benefit of Indemnitee and Indemnitee's spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.

(b) Any successor of the Company (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part, of the business or assets of the Company shall be automatically deemed to have assumed and agreed to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place, provided that no such assumption shall relieve the Company of its obligations hereunder. To the extent required by applicable law to give effect to the foregoing sentence and to the extent requested by Indemnitee, the Company shall require and cause any such successor to expressly assume and agree to perform this Agreement by written agreement in form and substance satisfactory to Indemnitee.

Section 14. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 15. Limitation and Exception to Right of Indemnification or Advance of Expenses. Notwithstanding any other provision of this Agreement,

(a) any indemnification or advance of Expenses to which Indemnitee is otherwise entitled under the terms of this Agreement shall be made only to the extent such indemnification or advance of Expenses does not conflict with applicable Maryland law and (b) Indemnitee shall not be entitled to indemnification or advance of Expenses under this Agreement with respect to any Proceeding brought by Indemnitee, unless (i) the Proceeding is brought to enforce rights under this Agreement, the Charter, the Bylaws, liability insurance policy or policies, if any, or otherwise or (ii) the Charter, the Bylaws, a resolution of the shareholders entitled to vote generally in the election of the Board or an agreement approved by the Board to which the Company is a party expressly provides otherwise. Notwithstanding any other provision of this Agreement, a court of appropriate jurisdiction, upon application of Indemnitee and such notice as the court shall require, may order indemnification of Indemnitee by the Company in the following circumstances: (a) if such court determines that Indemnitee is entitled to reimbursement under Section 2-418(d)(1) of the MGCL, the court shall order indemnification, in which case Indemnitee shall be entitled to recover the Expenses of securing such reimbursement; or (b) if such court determines that Indemnitee is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not Indemnitee (i) has met the standard of conduct set forth in Section 2-418(b) of the MGCL or (ii) has been adjudged liable for receipt of an improper personal benefit under Section 2-418(c) of the MGCL, the court may order such indemnification as the court shall deem proper without regard to any limitation on such court-ordered indemnification contemplated by Section 2-418(d)(2)(ii) of the MGCL.

Section 16. Specific Performance, Etc. The parties hereto recognize that if any provision of this Agreement is violated by the Company, Indemnitee may be without an adequate remedy at law. Accordingly, in the event of any such violation, Indemnitee shall be entitled, if Indemnitee so elects, to institute proceedings, either in law or at equity, to obtain damages, to enforce specific performance, to enjoin such violation, or to obtain any relief or any combination of the foregoing as Indemnitee may elect to pursue.

Section 17. Arbitration. (a) Any disputes, claims or controversies regarding the Indemnitee's entitlement to indemnification or advancement of Expenses hereunder or otherwise arising out of or relating to this Agreement, including any disputes, claims or controversies brought by or on behalf of a party hereto or any holder of equity interests (which, for purposes of this Section 17, shall mean any holder of record or any beneficial owner of equity interests or any former holder of record or beneficial owner of equity interests) of a party, either on his, her or its own behalf, on behalf of a party or on behalf of any series or class of equity interests of a party or holders of equity interests of a party against a party or any of their respective directors, members, officers, managers, agents or employees, including any disputes, claims or controversies relating to the meaning, interpretation, effect, validity, performance or enforcement of this Agreement, including this arbitration agreement or the governing documents of a party, (all of which are referred to as "**Disputes**") or relating in any way to such a Dispute or Disputes shall, on the demand of any party to such Dispute or Disputes, be resolved through binding and final arbitration in accordance with the Commercial Arbitration Rules (the "**Rules**") of the American Arbitration Association ("**AAA**") then in effect, except as those Rules may be modified in this Section 17. For the avoidance of doubt, and not as a limitation, Disputes are intended to include derivative actions against the directors, officers or managers of a party and class actions by a holder of equity interests against those individuals or entities and a party. For the avoidance of doubt, a Dispute shall include a Dispute made derivatively on behalf of one party against another party. For purposes of this Section 17, the term "equity interest" shall mean, in respect of (i) the Company, shares of beneficial interest of the Company, (ii) shares of "membership interests" in an entity that is a limited liability company, (iii) general partnership interests in an entity that is a partnership, (iv) shares of capital stock of an entity that is a corporation and (v) similar equity ownership interests in other entities.

(b) Any arbitration shall be conducted by a single arbitrator chosen by the parties. If there are more than two (2) parties to the Dispute, the arbitrator shall be chosen by all claimants by the vote of a majority of the claimants, on the one hand, and all respondents by the vote of a majority of the respondents, on the other hand. If such parties fail to select the arbitrator within fifteen (15) days after receipt of the demand for arbitration, the arbitrator will be chosen pursuant to the rules of the AAA in accordance with a listing, striking and ranking procedure, with each party having a limited number of strikes, excluding strikes for cause.

(c) The place of arbitration shall be Baltimore City, Maryland, unless otherwise agreed by the parties.

(d) There shall be only limited documentary discovery of documents directly related to the issues in dispute, as may be ordered by the arbitrators. For the avoidance of doubt, it is intended that there shall be no depositions and no other discovery other than limited documentary discovery as described in the preceding sentence.

(e) In rendering an award or decision (an "**Award**"), the arbitrators shall be required to follow the laws of the State of Maryland without regard to principles of conflicts of law. Any arbitration proceedings or award rendered hereunder and the validity, effect and interpretation of this arbitration agreement shall be governed by the Federal Arbitration Act, 9 U.S.C. §1 et seq. An Award shall be in writing and shall state the findings of fact and conclusions of law on which it is based. Any monetary Award shall be made and payable in U.S. dollars free of any tax, deduction or offset. Subject to Section 17(g), each party against which an Award assesses a monetary obligation shall pay that obligation on or before the thirtieth (30th) day following the date of such Award or such other date as the Award may provide.

(f) Except to the extent expressly provided by this Agreement or as otherwise agreed by the parties thereto, each party and each Person acting or seeking to act in a representative capacity (such Person, a "**Named Representative**") involved in a Dispute shall bear its own costs and expenses (including attorneys' fees), and the arbitrators shall not render an Award that would include shifting of any such costs or expenses (including attorneys' fees) or, in a derivative case or class action, award any portion of a party's award to its attorneys, a Named Representative or any attorney of a Named Representative. Each party (or, if there are more than two (2) parties to the Dispute, all claimants, on the one hand, and all respondents, on the other hand, respectively) shall bear the costs and expenses of its (or their) selected arbitrator and the parties (or, if there are more than two (2) parties to the Dispute, all claimants, on the one hand, and all respondents, on the other hand) shall equally bear the costs and expenses of the third (3rd) appointed arbitrator.

(g) Notwithstanding any language to the contrary in this Agreement, an Award, including but not limited to any interim Award, may be appealed pursuant to the AAA's Optional Appellate Arbitration Rules (the " **Appellate Rules**"). An Award shall not be considered final until after the time for filing the notice of appeal pursuant to the Appellate Rules has expired. Appeals must be initiated within thirty (30) days of receipt of an Award by filing a notice of appeal with any AAA office. Following the appeal process, the decision rendered by the appeal tribunal may be entered in any court having jurisdiction thereof. For the avoidance of doubt, and despite any contrary provision of the Appellate Rules, Section 17(f) shall apply to any appeal pursuant to this Section 17 and the appeal tribunal shall not render an Award that would include shifting of any costs or expenses (including attorneys' fees) of any party or Named Representative or the payment of such costs and expenses, and all costs and expenses of a party or Named Representative shall be its sole responsibility.

(h) Following the expiration of the time for filing the notice of appeal, or the conclusion of the appeal process set forth in Section 17(g), an Award shall be final and binding upon the parties thereto and shall be the sole and exclusive remedy between those parties relating to the Dispute, including any claims, counterclaims, issues or accounting presented to the arbitrators. Judgment upon an Award may be entered in any court having jurisdiction. To the fullest extent permitted by law, no application or appeal to any court of competent jurisdiction may be made in connection with any question of law arising in the course of arbitration or with respect to any award made except for actions relating to enforcement of this agreement to arbitrate or any arbitral award issued hereunder and except for actions seeking interim or other provisional relief in aid of arbitration proceedings in any court of competent jurisdiction.

(i) This Section 17 is intended to benefit and be enforceable by the parties hereto and their respective holders of equity interests, directors, officers, managers, agents or employees, and their respective successors and assigns, and shall be binding upon all such parties and their respective holders of equity interests, and be in addition to, and not in substitution for, any other rights to indemnification or contribution that such individuals or entities may have by contract or otherwise.

Section 18. Venue. Any Proceeding in respect of any claim arising out of or related to this Agreement shall be brought in the Circuit Court for Baltimore City or the Circuit Court for Baltimore County, Maryland (a "State Court Action"), or the United States District Court for the District of Maryland – Northern Division (the "**Chosen Courts**"). In any State Court Action, the parties upon the request of any of them shall join in a request to have the case assigned to a Judge sitting on the Business and Technology Track of that state court. Any Proceedings arising out of or related to this Agreement shall be brought exclusively in Maryland, and the parties consent to exclusive jurisdiction and venue in Maryland. Solely in connection with claims arising under this Agreement, each party irrevocably and unconditionally (i) submits to the exclusive jurisdiction of the Chosen Courts, (ii) agrees not to commence any such Proceeding except in such courts, (iii) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any such Proceeding in the Chosen Courts, (iv) waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such Proceeding, (v) agrees that service of process upon such party in any such Proceeding shall be effective if notice is given in accordance with Section 24 and (vi) agrees to request and/or consent to the assignment of any State Court Action to the Business and Technology Track, or similar program, of that state court. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by law. A final judgment in any such Proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS. Notwithstanding anything herein to the contrary, if a demand for arbitration of a Dispute is made pursuant to Section 17, this Section 18 shall not preempt resolution of the Dispute pursuant to Section 17.

Section 19. Adverse Settlement. The Company shall not seek, nor shall it agree to or support, or agree not to contest any settlement or other resolution of any matter that has the actual or purported effect of extinguishing, limiting or impairing Indemnitee's rights hereunder, including without limitation the entry of any bar order or other order, decree or stipulation, pursuant to 15 U.S.C. §78u-4 (the Private Securities Litigation Reform Act), or any similar foreign, federal or state statute, regulation, rule or law.

Section 20. Period of Limitations. To the fullest extent permitted by law, no legal action shall be brought, and no cause of action shall be asserted, by or on behalf of the Company or any controlled affiliate of the Company against Indemnitee, Indemnitee's spouse, heirs, executors or personal or legal representatives after the expiration of two years from the date of accrual of such cause of action, and any claim or cause of action of the Company or its controlled affiliate shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such two- year period; provided, however, if any shorter period of limitations is otherwise applicable to any such cause of action, such shorter period shall govern.

Section 21. Counterparts. This Agreement may be executed in any number of counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties hereto and delivered to the other party (including via facsimile or other electronic transmission), it being understood that each party hereto need not sign the same counterpart.

Section 22. Delivery by Electronic Transmission. This Agreement and any signed agreement or instrument entered into in connection with this Agreement or contemplated hereby, and any amendments hereto or thereto, to the extent signed and delivered by means of an electronic transmission, including by a facsimile machine or via email, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto shall re-execute original forms thereof and deliver them to the other parties. No party hereto or to any such agreement or instrument shall raise the use of electronic transmission by a facsimile machine or via email to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through electronic transmission as a defense to the formation of a contract and each such party forever waives any such defense.

Section 23. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed to, or shall, constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

Section 24. Notices. Any notice, report or other communication required or permitted to be given hereunder shall be in writing unless some other method of giving such notice, report or other communication is accepted by the party to whom it is given, and shall be given by being delivered at the following addresses to the parties hereto:

(a) If to Indemnitee, to: The address set forth on the signature page hereto.

(b) If to the Company, to:

Wheeler Real Estate Investment Trust, Inc.
2529 Virginia Beach Boulevard
Virginia Beach, VA 23452
Attention: Corporate Secretary

or to such other address as may have been furnished to the Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

Section 25. Governing Law. The provisions of this Agreement and any Dispute, whether in contract, tort or otherwise, shall be governed by and construed in accordance with the laws of the State of Maryland without regard to principles of conflicts of law.

Section 26. Interpretation. (a) *Generally*. Unless the context otherwise requires, as used in this Agreement: (i) words defined in the singular have the parallel meaning in the plural and vice versa; (ii) "Articles," "Sections," and "Exhibits" refer to Articles, Sections and Exhibits of this Agreement unless otherwise specified; and (iii) "hereto" and "hereunder" and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(b) *Additional Interpretive Provisions*. The headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. Any capitalized term used in any Exhibit to this Agreement, but not otherwise defined therein, shall have the meaning as defined in this Agreement. References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder and any successor statute or statutory provision. References to any agreement are to that agreement as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. Reference to any agreement, document or instrument means the agreement, document or instrument as amended or otherwise modified from time to time in accordance with the terms thereof, and if applicable hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have executed or caused to be executed on their behalf this Agreement as of the date first written above.

WHEELER REAL ESTATE INVESTMENT TRUST, INC.

By: _____
Name:
Title:

[INDEMNITEE]

Indemnitee's Address:

[Signature Page to Indemnification Agreement]

EXHIBIT A
FORM OF AFFIRMATION AND
UNDERTAKING TO REPAY EXPENSES ADVANCED

To the Board of Directors of Wheeler Real Estate Investment Trust, Inc.:

This affirmation and undertaking is being provided pursuant to that certain Indemnification Agreement dated _____, 20 __ (the "**Indemnification Agreement**"), by and between Wheeler Real Estate Investment Trust, Inc., a Maryland corporation (the "**Company**"), and the undersigned Indemnitee, pursuant to which I am entitled to advancement of expenses in connection with [Description of Claims/Proceeding] (together, the "**Claims**"). Terms used, and not otherwise defined, herein shall have the meanings specified in the Indemnification Agreement.

I am subject to the Claims by reason of my Company Status or by reason of alleged actions or omissions by me in such capacity. I hereby affirm my good faith belief that the standard of conduct necessary for my indemnification has been met.

In consideration of the advancement of Expenses by the Company for attorneys' fees and related expenses incurred by me in connection with the Claims (the "**Advanced Expenses**"), I hereby agree that if, in connection with a proceeding regarding the Claim, it is ultimately determined that I am not entitled to indemnification under law with respect to an act or omission by me, then I shall promptly reimburse the portion of the Advanced Expenses relating to the Claim(s) as to which the foregoing findings have been established and which have not been successfully resolved as described in Section 5 of the Indemnification Agreement. To the extent that Advanced Expenses do not relate to specific Claims, I agree that such Advanced Expenses may be allocated on a reasonable and proportionate basis.

IN WITNESS WHEREOF, I have executed this affirmation and undertaking on _____, 20 ___

WITNESS:

Print name of witness

Print name of witness

Exhibit 21.1

SUBSIDIARIES OF THE REGISTRANT

- DF I-Courtland, LLC
- DF I-Edenton, LLC
- DF I-Moyock, LLC
- Lumber River Village Associates, LLC
- WHLR – Lumber River, LLC
- Northpointe Investors, LLC
- Riversedge Office Associates, LLC
- Tuckernuck Associates, LLC
- Walnut Hill Plaza Associates, LLC
- WHLR Surrey Plaza Associates, LLC
- WHLR – Surrey Plaza, LLC
- WHLR Twin City Crossing, LLC
- WHLR Tampa Festival, LLC
- WHLR Forrest Gallery, LLC
- WHLR Clover, LLC
- WHLR St. George, LLC
- WHLR South Square, LLC
- WHLR Waterway, LLC
- WHLR Westland, LLC
- WHLR Winslow, LLC
- WHLR Port Crossing, LLC
- WHLR – PCSC Associates, LLC
- WHLR Cypress, LLC
- WHLR Harrodsburg, LLC
- WHLR LaGrange, LLC
- WHLR Freeway Junction, LLC
- WHLR Pierpont Center, LLC
- WHLR Crockett Square, LLC
- Wheeler REIT, L.P.
- Wheeler Real Estate Investment Trust, Inc.
- Wheeler Interests, LLC
- Wheeler Real Estate, LLC
- WHLR Brook Run Property, LLC
- WHLR Alex City Marketplace, LLC
- WHLR Brook Run Associates, LLC
- Chesapeake Square Associates, LLC
- WHLR Sunshine Shopping Plaza, LLC
- WHLR Cardinal Plaza, LLC
- WHLR Franklinton Square, LLC
- WHLR Nashville Commons, LLC
- WHLR Parkway Plaza, LLC
- WHLR Grove Park, LLC
- WHLR Fort Howard Square, LLC
- WHLR Conyers Crossing, LLC
- WHLR Shoppes at Myrtle Park, LLC
- WHLR Darien, LLC
- WHLR Devine, LLC
- WHLR Folly Road Crossing, LLC
- WHLR Georgetown, LLC
- WHLR Ladson Crossing, LLC
- WHLR Lake Greenwood Crossing, LLC
- WHLR Lake Murray, LLC
- WHLR – St. George II, LLC
- WHLR Litchfield Market Village, LLC
- WHLR Moncks Corner, LLC
- WHLR Mullins South Park, LLC
- WHLR Ridgeland, LLC
- WHLR South Lake Pointe, LLC
- WHLR Rivergate, LLC
- WHLR Riverbridge Shopping Center, LLC
- WHLR New Market Crossing, LLC
- WHLR Village of Martinsville, LLC

- Sangaree/Tri-County, LLC
- South Main Streets, LLC
- WHLR Laburnum Square, LLC
- WHLR Franklin Village, LLC
- WHLR Columbia Fire House, LLC
- WHLR Beaver Ruin Village, LLC
- WHLR Beaver Ruin Village II, LLC
- WHLR Bryan Station, LLC
- WHLR Butler Square, LLC
- Harbor Pointe Associates, LLC
- DFI Berkley, LLC
- WHLR JANAF, LLC

- WHLR JEB, LLC
- WHLR-JANAF 1, LLC
- WHLR -JANAF 2, LLC
- Cedar Realty Trust, Inc.

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

Wheeler Real Estate Investment Trust, Inc. and Subsidiaries
Virginia Beach, Virginia

We hereby consent to the incorporation by reference in the Registration Statement on Form S-11 of our report dated March 2, 2023, relating to the consolidated financial statements and consolidated financial statement schedules of Wheeler Real Estate Investment Trust, Inc. and Subsidiaries (the "Company") as of December 31, 2022 and 2021 and for each of the years in the two-year period ended December 31, 2022, which appears in the Company's annual report on Form 10-K, and to the reference to our firm under the heading "Experts".

/s/ Cherry Bekaert LLP

Virginia Beach, Virginia
September 1, 2023

Exhibit 107

Calculation of Filing Fee Table

Form S-11
(Form Type)

Wheeler Real Estate Investment Trust, Inc.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

	Security Type	Security Class Title	Fee Calculation or Carry Forward Rule	Amount Registered (1)	Proposed Maximum Offering Price Per Share (2)	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Fees to Be Paid	Equity	Common Shares, $0.01 par value	457(c)	101,100,000	$ 3.805	$ 384,685,500	$ 0.00011020	$ 42,392.34
Fees Previously Paid								
				Total Offering Amounts		$ 384,685,500		$ 42,392.34
				Total Fees Previously Paid				—
				Total Fee Offsets				—
				Net Fee Due				$ 42,392.34

(1) In accordance with Rule 416 under the Securities Act of 1933, as amended, this Registration Statement shall be deemed to cover any additional securities that may from time to time be offered or issued to prevent dilution resulting from stock splits, stock dividends, recapitalization or similar transactions.

(2) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(c) under the Securities Act. The proposed maximum offering price per share and proposed maximum aggregate offering price are based upon the average of the high $3.97 and low $3.64 sale prices of the Common Stock on August 25, 2023.